

Tang Eng Seng and Others v Tang Boon Kiat Eugene
[2003] SGHC 201

Case Number : OS 1685/2002
Decision Date : 09 September 2003
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : Leonard Loo Peng Chee and Edwin Loo (Leonard Loo & Co) for the plaintiffs;
Suresh Damodara and Sunil Gill (David Lim & Partners) for the defendant
Parties : Tang Eng Seng; Tang Bee Leng; Tang Bee Lay Margaret — Tang Boon Kiat Eugene

Gifts – Inter vivos – Sum held in accounts in joint names of deceased and defendant – Whether deceased intended sum as gift for defendant

Probate and Administration – Distribution of assets – Sum held in accounts in joint names of deceased and defendant – Whether sum belonged to estate of deceased

1 By this Originating Summons the plaintiffs, as executor, executrices and trustees of Mr Tang Kong Low, deceased sought the determination of this court on the question whether the sum of \$518,583.11 held in 3 Time Deposit accounts ("the disputed accounts") jointly in the names of the late Mr Tang Kong Low ("the grandfather") and the defendant belong to the Estate of the grandfather ("the Estate") or the defendant. At the conclusion of the hearing, during which viva voce evidence was taken, I concluded that on the totality of the evidence I was persuaded that more probably than not the grandfather had intended to and did make a gift of the moneys in the 3 Time Deposit accounts and interest earned to the defendant, his first grandson.

The facts

2 On 12 December 2001, the grandfather passed away, leaving a Will. His wife, Madam Ng Ah Lian, had predeceased him, having died in 1994. He left behind 6 children, 5 children in law and 11 grandchildren. He directed that the Estate after paying debts and duties shall be divided into 16 parts. He gave each child of his one share, most of the grandchildren one share. The in-laws were given either one share or half a share. The defendant was given half a share.

3 His eldest son is Tang Eng Seng, the first plaintiff, who is a diploma holder. He lives in a landed property at Salam Walk, Singapore. His second son is Tang Eng Hock. He lives in an HDB flat.

4 The third son and child is Tang Eng Chye. He is the father of the defendant. He too is of modest means, living in an HDB flat. He is the only son and child who has assisted his father in the second-hand goods business. He had been working for almost 20 years for his father and was paid a modest salary throughout. Naturally, the defendant and his brother, Mark Tang, were frequently in the grandfather's shop house which was then at Race Course Lane. From there the defendant was taken to his primary school. As I will recall later, the defendant and the grandfather became very close.

5 The fourth child is the eldest daughter, who is the second plaintiff. She is a graduate. She married well and she also lives in a landed property in Bedok Walk, Singapore.

6 The 5th child and fourth son is Tang Eng Ann. He is a mental patient at Woodbridge Hospital.

The 6th child is the second daughter and is the third plaintiff. She is a graduate and lives in a private condominium.

7 At about 2.00pm on 12 December 2001, the defendant's mother informed him that his grandfather had passed away. He immediately left his work place and rushed to his grandfather's house. All the children except Tang Eng Ann were present.

8 Eventually, the grandfather's safe was opened. The third plaintiff recorded all the assets of the grandfather, including details of the joint account slips in a notebook. It was at this point in time that the rest of the members of the family discovered the existence of the defendant's joint accounts with the grandfather.

9 There followed a discussion on how to deal with the joint accounts. The defendant's father, Mr Tang Eng Chye, was the first one to suggest that the major joint accounts should be immediately withdrawn so that the banks would not 'freeze' them. It was later agreed that Mr Tang Eng Hock and the defendant would go to the bank the next day to withdraw the moneys held jointly by the defendant with the grandfather.

10 The defendant told me, and I accept, that he did not object to this arrangement at that point in time because he was a junior member of the family and he abided by the wishes of his own father who had agreed to the proposed course of action. Understandably, the defendant did not want to make an issue in the midst of their bereavement.

11 On 22 December 2001, the sons and daughters gathered in their late father's house to hear the Will read out by a lawyer. Before the Will was read out, everyone present signed an agreement described as "POINTS OF AGREEMENT". The defendant did not sign the agreement. One of the clauses in this agreement stated that all joint accounts with the grandfather held by any of the parties to the agreement belonged to the Estate.

12 On 2 January 2002, some days after the Will was read out, the first plaintiff informed the defendant over the phone of two other joint Keppel Tat Lee time deposit slips and arranged for the defendant to meet him on the same day to have the funds withdrawn from the accounts and paid to the plaintiffs. The defendant was himself surprised because he only knew of one joint account with the grandfather. He said in evidence that he never asked the grandfather the amount of the joint accounts. After all the grandfather had told him that he intended to ensure that he had sufficient funds to complete his Masters degree and start a business.

13 The defendant at this juncture decided not to follow the instructions of the plaintiffs. It had become clear to him that if he had parted with the moneys to them he would never see it again. As arranged, the first plaintiff, the second plaintiff and the defendant met at the Keppel Tat Lee Bank, Burlington Square Branch. The first plaintiff instructed the defendant that, after he had closed the two Time Deposit accounts with the respective amounts of \$71,806.26 and \$116,376.85, the defendant was to instruct the bank teller to issue a cheque in favour of the second plaintiff so that she could deposit the moneys in the Estate account which had been set up.

14 When the bank teller was about to issue the cheque, the defendant took out his personal saving account book and asked the bank teller to transfer the moneys into that account. The first plaintiff reprimanded him in front of the bank teller. But the defendant firmly told the bank teller to follow his instructions. The moneys were deposited into the defendant's savings bank account.

15 The first and second plaintiff informed the third plaintiff of what had happened. The third

plaintiff telephoned her friend who was a bank officer in the bank branch. In the end, the withdrawal of the Time Deposits and the deposit of the proceeds into the defendant's savings bank account were reversed and the accounts were 'frozen' by 1.30pm on 2 January 2002.

16 On 20 August 2002 the defendant's solicitors made a demand on the plaintiffs to return the approximate sum of \$332,389 which he had deposited with them. The defendant also claimed that he was beneficially entitled to the proceeds of the two Time Deposits which were 'frozen' by the bank. The plaintiffs replied through their solicitors that those sums were held by the defendant upon trust for the Estate and insisted that they must be paid over to the Estate. Issue was therefore joined.

The relationship between the grandfather and the defendant

17 It is clear from the evidence that the grandfather had a close relationship with the defendant. He is the first grandson, a fact of significance to a traditional but enlightened Chinese like the grandfather. Further, Mr Tan Eng Chye, the third son of the grandfather, had worked in the family business, helping to run it, for almost 20 years. Mr Tan Eng Chye was paid only a modest salary. The defendant had visited the grandfather regularly. During many visits, the grandfather had shared with him many of his experiences and taught him to be honest, diligent and no doubt shrewd in business. The grandfather also made the defendant read all his letters including bills, bank statements, CPF statements and others. He also wanted satisfactory explanations from the defendant about those transactions. Obviously, the defendant was being trained in the ways of a shrewd businessman. That the grandfather was a shrewd, prudent and successful businessman is evidenced by the size of his Estate.

18 The grandfather was particularly concerned over the education of the defendant. He placed great store in education. He supported the defendant who read Electrical Engineering in the National University of Singapore. He paid the fees and gave him a monthly allowance. He paid for the defendant's hostel fees so that the defendant could save on travelling time and devote more time for extra revision of his work. Believing that the defendant should have a sound mind in a sound body, the grandfather also sponsored his California Fitness Club subscription. The defendant excelled in his studies; he did not let the grandfather down. He obtained a Second Class Upper Honours Degree in Electrical Engineering. He also obtained a very good job as an engineer in a semiconductor firm.

19 The grandfather was keen that the defendant undertake a postgraduate course. He wanted his first grandson to stand out amongst his graduate co-horts. He reminded the defendant to study for a Masters degree from a University either in USA or in the United Kingdom, in preference to a Masters from our local university. The grandfather also advised the defendant to work in a field outside Engineering (especially in the business or finance sectors) so that the defendant could gain a broader perspective and ultimately after gaining enough working experience start doing his own business with the financial help from the grandfather.

Evidence on the gifts

20 Throughout this period, according to the defendant, the grandfather constantly assured him that the funds in the joint accounts were to be used to obtain his Masters and to do business. The grandfather told him that the funds in the joint accounts were separate from any share he would receive from his Estate. The grandfather impressed upon him that he should not tell anyone about the existence of the joint accounts, not even to the defendant's own immediate family members because it would create jealousy and disharmony among the family members. Following those conversations, the defendant applied for and obtained an admission into the Masters program in Computational Finance at a US university. The grandfather kept asking about the progress of his application to

undertake a Masters program overseas.

21 The defendant in his evidence referred to his late visit to his grandfather on 30 November 2001. The grandfather told him for the first time that he might not be around much longer. The grandfather again told the defendant that all the moneys deposited in the joint accounts was meant for him to be used to complete his Masters degree and to start a business. The grandfather was of the firm view that the only way for the defendant to advance in life was to start his own business. The defendant did not know the amounts in the fixed deposits. He knew there would be enough because he trusted his grandfather to provide enough.

22 Madam Liew Kiam Siew, a business friend of the grandfather for about 30 years, gave evidence for the defendant. She said that during her many conversations with the grandfather they talked about business, shares and sometimes about family matters. She remembered the grandfather telling her that "Ah Chye's son" was very good in his studies. "Ah Chye's son" meant the defendant. This witness also told the court that the grandfather had told her that he had provided moneys for the defendant's education. No sum was mentioned. The grandfather said he was providing from his own moneys.

The plaintiffs' case against any gift

23 The first plaintiff in his evidence referred to the 10 time deposit bank accounts and two savings accounts in the joint names of the grandfather and Mr Tang Eng Hock. One deposit amounted to \$330,485.26, 2 deposits each of about \$250,000 and 5 deposits of \$50,000 each. They totalled \$1,158,540.28. The monies in these accounts were withdrawn and paid to the Estate accounts. Mr Tan Eng Hock confirmed by Statutory Declaration that he held the monies upon trust for the grandfather. Mr Tan Eng Hock did not give evidence before me.

24 The first plaintiff also referred to several family meals with the grandfather, each followed by a meeting. His evidence on what had transpired during the meetings were repeated by the second and third plaintiffs. They were to the following effect. The grandfather, firstly, declared that all joint time deposit bank accounts and joint saving accounts, which bore his name, would be part of the Estate for distribution according to his Will after he passed away. Secondly, the grandfather, noting that all his grandsons had received support from him during their tertiary education, had already received part of their inheritance in advance and less provision would be made for them in the Will. Thirdly, the grandfather referred to the acquisition of a piece of land registered in the joint name of himself and Tang Eng Hock. When the compensation was received, Mr Tang Eng Hock returned his share to the grandfather. This matter was referred by the grandfather to establish the point that time bank accounts or saving accounts were solely for the Estate to be distributed according to his testamentary disposition.

25 None of the three plaintiffs knew about the time deposits which the grandfather had established in which the defendant's name was added. I was persuaded at the end of the trial that the grandfather kept his joint deposits with the defendant from the rest of the family. He dealt with the funds in the joint accounts as a matter separate from his estate and as a matter between himself and his favourite grandson, the defendant. I am mindful of the dangers in relying on the mere evidence of a party interested as to the effect of conversations he had with a deceased person. But all the circumstances of this case were taken into account by me and I found the defendant a truthful witness. He answered questions directly and his evidence convinced me that he was telling me the truth. Most of the evidence of the plaintiffs, when shaken down, amounted to arguments and submissions as to what ought to have happened. In my view, what happened was that the grandfather intended to make a gift of the moneys in the joint accounts with the defendant and he

did give them to him.

26 I therefore made the orders I did.

Plaintiffs' claim dismissed with costs

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