

Li Suk Fong Susana v Shanghai Commercial Bank Trustee Ltd and another
[2015] SGHC 152

Case Number : Originating Summons No 1186 of 2013 (Summons No 1578 of 2014)
Decision Date : 10 June 2015
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Jason Lim Chen Thor, Goh Kok Yeow, and Lim Xinhua (De Souza Lim & Goh LLP) for the plaintiff; Molly Lim SC, Yap Jie Han and Kam Kai Qi (Wong Tan & Molly Lim LLC) for the first and second defendants.
Parties : Li Suk Fong Susana — Shanghai Commercial Bank Trustee Ltd and another

Probate and Administration – distribution of assets

10 June 2015

Judgment reserved.

Choo Han Teck J:

1 Mr Lorenz Henryk Gustav ("the deceased") was a German national domiciled in Hong Kong at the time of his death. In his will dated 9 May 2000 ("the Will"), he appointed the first defendant, Shanghai Commercial Bank Trustee Limited, to be his trustee and executor over assets located in Germany and the rest of the world, including Singapore. The second defendant is an employee of the first defendant and was entrusted to apply for grants of probate and letters of representation in the various jurisdictions, including Singapore. Under the Will, the deceased bequeathed all his real and personal properties located outside of Germany ("the Non-German Residuary estate") to the plaintiff, except for a pecuniary gift of one million German marks to a friend of the deceased, one Mr Gerhard Schoenegge.

2 The plaintiff sought, by way of Originating Summons No 1186 of 2013, for the transfer of the Singapore estate to the plaintiff as the sole remaining beneficiary. The parties have since agreed on a draft Order of Court for the distribution of the estate, save for one issue.

3 This issue arises from the defendants' application to retain a sum of S\$700,000 to account for trustee's costs, prior to distributing the Singapore estate to the plaintiff. There are two types of expenses that the defendants are claiming for. The first, relates to taxes on the Singapore estate, comprising of seven real properties and three bank accounts. It states that "there are taxes to be paid which have not been finalised." It estimates that the taxes amount to about S\$74,000. The second type of expenses relate to the administration of remaining estates such as those in New South Wales ("NSW"). The defendants claim that as the plaintiff has commenced proceedings in NSW which the defendants are now involved in, considerable costs will be incurred. The plaintiff has lodged a caveat which allegedly prevents the defendants from raising cash from the NSW assets, and thus the defendants now seek to use the Singapore estate to cover its expenses in NSW.

4 The plaintiff objects to this application. It states that the defendants have not rendered an invoice for the tax returns or assessments in respect of the Singapore estate. It also argues that the defendants "for the past [eight] years treated each jurisdiction as wholly exclusive, discrete and independent", and hence, each jurisdiction should determine its own costs issue. It further asserts that a substantial sum of HK\$12,650,000 has been deducted by defendants from the Non-German

Residuary Estate. This sum has been paid to itself as trustees' fees and expenses, and to date, this has not been denied by the defendants.

5 A trustee is entitled to be reimbursed expenses which he incurred whilst executing his duties under the trust. Though the defendants may have previously treated each jurisdiction as wholly discrete and independent, there is nothing in the will that prevents the defendants from dealing with the Non-German Residuary estate as a whole. There is only a separation between the German estate and the Non-German Residuary estate, with each having different named beneficiaries. Thus in principle, there does not seem to be anything that prevents the trustee from claiming expenses incurred in one jurisdiction of the Non-German Residuary estate, from the estate of another jurisdiction wherein a caveat may have been lodged.

6 In this case, the problem with the defendant's application is that it is unsubstantiated by evidence. The trustee has not proved that these are expenses which it incurred whilst executing its duties under the trust. No invoices have been produced in court, even for the taxes which allegedly amount to S\$74,000. In fact, that is the only quantification given by the defendants, and yet they wish to retain a sum of S\$700,000. Further, there is a lack of specificity in the defendants' claims in relation to the administration of the NSW estate. Given that the defendants have not provided this court with any evidence of the alleged expenses that are outstanding in respect of the Singapore estate, and the expenses to be incurred in NSW, I am unable to award the defendants a retention sum of S\$700,000 out of the Singapore estate.

7 Turning to the issue of costs, both parties have relied on O 59 r 6(2) of the Rules of Court (Cap 332, R 5, 2014 Rev Ed) in their submissions. O 59 r 6(2) states:

Where a person is or has been a party to any proceedings in the capacity of a trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative or out of the mortgaged property, as the case may be; and the Court may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or, in the case of trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

Counsel for the plaintiff submits that the defendants have acted solely for their own benefit in refusing to transfer the Singapore estate to the plaintiff or to accept the termination of the trust, including the decision not to transfer the Singapore estate based on the risk that they may be sued by the children of the deceased. As such, Counsel submits that the defendants are not entitled to any costs out of the Singapore estate "which they had unjustifiably withheld from the plaintiff since 2012", and submits for costs on an indemnity basis. In response, the defendants state that they cannot be faulted for seeking protection in a Court order so that they are not exposed to any legal action from the children.

8 In determining whether costs were properly incurred by the defendants in these proceedings, the defendants must satisfy the court that it has not acted unreasonably or for their own benefit. In the course of executing the duties, the defendants claim that they had been advised by its solicitors that the children of the deceased may have a potential claim against the Non-German Residuary estate. The defendants thus decided to only distribute the assets after getting the requisite court direction and orders in the various jurisdictions in which the assets are situated. The defendants also sought to notify the children of the intent to distribute the Singapore estate pursuant to Singapore court directions, so that the children would be bound by the various orders, thus bringing finality to

the administration of the Will. I am of the view that the defendants have not acted unreasonably and have not acted for their own benefit rather than for the benefit of the fund, and the plaintiff has not provided me with any reason to find otherwise. I thus allow the defendants to recover costs of this action and the applications herein from the trust fund. The quantum of costs is to be determined at a later date, if parties are unable to agree.

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