# Lee Hiok Tng and Another v Lee Hiok Tng (in his personal capacity) and Others [2000] SGHC 192

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| **Case Number** | : OS 571/1999 |
| **Decision Date** | : 22 September 2000 |
| **Tribunal/Court** | : High Court |
| **Coram** | : Amarjeet Singh JC |
| **Counsel Name(s)** | : Malcom Lim (Tan & Lim) for the plaintiffs; Alvin Tan (Wong Thomas & Leong) for the defendant; Chan Hian Young assisted by Adrian Wong (Allen & Gledhill) for the interveners |
| **Parties** | : Lee Hiok Tng; Lee Hiok Woon (as Executors and Trustees of the Estate of Lee Wee Nam, deceased) — Lee Hiok Tng (in his personal capacity); Lee Siew Choon (Interveners); Lee Siew Hong (Interveners); Lee Siew Ngug (Interveners) |

## JUDGMENT:

### Grounds of Judgment

Introduction

1. The 1st and 2nd Plaintiffs, Lee Hiok Tng ('Tng') and Lee Hiok Woon ('Woon') are Executors and Trustees respectively of the Estate of Lee Wee Nam ('Nam') deceased.

The Defendant, who is also the 1st Plaintiff is sued in his personal capacity.

2. The 1st, 2nd and 3rd Interveners, Liew Siew Choon, Lee Siew Hong and Lee Siew Ngug are three of several beneficiaries of the Estate of Nam.

3. By their Originating Summons, the Plaintiffs sought determinations by the Court of the following questions:

> (a) The determination of the rights of the parties with respect of the gift of the 27 Overseas Union Bank ("OUB") shares of $100/- each from Nam to Tng on or about 30th April 1962 and more particularly the portion of the gift that Nam held as beneficial interest through a partnership known as Wee Kee Kongsi ('Wee Kee Kongsi') and Sze Teck Tng Chye Kee ('STTCK').
>
> (b) The determination whether Tng is entitled to an indemnity and/or contribution in respect of all costs and expenses incurred by him pertaining to the said 27 OUB shares from the Estate of Nam.

4. The Interveners opposed the application of the Plaintiffs claiming it as an abuse of the process of court as the issue concerning the 27 OUB shares and related matters had already been fully and conclusively decided by Chao J in another set of proceedings to which I shall allude later.

Background

5. The brief background to the present proceedings is that in 1918 one Lee Hum Chye having come from China to seek his fortune gave all his monies to his three sons Lee Wee Kheng ('Kheng'), Lee Wee Kiat ('Kiat') and Nam and founded the family fund STTCK with the monies.

6. In 1927 the three brothers formed a partnership in Wee Kee Kongsi pursuant to a written agreement. STTCK was also given a share in Wee Kee Kongsi. Later that year, Kiat passed away. Much later, in 1940 the Estate of Kiat executed a Deed of Release with Kheng and Nam the surviving partners whereby the Estate of Kiat relinquished all interest in Wee Kee Kongsi and the assets of Wee Kee Kongsi were re-distributed into 21 shares with Kheng obtaining a *9/21* share, Nam a *8/21* share and STTCK a *4/21* share.

7. In 1950 Kheng and Nam incorporated Lee Brothers (Wee Kee) Ltd ('Lee Brothers') and the *immovable* property of Wee Kee Kongsi and STTCK was transferred to Lee Brothers. Kheng, Nam together with their family members and STTCK held shares in Lee Brothers. Kheng and his family held *9,350* shares, Nam and his family *10,250* and Kheng and Nam held for STTCK *2,400* shares. Kheng and Nam also incorporated or formed other business ventures. Kheng in his earlier years spent much of his time managing the Sze Hai Tong Bank Ltd which later became the Four Seas Communications Bank ('FSC Bank'). He later went to Bangkok to form and head the bank's branch there. Nam took over management of the FSC Bank in Singapore.

8. Kheng passed away in July 1962. His sons Lee Hiok Ker ('Ker') and Lee Hiok Kwee ('Kwee') obtained probate of his Will. The business of WKK, Lee Brothers and STTCK continued and were all controlled by Nam.

9. On 15 March 1963 Nam incorporated a new company Lee Hiok Kee Pte Ltd ('LHKPL') whose shares were held entirely by Nam's sons and grandsons.

9.1 On 30 July 1963 the shares of Nam's descendants in Lee Brothers were transferred to LHKPL and in October 1963 LHKPL's paid up capital was increased to $3.05 million from $3,000/-.

9.2 Nam also incorporated on 4 April 1963 another company Lee Investments Pte Ltd ('L. Inv.'). The shares in the company were held entirely by Nam's male descendants.

9.3 Soon afterwards on 23 January 1964 Nam passed away leaving a Will.

9.4 His two sons Tng and Woon were granted probate of his Will on 30 April 1964 and both of them thereafter managed the business of LHKPL, Lee Brothers, WKK and STTCK with Tng being the main controlling person.

10. Thereafter sometime in the early seventies there began a series of legal proceedings. It is sufficient to mention here three legal proceedings in addition to the present proceedings. Two of the proceedings were:-

> Firstly, Suit No. 1401 of 1973 and Suit No. 2457 of 1981 which were consolidated ('the Consolidated Suit') and heard before Chao J.
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> In Suit No. 1401 of 1973 the Plaintiffs were sons and grandsons of Kheng and the beneficiaries of his estate. They sued their half brothers (or uncles) Lee Hiok Kwee and Lee Hiok Kher as Executors and Trustees and in their individual capacities for failing to realise and account for assets of the estate of Kheng in various companies. They asked for inquiries, accounts and declarations.
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> In Suit No. 2457 of 1991 the Plaintiffs sued Tng and Woon (the 1st and 2nd Plaintiffs in the present case and the Defendant who is also the 1st Plaintiff) as Executors and Trustees of the Estate of Nam as well as in their personal capacities alleging that when Kheng and Nam were alive, they were business partners in WKK and STTCK and shareholdings in Lee Brothers, FSC Bank and its predecessor and other companies. In the Suit, the Plaintiffs claimed that Tng and Woon jointly invested shares in public companies all of which shares were registered in the names of Nam or his nominees and that Nam was in breach of his fiduciary duties in not winding up WKK and had retained or converted partnership assets for his own benefit and transferred partnership assets to his descendants and to LHKPL and Lee Investments and had thereby failed to render an account to the Estate of Kheng. The Plaintiffs also alleged that Woon had assisted Nam in commission of these

breaches of trust.

Both Suits being the Consolidated Suit were heard and disposed of by Chao J. Chao J made a number of orders as contained in his judgment dated 24 January 1992 after the conclusion of the trial before him. The Respondents appealed to the Court of Appeal against Chao J's decision and subsequently again to the Privy Council when the Respondents' appeals were finally dismissed on 27 March 1996 and the matter concluded.

The orders made by Chao J included orders touching and concerning the 27 OUB shares which these proceedings are concerned with. The relevant part of the orders were:

1. A declaration that the parnership subsisting between Lee Wee Kheng, Lee Wee Nam and Sze Teck Tng Chye Kee and known as Wee Kee Kongsi was dissolved on the death of Lee Wee Kheng on 18 July 1962.

2. An order that the said partnership may be wound up by this Court.

3. A declaration that all the shares in the following banks and insurance companies, registered in the name of Lee Wee Nam, as on 18 July 1962 were beneficially owned by the Partners in the Wee Kee Kongsi in the proportions of 9/21 to Lee Wee Kheng, 8/12 [sic] to Lee Wee Nam, and 4/12 [sic] to the trust of Sze Teck Tng Chye Kee.

a. Overseas Union Bank Ltd;

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4. xxxxx

5. A declaration that the first to third defendants are liable to account for and restore to the Kongsi the following assets namely:

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c. 27 shares of $100 each in Overseas Union Bank Ltd transferred by Lee Wee Nam to the third defendant on or about 8th August 1963.

6. An account of all bonus and rights issues which have been declared in respect of the shares specified in paragraph 5 and all moneys expended to take up the shares.

7. An account of all dividends received in respect of the abovementioned shares …..specified in paragraph 5 ……..

8. A declaration that the first to third defendants are personally liable to make good and restore to the Wee Kee Kongsi:

a. the bonus and rights issues specified in paragraph 6;

b. the net dividends specified in paragraph 7 together with compound interest thereon at such rate or rates as may be determined by the court at the taking of accounts.

9. An order that upon the taking of such accounts the first to third defendants do transfer to the fourth to sixth defendants:

a. such of the shares described in paragraphs 5 and 6 as represent the 9/21st entitlement of the estate of Lee Wee Kheng to the assets of Wee Kee Kongsi and the 1/3rd share of the estate in the entitlement of Sze Teck Tng Chye Kee to the said assets; and

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10. A declaration that Lee Wee Nam, as constructive trustee for the estate of Lee Wee Kheng of the said listed shares, was in breach of trust, after the death of Lee Wee Kheng, in that he:

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c. Transferred 27 OUB shares which were held in his name for the benefit of the partners in the Wee Kee Kongsi to the third defendant in 1963.

Secondly

, there was Originating Summons No. 194 of 1982 in which another 3 of the several beneficiaries of the Estate of Nam who are also the Interveners herein had similarly sued Tng and Woon (the Plaintiffs herein) for *inter alia* accounts and enquiries as to:

(1) An inquiry as to what properties belonging to the abovenamed Testator subject to the trusts under the said Will was received or possessed by or vested in the Defendants or either of them on or after the 23rd January 1964 and whether any property so received possessed or vested as aforesaid was paid or transferred to or into the name of any other person and if so whom, at what time or times and under what circumstances and what changes of investment of the said properties were made and when and under what circumstances and what has become of the said properties.

(2) An account of the properties subject to the trusts under the said Will possessed, received and/or vested in the Defendants or either of them or by any persons or person by this order or for the use of the Defendants or either of them and of the dealings of the Defendants or either of them with the properties as possessed received or vested as aforesaid from 23rd January 1964 till to-date and payment of the amount found due on taking the said account.

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(11) An inquiry whether there is any debt of the Testator remaining unpaid and in particular the position regarding Estate Duties paid and payable and/or supporting Schedules of the computation.

11. The above O.S. No. 194 of 1982 is now subject of interlocutory applications and is pending hearing.

12. The Executors and Trustees of Nam's estate have sold assets of the estate and made distributions a number of times to all beneficiaries in the last few years but the Plaintiffs aver that Tng and Woon have not made a full and fair disclosure of all the assets belonging to Nam and his estate and are now demanding a Deed of Release from the Plaintiffs unconditionally releasing them consequent upon an intended final distribution of the assets of Nam's Estate which they have refused to sign.

The Present Suit

13. Having briefly alluded to the above background concerning the parties and the proceedings they brought, I now proceed to deal with the Plaintiffs' present Suit and the declaratory orders sought by the Plaintiffs and the Defendant.

14. At the hearing, Counsel for the 1st and 2nd Plaintiffs submitted that the issues to be decided were:

> (i) Whether the gift from Nam to Tng of shares belonging to Wee Kee Kongsi were effective to convey to Tng the portion of shares owned by Nam through his interest in Wee Kee Kongsi;
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> (ii) Whether the transfer of shares by Nam to Tng raises the presumption of advancement;
>
> (iii) Whether Nam's estate is estopped from claiming from Tng the portion of shares attributable to it through its interest in Wee Kee Kongsi.

These issues, Counsel stated, were not litigated in the Consolidated Suits as:

> (a) they never arose there;
>
> (b) the Consolidated Suit was an adjudication of the rights between the Estate of Nam (on the one hand), Wee Kee Kongsi and the Estate of Kheng (on the other hand);
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> (c) neither the Court nor the parties addressed their minds to the rights inter se between the Estate of Nam and Tng;
>
> (d) the issue that the Consolidated Suit decided was that the shares belonged to Wee Kee Kongsi;
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> (e) the Defendant does not in any way challenge or contradict this finding in the framing of his case.

14.1 Counsel for the 1st and 2nd Plaintiff had clearly conceded that the 27 shares formed part of the assets of Wee Kee Kongsi (pg 3 of Notes of Evidence) as decided by Chao J. Counsel for the 1st and 2nd Plaintiffs effectively in the end wanted a clarification and orders as to:

> (i) what shares Tng would have to restore to the estate of Nam.
>
> (ii) whether Tng was entitled to an indemnity and contribution of all costs from the estate of Nam in claiming his entitlement to the shares and defending his position as it had been decided that Nam had given the shares to him in breach of the trust, a matter of which he was not aware of as he believed the shares were a bona fide gift to him.

14.2 I might add for clarification that the 27 OUB shares of $100/- each are equivalent to 125,564 such shares currently. The total dividends declared amount to $188,159.63cts since the death of Nam.

15. The Defendant in his Affidavit dated 13 April 2000 and by his Counsel representing him in his personal capacity, claimed the 27 OUB shares as belonging to him stating that his late father had made a gift of the said shares to him in 1963 although no formal documents were signed to record that fact. His claim surprisingly conflicted with his position as put forward by Counsel for the 1st and 2nd Plaintiffs, he being the 1st Plaintiff as well. He explained that his late father had subscribed to the 27 shares as *excess rights* given to him over and above his entitlement to other rights given to him in respect of his shareholding in the said counter. He referred to paragraph 5 of the Plaintiffs' Joint Affidavit and *Exhibit LHT2* filed therein showing the excess of 27 shares under Nam's name in the OUB share register and their transfer to himself on or about 8 August 1963. He had offered his father $2,700/- at the material time for 27 OUB shares but his father had declined the offer repeating it was a gift to him. He

believed his father gave him the shares as an appreciation for the assistance he gave him in his business over the past thirty plus years. He had subsequently taken up other rights issued on the said shares paying for them. The shares had multiplied manifold. The Defendant provided a history of accumulation of the subsequent rights issue and their cost which he paid till 1994. On 11 August 1983 he had transferred about 96,588 OUB shares which were attributable to the original 27 shares. Of this total 68,120 were either rights shares which he paid for or were bonus shares. The Defendant specifically prayed for an order that he be entitled to retain the 27 shares attributable to the Estate of Nam with all the accrued benefits to-date declared on the share.

16. The Interveners' Counsel submitted that the application made herein by the 1st and 2nd Plaintiffs as Executors and Trustees for the orders sought was not a *bona fide* application in view of the 1st Plaintiff and the Defendant being actually one and the same person though acting in different capacities. The application was not even served on the Interveners as beneficiaries and they only had learned of it much later. The application was facilitated by the 2nd Plaintiff by allowing the proceedings to be filed essentially by the 1st Plaintiffs in an attempt to mainly vest the 27 shares in OUB in the Defendant notwithstanding that in the prior proceedings in the Consolidated Suit in which both Tng and Woon were Defendants in their capacity as Executors, as well as in their personal capacities it had been decided by Chao J that the 27 OUB shares belonged to Wee Kee Kongsi and that Nam had been holding them as a trustee for Wee Kee Kongsi. Counsel also submitted that the Defendant had seriously contradicted his position in claiming the 27 OUB shares belonged to him when he was a signatory to the making of an Estate Duty Affidavit after the death of Nam in which the 27 OUB shares were included amongst other shares as belonging to Wee Kee Kongsi. There was no dispute as to this point. Also in 1984 the Plaintiffs had made an agreement to settle the question of the 152 OUB shares which included the 27 OUB shares with the beneficiaries (1st to 4th Plaintiffs in the Consolidated Suit). Counsel also brought to the attention of the Court which fact was not disputed by the Defendant' Counsel that although Tng had filed a defence in the Consolidated Suits he had failed to turn up and testify at the hearing to claim the 27 OUB shares. Similarly Woon had also not testified and both had therefore also not subjected themselves to cross-examination. Counsel contended that Chao J had further fully given his reasons in holding that Nam held the shares as a trustee for Wee Kee Kongsi and had committed a breach of trust in transferring them to Tng. Tng was in the circumstances abusing the process of the court and attempting to re-litigate the matter and the doctrine of res judicata and estoppel operated against him.

17. Having considered the Affidavit evidence and all the submissions and the Counsel of the 1st and 2nd Plaintiffs having conceded by agreeing that the 27 OUB shares formed part of the assets of Wee Kee Kongsi and the 1st and 2nd Plaintiffs having accepted the decision of Chao J on the issue of the ownership of the 27 OUB shares, there was no doubt in my mind that the Defendant (in his personal capacity but the alter ego of the 1st Plaintiff) was attempting to re-litigate the matter to the entitlement of the 27 OUB shares. The Defendant had failed to pursue his claim in the trial before Chao J after filing his defence by testifying and subjecting himself to cross-examination concerning his claim or claims which Plaintiffs' Counsel was now articulating. Moreover, Chao J in his judgment gave detailed reasons why the 27 OUB shares belonged to Wee Kee Kongsi in his judgment (unreported) at pg 21E to pg 24E. All the relevant exhibits including the extracts of the relevant share register was before the learned Judge. These reasons amongst other matters, were scrutinised by both the Court of Appeal and the Privy Council where the Defendant was one of the appellants. The appeals had been dismissed.

17.1 In its judgment in the Court of Appeal, Rajendran J delivering the judgment of the Court, confirming Chao J's finding, stated:

> "(3) The 152 OUB shares (125 + 27) were entered by the appellants in the schedule to the estate duty affidavit for Wee Nam's estate. On 17 April 1982, the appellants' then solicitors wrote to the Commissioner of Estate Duty and informed him that the 152 shares were held by Wee Nam in trust for the Kongsi. Although it is said that this was a mistake, no evidence was called to substantiate that submission.
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> (4) In April 1984, the appellants agreed to settle with the first to fourth respondents in respect of these shares. Again no explanation was given in evidence by the appellants as to why they did this if the

shares did not belong to the Kongsi. "

17.2 The Privy Council upholding the Court of Appeal's decision concerning the 27 OUB shares and other shares had this to add about the conduct of Woon, Tng and Nam:

> "The fact is that, while the totality of information put before the court by Woon and Tng with reference to the circumstances of the acquisition and ownership of the disputed shares left those circumstances unclear, and with no explanation as to why they were unclear, the plain probability is that the shares were Kongsi property. Nam treated the shares as his separate property for a period of time. If he had survived, he could no doubt have carried out the consequential accounting either to demonstrate his separate ownership, if that in truth were the position, or to make due allowance for the transfers out to his newly formed company in favour of his section of the family."

18. In my opinion therefore, the Defendant could not reassert his claim to the 27 OUB shares or say that the several issues defined by the 1st and 2nd Plaintiffs' Counsel as set out earlier had not arisen in the Consolidated Suit and claim that there was as such no re-litigation of the issues here. The truth is the 1st Plaintiff (the Defendant) and the 2nd Plaintiff could and should have raised the issue there as they were Defendants to the Suit. They chose not to. The judgment of Chao J upheld by the Court of Appeal and the Privy Council touching on the issue of the 27 OUB shares therefore operated both as an estoppel by record and as an issue estoppel against the Defendant. Such judgment prevented both the 1st Plaintiff who is also the Defendant and the 2nd Plaintiff from denying or re-agitating the facts on which it is based. The only exception when a judgment does not operate as such is when it is obtained by fraud or collusion which is plainly not the case here. The proceeding by the 1st and 2nd Plaintiffs and the claim by the Defendant was an abusive of the process of court.

19. In the circumstances, I dismissed the Defendant's claim that the 27 OUB shares were a gift to him by Nam. The shares were the property of Wee Kee Kongsi.

20. The secondary question posed by the Plaintiffs' Counsel as to what shares Tng would have to restore to the estate of Nam in respect of the 27 OUB shares does not arise in view of my decision that the said shares were not given to the Defendant as gift or advancement and did not vest in him. Nam's estate would, according to Chao J's judgment, get a 8/21 share of the 27 OUB shares (with all accretions) which was declared to be owned by Wee Kee Kongsi as that was the proportion of Nam's interest in Wee Kee Kongsi. Tng's interest in the said shares was only as one of the beneficiaries of Nam's estate whatever that might be.

20.1 As to the question of entitlement to indemnity or contribution and costs for Tng for the reason that Tng was not aware that the shares were given to him in breach of trust and he had only defended his position on the shares believing it to be a *bona fide* gift to him or had personally expended monies on the rights in respect of the shares, the Defendant must also fail on this issue. Tng and Woon had not appeared in the Consolidated Suit to put forward this view. The Privy Council succinctly observed in the appeal in the Consolidated Suits that Tng and Woon had left the circumstances of the acquisition and ownership of the shares unclear with no explanation as to why they were unclear. The 1st and 2nd Plaintiffs and the Defendant who is also the 1st Plaintiff must abide by all of Chao J's orders touching and concerning the 27 OUB shares.

21. In the circumstances, the 1st and 2nd Plaintiffs' application and the claim of the Defendant (the 1st Plaintiff) was dismissed with costs. I ordered that the 1st and 2nd Plaintiffs bear the Interveners' costs herein personally and that the Estate of Nam should not be burdened with these costs as these proceedings were an abuse of the process of the court. I further made no order as to costs between the 1st and 2nd Plaintiffs and the Defendant for obvious reasons.

Amarjeet Singh

Judicial Commissioner

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