Teo Gim Tiong *v* Krishnasamy Pushpavathi (legal representative of the estate of Maran s/o Kannakasabai, deceased)
[2014] SGCA 38

Case Number	: Civil Appeal No 132 of 2013
Decision Date	: 24 July 2014
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Chao Hick Tin JA; V K Rajah JA
Counsel Name(s)	: M Ramasamy and N K Rajarh (M Rama Law Corporation) for the appellant; Ramesh Appoo and Susila Ganesan (Just Law LLC) for the respondent.
Parties	: Teo Gim Tiong — Krishnasamy Pushpavathi (legal representative of the estate of Maran s/o Kannakasabai, deceased)

Choses in action – assignment – incapacity

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2013] SGHC 178.]

24 July 2014

Chao Hick Tin JA (delivering the grounds of decision of the court):

Introduction

1 This appeal raised the question as to whether an offer to settle made by the appellant, the defendant in the action below ("the Appellant"), under O 22A of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules of Court") was validly accepted and could be enforced. The cause of action arose from a motor accident in which the victim plaintiff (who had, since the institution of the action, passed away) suffered severe injuries. The Appellant admitted partial liability and on the issue of damages made an offer to settle ("Offer to Settle") in the sum of $500,000 (excluding costs and disbursements).

2 The action was pending and the Offer to Settle still remained open for acceptance when the victim passed away intestate. The victim's mother then purported, before applying for letters of administration, to accept the Offer to Settle on behalf of her son's estate. The question, which was the subject of the action and this appeal, was whether a settlement agreement ("the Settlement Agreement") had come into being upon acceptance by the mother of the victim. The High Court judge ("the Judge") answered the question in the positive (see *Teo Gim Tiong v Krishnasamy Pushpavathi (legal representative of the estate of Maran s/o Kannakasabai, deceased* [2013] SGHC 178 ("the Judgment")). The Appellant appealed against the ruling of the Judge.

3 We first heard the appeal on 20 March 2014. On that occasion, we were troubled by the preliminary issue of whether the victim's mother had the standing to accept the Offer to Settle on behalf of the victim's estate, given that no letters of administration over the estate of the intestate victim had been granted or extracted. This point was not expressly taken before the Judge; neither was it expressly raised in the respective cases of the parties. As we felt that this issue was critical, we invited further written submissions from the parties on it. A second hearing of the appeal took place before us on 21 May 2014, at the end of which we allowed the appeal on the ground that the victim's mother had no title or capacity to accept the Offer to Settle before it was withdrawn. We

now give our written grounds for the decision.

4 We should add that between the time that our decision was given and the issuing of these grounds one member of the coram took up appointment as the Attorney-General. Accordingly, these grounds of decision are signed by only two members of the coram. However we repeat what we said at the conclusion of the hearing on 21 May 2014, which is that all three of us on the coram were of the same view with regard to the disposition of the appeal.

Background to the dispute

5 On 22 July 2006, the victim, Maran s/o Kannakasabi ("Maran") was badly injured in a traffic accident for which he and the Appellant were both at fault. Maran was then just 18 years of age. He suffered very severe brain injury with consequent mental and physical disabilities. The medical reports said that he could be regarded as being in a persistent vegetative state. On 12 April 2007, his mother, Krishnasamy Pushpavathi ("Mdm Pushpavathi"), was appointed to be the Committee of Persons to manage her son's affairs.

6 On 30 January 2009, Mdm Pushpavathi, on behalf of Maran, filed a writ of summons in the Subordinate Court (now re-named as State Court) against the Appellant claiming among other things medical and other expenses past and future, loss of future earnings and loss of earning capacity. Initially the Appellant (or rather his insurer) disputed liability but eventually a consent interlocutory judgment was entered on 14 December 2009 where the Appellant admitted to 40% liability for the accident.

7 The matter proceeded for hearing on the assessment of damages. On 6 September 2011, after the first tranche of the hearing, the Appellant made the Offer to Settle which was the subject of the appeal. The Offer to Settle was not expressed to be limited as to the time within which it was open for acceptance. The only response from Maran was a counter-offer made on 17 February 2012 that he would settle for a sum of $850,000, which offer was not accepted. The second tranche of the hearing was fixed for 5 April 2012 but before this came about, on 29 March 2012, Maran passed away, presumably from his injuries.

8 On the same day, the Appellant was notified of Maran's death. On 12 April 2012, about two weeks after Maran's death, Mdm Pushpavathi applied for, *ex parte*, and obtained an order of court for her to be made a party to the proceedings as the legal representative of Maran's estate under O 15 r 7(2) of the Rules of Court ("the substitution order"). For convenience, being effectively the true respondent in the appeal, we will hereinafter refer to Mdm Pushpavathi as "the Respondent". That same day at noon, the Appellant's solicitors sent a letter to the Respondent's solicitors by way of fax giving the Respondent notice of his intention to withdraw the Offer to Settle, on the ground that Maran's death had rendered the Offer to Settle incapable of acceptance. [note: 0]

9 As we saw it, it was a mere coincidence that both these events occurred on the same day. We were told by the assisting counsel for the Respondent, Ms Susila Ganesan, that the Respondent took time to "settle down" after the death of her son; it was not until 11 April 2012 that she was able to affirm an affidavit in support of the substitution order. The application papers for the substitution order were filed the very next day and for reasons which were irrelevant for present purposes it was not until late in the afternoon of 12 April 2012 that the order was granted. By that time, the notice of intention to withdraw the offer had been faxed to Ms Ganesan's office (it was stamped as having been received at noon), but she did not see it until she returned to the office in the evening. As it was apparent that neither the Respondent nor her counsel was aware of the Appellant's faxed notice before the substitution order was applied for and granted, we were therefore satisfied that these two

events were not linked in any way.

10 The very next morning, on 13 April 2012 at 9am, after the substitution order was granted, the Respondent served on the Appellant a notice of acceptance of the Offer to Settle. At 10.15am that same day, the Appellant served a notice of withdrawal of the Offer to Settle.

11 On 28 December 2012, the Respondent filed for judgment in the Subordinate Court in terms of the Offer to Settle and a judgment in terms was entered on 3 May 2013. It was resisted by the Appellant, who took the view that Maran's death had rendered the Offer to Settle incapable of being accepted. He appealed to the District Judge in Chambers (*vide* RA 66/2013) which appeal was heard and dismissed on 3 July 2013. The Appellant appealed further to the High Court in RAS 89/2013.

12 The Judge noted that an offer to settle under O 22A could result in the offeree getting more than what he deserved. But the only way to ascertain this was to assess damages. Such an assessment would result in a prolonged hearing which was the very thing the O 22A regime was created to avoid. Accordingly, the Judge dismissed the appeal.

The parties' cases on appeal

13 Before us, the appeal was initially mounted on the ground that the Offer to Settle was rendered incapable of being accepted due to Maran's death, which, it was alleged, so altered the nature of the claim as to constitute a fundamental change of circumstances. This, in turn, raised a number of issues, such as the nature of the O 22A regime, its interaction with the law of contract, and the circumstances in which a compromise agreement would or would not be enforced.

14 While full written submissions were made to us on these points, we did not go on to consider them because it seemed to us that there was an insuperable difficulty in the way of the Respondent. It was not disputed that on the basis of the way the claim was characterised before us, that following the death of Maran, the action was being pursued as the *estate's* claim for damages under a cause of action that survived death: see s 10(1) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("the CLA"). It was not a *dependency* claim mounted under s 20 of the CLA by a dependant of a deceased person.

15 Since it was the *estate's* claim for damages, it seemed to us that any action, or the continuance of any action, had to be undertaken by a person properly authorised to do so on behalf of the estate, *viz*, the properly constituted administrator or administratrix, there being no will. But the undisputed fact was that at the time the substitution order was obtained on 12 April 2012, the Respondent had not yet applied for letters of administration, far less obtained them. The Respondent was certainly aware of this; in her affidavit in support of the substitution order, she said that the order was necessary because it would have taken her some months to obtain letters of administration. Therefore we felt constrained to invite further submissions on the issue of whether the Respondent had the capacity to act for the estate to accept the Offer to Settle; for it was clear that if the Respondent did not have the capacity to act for the estate, the appeal had to be allowed forthwith. Only if she did have the requisite capacity could the parties then proceed to the substantive points alluded to.

16 In this regard, the Respondent submitted that as her claim came within s 10 of the CLA rather than s 20, it was not necessary that letters of administration had to be obtained by the person who was substituted to act for the estate of the deceased. It was enough, she argued, that she was eligible to be a personal representative and had obtained thereby the substitution order under O 15 r 7(2) of the Rules of Court. The distinction between s 10 and s 20 of the CLA was important because,

if Maran had died *before* the action was commenced, such action commenced by a person without letters of authorisation to act for the estate would have been an incurable nullity. But since the action had been properly commenced by Maran before he died (or more properly by the Respondent, then acting as his Committee of Persons), the Respondent contended that the action was not a nullity and could validly be continued once a substitution order was obtained; it was not necessary that the person so substituted to act for the estate had to be a properly appointed personal representative of the estate. On that last point, the Respondent relied on the judgment of Assistant Registrar Lionel Leo ("AR Leo") in *Tan Keaw Chong v Chua Tiong Guan and Another* [2009] SGHC 127 ("*Tan Keaw Chong*"), as well as the Malaysian case of *Government of Malaysia & Anor v Taib bin Abdul Rahman* [1991] 2 MLJ 174 ("*Taib*").

17 On the other hand, the Appellant made the following submissions. First, he argued that the substitution order was bad because there was no full and frank disclosure of material facts, in particular, the fact that the intention behind the substitution order was to enable the Respondent to accept the Offer to Settle before it was withdrawn.

18 Second, the Appellant submitted that only a lawfully authorised personal representative could be substituted to act for a deceased person under O 15 r 7(2) and the Respondent was not such a person. The Appellant also sought to distinguish the cases of *Tan Keaw Chong* and *Taib* on the facts.

Our analysis

Whether the Respondent had capacity to accept the Offer to Settle

19 In our judgment, the Respondent was not properly authorised to act for the estate when she obtained the substitution order since it was clear that she had not been granted letters of administration. It followed that all subsequent acts taken on behalf of Maran's estate were nullities, including, in particular the Respondent's purported acceptance of the Offer to Settle on 13 April 2012. Therefore, there was no Settlement Agreement between the estate of Maran and the Appellant and, thus, there was no question of it being enforceable as a judgment and the appeal had to be allowed.

20 We begin with a discussion of s 10 of the CLA. Under that provision, on the death of a person, all causes of action vested in him (less certain exceptions not relevant here) survive for the benefit of his estate. It was not disputed that Maran's claims for damages under the action survived for the benefit of his estate.

21 However, s 10 of the CLA does not answer the posterior question of *who* may act for the estate in question. If Maran had left a will, the answer would be the named executor or executrix. Since it is good law that executorship takes effect from the moment of death, there would be no need for probate of the will before the executor could apply to be substituted in place of the deceased in the action: see *Lee Han Tiong and others v Tay Yok Swee* [1996] 2 SLR(R) 833. But Maran died intestate and in this regard, s 37(1) of the Probate and Administration Act (Cap 251, 2000 Rev Ed) ("the PAA") states that where a person dies intestate, his real and personal estate vests in the Public Trustee, and under s 37(4) of the PAA, the vesting ceases on the grant of administration in respect of the estate. Included in his real and personal estate is any cause of action accrued while he was alive and which survived his death. Thus, upon Maran's death, only the Public Trustee could act for Maran's estate in any matter until there was a grant of administration. Indeed, it is only when the grant is extracted that the person to whom the grant is made is finally clothed with the authority to deal with the estate: *Chay Chong Hwa and others v Seah Mary* [1983–1984] SLR(R) 505 at [8].

22 We therefore agreed with the Respondent that the claim came within s 10 of the CLA, but we

disagreed with her that in such a claim it was not necessary that letters of administration had first to be obtained by the person who stepped into the shoes of the deceased plaintiff. In our judgment, it was necessary first to obtain letters of administration because only a person so authorised could act for the estate or maintain a claim under s 10. Where a person purports to act in a suit in a capacity that he or she does not in fact possess, such actions are of no effect and are nullities.

23 In our judgment this principle is well established. In *Ingall v Moran* [1944] 1 KB 160 ("*Ingall*"), the son of the plaintiff was killed in an accident due to the negligence of the defendant. The plaintiff issued a writ in the capacity of administrator of his son's estate under s 1 of the Law Reform (Miscellaneous Provisions) Act 1934 (*in pari materia* to s 10 of the CLA). A claim on such a basis could only be brought by the person lawfully authorised to act for the estate, but at the time the writ was issued letters of administration had yet to be granted to the plaintiff. The plaintiff sought to argue that a subsequent grant of letters of administration permitted him, on the doctrine of "relation back", to cure the incapacity under which the initial claim had been brought. Luxmoore LJ rejected this argument. He drew a distinction between the position of the executor and that of the administrator and held that while an executor could institute an action before probate was granted, this was because the executor's authority was derived from the testator's will, whereas (at 167–168):

> … An administrator is, of course, in a different position, for his title to sue depends solely on the grant of administration. It is true that, when a grant of administration is made, the intestate's estate, including all choses in action, vests in the person to whom the grant is made, and the title thereto then relates back to the date of the intestate's death, but there is no doubt that both at common law and in equity, in order to maintain an action the plaintiff must have a cause of action vested in him at the date of the issue of the writ. …

24 Luxmoore LJ also cited (at 168) the *Annual Practice* for 1943 as authority for the proposition that:

> ... [A]n administrator is not entitled to sue in King's Bench Division until administration is granted, *for until such grant there is no certainty that there is an intestacy, nor that if there is an intestacy any particular person will be administrator*. … [emphasis added]

25 In the result, Luxmoore LJ concluded (at 169):

> … I have no doubt that the plaintiff's action was incompetent at the date when the writ was issued, and that the doctrine of the relation back of an administrator's title to his intestate's property to the date of the intestate's death when the grant has been obtained cannot be invoked so as to render an action competent which was incompetent when the writ was issued. …

26 The principle in *Ingall* was followed in *Hilton v Sutton Steam Laundry* [1946] 1 KB 65 ("*Hilton*"). In this case, the widow of the deceased brought an action as administratrix of her husband's estate for damages under both the Fatal Accidents Act *and* the Law Reform (Miscellaneous Provisions) Act 1934 (the equivalent of s 20 and s 10 of the CLA respectively). However, as at the date of the writ the widow had not yet obtained letters of administration, she had therefore purported to sue in a capacity she did not possess. The action was therefore a nullity.

27 In *Finnegan v Cementation Co Ld* [1953] 1 QB 688 ("*Finnengan*"), a workman died in an accident in the course of his employment and his widow sued for damages under the Fatal Accidents Acts 1846 and 1864. The widow was granted letters of administration in Ireland but not in England, where the claim was brought. It was accepted that the widow was in fact claiming as "administratrix

of the estate of [the workman], deceased". Jenkins LJ stated the proposition of law as follows (at 700–701):

> … an action commenced by a plaintiff in a representative capacity which the plaintiff does not in fact possess is a nullity, and, further, that it makes no difference that the claim made in such an action is a claim under the Fatal Accidents Acts which the plaintiff could have supported in a personal capacity as being one of the dependants to whom the benefit of the Acts extends. It follows in the present case that if the action was brought by this plaintiff in the representative capacity of administratrix of the estate of her deceased husband, and if she did not in fact possess that capacity, then her writ was a mere nullity and her claim must fail, because she omitted to pursue it in properly constituted proceedings within the prescribed period; and the period having run, the court will not take any step to validate proceedings which were ab initio defective.

28 Singleton, Jenkins and Morris LJJ all expressed regret that the widow's action had to be defeated but considered that they were bound by authority, and in particular, the prior cases of *Ingall* and *Hilton*.

2 9 *Ingall* was recently applied in the case of *Millburn-Snell and others v Evans* [2011] EWCA Civ 577 ("*Millburn-Snell*"). In this case, the claimants were the daughters of one Timothy Millburn, who had died intestate. They purported to bring a claim against the defendant, a former business partner of their deceased father, in the capacity of "personal representatives" and on behalf of the estate. At that point, the claimants had not obtained letters of administration. Rimer LJ held that it was clear law (at [16]):

> … that an action commenced by a claimant purportedly as an administrator, when the claimant does not have that capacity, is a nullity. …

30 These were all cases in which the deceased had passed away before the action was instituted and the question was whether a plaintiff who had not yet obtained grant of administration could *commence* an action in the capacity of an administrator. However, in our view the principles established in these cases should also apply to the situation where a person purported to *continue* an action on behalf of the plaintiff's estate where the plaintiff passed away intestate before the action was concluded.

31 The reason is that in either case the question is the same, *ie*, whether the person bringing or maintaining the claim has the capacity or standing to do so. In cases of intestacy, the court jealously guards the assets – including causes of action – of the deceased's estate through the procedure by which letters of administration are granted. If this is the position where the writ has not yet been filed, there seems no good reason why this protection should be lifted where the writ has already been commenced but the plaintiff dies intestate before it has been finally determined. The underlying public interest – the preservation of the assets of the estate – is the same and the estate's worth may be frittered away as much through the process of litigation as by the commencement of an action.

32 The rationale for this rule is one of public interest and it therefore should not matter if in certain cases, perhaps including the present, there is no obvious dispute over who is entitled to be the personal representative of an estate. That was indeed also the case in *Ingall*, *Hilton* and *Finnegan.* In principle, unless and until letters of administration are granted it must be uncertain as to who may legitimately act for the estate; it would be question-begging to hold otherwise. As was astutely observed in the passage from *Ingall* cited above at [24], until such grant there is no certainty that

the case is even one of intestacy, nor that, if it is a case of intestacy, any particular person is the administrator. Thus the obtaining of proper letters of administration is not a mere formality or technicality but a rule conveying substantive rights and as such should not be easily overridden.

33 In the circumstances, the correct procedure would have been for the proceedings to be stayed pending the grant of letters of administration. Entitlement to apply for letters of administration is one thing but entitlement to act on behalf of the estate is another. The only person entitled to act for the estate is the person to whom letters of administration have been granted. The Respondent might feel entitled to act for Maran's estate but until she has been so granted the authority to do so she would not be able to act for his estate. That said, we did not think that pending the grant, she would be incapacitated from applying for a stay of proceedings; under O 15 r 9(1) of the Rules of Court, the action will not be struck out where a plaintiff has died, unless the court is:

> … satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased plaintiff and to any other interested persons who, in the opinion of the Court, shall be notified.

The Rules of Court therefore appear to contemplate that such person(s) as might be considered interested may seek a stay pending grant of letters of administration so that the action may proceed on the proper footing. As the action would not be struck out in the interim, we could not see any prejudice to the Respondent if she had taken this course.

Whether the Respondent could rely on O 15 r 7(2)

34 The Respondent's case was that her lack of authority could be cured by the grant of an order under O 15 r 7(2) of the Rules of Court.

35 Before we consider her arguments on this point we deal first with the preliminary point raised by the Appellant that the Respondent had failed to make full and frank disclosure of all the material facts when she applied *ex parte*, pursuant to O 15 r 7(2), for the substitution order on 12 April 2012. The Appellant alleged that the application was made solely to enable the Respondent to "expeditiously accept" the Offer to Settle so as to prejudice the Appellant's position. This was not made known to the court when the substitution order was applied for, and the Appellant argued that this amounted to a failure to provide full and frank disclosure justifying the setting aside of the order.

36 We did not think there was any merit to this submission. It was a question of fact as to the circumstances under which the application was made. We have observed above (at [9]) that it was a mere coincidence that the application was made the very day the Appellant gave notice of his intention to withdraw the Offer to Settle. As we have found that the Respondent was unaware of the notice, taking away the coincidence of timing, it did not seem to us that there was any other evidence to suggest that her sole purpose for making the application was so that she could accept the Offer to Settle before it lapsed. In any case, the fact that the Offer to Settle was made, as well as its terms, was apparent from the record and we did not think there was anything untoward in the manner of the application. We therefore did not find that there was any material non-disclosure and the substitution order could not be faulted on this basis.

37 Turning to the substantive arguments, we note that the Respondent did not deny that she had not been appointed administratrix of Maran's estate at the time the substitution order was obtained, but submitted that this could be cured by an order under O 15 r 7(2). This rule reads:

> Where at any stage of the proceedings in any cause or matter the interest or liability of any

party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first-mentioned party. An application for an order under this paragraph may be made ex parte.

38 The application for the substitution order filed by the Respondent did not state the specific rule under which the application was made but we were told by counsel for the Respondent that the substitution order was indeed sought under this rule.

39 We did not think that any defect in title to act for the estate in this case could be cured by an order made under O 15 r 7(2), a rule of a procedural nature. In *Sheagar s/o T M Veloo v Belfield International (Hongkong) Ltd* [2014] SGCA 26, we said (at [100]) that O 2 r 1 of the Rules of Court had the effect of removing the previous distinction between nullities and irregularities, so that any omission or mistake in practice or procedure would be regarded as an irregularity which could be rectified by the court. But the present case was not one involving such an irregularity; it was clear that the defect in this case was a substantive one that went to the root of the Respondent's right to act for the estate in this matter and was not a mere omission or mistake in practice or procedure.

40 We were of the view that the Respondent could not avail herself of O 15 r 7(2) for the simple reason that that rule only provides for substitution of parties in certain eventualities. It is a procedural provision. It does not confer a right to represent an estate where none exists. Since the Respondent had yet to be granted letters of administration she therefore could not act for the estate of Maran. The substitution order obtained by the Respondent was thus premature and improper.

41 The Respondent averred to the contrary and made two arguments. First, she relied on *Taib* which was applied in *Tan Keaw Chong*. Second, she argued that an analogy could meaningfully be drawn between O 15 r 7(2) and Rule 19.8(1) of the English Civil Procedure Rules 1998; since the English rule permitted such a substitution the Respondent argued that the equivalent local rule, that is O 15 r 7(2), should be similarly construed. We will now discuss these points in turn.

The Malaysian case of Taib

42 In *Taib*, the plaintiff was knocked down in 1978 by a postman riding a motorcycle. In 1981, the plaintiff sued the government in the sessions court for damages arising out of the postman's alleged negligence. However, before the matter was determined, he died on 3 July 1984 and on 22 January 1985 his son applied under the equivalent provision in the Malaysian rules of court to be appointed a party in substitution for his deceased father. Initially, the application was granted by consent even though, at that point, the son had yet to be appointed personal representative of his father's estate. Subsequently, the government had second thoughts and sought to have the consent order set aside. Azmi SCJ refused the application:

> … We need only to add that although under s 39 of the Probate and Administration Act 1959, the interests of the deceased plaintiff vest in the Official Administrator (since he died intestate), it does not mean that pending an order for a grant of administration, only the Official Administrator could make an application to be made a party under O 8 r 7(2). In our opinion, such an interpretation would defeat the very object of r 7(2) which is to avoid delay in the disposal of cases where the interests or liabilities of any party to a pending proceeding vest temporarily upon some other person, such as the Official Administrator. In our view the narrow interpretation advocated by learned counsel for the appellants has its root in the misinterpretation of the word

'other person' in the latter part of r 7(2) as referring to the words 'some other person' in the earlier part of the provision.

In our opinion, in order to give effect to the principal object of the rule, which is to avoid delay in the disposal of cases, the word 'that' immediately preceding the word 'other person' should be read merely as a relative or conjunctive adverb. In short, when the property or interest of an estate devolves or vests by virtue of s 39 in some other persons - in this case the Official Administrator, 'the Court may order that other person (ie person other than the Official Administrator) to be made a party to the cause or matter'. It seems clear that the word 'that' should not be read as a demonstrative pronoun referring to the earlier mentioned 'some other person' upon whom the interest or liability of a party devolves or vests but should be read as mere conjunction introducing the words 'other person'.

Thus, it is our conclusion that, when at any stage of any proceedings, the plaintiff dies intestate, and his interests devolve or vest temporarily in the Official Assignee under s 39, *until administration or probate is granted, the court has the discretion to order that his son or any other person be made a party* under O 8 r 7(2), if the court 'thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be completely determined and adjudicated upon'.

[emphasis added]

43 *Taib* was approved and applied by AR Leo in *Tan Keaw Chong*. This was an application by the second defendant, one Chua Hui Khim ("Hui Khim"), to set aside an order of court joining her as a representative of the estate of the first defendant, Chua Tiong Guan ("Tiong Guan"). At that point, Hui Khim had not yet been appointed administrator of the estate of Tiong Guan and all that had been done in the matter was the taking out of an advertisement seeking information on whether Tiong Guan had left a will. Hui Khim argued that as she was not the personal representative of the estate, the order was bad. The learned assistant registrar applied *Taib* and said at [13]:

I agree with the view expressed in [*Taib*] since a holding to the contrary would frustrate the object of O 15 r 7(2), which is to avoid delay in the disposal of cases where the interests or liabilities of any party to a pending proceeding had to vest temporarily in the Public Trustee. Such an interpretation of O 15 r 7(2) would also be in line with the High Court's decision in *Chern Chiow Yong*. In the circumstances, I did not think that the Second Defendant had been wrongly appointed simply because she was not the personal representative of the deceased's estate at the time of the application.

44 Thus two reasons were advanced in *Taib* and *Tan Keaw Chong* for the position taken in those cases. The first was time: not allowing a person other than the personal representative to be substituted to act for a deceased person's estate "would frustrate the object of O 15 r 7(2), which is to avoid delay in the disposal of cases". The second was statutory interpretation: the word "other person" in the latter part of O 15 r 7(2) did not refer strictly and narrowly to the person on whom the interest devolved in the first part of O 15 r 7(2).

45 In our judgment, neither of these reasons was correct. On the first point, that the object of the rule was to avoid delay, we note that there was no discussion of the issue in *Taib*. The point appeared to have been assumed, rather than reasoned through. Very little legal archaeology will show that O 15 r 7(2) may be traced to O L(2) of the Rules of Court in the First Schedule to the Supreme Court of Judicature Act 1875 ("1875 Judicature Act"), which reads:

> In case of marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to an action, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved in the action, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party to the action, or be served with notice thereof in such manner and form as hereinafter prescribed, and on such terms as the Court or Judge shall think just, and shall make such order for the disposal of the action as may be just.

46 It was clear to us from the text of the rule that its rationale is couched in terms of necessity, rather than timeliness, and this rationale of necessity is preserved in our O 15 r 7(2). We were not aware of any good authority for the proposition that the object of the rule, either in its older forms or in its modern incarnations, is to avoid delay. In our view, all that the rule seeks to do is to regularise procedure in accordance with the changed circumstances: if the interest moves, then the party who succeeds to the interest may be made a party to the proceeding so that there could be complete settlement of all the questions arising in the action.

47 AR Leo in *Tan Keaw Chong* referred to the case of *Chern Chiow Yong and others v Cheng Chew Chin* [1998] 1 SLR(R) 876 ("*Chern Chiow Yong*") (the extract quoted at [43] above) but we did not think the latter case could assist the Respondent here. The issue in *Chern Chiow Yong* was whether under O 15 r 7(2) the *executors* of the deceased defendant's estate could be substituted in place of the deceased who had passed away before the matter was concluded. The *executors* resisted the application on the ground that probate had yet to be granted. Warren Khoo J found that the *executors* could be so substituted; it was in this context that Khoo J observed, at [7]:

> In this case, it is not disputed that the executors can be sued. If they can be sued, I see no reason why the proceedings should then be suspended until they have taken out the sealed grant of probate. Such a rule might lead to claims against the estates of a deceased persons (*sic*) being delayed or frustrated by the failure to obtain the sealed grant. This would be against the policy underlying the present Rules of Court allowing claims against deceased persons' estates to be proceeded with in the absence of a grant of probate or administration. See O 15 r 6A of The Rules of Court.

48 Khoo J's point was that since the executor could act for the estate once he accepted office, he could be sued; and suspending proceedings until probate was granted would result in unwarranted delay. The case was certainly different from the present where no executor was involved. To the extent that in the last sentence in the extract quoted above, Khoo J seemed to suggest that the position of an administrator was no different from that of an executor, we would, with respect, say that he was mistaken (see [23] above).

49 The second point, which relates to interpretation, could be dismissed simply on the plain words of the rule. It is clear that O 15 r 7(2) posits only two persons. The first is the original party to the action. Where his interest or liability is assigned or transmitted to or devolves upon some other person, that second named person – and only him, as the successor in interest – may be substituted as a party for the first named person. A reference to O L(2) of the 1875 Judicature Act will make it very clear that in the case of the death of a party, only his personal representative may be made a party in substitution for the deceased person. The principle of *reddendo singula singulis* is directly applicable. This principle is that (see *Jeyaretnam Kenneth Andrew v Attorney-General* [2013] 1 SLR 619 at [30], citing *Bennion on Statutory Interpretation* (LexisNexis, 5th Ed, 2008) at pp 1247–1248):

> Where a complex sentence has more than one subject, and more than one object, it may be the right construction to render each to each, by reading the provision distributively and applying

each object to its appropriate subject. A similar principle applies to verbs and their subjects, and to other parts of speech.

50 When O L(2) is read distributively, it becomes clear that the words "personal representative" are linked to the word "death" so that only a personal representative may be substituted for the deceased person. We did not see the subsequent amendments to O L(2) that created its modern form in O 15 r 7(2) as changing the meaning of the rule on this point. As we have discussed, this is fundamental to the purpose of the rule and we did not think any subsequent amendments are material on this point. The phrase "that other person" in O 15 r 7(2) should be construed to refer to "some other person" mentioned earlier in the provision, being the person to whom the interest or liability in the pending proceeding as having been "assigned or transmitted to or devolves upon".

Rule 19.8(1) of the English Civil Procedure Rules

51 The Respondent then sought to argue that a meaningful analogy could be drawn between Rule 19.8(1) of the English Civil Procedure Rules 1998 and O 15 r 7(2). Rule 19.8(1) reads:

> Where a person who had an interest in a claim has died and that person has no personal representative the court may order –
>
> (a) the claim to proceed in the absence of a person representing the estate of the deceased; or
>
> (b) a person to be appointed to represent the estate of the deceased.

52 The Respondent said that the English position was that under this rule, the court was empowered to appoint a person to represent the estate of a deceased party even where there was no personal representative. Since this is analogous to our O 15 r 7(2), the latter provision could, the Respondent argued, also be used to substitute a person other than the personal representative for a deceased party.

53 We do not need to express any firm opinion on whether, as a matter of the English law on civil procedure, Rule 19.8(1) has the effect that the Respondent places on it, for the simple reason that there was no meaningful analogy to be drawn between O 15 r 7(2) and Rule 19.8(1), as the Respondent had urged us to do. They are, quite simply, different rules altogether. In our view the analogue to Rule 19.8(1) is probably O 15 r 15(1) of the Rules of Court (see also *Millburn-Snell* at [25]), which reads:

> Where in any proceedings it appears to the Court that a deceased person was interested in the matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceedings.

54 It is apparent that these two rules share a common ancestor. We note that the Respondent had not sought the substitution order under this rule (that is, O 15 r 15(1)), but even if she had done so we did not think this rule could cure her lack of capacity. Order 15 r 15(1) was considered in *Wong Moy (administratrix of the estate of Theng Chee Khim, deceased) v Soo Ah Choy* [1995] 3 SLR(R) 822 ("*Wong Moy*"). In that case, the plaintiff was the widow of the deceased who had died intestate. She

sued the defendant in the capacity of administratrix of the deceased's estate for declarations in relation to properties allegedly belonging to the deceased but registered in the name of the defendant. The defendant applied to set aside the writ on the grounds that the plaintiff had no capacity to commence action as administratrix of the estate as, although her application for letters of administration to the deceased's estate had been granted, the letters had not been extracted because she allegedly was unable to file an estate duty affidavit.

55 Judith Prakash J accepted (at [11]) that the plaintiff did not have the necessary authority to sue as administratrix of the estate, because a person was clothed with such authority only after letters of administration had been granted and extracted. The plaintiff then sought for an order under O 15 r 15(1) that she be appointed the person to represent the estate of the deceased for the purpose of those proceedings. Prakash J rejected the application and held that this rule could be invoked only in relation to existing court actions between parties who were not suing or being sued on behalf of the estate of the deceased, and observed at [22]:

> It appeared to me that O 15 r 15(1) is directed at the situation where after an action had been started and both plaintiff and defendant were litigating it, it became apparent that a deceased person who was neither the plaintiff nor the defendant and thus not a party to the litigation had an interest in the subject matter of the litigation and therefore his estate should be represented in the action. This was not the case here because when the suit had started, the plaintiff had sued in her purported capacity as administratrix of the deceased's estate. She had brought an action on behalf of the deceased and not an action on her own behalf. There was no pending proceeding between third parties in which the deceased had an interest because the plaintiff was in fact the deceased in other clothing. The plaintiff could not, therefore, satisfy this requirement of the rule.

56 We agree with these observations. While the word "interested" in O 15 r 15(1) has a wide ambit we did not think that it could be used to displace or otherwise circumvent the rule in O 15 r 7(2). We were further supported in this conclusion by the fact that the position in relation to proceedings against estates (*ie*, where the estate is a party as a defendant) is clear; under O 15 r 6A(4)(*a*) the court may order a person other than a personal representative to represent the estate for the purposes of the proceedings. Giving O 15 r 15(1) a wide reading to permit the substitution of persons other than personal representatives for deceased parties would render both O 15 r 6A and O 15 r 7(2) otiose. Reading these three rules harmoniously, we were of the view that the correct construction to be placed on O 15 r 15(1) must be that the purpose of this rule is a limited one, which is to permit the court to order that some person not a personal representative may represent the estate of a deceased person where the deceased person was not a party to the litigation. Thus it was clear that the present case quite simply did not fall within the situations under which O 15 r 15(1) could be utilised. We should note here that the appeal in *Wong Moy* was allowed but not on these grounds (see the decision of the Court of Appeal in *Wong Moy (administratrix of the estate of Theng Chee Khim, deceased) v Soo Ah Choy* [1996] 3 SLR(R) 27.

Conclusion

57 For the preceding reasons the substitution order was set aside and the appeal allowed.

58 On the matter of costs, we noted that the appeal was allowed for reasons which were never advanced by the Appellant in the proceedings below, or indeed until the matter was first heard before us. We were of the view that if the issue of the Respondent's lack of capacity had been taken up earlier, much time and costs would have been saved. Accordingly we exercised our discretion and made no order as to costs here and below, and set aside all previous costs orders. We also made the

usual consequential orders, including the release of the security for costs.

[note: 0] CB p 32