

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2023] SGHC 163

Originating Application No 701 of 2022

Between

Goh Siam Teow (a person lacking capacity suing by her litigation
representative, Lim Sai Hong)

... Applicant

And

Arthero Lim Tung Hee

... Respondent

JUDGMENT

[Land — Sale of land — Sale under court order]

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Goh Siam Teow
(a person lacking capacity suing by her litigation
representative, Lim Sai Hong)
v
Lim Tung Hee Arthero

[2023] SGHC 163

General Division of the High Court — Originating Application No 701 of 2022

Choo Han Teck J
25 May 2023

1 June 2023

Judgment reserved.

Choo Han Teck J:

1 The applicant, Mdm Goh Siam Teow (“G”), is 89 years old and suffers from dementia and is suing by her litigation representative as she lacks the mental capacity to initiate and sustain the action. G has three children — Lim Sai Hong (“SH”), aged 70; Lim Tung Hee Arthero (the respondent in this application), aged 68; and Lim Chew Hong, aged 63. SH, a retiree who previously operated a student hostel, is the litigation representative of G pursuant to an order of court granted in FC/ORC 4061/2022. The respondent says that he is an artist — a painter — but has since ceased to paint professionally after he sustained a stroke. He appears in person and does not seem to have any physical or mental impediment to presenting his own case.

2 This is G’s application under s 18(2) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) read with paragraph 2 of the First Schedule, for leave of court to sell an HDB flat located at Lorong 4 Toa Payoh (“the “Property”). The Property’s value is about \$700,000. G purchased the Property in 2001 in joint names with the respondent, but the joint tenancy has since been severed, as evidenced by the subsidiary certificate of title dated 5 December 2022. Presently, G and the respondent hold the Property as tenants-in-common in equal shares. However, only the respondent is residing in the Property. He has been residing there for 20 years. It is undisputed that he has been renting out two rooms in the Property, earning about \$1,500 a month, which he uses for his living expenses. Although G is a co-owner of the Property, she has not received any of the rental proceeds. Since 2003, G has been residing with SH, her appointed deputy.

3 The only issue for my determination is whether the Property should be sold. If an order for sale is made, the sale proceeds will have to be apportioned equally between G and the respondent as tenants-in-common in equal shares. The respondent resists the application on procedural and substantive grounds. Procedurally, the respondent says that SH, as the litigation representative of G, lacks the power to apply for the Property to be sold. The respondent points to Order 5(b)(vi) of FC/ORC 4061/2022, which reads:

Subject to the consent of the joint-owner, to sell the Property at or above market price and, after payment of the outstanding housing loan (if any) and/or any other monies due to HDB, refunding parties CPF accounts with monies utilised towards the purchase of the flat together with accrued interest and deducting all costs and expenses of sale, to give a good and valid receipt for P's share of the net sale proceeds (i.e. 50% of the net sale proceeds).

The respondent says that this order is the only authorised method by which SH may apply, as deputy, for the Property to be sold. Thus, he says that since he

has not consented to the sale of the Property, SH is not empowered to make the application in the first place. I am unable to accept this argument. Order 5(b)(vi) is merely one agreed method by which SH is empowered to act, as deputy of G. The grant of a specific power does not delimit the ambit of general powers accorded to SH as a deputy of G. In particular, s 23(1)(b) of the Mental Capacity Act 2008 (2020 Rev Ed) grants SH powers for “the sale, exchange, charging, gift or other disposition of P’s property”. Further, s 23(1)(g) authorises SH to conduct legal proceedings in G’s name or on G’s behalf. Accordingly, SH did not act outside of her powers when commencing this application.

4 Apart from his procedural objection, the respondent resists the sale of the Property on the ground that he is a stroke patient with no income. He says that he has no financial means to move out because he would otherwise lose the rental he currently receives, along with his current place of residence. On the other hand, SH says that the sale of the Property is necessary to meet the financial burden of G’s medical expenses, especially in the light of her worsening dementia condition. SH says that her own savings are insufficient, and the sale proceeds will be applied towards G’s long-term care.

5 The respondent’s case is that he will not have sufficient resources for his upkeep if the property is sold. This, however, must be balanced against the best interests of his ailing and aged mother, G. She cannot be kept out of the property and have the respondent taking over the benefits of ownership entirely. Nothing can be more inequitable. A sale of the Property is the most equitable solution in the circumstances. The respondent will receive a lump sum pay-out of at least \$350,000 according to the valuation of \$700,000 and the prayer of SH for the sale proceeds to be apportioned equally. This pay-out is not insignificant and will provide for the respondent adequately. As Ms Lim, counsel for G, points out, the respondent has additional support from the welfare services on account

of his age and health. He will also have a sum of at least \$192,000 in his CPF retirement fund once his CPF contribution from the sale of the flat is refunded.

6 I now turn to the issue of how the sale proceeds should be apportioned. Ms Lim asks for an equal apportionment of the sale proceedings according to the ownership interests as *per* the title deed. The respondent says that this will prejudice him as he contributed significantly more than G toward the purchase of the Property in 1993 and asks for the sale proceeds to be apportioned in the ratio of 60.31% (respondent): 39.69% (G).

7 It was not disputed that a significant portion of the funds used to purchase the Property came from the sale of another flat at Lorong 5 Toa Payoh which the parties acquired in joint names in 1993. The net sale proceeds amounted to \$398,241.64. It was undisputed that this sum was received solely by G at the time of sale. However, the respondent claims that he is entitled to half of the proceeds. He claims that G is holding his share in trust for him, notwithstanding that it was G who repaid the housing loan of \$241,000 to HDB for the purchase of the Property. The respondent claims that the monies used to repay the loan were from the monies allegedly held on trust for him.

8 The evidence does not support the respondent's narrative. The documents only show that the respondent contributed from his CPF accounts, and that the cash payments were made by G. Although the housing loan for the Lorong 5 Toa Payoh flat was paid for by the respondent, he only contributed \$30,578.36 out of the loan quantum of \$64,000. The remaining redemption was paid for by G. The payment was made by SH, who adduced evidence of a cashier's order from G dated 19 October 2001. I incline to accept SH's evidence over the respondent's evidence. The respondent said that he paid for the remaining cash redemption "to the best of [his] recollection". This corroborates

the evidence that G contributed more. In any event, the respondent's failure to apportion to G the rental proceeds of the Property (which exceeded \$400,000) since 2003, sufficiently settles the difference in contributions.

9 Furthermore, without proper documentation, it is difficult to ascertain the breakdown of the financial contribution of the parties made some 20 years ago to different properties. The joint tenancy was severed in 2020, and thus, G and the respondent became tenants-in-common in equal shares. This was not disputed by the respondent when the subsidiary title was registered, and I am of the view that it is too late to do so now. The Property is to be sold, and the proceeds shall be divided equally between G and the respondent. And so I order.

10 On the issue of costs, counsel for G asks for costs to be fixed at \$34,000 inclusive of disbursements. The respondent says that he is unemployed and reiterated that he is a stroke patient. But substantial legal costs had been expended by G to obtain the orders I am making. Having regard to the circumstances of the case, I am of the view that a sum of \$12,000 inclusive of disbursements is fair, and I so order that the respondent pay this sum.

- Sgd -
Choo Han Teck
Judge of the High Court

Lim Kim Hong (Kim & Co.) for the applicant;
Respondent in person.