

Wong Sau Kuen and Others v Wong Kai Wah and Another
[2008] SGHC 5

Case Number : OS 632/2007
Decision Date : 09 January 2008
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Philip Jeyaratnam SC, Rodney Keong and Elizabeth Yeo (Rodyk & Davidson LLP) for the first to fifth plaintiffs; K Nair and Mohan Das Naidu (Mohan Das Naidu & Partners) for the first defendant; Brian Campos (Wee, Tay & Lim) for the second defendant
Parties : Wong Sau Kuen; Wong Sau Har; Wong Sau Chin; Wong Sow Meng; Wong Suan Fong — Wong Kai Wah; Wong Khai Soon

Mental Disorders and Treatment – Management of patients' property and affairs – Composition of committee of person and estate – Children of patient objecting to each other's appointment – Whether independent member ought to be appointed – Whether feuding children ought to be appointed – Section 9 Mental Disorders and Treatment Act (Cap 178, 1985 Rev Ed)

9 January 2008

Choo Han Teck J:

Introduction

1 This was an application by the Plaintiffs'; opposed by the Defendants'; for them to be made the Committee of the Person and Estate for Yan Lai Lin ("YLL") (NRIC No. S0902685A) ("the Committee"). This application followed the declaration of YLL's incapacity made by this court under s 7 of the Mental Disorders and Treatment Act (Cap 178, 1985 Rev Ed) ("the Act"). Section 9 of the Act provided that once such a declaration was made, it was then up to the Court's discretion to appoint a Committee.

2 After hearing the parties, I ordered that the 2nd to 5th Plaintiffs and the 2nd Defendant be made members of the Committee with parties at liberty to apply should circumstances change in the future. Dissatisfied, the 1st Defendant has lodged an appeal against my decision, the grounds of which are set out in the paragraphs that follow.

Factual Background

3 The Plaintiffs and Defendants are YLL's children. One other sibling, Wong Kai Yuan, is not involved in this matter but has filed a notice of consent to the Plaintiffs being appointed as the Committee, and has also agreed to himself not being appointed.

4 Quite apart from this contested application, the 1st Defendant has been alleged to have procured from YLL shares that she owned in companies in Australia through undue influence. There are presently, proceedings in Australia against the 1st Defendant in this regard and interlocutory injunctions have been granted against him, evidencing that the allegations are meritorious. The relevance of these Australian proceedings is that the 1st Plaintiff has been acting as YLL's litigation

guardian against the 1st Defendant in the said proceedings. As such, the relationship between the 1st Defendant and the 1st Plaintiff is muddled with disputes. This is the reason for the 1st Defendant's objections to the 1st Plaintiff being on the Committee of YLL, despite the fact that it is the unanimous view of all the Plaintiffs that the 1st Defendant had acted improperly in acquiring the shares.

5 All parties in this proceeding accept that YLL is mentally incapable of looking after herself and that a Committee should be appointed. The only issue was the composition of the Committee. The 2nd Defendant agreed to withdraw his objection to the appointment of the Plaintiffs as members of the Committee provided it comprised the Plaintiffs and himself only. The Plaintiffs had no objection to the 2nd Defendant being appointed as a member of the Committee. Further, by way of consent order, the 1st Defendant did not object to the 2nd Defendant being appointed on the Committee either.

6 However, the 1st Defendant's wished to be appointed as a member of the Committee and further objected to the 1st Plaintiff's appointment to the Committee. Instead, he asked that an "independent" member be appointed as a member of the Committee. In light of the 1st Defendant's objections to the 1st Plaintiff being on the Committee and because of the on-going proceedings in Australia, the 1st Plaintiff withdrew her name from this present application.

7 The Plaintiffs were opposed to the 1st Defendant's preference that an independent person be appointed as Committee to YLL. The 1st Defendant had submitted that this person could possibly be Suzanna Chong ("Chong"), who was the personal advisor to YLL. The Plaintiffs however objected to Chong as a possible independent candidate for the Committee on the grounds that it was too late to name any such candidate at all, and also that Chong herself had not yet consented to such an appointment. Thus, the question that remained was whether the 1st Defendant should be added as a member of the Committee.

Decision

Composition of Committee

8 In making a determination on the composition of the Committee, the primary objective of the court is to ensure the protection of YLL and her interests. It is the court's role to "sieve and filter out the bitter dross of family conflict in order to arrive at a reasonably good solution" for YLL: *Teo Choo Him & Another v Teo Leng Hui* [2005] SGHC 97 at [22]. In this respect, it is always better to have family members rather than outsiders as members of the Committee. People familiar with YLL's background and idiosyncrasies would be more likely to manage her affairs better. In the present case, the siblings would know YLL and her interests best. It would not be sensible to appoint an independent person as a member of the Committee.

9 Secondly, it was also necessary that all the siblings appointed to the Committee were not at loggerheads with one another, in order to facilitate workable solutions to problems that may arise from time to time, and to aid in effective decision-making. On the facts, the 2nd to 5th Plaintiffs and the 2nd Defendant were on good terms with one another and as such, there was lesser potential for conflict within a Committee constituted of them.

10 In the circumstances, I determined that the Committee be made up of the 2nd to 5th Plaintiffs

and the 2nd Defendant. In doing so, I was aware that the 1st Defendant's interests, whatever they may be, were not unduly prejudiced. This was because none of the members of the Committee could act independently. They each needed to consult one another when making decisions and in the event of a disagreement between the members of the Committee, the decision of the simple majority of the members would prevail. In addition to that, if there was no majority decision, any of the members of the Committee could apply to Court for adjudication on the matter. In any event, parties are always at liberty to apply should the circumstances and/or the relationship between members of the Committee change.

Costs

11 After hearing the parties on their submissions as to costs, I exercised my discretion that the costs of the Committee were to be paid from the estate of YLL while the costs of the 1st Plaintiff and 1st Defendant were to be borne personally.

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