

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 121

Originating Summons No 1229 of 2017

In the matter of Order 80 Rule 2 of the Rules of Court (Cap 322)

And

In the matter of the Estate of Harkishindas Ghunmanmal Bhojwani, deceased

Between

**LAKSHMI PRATAPRAI BHOJWANI
MRS LAKSHMI JETHANAND BHOJWANI**

... Plaintiff

And

MOTI HARKISHINDAS BHOJWANI

... Defendant

GROUNDS OF DECISION

[Probate and administration] — [executors]
[Trusts] — [trustees]

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Lakshmi Prataprai Bhojwani
(alias Mrs Lakshmi Jethanand Bhojwani)
v
Moti Harkishindas Bhojwani

[2018] SGHC 121

High Court — Originating Summons No 1229 of 2017
George Wei J
18 January 2018

18 May 2018

George Wei J:

Introduction

1 This was an application by the plaintiff, Lakshmi Prataprai Bhojwani (“the Plaintiff”), for the defendant, Moti Harkishindas Bhojwani (“the Defendant”), to provide an account of the assets of the estate (“the Estate”) of the late Harkishindas Ghumanmal Bhojwani (“the Testator”).

2 Specifically, the application was for an account of the Estate as at 4 March 2007, being the date on which the Testator had passed away and also as at the time the application was made. The account was to include details of any investment or divestment of the assets of the Estate, and the proceeds of such investment or divestment.

3 At the conclusion of the hearing on 18 January 2018, I dismissed the Plaintiff's application. The Plaintiff was dissatisfied with my decision and has appealed. I now furnish the grounds of my decision.

Facts

Parties

4 An introduction to the background of this application must begin with a description of the Bhojwani family tree.

5 The Testator was the patriarch of the Bhojwani family, and it is his last will and testament ("the Will") that was at the heart of this application. He is survived by his three sons, namely, Jethanand Harkishindas Bhojwani ("Jethanand"), Jaikirshin Harkishindas Bhojwani ("Jaikirshin") and the Defendant.¹

6 Jethanand, Jaikirshin and the Defendant are each married and have children of their own. The Defendant was at all material times the sole executor of the Will,² while each of the three sons is trustee over different parts of the Estate.³

7 The Plaintiff is the wife of Jethanand, and hence the daughter-in-law of the Testator.⁴ However, the Plaintiff's marriage with Jethanand deteriorated over the years, and this culminated in divorce proceedings filed by her on 5 October 2017.⁵ The Plaintiff is one of the beneficiaries named in the Will.⁶

¹ Affidavit of Lakshmi Prataprai Bhojwani dated 27 October 2017 ("Plaintiff's 1st Affidavit") at para 4.

² Plaintiff's 1st Affidavit at p 22.

³ Plaintiff's 1st Affidavit at pp 23–27.

⁴ Plaintiff's 1st Affidavit at para 4.

The Will

8 Pursuant to the Will, the Estate was divided into three groups of assets. Generally, each of the Testator’s three sons was appointed as trustee for each group of assets, with his respective family members being the beneficiaries of the assets of which he is trustee.⁷

9 I pause to note that the Will creates five discretionary trusts: one for the assets under cl 4 of the Will, one for the assets under cl 5 of the Will and three separate discretionary trusts for the residue of the Estate under cl 7 of the Will. The Plaintiff’s interest as a beneficiary flows from her position as a member of the class of discretionary beneficiaries under cl 5 of the Will, as well as one of the trusts under cl 7.

10 Clause 4 of the Will specifies assets of which the Defendant (the executor of the Estate) is trustee. Clause 4 states:⁸

4.1 In this clause:

- (i) “the trust period” means the period of 30 years commencing from the date of my death;
- (ii) “the beneficiaries” means
 - (a) **MRS BHAUNA MOTI BHOJWANI ...**
-
 - (c) remoter issue of **MOTI** who may be born before the end of the trust period together with any spouse, widow or widower of any such children or remoter issue; and

⁵ Plaintiff’s 1st Affidavit at para 5.

⁶ Plaintiff’s 1st Affidavit at p 25.

⁷ Plaintiff’s 1st Affidavit at pp 23–27.

⁸ Plaintiff’s 1st Affidavit at pp 23–24.

- (d) any person or class of persons nominated to my trustees by two beneficiaries and whose nomination is accepted in writing by my trustees.
- (iii) “my trustee” means **MOTI** and includes any trustees that may be appointed by **MOTI**; and
- (iv) “Trust Property” means
 - (a) such interest as I may have in No. 32A Branksome Road, Singapore ...
 - (b) 2,000 shares in Malaya Silk Store (Private) Limited[;]
 - (c) 73,001 shares in Shankar’s Emporium (Private) Limited;
 - (d) 5,000 shares in Sharrods (Private) Limited;
 - (e) 2,000 shares in Shankar’s Pte Ltd;
 - (f) 5,000 shares in Sovrein Investments Private Limited;
 - (g) 3,000 shares in Lions Amalgamated Industries Private Limited;
 - (h) my 1 founder’s share in Malaya Silk Store (Private) Limited ... and
 - (i) my 1 founder’s share in Sherridon Exim Pte Ltd ...
- 4.2 I direct my trustee to hold the Trust Property upon trust for all or such one or more of the beneficiaries at such ages or times in such shares and upon such trusts for the benefit of all or any one or more of the beneficiaries as my trustee in his absolute discretion may by deed or deeds revocable or irrevocable at any time or times during the trust period appoint and in making any such appointment my trustee shall have powers specified in clause 3 above during the Trust Period.

[emphasis in original]

11 The named beneficiaries under cl 4 are the Defendant’s wife and son.

12 Clause 5 of the Will provides for the group of assets of which Jethanand (husband of the Plaintiff) is trustee. Clause 5 states:⁹

5.1 In this clause:

- (i) “the trust period” means the period of 30 years commencing from the date of my death;
- (ii) “the beneficiaries” means
 - (a) **LAKSHMI PRATAPRAI BHOJWANI MRS LAKSHMI JETHANAND BHOJWANI** [the Plaintiff] ...
 - (b) **DEVIN JETHANAND BHOJWANI ...**
 - (c) **DILIP JETHANAND BHOJWANI ...**
 - (d) **SANDEEP JETHANAND BHOJWANI ...**
 - (e) remoter issue of **JETHANAND** who may be born before the end of the trust period together with any spouse, widow or widower of any such children or remoter issue; and
 - (f) any person or class of persons nominated to my trustees by two beneficiaries and whose nomination is accepted in writing by my trustees.
- (iii) “my trustee” means **JETHANAND** and includes any trustees that may be appointed by **JETHANAND**; and
- (iv) “Trust Property” means
 - (a) such interest as I may have in No. 32 Branksome Road, Singapore ...
 - (b) 9,000 shares in Malaya Silk Store (Private) Limited;
 - (c) 150,000 shares in Shankar’s Emporium (Private) Limited;
 - (d) 15,000 shares in Sharrods (Private) Limited;
 - (e) 11,360 shares in Shankar’s Pte Ltd;
 - (f) 15,000 shares in Sovrein (Private) Limited;
 - (g) 12,001 shares in Lions Amalgamated Industries Private Limited;
 - (h) 1 share in Shankar’s Investments Pte Ltd (formerly known as Shankar’s Vietnam (Private) Limited);

⁹ Plaintiff’s 1st Affidavit at pp 25–26.

- (i) 1 share in Liberty Merchandising Pte Ltd; and
- (j) my 1 founder's share in Shankar's Emporium (Private) Limited ...

5.2 I direct my trustee to hold the Trust Property upon trust for all or such one or more of the beneficiaries at such ages or times in such shares and upon such trusts for the benefit of all or any one or more of the beneficiaries as my trustee in his absolute discretion may by deed or deeds revocable or irrevocable at any time or times during the trust period appoint and in making any such appointment my trustee shall have powers specified in clause 3 above during the Trust Period.

[emphasis in original]

13 As can be seen from cl 5, while it is true that the Plaintiff is a beneficiary named in the Will, she is only a beneficiary with respect to the assets of which Jethanand is the trustee. The other named beneficiaries of these assets are the three sons of Jethanand and the Plaintiff.

14 In addition, the residuary estate, being all the remaining assets in the Estate that had not been previously dealt with in the Will ("the Residuary Estate"), is further divided into three parts and given to Jethanand, Jaikirshin and the Defendant to hold on trust for their respective families. Clause 7 states:¹⁰

7. I give, devise and bequest all the residue of my movable and immovable property of whatsoever nature and wheresoever situate not hereinbefore specifically devised or bequeathed to my trustees to distribute as follows:
- (a) one-third (1/3) to my son **JAIKIRSHIN HARKISHINDAS BHOJWANI** (hereinafter referred to as "**JAIKIRSHIN**") to hold on trust for all or such one or more of the beneficiaries stipulated in clause 8(ii) hereinbelow at such ages or times in such shares and upon such trusts for the benefit of all or any one or more of the beneficiaries stipulated in clause 8(ii) hereinbelow as **JAIKIRSHIN** in his absolute

¹⁰ Plaintiff's 1st Affidavit at pp 26–27.

discretion may by deed or deeds revocable or irrevocable at any time or times during the trust period as stipulated in clause 8(i) hereinbelow appoint and in making any such appointment **JAIKIRSHIN** shall have powers specified in clause 3 above during the trust period as stipulated in clause 8(i) hereinbelow;

- (b) one-third (1/3) to my son **JETHANAND** to hold on trust for all or such one or more of the beneficiaries stipulated in clause 5.1(iii) hereinabove at such ages or times in such shares and upon such trusts for the benefit of all or any one or more of the beneficiaries stipulated in clause 5.1(iii) hereinabove as **JETHANAND** in his absolute discretion may by deed or deeds revocable or irrevocable at any time or times during the trust period as stipulated in clause 5.1(i) hereinabove appoint and in making any such appointment **JETHANAND** shall have powers specified in clause 3 above during the trust period as stipulated in clause 5.1(i) hereinabove; and
- (c) one-third (1/3) to my son **MOTI** to hold on trust for all or such one or more of the beneficiaries stipulated in clause 4.1(iii) hereinabove at such ages or times in such shares and upon such trusts for the benefit of all or any one or more of the beneficiaries stipulated in clause 4.1(iii) hereinabove as **MOTI** in his absolute discretion may by deed or deeds revocable or irrevocable at any time or times during the trust period as stipulated in clause 4.1(i) hereinabove appoint and in making any such appointment **MOTI** shall have powers specified in clause 3 above during the trust period as stipulated in clause 4.1(i) hereinabove.

[emphasis in original]

15 Reading the Will in its entirety, it is apparent that the Plaintiff is a beneficiary of three main categories of assets (collectively, “the Assets”), namely:

- (a) the property at 32 Branksome Road, Singapore (“the Property”);

(b) the shares listed in items (b) to (j) of cl 5.1(iv) (“the Clause 5 Shares”); and

(c) one-third of the Residuary Estate.

The Defendant’s actions in relation to the Assets

16 At this juncture, it would be pertinent to state that at the beginning of the hearing, I had queried the parties on whether they were *ad idem* as to there not being a need to examine the deponents of the affidavits, to which they had both responded in the positive. Therefore, I saw this as an indication that both parties did not challenge the veracity of the evidence in the affidavits of both parties. In any event, given that this action commenced by way of originating summons, I did not expect any major disputes of fact.

17 The Testator passed away on 4 March 2007.¹¹ Subsequently, the Defendant was issued with a grant of probate in relation to the Estate on 12 February 2008.¹²

The Clause 5 Shares

18 The Defendant transferred the Clause 5 Shares to Jethanand on 1 August 2008. The stamp duty certificates for the transfers of the Clause 5 Shares were exhibited in the Defendant’s affidavit.¹³ Additionally, the Defendant stated in his affidavit that no dividends had been declared in relation to eight companies during the period between 4 March 2007 and 1 August 2008.¹⁴ These eight

¹¹ Plaintiff’s 1st Affidavit at para 6.

¹² Plaintiff’s 1st Affidavit at p 29.

¹³ Affidavit of Moti Harkishindas Bhojwani dated 27 November 2017 (“Defendant’s 1st Affidavit”) at pp A-2–A-10.

¹⁴ Defendant’s 1st Affidavit at para 9, p A-11.

companies largely correspond to the companies in which the Clause 5 Shares belong, with the exception of Shankar's Emporium (Private) Limited. I note that the Defendant did not make an express statement that no dividends were declared for Shankar's Emporium (Private) Limited. However, this inconsistency was not raised before the court during the hearing and I will say nothing more on the matter.

The Property

19 Upon the death of the Testator, legal title to the Property had vested in the Defendant, who remained the registered proprietor until 12 October 2016. On 12 October 2016, the Defendant transferred the Property to the Plaintiff. This transfer was done on the instructions of Jethanand, who had previously conferred with his three sons and the Plaintiff, all of whom were the named discretionary beneficiaries of the Property.¹⁵

The Residuary Estate

20 As for the Residuary Estate, a consolidation of all the remaining assets less all the Estate-related expenses resulted in a net deficit of \$57,966.52. A breakdown of this figure was exhibited in the Defendant's affidavit.¹⁶ The Defendant stated in his affidavit that he and Jethanand had paid equal amounts to provide for this deficit.¹⁷

Genesis of the dispute

21 The Plaintiff and Jethanand resided at the Property together with their three sons. As noted above, Jethanand is the trustee and the Plaintiff together

¹⁵ Plaintiff's 1st Affidavit at p 48; Defendant's Written Submissions at para 26.

¹⁶ Defendant's 1st Affidavit at pp A-12–A-13.

¹⁷ Defendant's 1st Affidavit at para 10.

with their three sons are the beneficiaries of the Assets, which included the Property. Jethanand did not have any beneficial interest in the Property. The Defendant and his family resided next door at 32A Branksome Road.

22 The Plaintiff asserted that she had not been informed of her beneficial interest under cll 5 and 7 of the Will until around November 2016.¹⁸

23 On or about 16 September 2016, the Plaintiff chanced upon a letter addressed to the Defendant, which referred to the Defendant as the occupant of the Property.¹⁹ This prompted the Plaintiff to conduct a title search on the Property, which revealed that the Defendant was indeed the registered proprietor of the Property.²⁰ This came as a shock to the Plaintiff, because she had believed all along that Jethanand was the registered proprietor of the Property. The Plaintiff was of the view that the Defendant, as the executor of the Estate, should rightfully have transferred the Property to Jethanand, at least, in accordance with the Will.

24 The Plaintiff therefore became concerned that the Defendant was similarly mismanaging the rest of the Estate, of which she is a beneficiary. On 12 October 2017, she sent a formal request to the Defendant for a full account of the part of the Estate in which she has an interest.²¹ The Defendant responded on 17 October 2017 stating that he did not owe the Plaintiff a duty to account, and his duty was only to the trustee referred to in cl 5.1 of the Will, *ie*, Jethanand.²²

¹⁸ Plaintiff's 1st Affidavit at para 7.

¹⁹ Plaintiff's 1st Affidavit at para 13.

²⁰ Plaintiff's 1st Affidavit at para 16.

²¹ Plaintiff's 1st Affidavit at para 35.

²² Plaintiff's 1st Affidavit at para 36.

25 On 30 October 2017, the Plaintiff filed Originating Summons No 1229 of 2017 to bring the present application.

Parties' cases

26 The Plaintiff argued that the Defendant, being the executor of the Estate, owes her, a beneficiary of the Estate, fiduciary duties both at common law and under the Trustees Act (Cap 337, 2005 Rev Ed). This fiduciary relationship therefore obliged the Defendant to provide the Plaintiff with an account of the Estate upon her request.

27 In response, the Defendant contended that he did not owe the Plaintiff any fiduciary duties, because even though he is the sole executor of the Estate, he is not the trustee over the portion of the Estate of which the Plaintiff is a beneficiary. The Defendant contended that an executor's duty is merely to call in and distribute the assets in the estate in accordance with the provisions of the will. Therefore, the Defendant argued that his duties to the Plaintiff had ceased upon his transfer of the Assets to Jethanand. The proper person for the Plaintiff to seek an account from should therefore be Jethanand and not the Defendant.

Issues for determination

28 In my view, there were two main issues that had to be determined in deciding whether or not to grant the Plaintiff's application:

- (a) whether the Plaintiff was entitled, as a matter of law, to an account of the Estate from the Defendant, and if so, for what assets and over which period of time; and
- (b) if the answer to issue (a) was answered in the positive, whether there existed any good reasons for this court to exercise its inherent

discretion not to make an order for the Defendant to provide an account to the Plaintiff.

My decision

The Plaintiff's entitlement to an account from the Defendant

29 I will first deal with the issue of whether the Plaintiff was entitled to an account of the Estate from the Defendant. It is settled law that the executor of a will owes the beneficiaries under the will fiduciary duties. It is the fiduciary relationship that provides the basis for this duty to account (see *Attorney-General v Cocke and Another* [1988] 1 Ch 414 at 420). As was stated in my earlier decision in *Foo Jee Boo and another v Foo Jhee Tuang and others* [2016] SGHC 260 (“*Foo Jee Boo*”) at [80]:

It is also the duty of the executor[s] to keep proper accounts of the administration of the estate that they are dealing with. If called upon by the beneficiaries to render accounts, they are obliged to furnish such accounts and allow the beneficiaries to inspect the accounts.

30 The Defendant had argued in his written submissions that the Plaintiff was not entitled to an account because she did not have an interest *per se* in the Estate. This was on the basis that the Plaintiff is merely a discretionary beneficiary under the Will, and therefore whatever interest she has in the Estate would purely be at the discretion of Jethanand as her trustee.²³ I disagreed. There is a distinction to be made between the beneficiaries under two types of discretionary trusts. The first type of trust involves *named* beneficiaries whose benefits to be paid out of the estate are solely at the discretion of the trustee, such as the Plaintiff in this case. The second type of trust involves persons who are only *possible* beneficiaries of a discretionary trust, where there is a large

²³ Defendant's Written Submissions at para 46.

number of such possible beneficiaries. To clarify, the latter scenario envisions a trust structure in which there is a wide class of possible beneficiaries, and the trustee may be given the power to add to this class of beneficiaries other persons with the exception of certain stated individuals. This was the type of trust that was considered in *Hartigan Nominees Pty Ltd and Another v Rydge* (1992) 29 NSWLR 405 (“*Hartigan*”), where the “Eligible Beneficiaries”, and thus possible beneficiaries, to the trust included “any children[,] grandchildren or great-grandchildren” of the *de facto* settlor. In addition, Eligible Beneficiaries could include persons who were nominated in writing to the trustees by the *de facto* settlor, his legal representatives, or the trustees themselves. In such a trust structure, there would exist a large number of possible beneficiaries who would only have an interest in the trust if they have been declared as beneficiaries by those who have the power to do so.

31 The beneficiaries under these two types of trusts may both be loosely termed as “discretionary beneficiaries”. Indeed, the Defendant used that term to describe the Plaintiff as a type of beneficiary falling into the former category. However, while the same label is used on both types of beneficiaries, it does not mean that they have similar rights in respect of the trust nor should it be interpreted that way. In my view, a beneficiary falling into the former category such as the Plaintiff should be entitled to accounts. On the other hand, a possible beneficiary belonging in the latter category would have no such right (see *Hanbury and Martin: Modern Equity* (Jamie Glister & James Lee gen ed) (Sweet & Maxwell, 20th Ed, 2015) at para 20-018). A person in the former category has an identifiable interest in the estate regardless of the manner in which the trustee’s discretion is exercised, and therefore has a corresponding right to an account. In contrast, a person in the latter category does not have an identifiable interest in the estate until it is decided that he will be a beneficiary.

Mahoney JA stated at pp 431–432 of *Hartigan* that notwithstanding a trustee’s obligation to provide an accounting in respect of the administration of the trust upon such a request being made by the beneficiaries, it may be that such a right to an account does not exist where the request is made by a person who is only a possible beneficiary under a discretionary trust. Mahoney JA further stated: “I doubt that a person whose interest lies not in property but in possibility and is in respect of part but not all of the trust property may demand such information.”

32 It has often been said that a discretionary trust is one which gives a beneficiary no right to any defined part of the income or capital of the trust fund. The beneficiary has no more than a hope that the discretion will be exercised in his favour (see *Snell’s Equity* (John McGhee gen ed) (Sweet & Maxwell, 33rd Ed, 2015) (“*Snell’s Equity*”) at para 22-005). In a similar vein, *Halsbury’s Laws of Singapore* vol 9(3), *Equity and Trusts* (LexisNexis, 2017 reissue) (“*Halsbury’s Laws of Singapore* vol 9(3): *Equity and Trusts*”) states at para 110.531:

Discretionary trusts which are exhaustive call for a distribution ultimately of the trust property and confer on beneficiaries a *spes* or hope of an exercise of discretion in their favour.

33 Nevertheless, this should not affect the principle that the Plaintiff as a named discretionary beneficiary of the Will has an identifiable interest in the Estate such that she would *prima facie* be entitled to an account of the Estate. *Gartside and Another v Inland Revenue Commissioners* [1968] AC 553 at p 617 also states that a beneficiary under a discretionary trust has an interest in that he has the right to be considered as a potential recipient of benefit by the trustees and a right to have that interest protected by a court of equity. This explains the comment in *Snell’s Equity* at para 22-005 that the discretionary beneficiary’s interest is proprietary in character since it gives him a stronger equitable title to the trust property than a third party with no entitlement at all.

34 I move then to examine the scope and extent of this duty to account. The Plaintiff had sought to rely on *Lalwani Shalini Gobind and another v Lalwani Ashok Bherumal* [2017] SGHC 90 (“*Lalwani*”) at [20] to argue that a trustee’s duty to account is a continuous one, and that the transfer of trust assets to new trustees does not obviate the original trustee’s duty to account. However, I would note that an executor or a trustee should only owe a beneficiary a duty to account in relation to matters that occurred *during his term as a trustee* (see *Lalwani* at [11]). Properly understood, this continuing duty is a duty on the trustee to provide accounts to the beneficiary when requested, and this duty to account for his past conduct continues even after the trustee has transferred the trust assets to another party.

35 However, this continuing duty does not mean that the trustee will remain accountable for the trust assets in the period after they have been transferred to another party. Therefore, any account provided by the trustee will necessarily be confined to the assets which he was in control of, and only for the period that he was actually the trustee over these assets. The same principle applies where a claim is brought against an executor for an account of estate assets that are to be subsequently held by trustees under discretionary trusts as set up by a will.

36 Applying this to the present facts, the Defendant should therefore only be liable to account to the Plaintiff for the period that he was acting as executor and her trustee, and only in relation to the Assets of which she is a beneficiary.

37 In summary, the Defendant was in a fiduciary position as executor *viz* the beneficiaries and was subject to the duty to account for his conduct for the period up to the transfer of the Assets to Jethanand as required by the Will, or to the Plaintiff in accordance with Jethanand’s instructions. The Plaintiff rightly

pointed out that an executor steps into the shoes of a trustee once he has discharged his duties of calling in and collecting the assets of the estate and paying off all necessary funeral, testamentary and estate expenses and liabilities (see *Lee Yoke San and another v Tsong Sai Sai Cecilia and another* [1992] 3 SLR(R) 516 at [35]).

38 It follows that where the will creates trusts over the estate assets, once the executor properly transfers the assets to the appointed trustees he will cease to be accountable for those assets. By this, what is meant is that whilst the executor remains accountable for the period when the assets were under his control, he is not accountable for those assets for the period after they are transferred to the trustees in accordance with the terms of the will.

39 On this basis, once the Defendant had transferred the Assets to Jethanand (and, in the case of the Property, to the Plaintiff), the Defendant ceased to be the Plaintiff's trustee, and would accordingly not have to account for the Assets henceforth.

Assets and time period that the Defendant should be accountable for

40 Title to a testator's estate vests in the executor immediately upon the death of the testator (see *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate* (John Ross Martyn & Nicholas Caddick gen ed) (Sweet & Maxwell, 20th Ed, 2013) at para 5-02). Therefore, the Defendant was vested with title to the Assets on 4 March 2007, which is the day the Testator passed away.

41 The Defendant thereafter transferred the Clause 5 Shares to Jethanand on 1 August 2008. Therefore, for the period between 4 March 2007 and 1 August 2008, the Defendant would have been holding the Clause 5 Shares on

trust for the Plaintiff and the other beneficiaries, and he would hence be liable to account for the Clause 5 Shares during that period.

42 As for the Property, the Defendant had been the registered proprietor and legal owner (by way of transmission on the Testator's death) up until 12 October 2016, after which he transferred legal title to the Plaintiff in accordance with the instructions of Jethanand.²⁴ Therefore, the Defendant would have been holding the Property on trust for the Plaintiff and the other beneficiaries from 4 March 2007 to 12 October 2016, and would be liable to account for the Property during that period.

43 Finally, with regard to the Plaintiff's interest in one-third of the Residuary Estate, the Defendant had given evidence that after consolidating all the remaining assets and accounting for all the Estate-related expenses, this resulted in an overall deficit. This deficit was subsequently borne by the Defendant and Jethanand in equal shares. Be that as it may, it appeared to me that the Defendant would have had legal title over the Residuary Estate, at least up to the point where the assets under of the Residuary Estate were presumably liquidated to pay for the Estate-related expenses. During such time, he would have been holding the Residuary Estate on trust for the Plaintiff and the other beneficiaries. Therefore, in my view, the Defendant would also owe the Plaintiff a duty to account for the Residuary Estate from 4 March 2007 up until the point where it was completely used to account for the Estate-related expenses.

Reasons for this court not to order an account

44 Notwithstanding the Plaintiff's *prima facie* entitlement to an account from the Defendant for the Assets during the time period as identified above, I

²⁴ Defendant's Written Submissions at para 26.

was of the view that this was not a case which warranted the calling of an account. As was noted in *Foo Jee Boo*, notwithstanding a beneficiary's entitlement to an account from his trustee, the court may in its discretion decline to make an order for the taking of accounts if it would be oppressive for the trustee to so account, or if there was some other good reason to so decline (see *Foo Jee Boo* at [81]). The High Court in *Chiang Shirley v Chiang Dong Pheng* [2015] 3 SLR 770 observed at [89] that "[w]hether the trustee/personal representative has complied with his duty to supply documents and information is a fact-sensitive exercise in every case." Further, the Court of Appeal in *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 stated at [39] that "the court may be able to draw an inference, on a balance of probabilities, that settled accounts have *already been provided*" [emphasis in original].

45 In my view, there was no need to order the Defendant to provide further accounts to the Plaintiff given that the Defendant had already sufficiently discharged this duty. In coming to this decision, I noted that the question as to whether the Defendant had provided a sufficient account was a fact-sensitive inquiry. That said, I was reminded that a critical aspect of the custodial fiduciary relationship is the duty of the trustee (and executor) to keep accounts and to permit inspection by the beneficiaries for the purpose of (i) providing information as to the current status of the estate or trust assets; and (ii) as a means for ascertaining whether, *inter alia*, maladministration has taken place (see *Lalwani* at [16]).

46 First, I considered the Defendant's duty to account in relation to the Clause 5 Shares. The Defendant had exhibited in his affidavit a document stating that there were no dividends declared in relation to eight companies during the period from 4 March 2007 to 1 August 2008 (although I note the inconsistency between this document and the Clause 5 Shares as pointed out at

[18] above). The Plaintiff responded in her own affidavit stating that “[t]his document is completely self-serving”.²⁵ Yet, the Plaintiff did not apply to cross-examine the Defendant on the evidence given in his affidavit which indicated her acceptance of the veracity of this evidence. The Defendant had also exhibited in his affidavit the stamp duty certificates for the transfers of the Clause 5 Shares that were made to Jethanand on 1 August 2008. Despite this, the Plaintiff stated at the hearing that she was not satisfied with such evidence, and wanted sight of the actual share transfer forms. However, she did not explain why this was necessary, nor did she seriously seek to challenge the authenticity of the stamp duty certificates.

47 In the circumstances, I saw no reason to doubt the Defendant’s evidence as it stood. He had accounted for the Clause 5 Shares during the period which he held them on trust for the Plaintiff, including whether or not there were any dividends declared. Therefore, I found that he had sufficiently discharged his duty to account for the Clause 5 Shares, and accordingly there was no need for me to make an order for the same.

48 Second, I considered the Defendant’s duty to account in relation to the Property. It is the Plaintiff’s own evidence that she, Jethanand and their three sons had been living in the Property for the past 31 years and continue to reside there to date.²⁶ The Plaintiff had confirmed during the hearing that there had never been a question of renting out the Property. Therefore, it can safely be assumed that there would be no rental income to account for in relation to the Property. Furthermore, a title search conducted on 16 September 2016 showed that there were no encumbrances on the Property. All things considered, it was

²⁵ Affidavit of Lakshmi Prataprai Bhojwani dated 14 December 2017 at para 10.

²⁶ Plaintiff’s 1st Affidavit at para 12.

clear to me that the Plaintiff and her family had lived in the Property unhindered for the past 31 years.

49 In light of this, I found the Plaintiff's demand for an account of the Property to be unreasonable, given that there would simply be nothing to account for. It is evident that there was no rental income earned from the Property. The title search on the Property conducted on 16 September 2016 showed that it was then free of any encumbrances. If the Plaintiff was concerned that there may have been any prior encumbrances on the Property as a result of loans that the Defendant may have borrowed to his own advantage, it would have been open to her to find out by simply conducting a historical information search. For those reasons, it would have been unnecessary to order the Defendant to provide an account of the Property and therefore I declined to do so.

50 Third, I considered the Defendant's duty to account for the Plaintiff's share of the Residuary Estate. As was mentioned, the Residuary Estate was completely used to pay for the Estate-related expenses. In this regard, the Defendant had exhibited a breakdown of the accounts for the Residuary Estate in his affidavit. I saw no reason to disbelieve this evidence. If the Plaintiff was truly sceptical about the evidence provided by the Defendant, it would have been open to her to have the matter proceed to trial instead where the evidence could then be tested by cross-examination. Therefore, I was satisfied that the Defendant had provided an account of the Residuary Estate to the Plaintiff, and there was also no need for me to make an order for the same.

51 As a final point, I would note that the Plaintiff had argued that the Defendant had breached his fiduciary duties by failing to inform the Plaintiff of her interest under the Will.²⁷ The Court of Appeal in *Foo Jee Seng and others v*

Foo Jhee Tuang and another [2012] 4 SLR 339 has clarified at [87] that a trustee's duty to account is not contingent on there being a breach of the trustee's fiduciary duties. However, the Court did add that where such a breach could be established, the beneficiaries would all the more be entitled to an account. Therefore, if it could be established in the present case that the Defendant had indeed breached his fiduciary duties, this might have been a factor to sway me in favour of granting the Plaintiff's application.

52 It is the executor's foremost duty to act in the best interests of the beneficiaries when carrying out his duties or exercising his powers, in the sense that he must do his best to promote the beneficiaries' affairs (see *Halsbury's Laws of Singapore* vol 9(3): *Equity and Trusts* at para 110.213). The question that arose was whether the failure on the part of the Defendant to inform the Plaintiff of her interest under the discretionary trusts was (i) a breach of his duty and (ii) if so, a breach that justified the ordering of an account in any event.

53 There was no claim against Jethanand in these proceedings for an account of the Assets. The fact that Jethanand was and still is the Plaintiff's husband and that their marriage appears to have broken down did not make any difference. The Plaintiff did however submit that whilst Jethanand's conduct was not part of these proceedings, the "wilful silence" of the Defendant in failing to inform the Plaintiff and her sons of the contents of the Will enabled any misconduct Jethanand may be guilty of in respect of the Assets.²⁸

54 I start by repeating that in the case of the Clause 5 Shares, the Defendant had transferred them to Jethanand on 1 August 2008 to hold on trust for the Plaintiff and her three sons, as required by the Will.

²⁷ Plaintiff's Written Submissions at para 21.

²⁸ Plaintiff's Written Submissions at para 25.

55 With regard to the Property, even though the Defendant did not inform the Plaintiff that he was the registered proprietor, she and her family had been residing there for the past 31 years without any interruptions. It is important to note that under the terms of the Will, the executor and the trustees were given a very wide discretion as to how to administer the Estate, so long as the beneficiaries were provided for in accordance with the Will.

56 For example, cl 3 of the Will provides the executor with the power, *inter alia*, to permit any beneficiary to reside in any dwelling-house rent free or otherwise and on such terms the executor in his sole discretion shall think fit. Clause 5 (which established the discretionary trust for the Plaintiff and her three sons) confers on the trustee the same powers set out in cl 3 during the “trust period”.

57 The Defendant submitted that the Plaintiff could have queried him or Jethanand much earlier as to whether there was a will and if so whether she had any interest. Her apparent failure to ask Jethanand, her trustee and her husband, about the Will and the Estate over so many years was said to be “odd”. This court notes that this might not be significant if she had no reason to think there was a will in the first place. It was apparent however that she was aware that there was a will although she was not informed of the details and her interest until much later around November 2016.²⁹ The Defendant on the other hand pointed out that the Plaintiff must have been aware of the terms of the Will or the relevant discretionary trust at the latest by around September 2016. Nothing turned on this slight difference in timing. To be sure, the Plaintiff could have conducted a search to ascertain whether probate had been granted for any will and to inspect the Testator’s file. If she had done this, she might have discovered

²⁹ Plaintiff’s 1st Affidavit at paras 7, 23.

her discretionary beneficial interest very much earlier. This did not however detract from the principle that the Defendant as executor should have informed the Plaintiff of her interest under the Will and the discretionary trusts.

58 That said, based on the material put before this court, it did not appear that the Plaintiff had suffered any loss. Indeed, the Plaintiff had received all that she could have hoped for pursuant to the terms of the Will and the discretionary trusts. She remained in continuous residence (rent-free) of the Property. Eventually, full and unencumbered title of the Property was transferred to her on 12 October 2016.

59 Accordingly, even if the Defendant had breached his fiduciary duties by not informing the Plaintiff of her interest, I am of the view that the breach was not such that led to the conclusion that an account must be ordered of the Property for the period between the Testator's death and 12 October 2016.

Conclusion

60 Whilst I found for the Defendant, it is apposite to underscore the serious nature of the duties imposed on executors and trustees of discretionary trusts. The fact that a will creates a discretionary trust does not mean that a member of the class of beneficiaries does not have any recognised interest in the assets of the discretionary trust. It follows that the Plaintiff was and is *prima facie* entitled to an account from Jethanand being the trustee of the Assets in which the Plaintiff has a discretionary interest. As was rightly stated in *Halsbury's Laws of Singapore* vol 9(4), *Equity and Trusts* (LexisNexis, 2017 reissue) at para 110.790, note 1, the duty to render accounts is one of the trustee's most basic duties. For avoidance of doubt, this comment is made bearing in mind that Jethanand's conduct as trustee was not an issue that was before me.

61 The Defendant in this case was the executor of the Will under which the discretionary trusts were created. The Defendant was not the named trustee of the Assets to which the discretionary trusts related. In my view, the Defendant as the executor ought to have informed the Plaintiff of her discretionary interest under the trusts as part of his duty to call in the assets and to distribute the same in accordance with the Will. This duty also included the transfer of the relevant Estate assets to the respective trustees for administration by them in accordance with the terms of the discretionary trusts.

62 It follows that the Defendant as executor was under an obligation to provide an account to the Plaintiff of the Assets up to the point when the Assets were transferred to Jethanand or dealt with in accordance with Jethanand's instructions. That said, I was of the view that it would be unnecessary to make an order for the Defendant to do so given that he had already satisfactorily discharged this duty in the course of filing his reply affidavits for this application, bearing in mind there was no application to cross-examine him.

63 Accordingly, I dismissed the Plaintiff's application. Nevertheless, I noted that the Plaintiff's concern might have been addressed by quicker and fuller responses by the Defendant. Looking at the circumstances, I ordered fixed costs of \$2,000 to be paid by the Plaintiff to the Defendant.

George Wei
Judge

Melanie Ho, Chang Man Phing, Chan Yu Xin and Valerie Quay
(WongPartnership LLP) for the plaintiff;
Gopalan Raman (KhattarWong LLP) for the defendant.
