Ong Wui Teck
v
Ong Wui Swoon

[2016] SGHC 42

High Court — HC/Originating Summons No 165 of 2016
Woo Bih Li J
4 March 2016

Courts and jurisdiction — Judges — Recusal

21 March 2016

Woo Bih Li J:

Introduction

1 The plaintiff, Ong Wui Teck ("Mr Ong") and the defendant, Ong Wui Swoon ("Mdm Ong") are two out of six siblings. One of the six siblings passed away in 1990. Mr Ong is the administrator of the estate of their father ("the father") who died intestate. He is also the executor of the estate of their mother ("the mother") who had made a Will.

2 The present application was filed by Mr Ong on 22 February 2016 for me to disqualify myself from hearing all matters pertaining to the mother's estate. He filed two affidavits in support of this application, which were affirmed on 18 February 2016 and 2 March 2016 respectively. I will refer to

them as "his first supporting affidavit" and "his second supporting affidavit" respectively. The application was opposed by Mdm Ong who had affirmed an affidavit on 29 February 2016. I will set out in some detail the background leading to the present application.

The father's estate

3 In Suit No 385 of 2011 which concerned the father's estate, Mdm Ong was the plaintiff and Mr Ong was the defendant. Mdm Ong alleged that Mr Ong had failed to render an accurate account of that estate's assets. She therefore asked for an order that he (i) render another account and (ii) pay damages for his alleged breach of duty. She also asserted a beneficial interest in the sale proceeds of a private property in the name of Mr Ong which she claimed that Mr Ong had held in trust for the father.

4 After a trial, I concluded that Mr Ong had not given a proper account of the assets of the father's estate ("my substantive decision"). However, I also concluded that the private property which he had held in his name was not part of the assets of the father's estate, *ie*, he was not holding that property in trust for the father.

5 I ordered an inquiry before the Registrar of the Supreme Court to determine the assets of the father's estate based on the specific guidelines which I had set out in my written judgment of 30 October 2012 for my substantive decision, *Ong Wui Swoon v Ong Wui Teck* [2013] 1 SLR 733 (at [143]–[151]).

6 As for costs, I initially ordered on 3 February 2014 that each party was to bear his or her own costs of the trial. However, Mdm Ong requested further

arguments on this decision and I agreed to the request. After hearing the further arguments on 3 March 2014, I decided that Mr Ong was to pay Mdm Ong some costs of the trial which I fixed at $10,000.

7 In the meantime, an Assistant Registrar ("AR Leong") had conducted the inquiry which I had ordered. On 24 September 2013, AR Leong decided that the father's estate had assets amounting to $15,756.47. He ordered Mr Ong to pay Mdm Ong $1,313 as her one-twelfth share thereof. He also ordered that the costs of the inquiry be agreed or taxed. Although the costs order was made by consent, there was a dispute as to who would be liable for such costs. Eventually AR Leong clarified that his costs order meant that Mr Ong was to pay such costs to Mdm Ong.

8 Mr Ong then applied for an extension of time to appeal against the AR's decisions as he was out of time to do so. This application was allowed by another Assistant Registrar ("AR Khng") on 24 February 2014. Mr Ong then appealed against both the substantive decision and the costs order of AR Leong.

9 However, Mdm Ong filed an appeal against AR Khng's decision to grant Mr Ong an extension of time to appeal.

10 Both the appeals came up for hearing before me on 19 May 2014. I allowed Mdm Ong's appeal in part in that I set aside AR Khng's decision to allow the extension of time to appeal against AR Leong's substantive decision. However, I allowed the extension of time for Mr Ong to appeal against AR Leong's costs order to remain. Therefore, Mr Ong's appeal before me remained only in respect of AR Leong's costs order. After hearing arguments, I set aside AR Leong's costs order in that such costs were not to be taxed although

Mr Ong was still liable to pay the costs of the inquiry. I fixed the quantum of costs that he had to pay for the inquiry at $400. (see *Ong Wui Swoon v Ong Wui Teck* [2014] SGHC 157).

11 Mr Ong then filed two appeals in respect of the decisions that I made on 19 May 2014. In response, Mdm Ong filed two applications to strike out both of Mr Ong's appeals on the ground that he had not obtained the leave of court to appeal to the Court of Appeal.

12 On 15 October 2014, the Court of Appeal ordered the parties to go for mediation to resolve all the disputes pending between them (and not just the disputes which I had decided on). However, the mediation was apparently unsuccessful and parties appeared before the Court of Appeal again on 9 March 2015. The Court of Appeal then struck out Mr Ong's appeals on the basis that they were bound to fail. However, the Court of Appeal made no order as to costs in respect of the applications and the appeals to the Court of Appeal and ordered Mr Ong's security for the costs of the appeals to be released to him.

The mother's estate

13 Prior to my substantive decision on the father's estate, Mdm Ong and other siblings had filed an action in the then-Subordinate Courts in 2005 to challenge the validity of the mother's Will. The Will was upheld by the District Court in 2007. Appeals to the High Court and to the Court of Appeal were dismissed.

14 However in 2013, Mdm Ong filed another action in the Subordinate Courts against Mr Ong in respect of the mother's estate. This was to seek (i) the

revocation of Mr Ong's appointment as executor of the mother's estate for which he had obtained a grant of probate, and (ii) the appointment of Mdm Ong as administrator in place of Mr Ong.

15 On 29 September 2015, Mdm Ong's action was dismissed. She then filed an appeal to the High Court on 13 October 2015. This is HC/DCA 21/2015 ("DCA 21/15").

16 Mr Ong then filed HC/OS 11/2016 ("OS 11/16") to require Mdm Ong to apply for an extension of time to serve various documents on Mr Ong as he alleged that service of such documents had not been effected on him. He also sought other reliefs as set out in more detail in his application.

17 Apparently, at a pre-trial conference on 26 January 2016, an Assistant Registrar informed the parties that both OS 11/2016 and DCA 21/2015 were fixed for hearing before me and that another two outstanding applications (filed in 2014) concerning the mother's estate would also be eventually heard by me.

18 Mr Ong then filed the present application, *ie*, HC/OS 165/2016 on 22 February 2016 for me to recuse myself from hearing all matters in respect of the mother's estate.

Mr Ong's reasons

19 Mr Ong's reasons for seeking my recusal, as stated in para 5 of his first supporting affidavit for the present application, were as follows:

(a) conflict of interest;

(b) absence/lack of independence;

(c) biasness;

> (d) prejudgment/predetermination; and
>
> (e) condoning the actions of the opposing party/solicitor that are contrary to and/or an obstruction to justice.
>
> [numbering added]

20 These reasons may be divided into two broad categories: (i) conflict of interest, and (ii) bias.

21 I add that in the trial in respect of the father's estate, Mr Ong was represented by solicitors. Thereafter he represented himself in the matters which I subsequently heard. He has acquired considerable experience in litigation.

Alleged conflict of interest

22 Mr Ong's allegation about a conflict of interest was conflated with his allegation of bias on my part.

23 I gathered from Mr Ong's first supporting affidavit that he was alarmed because Mdm Ong had asserted that she would rely on findings of fact made by me against him (Mr Ong) in respect of the father's estate for her current disputes with him in respect of the mother's estate. As deposed at para 13 of his first supporting affidavit, Mr Ong was afraid that:

> [I] would, in all likelihood, uphold [my] prior ruling and not bring an impartial mind to the issues, including the issue of [Mdm Ong's] obstruction of the estates' accounting by withholding the files and documents of both the estates of [the] father and [the] mother.

24 Contrary to Mr Ong's allegations, the mere fact that a judge has made an adverse ruling or comment against a litigant does not necessarily mean that

he should recuse himself in the same or a subsequent matter involving that litigant.

25 As observed by the English Court of Appeal in *Otkritie International Investment Management Ltd* [2014] EWCA Civ 135 at [17], a judge who has previously criticized the conduct of a party in the course of his judgment on a matter, which he considers relevant to his decision, is not precluded from hearing a subsequent dispute involving the same party. The judge is simply exercising his judicial function. Only if the views were expressed in such outspoken, extreme, or unbalanced terms as to cast doubt on the judge's ability to approach the subsequent case with an open judicial mind should he recuse himself. Much turns on the nature of the views expressed previously by the judge and of the objection taken subsequently by the party. In *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451 at [25], the English Court of Appeal gave the following example:

> a real danger of bias might well be thought to arise if … in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see *Vakauta v Kelly* (1989) 167 C.L.R. 569) … *The mere fact that a judge*, earlier in the same case or *in a previous case*, had *commented adversely on a party or witness*, or *found the evidence of a party or witness to be unreliable*, *would not without more found a sustainable objection*.
>
> [emphasis added]

26 As regards Mr Ong's allegation about my prior ruling, it appeared from his first supporting affidavit that he was referring to para 138 of my judgment

in my substantive decision in respect of the father's estate. There, I had said that it was not open for Mr Ong to argue that he was unable to give a proper account of the assets of the father's estate on the ground that he did not have an estate file. The file was allegedly kept at a flat of which he was locked out, or had otherwise been kept by one of his brothers. I had observed that Mr Ong had made no attempt to try and get that file. In any event, Mdm Ong had managed to get the file from that brother and had made discovery of the file to Mr Ong before the trial commenced.

27 What then was Mr Ong complaining about? He was not alleging that I was wrong in principle that he needed to attempt to obtain the estate file in respect of the father's estate. His point was that he was unaware that the file was with Mdm Ong. However, Mdm Ong had since made discovery of the file to him. While Mdm Ong made discovery of that file only after filing her action, Mr Ong was still using the excuse that he did not have the file at the trial, instead of asking for the file and rendering a proper account before the trial started.

28 In any event, four points are pertinent. First, while Mr Ong made many negative comments about my findings of fact in my substantive decision, he did not appeal against my substantive decision that he had failed to render a proper account in respect of the assets of the father's estate.

29 Secondly, the timing of Mr Ong's present application is relevant. As I will elaborate later below (in the context of the allegation about bias), he did not complain about any conflict (or bias) on my part until now.

30 Thirdly, as I will also elaborate later below, Mr Ong was complaining about rulings of mine which went against him while ignoring those rulings which went in his favour.

31 Fourthly, in respect of the mother's estate, Mr Ong did not say in his affidavits for the present application that he could not render proper accounts because he did not know where the file or documents for that estate were. Indeed, the judgment of the district judge Seah Chi-Ling ("DJ Seah") in respect of Mdm Ong's 2013 action, *Ong Wui Swoon v Ong Wui Teck* [2015] SGDC 270 ("DJ Seah's Judgment"), did not indicate that Mr Ong's failure to access documents to do a proper account of the assets of the mother's estate was an issue.

32 If the proper rendering of accounts was still an issue in respect of the mother's estate and if Mr Ong had a valid reason why he could not render such accounts, then the facts of that case would have to be considered.

33 In my view, Mr Ong's allegation of conflict of interest on my part fell far short of supporting his application for recusal and was not valid.

Alleged bias

34 I now come to Mr Ong's allegation of bias against me. He referred to many instances of alleged actual bias to support this allegation.

Fixing of four matters before this court of which two were fixed for hearing on the same date

35 First, as already mentioned, Mr Ong had apparently learned from an Assistant Registrar at the pre-trial conference on 26 January 2016 that I would

be hearing OS 11/2016 and DCA 21/2015 as well as two other outstanding applications pertaining to the mother's estate. He assumed that this was my doing, in that I had procured for all these matters to be heard by myself. He alleged that under a system of allocation of cases based on the number of judges on the bench, there was a less than 0.1% chance of the same judge hearing all four matters (see para 6 of his first supporting affidavit).

36 Mr Ong's belief that there was foul play was further fuelled by the fact that OS 11/2016 and DCA 21/2015 were fixed for hearing on the same day. He assumed that this meant that both matters would necessarily be heard on the same day and that it was an attempt to compel him to proceed to address Mdm Ong's appeal in DCA 21/2015 regardless of the outcome of his application in OS 11/2016 for Mdm Ong to serve various documents on him. He was afraid that if he was unsuccessful in his application and was compelled to proceed to address Mdm Ong's appeal he would be denied an opportunity to appeal (or seek leave to appeal) against an unfavourable decision on his application (see paras 15-19 of his first supporting affidavit).

37 Mr Ong had made a number of wrong assumptions regarding the above allegations.

38 First, it was not I who directed that all outstanding matters in respect of the mother's estate be heard by the same judge although, having learned of this development, I agree that that was the logical step to take. The Registrar of the Supreme Court must have thought that it made sense for one judge to hear all the outstanding matters rather than to scatter them among a number of judges, especially since we have a docket system. This would ensure consistency of

rulings and would also be more efficient as parties would not have to repeat the same background facts before different judges.

39 Secondly, and very importantly, I did not direct that I should be the judge to hear the outstanding matters regarding the mother's estate. Perhaps the Registrar of the Supreme Court identified me as the judge to hear them because I already had some familiarity with the disputes of the parties in respect of the father's estate. Whatever the reason, it was not I who had asked to hear the disputes in respect of the mother's estate.

40 Thirdly, Mr Ong was wrong to conclude that because OS 11/2016 and DCA 21/2015 were fixed for hearing on the same day, that would mean that the latter, being Mdm Ong's appeal, would be heard regardless of the outcome of his application in the former, thus denying him a chance to appeal (or ask for leave to appeal) if his application was unsuccessful.

41 The fact that both matters were fixed for hearing on the same day did not mean that both would certainly be heard on the same day. As Mr Ong himself alluded to, his application would be heard first. If he was successful, then Mdm Ong would have to serve him various documents, which he had said were necessary in respect of her appeal. That would mean that it was unlikely that her appeal would be heard on the same day.

42 Even if Mr Ong's application was unsuccessful, it was open to him to persuade the High Court to grant him leave to appeal to the Court of Appeal or to adjourn the hearing of Mdm Ong's appeal pending any application by him to the Court of Appeal for leave to appeal. The High Court would decide whether to grant any such request. It did not follow that just because both matters were

fixed for hearing on the same day that both must would be heard that day. The fixing of both matters for hearing on the same day was just to allow the court to hear both matters on the same day if the court were minded to do so.

43 If only Mr Ong's application was fixed for hearing that day, then the court would not be able to carry on with Mdm Ong's appeal even if Mr Ong did not succeed in his application, for example, because all relevant documents had been served on him or because it was academic. I do not say that his application was in fact without merit but the point was that the fixing of both matters for hearing would give the court an option whether to hear Mdm Ong's appeal. It was not the foregone conclusion that Mr Ong was labouring under. Furthermore, he was wrong to blame this court for his perceived predicament.

Mdm Ong's conduct

44 Secondly, Mr Ong suggested in para 13 of his first supporting affidavit that I was biased because I had not taken into account (in the trial) Mdm Ong's conduct in denying him the estate file of the father for which he needed to give a proper account. However, Mdm Ong had given discovery of the file to him prior to the commencement of the trial for the father's estate before me. Indeed, Mr Ong could have asked for the documents in the file to give a proper account at any time before the end of the trial. However, he did not do so.

45 Furthermore, Mr Ong did not appeal against my substantive decision ordering him to give a proper account. If he was still genuinely handicapped at the inquiry because he did not have all the documents he needed, he could have informed AR Leong of his disadvantage. As far as I am aware, he did not raise this point before AR Leong. He also did not raise this point in his appeal which

was heard by me. At the time of the inquiry before AR Leong, Mr Ong's point was that the father's estate was negative in value, and not that he still lacked the documents to give a proper account.

46 Therefore, Mr Ong's allegation that I was biased because I had not considered that he was impaired by Mdm Ong's obstruction in relation to the estate file was baseless.

Value of the father's estate

47 Thirdly, Mr Ong alleged (in paras 13 and 28–31 of his first supporting affidavit) that I had failed to take into account that the father's estate was negative in value. I did no such thing. I left it to the Registrar to make an inquiry and it was for Mr Ong to persuade AR Leong that the father's estate was negative in value. Indeed, I note from DJ Seah's Judgment at [27] that Mr Ong had made the same point to him, *ie*, that it was the Registrar who made the inquiry.

48 Furthermore, in considering Mr Ong's appeal in respect of the lack of merits of AR Leong's substantive decision, I accepted that his appeal was not clearly hopeless. However, I decided that he was not entitled to an extension of time to file an appeal in respect of that decision for other reasons stated in my grounds of decision dated 7 August 2014 (see *Ong Wui Swoon v Ong Wui Teck* [2014] SGHC 157 at [64]).

49 Mr Ong's allegation on this point was therefore factually incorrect.

Mdm Ong's solicitors' conduct

50 Fourthly, Mr Ong alleged (in paras 20–23 of his first supporting affidavit) that I was somehow in cahoots with Mdm Ong's solicitors. He alleged that in Order of Court No 4561 of 2014, which Mdm Ong's solicitors had extracted in respect of RA 54/2014 (which was Mr Ong's appeal against AR Leong's decisions), Mdm Ong's solicitors had deliberately stated that the appeal was that of Mdm Ong when actually the appeal was his. Mr Ong alleged that this was the solicitors' attempt to mislead the Court of Appeal so that that court would think that his appeal was only in respect of costs.

51 Mr Ong complained that a draft of the order had not been sent to him for approval as he was a litigant in person and that after the engrossed order was extracted and served on him, he wrote a letter dated 16 July 2014 to Mdm Ong's solicitors to draw their attention to the error and a copy of that letter was copied to the Registrar of the Supreme Court. Despite this, the error was not attended to unlike other instances when parties were immediately called for hearing to clarify or rectify an order of court. Mr Ong blamed me for this state of affairs and accused me of complicity.

52 Mr Ong assumed that I had approved the draft order before it was engrossed. He also assumed that I had seen his letter dated 16 July 2014 which he alleged he had copied to the Registrar.

53 In fact, I did not approve the draft order, which was likely approved by a duty Registrar. Even if I had, it would have been a genuine error. Secondly, I did not see a copy of his letter dated 16 July 2014. Thirdly, the order had already been engrossed and extracted. This is unlike instances where the order has not

yet been extracted. Once an order has been extracted, then it is for either side to apply formally to correct the error. Where it has not yet been extracted, it may be clarified or rectified without a formal application.

54 Mr Ong also complained that by reason of the error, the order was false and was used by Mdm Ong in her applications to the Court of Appeal to strike out his appeals to the Court of Appeal. If indeed the error was so important (which I do not think so), he could and would have drawn it to the attention of the Court of Appeal. If he did not do so, he has to take responsibility for his own omission. If he did do so and the Court of Appeal still dismissed his appeals, there would again be no reason for him to blame this court for the outcome.

55 Mr Ong also said that I had failed to consider a point he had made in his submission dated 8 January 2014 in respect of the costs for the trial involving the father's estate. He claimed that he had submitted that a receipt which Mdm Ong had exhibited in one of her earlier affidavits had been doctored as the year had been intentionally left out with a dark overlay over the receipt so as to intentionally produce a dark image making it hard to read. Mr Ong blamed Mdm Ong's solicitors for this and accused this court of not seeking an explanation from them. He alleged that I had turned a blind eye to it, thereby vindicating Mdm Ong's solicitors. He also alleged that the $10,000 costs order which I made against him (for the trial) was "perverse" and had the effect of "shutting the door for any future actions [by him] against [Mdm Ong's] solicitor" (see paras 46 and 47 of his first supporting affidavit).

56 Whether the receipt was doctored or not was not material to this court for the purpose of deciding whether Mr Ong had given a proper account of the assets of his father's estate or in making the $10,000 costs order. Furthermore,

it is obvious that the $10,000 costs order did not shut Mr Ong from taking any future action against Mdm Ong's solicitors (if indeed he had any basis to do so).

57 Indeed, in para 16 of Mr Ong's second supporting affidavit, he said that it was not an issue of authenticity of documents presented during a list of documents stage for the main trial. Instead, he said that the fraud took place during the inquiry proceedings before AR Leong. He had changed his position. He then alleged that by not allowing him to proceed with his appeal against AR Leong's substantive decision, I had allowed the fraud to be "swept under the carpet". Yet if the fraud was as obvious as Mr Ong was alleging, it would not have escaped the attention of AR Leong unless Mr Ong did not raise it before AR Leong or, if he did, AR Leong did not agree with him that Mdm Ong or her solicitors had committed a fraud. Furthermore, as already mentioned, Mr Ong had filed two appeals against my decisions in respect of the inquiry to the Court of Appeal and the Court of Appeal dismissed his appeals for lack of merit.

The $10,000 costs order

58 Fourthly, Mr Ong stressed that I had penalised him by making the $10,000 costs order against him.(see paras 33, 38–40, and 55 of his first supporting affidavit).

59 Mr Ong ran his argument on this point in the following way. He said that it took me some four and a half months since AR Leong's decision on 24 September 2013 to make my initial order of 3 February 2014 that each party was to bear his or her own costs of the trial in respect of the father's estate. He then alleged that,

> Yet, in a matter of just one month, [I] had flip-flopped, and on 3 March 2014, [I] varied [my] order such that [Mr Ong] was now required to pay costs fixed at $10,000, with the only significant event within this one month being the extension of time granted by [AR Khng] on 24 February 2014 in respect of [Mr Ong's] application … to appeal against AR Leong's decision …

60 Mr Ong argued that since I was relying on the outcome of the inquiry before AR Leong in my decision on the further arguments on costs of the trial, I should have awaited the outcome of the appeal against AR Leong's decision before making my decision after hearing further arguments. He said that I was aware that an extension of time had been granted by AR Khng to Mr Ong to appeal against AR Leong's decisions. He alleged that (at the time of the hearing of the further arguments on 3 March 2014) it was a judicial commissioner who was scheduled to hear his appeal against AR Leong's decisions. He asserted that when I changed my decision on 3 March 2014 on costs and ordered him to pay $10,000 costs to Mdm Ong for the trial, this was a sham and that this order was intended to influence the outcome of his appeal before the judicial commissioner.

61 As it transpired, at the hearing before the judicial commissioner, Mdm Ong's counsel had asked for the appeals of Mr Ong and Mdm Ong against the decisions of AR Leong and AR Khng respectively, to be fixed before me. Hence they were eventually heard by me.

62 It is significant to note that Mr Ong admitted at para 55 of his first supporting affidavit that he raised the issue of my biasness "now" in respect of the mother's estate. He accepted that he did not mention the word "biased" during the action in respect of the father's estate. However, Mr Ong alleged that the arguments he had raised following the alleged sham cost order for that trial

and my decisions in respect of the appeal by him and Mdm Ong, from the decisions of AR Leong and AR Khng respectively, were clearly a reflection of his allegation of bias.

63 I make the following observations.

64 First, Mr Ong was suggesting that he was alleging biasness from the time I made the $10,000 costs order. This must mean that he was not complaining about any biasness in respect of my substantive decision in the trial before that costs order was made. Yet in his first supporting affidavit to ask me to recuse myself, he raised matters which I had either decided on or said in respect of my substantive decision to support his allegation of biasness. For example, he said I was biased because I had failed to take into account in the trial that he had been denied access to an estate file, but then contradicted himself by saying I was biased from the time the $10,000 costs order was made.

65 Mr Ong also complained that I made the $10,000 costs order only after I knew about AR Khng's decision to allow him an extension of time to appeal against AR Leong's decisions. As mentioned above (see [60] *supra*), he said that since I was of the view that the outcome of the inquiry (and any appeal) was relevant to the costs to be ordered for the trial, I should have waited for the outcome of his appeal.

66 However, I do not recollect being informed by either side about AR Khng's decision when I made the $10,000 costs order against Mr Ong. Indeed, when I made that decision, I informed the parties that I had taken into account the very small sum (of $1,313) which AR Leong had decided that Mr Ong should pay to Mdm Ong. Yet Mr Ong did not then inform me of

AR Khng's decision or ask me to suspend my decision pending the outcome of his appeal.

67 Even if Mr Ong did not have the presence of mind on that day to ask me to suspend my decision, the point is that he did not at any time thereafter mention AR Khng's decision and ask for further arguments in order to persuade me to suspend my decision pending the outcome of his appeal against AR Leong's decisions.

68 Moreover, while he recently accused me of making the $10,000 costs order to influence the judicial commissioner who was slated to hear the two appeals, there is no evidence that he alleged that I was biased against him when opposing counsel asked the judicial commissioner to fix the two appeals before me. Surely that would have been the time for Mr Ong to speak up, object and argue that the two appeals should not be fixed for hearing before me on the ground that I was biased. He did not do so.

69 Then, when the two appeals came before me for hearing, Mr Ong again did not allege any biasness on my part in making the $10,000 costs order. Indeed, while he reminded me during the arguments for the appeals that he had already been ordered to pay the $10,000 as costs he did not say that that order was a biased one.

70 Mr Ong's argument that he considered me to be biased from the time the $10,000 costs order was made was therefore an afterthought.

71 There was also nothing in his arguments during the appeals before me to suggest that he thought that I had been or that I was being biased against him.

The fact that he was not happy with some of my decisions was not a suggestion of bias on the part of this court.

72 I would reiterate that one of my decisions in the two appeals was in substance in his favour. Even though I denied him an extension of time to appeal against AR Leong's substantive decision, I allowed him to continue with his appeal against AR Leong's costs order. Moreover, while I was of the view that he should still be liable for some costs of the inquiry before AR Leong, I decided that he should pay only a very small sum of $400 as such costs. Had I not replaced AR Leong's costs order with mine, Mr Ong would have been liable for costs of the entire inquiry which was apparently carried out over four days. My decision on this point had saved him a substantial sum of money and yet he has since accused me of bias.

73 Coming back to AR Khng's decision to grant him leave to appeal, I would say that even if I had been aware of that decision, it would have made no difference to me when I made the $10,000 costs order. This is because as AR Leong's order stood, Mdm Ong was entitled to receive only $1,313 from Mr Ong. That was a very small sum. The value of her success was therefore very limited and I had already taken that into account. Even if Mr Ong had succeeded in his appeal, it would only mean that he would not have to pay a single cent to Mdm Ong. The difference would be the $1,313. I had ordered him to pay the $10,000 costs for the trial because in principle he had failed to render a proper account. I could have ordered him to pay a higher amount as costs for the trial but I noted that Mdm Ong's eventual success thereafter was very limited. I had also not forgotten that she had lost on her claim that a private property was held by Mr Ong in trust for the father.

74 It appeared that Mr Ong did not place much weight on those decisions of this court which went in his favour and focused instead on those which went against him. As I said before (at [4] *supra*), I dismissed Mdm Ong's claim that he had held a private property in trust for the father.

75 Mr Ong had also considered only the negative implications to him and ignored the positive implications of this court's decisions. For example, when I made the $10,000 costs order, I could have ordered him to pay a higher amount but I did not. Even when I denied him the extension of time to appeal against AR Leong's substantive order, I substituted AR Leong's costs order so that he had to pay only $400 for the costs of the inquiry instead of a much higher sum.

76 As I have mentioned before, Mr Ong filed two appeals to the Court of Appeal against my decisions in respect of the appeals from the decisions of AR Khng and AR Leong. If he had genuinely thought that I had been biased against him, he would have stated so to the Court of Appeal. Yet, as mentioned above (at [62] *supra*), he himself said that he did not mention the word "biased" until now. He said his arguments following the alleged sham costs order and my subsequent decisions clearly reflect such an allegation. It seemed to me that he realised that he had never made such an allegation before and he tried to address this omission by alleging that it was reflected in his subsequent arguments. It is clear that he did not allege any biasness until his present application was filed.

77 I reiterate that Mr Ong did not appeal against my substantive decision in the trial ordering him to provide a proper account of the assets of the father's estate. Perhaps realising that this omission negated many of his complaints against me, he has now suggested, also for the first time (at para 37 of his second supporting affidavit), that my substantive decision "could be subject to some

form of judicial review". Contrary to his allegation that this is a justification to disqualify this court from hearing matters arising from the mother's estate, it is not. Rather, it is another invalid excuse to justify his baseless allegations.

Language

78 In *Attorney-General v Tan Liang Joo John and others* [2009] 2 SLR(R) 1132 ("*Tan Liang Joo John*"), Judith Prakash J said at [14]–[18]:

> 14 Fair criticism does not amount to contempt of court. In an off-cited passage from *Andre Paul Terence Ambard v The Attorney-General of Trinidad and Tobago* [1936] 1 AII ER 704 ("*Ambard*"), Lord Atkin elaborated that (at 709):
>
> > But whether the authority and position of an individual judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice of attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.
>
> 15 It is apparent from Lord Atkin's reasoning, however, that there are limits to the right of fair criticism. The criticism must be made in good faith and must also be respectful. In determining whether *mala fides* has been proved, the court can take into account a wide range of factors.
>
> 16 One relevant factor is the extent to which the allegedly fair criticism is supported by argument and evidence. …
>
> 17 …
>
> 18 Another relevant factor is the manner in which the alleged criticism is made. The criticism must generally be expressed in a temperate and dispassionate manner, since an intention to vilify the courts is easily inferred where outrageous

> and abusive language is used (see *Borrie & Lowe*: *The Law of Contempt* (Nigel Lowe and Brenda Sufrin, Butterworths, 3rd Ed, 1996 ("*Borrie & Lowe*") at p 349). …

79 Although Mr Ong was aware that any criticism of the court must be in language which is temperate as he himself cited the judgment of Prakash J in *Tan Liang Joo John*, his language was not temperate. In his two supporting affidavits, he used words like "procurement", "extreme biasness", "complicity", "flip-flopped", "sham", "vehemently refused" and "swept under the carpet" against this court. He even alleged that I had "morphed from a judge into a supernumery [*sic*] opposing lawyer" (see para 58 of his first supporting affidavit). He also referred to *Re Raffles Town Club Pte Ltd* [2008] 2 SLR(R) 1101 at [7] to allege that I cannot "fully remove all trace of odour from the air of impartiality. Indeed, the more [I] seek to justify [my] position, the stronger the smell may grow."

80 I add that Mr Ong had omitted some important words in his quotation. In that case, the court had said that the individual concerned "***might still not*** fully remove all trace of odour from the air of impartiality …" [emphasis added]. On the other hand, Mr Ong was saying that in fact this court "cannot" fully remove all trace of odour. Also, in that case, the allegation was an appearance of bias and not actual bias.

Outcome

81 I decided to recuse myself not because there was any merit in Mr Ong's allegations against me but because, in the interest of justice, I was of the view that I should not hear his disputes with Mdm Ong in respect of the mother's estate since I was contemplating making a complaint about Mr Ong's conduct to the appropriate authorities. In my view, his allegations against this court were

not made *bona fide* and he was acting in contempt of court. However, that is to be dealt with separately.

82 I also considered that there would be no undue prejudice to Mdm Ong if I should recuse myself since I had not yet begun to hear any matter in respect of the mother's estate.

Woo Bih Li
Judge

The plaintiff in person;
Carolyn Tan and Tony Au (Tan & Au LLP) for the defendant.