Soo Yen Sun v Oversea-Chinese Banking Corp Ltd and Others
[2009] SGHC 243

Case Number : OS No 90/2009

Decision Date : 28 October 2009

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Narayanan Vijay Kumar (Vijay & Co) for the plaintiff/respondent; Adrian Chong (Low Yeap Toh & Goon) for the second defendant/appellant

Parties : Soo Yen Sun — Oversea-Chinese Banking Corp Ltd; Soo Kam Chun, the Administrator of the Estate of Soo Teik alias Soo Wei Cheang Deceased; Poh Kim Tong, the Administratrix of the Estate of Poh Kim Kwan Deceased

Probate and Administration – Distribution of assets

28 October 2009

Woo Bih Li J:

Introduction

1 Soo Teik @ Soo Wei Cheang ("the patriarch") was a Malaysian citizen. He was married to Yeow Kwei Lan ("the first wife") on or about 30 May 1959. They had four children: three daughters and a son by the name of Soo Kam Chun ("Kam Chun"). I will refer to the first wife and her children as "the first family" for convenience.

2 Some time in or about 1981, the patriarch met Poh Kim Kwan ("the second wife"), who was also a Malaysian, and allegedly went through a customary marriage with her. They had one child Soo Yen Sun ("Yen Sun") who is the plaintiff in this action. Yen Sun was born on 2 March 1983. I will refer to the second wife and Yen Sun as "the second family" for convenience.

3 In or around August 1999, the patriarch opened a joint account with Oversea-Chinese Banking Corporation Limited ("OCBC") in Singapore. The account number was XXX-X-XXXX88 ("the first OCBC account"). The other joint account holders were the second wife and Yen Sun who was only 15 or 16 years old then. The operating instruction was that the patriarch was to sign jointly with the second wife or Yen Sun.

4 The patriarch died intestate on 22 February 2003. According to Yen Sun, both her mother and her were not allowed to participate in the funeral nor allowed to visit the home where the first wife resided. They were cut off completely. Her mother, *ie*, the second wife, missed the patriarch very much and was emotionally distressed. Her condition became worse because of the ill-treatment from the first wife and her family. The second wife committed suicide on 14 April 2008. The second wife had executed a will on 19 January 1993 in which she had appointed the patriarch and one of her siblings Poh Kim Tong as executor/executrix and trustees of her will. The sole beneficiary was Yen Sun.

5 In the present action, Yen Sun is claiming the credit balance in the first OCBC account as the sole survivor of the three account holders. As at 30 June 2008, the credit balance was $360,122.78. The defendants are:

(a) OCBC.

(b) Kam Chun as the administrator of the patriarch's estate.

(c) Poh Kim Tong as the administrator of the second wife's estate.

6 Both OCBC and the second wife's estate did not contest Yen Sun's claim. Only the patriarch's estate did and that estate filed a counterclaim for the balance. After hearing arguments, I made a declaration that Yen Sun is entitled to all monies remaining in the first OCBC account as the sole surviving joint owner of that account and directed OCBC to forthwith allow Yen Sun to withdraw all monies remaining in the account. I dismissed the counterclaim of the patriarch's estate. I granted costs in favour of Yen Sun against the patriarch's estate which has filed an appeal to the Court of Appeal.

The arguments and the court's findings

7 According to Kam Chun, the source of the money deposited into the first OCBC account was dividends declared and paid on shares which the patriarch owned in a Singapore company known as Continental Steel Pte Ltd which was formerly known as Continental Hardware Pte Ltd. I will refer to this company as "Continental Steel" for convenience.

8 It did not really matter whether Kam Chun was right about this source because it was not in dispute that all the monies deposited into the first OCBC account came from the patriarch.

9 According to Yen Sun, there was no problem between the first and the second families while the patriarch was alive. He used to spend the mornings with the first family and grandchildren and in the afternoon with the second family. He would reside with the second family from Mondays to Saturdays and return to reside with the first family on Sundays. At times, the second wife and Yen Sun would fetch the patriarch from the home of the first family and on many occasions when they did so, the first wife would pack food for them to take home.

10 Yen Sun also used to attend church, dinner and many other functions together with Kam Chun and the rest of the members of the first family. However, it was the second wife and Yen Sun who accompanied the patriarch to functions of Continental Steel. This last part of her evidence was supported by an affidavit from Chua Ley Suang ("Ms Chua"), a daughter of Chua Kiam Seng who is one of the shareholders and directors of Continental Steel. This affidavit was given to counter the impression that Kam Chun had been giving. He had said in para 9 of his affidavit of 23 June 2009 that the directors of Continental Steel were friends of the first family and one of them, Chua Kiam Seng, had even invited the first family to attend his daughter's wedding reception in 2002. However, Ms Chua explained in her affidavit that the invitation card had been left with the patriarch when her parents had visited the patriarch at the residence of the first family after the patriarch had become very ill after a stroke. None of the first family members had attended the reception. Neither did Kam Chun or the first wife ever attend any of Continental Steel's functions. Indeed, it was Yen Sun and the second wife who had attended the functions of Continental Steel and the patriarch had been very proud of both of them. It was Yen Sun and the second wife who got along well with the family of

Ms Chua as well as the families of the other directors of Continental Steel.

11 The relationship between the directors of Continental Steel and the first family was not directly relevant to the issue before me. Nevertheless, Kam Chun raised it as an attempt to bolster the patriarch's estate's allegation that the monies in the first OCBC account came from dividends paid by Continental Steel and that the monies were not meant to benefit the second family at all. In his attempt, Kam Chun had painted a false impression of the relationship between the directors and the first family.

12 According to Yen Sun, the patriarch had always looked after the second family and treated them as his wife and daughter respectively. He had signed her report books and provided her with pocket money of about RM200 per week. About once or twice a year, the second family would accompany the patriarch to Singapore and he would pay for their shopping expenses in Singapore. The patriarch would withdraw money from the first OCBC account for her mother and herself and sometimes, her mother would withdraw large amounts of money from the same account before returning to Malaysia. Naturally, such withdrawals would have to be with the concurrence of the patriarch since he was a mandatory signatory. The patriarch provided Yen Sun with a supplementary credit card and also held a Malaysian property in trust for her. This trust was constituted by a trust deed dated 14 October 1998 executed by the patriarch. This trust was acknowledged by the patriarch's estate. Indeed, Kam Chun sought to exploit the absence of a trust deed for the balance in the first OCBC account to suggest that this militated against any suggestion that Yen Sun was entitled to the balance. I did not agree with his suggestion. The absence of the trust deed for the balance was neither here nor there. It was also arguable whether a trust deed would have been appropriate if the balance in the first OCBC account would accrue to the survivor(s) of the joint account holders in any event.

13 Significantly, Yen Sun produced copies of pages from the passbook of another account with OCBC of which her mother and her were the joint account holders. The patriarch was not a holder of this account. This account number was XXX-X-XXXX51 ("the second OCBC account"). Yen Sun said that part of some of the sums withdrawn from the first OCBC account was deposited into the second OCBC account. I noted that the entries she relied on in both accounts supported this assertion.

14 Kam Chun alleged that the first family had never acknowledged the second family but he did not dispute the specific allegations that Yen Sun was raising. I preferred her evidence on their relationship and interaction to his evidence.

15 As was evident, Kam Chun did not accept that the money in the first OCBC account was used or meant for the benefit of the second family. His version was that the money from the first OCBC account was used by the patriarch for his own use and also to give Kam Chun cash to help him (Kam Chun) with an express bus transportation business in Malacca known as Kuala Lumpur Malacca Express Sdn Bhd ("KLM Express"). Kam Chun alleged that upon receipt of the cash in Singapore currency, he had converted the same into Malaysian currency and lent the money to KLM Express.

16 In support of this contention, Kam Chun exhibited copies of KLM Express' ledger accounts and receipts allegedly issued to him by KLM Express for the cash which he had allegedly lent.

17 However, although the entries of the ledger accounts showed loans made by him, they were too general to match the dates of withdrawals from the first OCBC account to the alleged cash given to him and the loans made by him to KLM Express.

18 As for the receipts, they were suspicious. Although they contained the Malaysian currency

equivalent of the amount withdrawn from the first OCBC account, the copies thereof did not have any visible serial numbers or dates. They were not issued on the letterhead of KLM Express although the stamp of KLM Express was used. The receipts could have been issued from any common stationery and then used to insert the Malaysian currency equivalent to try and match the sums withdrawn from the first OCBC account after Kam Chun had had sight of the entries in the passbook of that account which had been exhibited by Yen Sun. Significantly, Kam Chun failed to produce the originals of the receipts for inspection by Yen Sun's counsel or the court although he was asked to do so.

19 Furthermore, Kam Chun failed to produce any bank statement of KLM Express (or any other more specific accounting record) to demonstrate that KLM Express did receive the specific loans of the amounts and at the times he was alleging. His explanation was that KLM Express did not keep bank statements which were more than six years old but this explanation conveniently overlooked the fact that he did not even try to obtain the bank statements from the relevant bank. I refused an attempt to seek an adjournment to obtain such statements from the bank because he had been given more than adequate time to obtain the bank statements but did not do so.

20 Kam Chun had obtained an affidavit from one Pang Fee Yoon ("Pang") who was said to be the auditor of KLM Express. Pang's affidavit stated that the statutory period for the storage of bank statements (by a company) is six years and hence he would not be surprised if the bank statements were no longer available or kept by the company. But, as I mentioned above, that was not the point. Kam Chun did not even attempt to get the bank statements from the relevant bank itself until much later when the statements were used as an excuse to request for an adjournment which request I refused. It was also not insignificant that he was able to produce old accounting records but not old bank statements.

21 Pang's affidavit was more "significant" in another way. He claimed that he had enquired from Kam Chun about the source of his funds for his loans to KLM Express and Kam Chun had told him that the source was from his father's Singapore account. Pang exhibited his working papers for some years which had certain handwritten statements to the effect that he had asked Kam Chun for the source of his funds and Kam Chun had said that the money was from his "dad's Singapore account". Yet, these statements were undated and not signed or initialled by anyone.

22 I was of the view that Kam Chun had used Pang. The handwritten statements which Pang referred to had been fabricated just as the receipts had been fabricated.

23 On another point, Kam Chun suggested that he thought that his father had maintained only a single account, but not a joint account, with a bank in Singapore (see paras 6 and 7 of his affidavit of 5 May 2009). He sought to explain why he did not include the first OCBC account in the list of Singapore assets of the patriarch on the basis that he never thought that the patriarch still kept and owned monies with OCBC in Singapore. I found this to be a disingenuous explanation. If he truly knew that the patriarch had held an account with a bank in Singapore (let alone an account with a specific bank), why would he assume that there was no money left in that account? Surely he would have inquired first but there was no suggestion by him that he made any inquiry. Only the patriarch's interest in the Continental Steel shares was identified in the schedule of assets from the Memorandum of Resealing in Singapore.

24 I was of the view that the truth was that he (and the first family) was never aware of any account of the patriarch with a bank in Singapore. That is why he never made any inquiry in Singapore about a bank account although he was the administrator of the patriarch's estate. He only learned about the first OCBC account when Yen Sun disclosed it for her claim. In *Tang Eng Seng v Tang Boon Kiat* [2003] 4 SLR 148, Lai Kew Chai J observed at [25] that:

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. …

25 Mr Adrian Chong, counsel for the estate, sought to rely on cl 13.2(b) of the relevant terms and conditions of OCBC in respect of the first OCBC account to argue that the rule of survivorship did not apply in the present instance. For completeness, I set out cll 13.1 and 13.2 in its entirety and cl 13.3:

13.1 Where the Customer is an individual, the Customer's executor or administrator shall be the only persons recognised by the Bank as the Customer's successor in the event of the Customer's death. Upon notice of the Customer's death, the Bank shall be entitled to freeze the Account until such time the Customer's successor produces a grant of probate or letters of administration.

13.2 If any Account(s) is/are opened in the names of two or more persons ("Joint Account(s)"), such persons shall be jointly and severally liable for all liabilities incurred on the Joint Account(s).

(a) Where the Joint Account(s) is/are operated with a single signing authority, instructions from any one of the Joint Account(s) holders will be accepted by the Bank and such instructions will be binding on the other Joint Account(s) holders.

If, prior to acting on instructions received from one Joint Account(s) holder, the Bank receives contradictory instructions from another Joint Account(s) holder, the Bank may choose to act thereafter only on the mandate of all the Joint Account(s) holders of the Joint Account(s) notwithstanding the Joint Account(s) require single signing authority.

(b) Where the Joint Account(s) is/are operated with joint signing authority, oral instructions will not be accepted by the Bank. Any written instructions may be given by the Account(s) holders in one or more counterparts, all of which when taken together shall constitute one and the same document.

Upon notice of the death of any one of the Joint Account(s) holders, the Bank shall be entitled to freeze the Account and to retain the credit balance in the Joint Account *until such time the Joint Account(s) holder's successor produces a grant of probate or letters of administration*.

(c) The Joint Account(s) holder and *their* estate, together with the other Joint Account(s) holders, undertake to indemnify the Bank and to keep the Bank indemnified against all claims, costs, expenses, losses and damages, including those arising from:-

(i) the payment of the credit balance in the Joint Acount(s) to *the survivor(s) in the manner stated as aforesaid*;

(ii) the freezing of the Joint Account(s) and the retention of the credit balance in the Joint Account(s) in the manner stated as aforesaid; and

(iii) *any dispute between any of the Joint Account(s) holder(s) and any personal representatives of the deceased Joint Account(s) holders*.

The Bank shall be entitled to debit from the Joint Account(s) such claims, costs, expenses, losses and damages at the Bank's sole and absolute discretion.

13.3 Upon production of a grant of probate or letters of administration, the Bank may, on the request of the Customer's successor, open an Account in the name of the estate of the deceased. The executor, the administrator of the estate or the personal representative of the deceased shall operate the Account in accordance with the probate or the letters of administration so granted.

[emphasis added]

26 Mr Chong argued that because OCBC would wait under cl 13.2(b) until a deceased joint holder's successor produced a grant of probate or letter of administration, this demonstrated that the rule of survivorship did not apply to the first OCBC account. In his arguments, he had also assumed that cl 13.2(b) was suggesting that the patriarch's estate would be entitled to the balance.

27 In the first place, cl 13.2(b) was not clear. What would happen when the deceased joint-holder's successor produced a grant of probate or letters of administration? Would OCBC make payment of the balance in favour of all the joint-account holders or only to the estate of the deceased account holder? Logic would suggest that payment of the balance should then be made to all as there would be no reason for OCBC to prefer one joint-holder to another.

28 The question was further complicated by the confusing terms of cl 13.2(c). It referred to the joint account holders and "their" estate but cl 13.2(b) kicked in so long as one of the joint account holders was deceased. Secondly, cl 13.2(c)(i) referred to the payment of the credit balance in the joint account "to the survivor(s) in the manner stated as aforesaid". Yet there was no prior provision stating that OCBC might make payment to the survivor of the joint account holders.

29 Clause 13.3 added to the confusion. It stated that upon production of a grant, OCBC "may, on the request of the Customer's successor, open an account in the name of the estate of the deceased." Was this provision restricted to a single holder account? Did it apply also to a joint account? If so, who was "the Customer"? The definition of "Customer" in the terms referred to an account holder with OCBC whether alone or jointly with any other person. So, since "the Customer" also referred to a surviving joint account holder, the reference to "the Customer's successor" was not always appropriate because the survivor might not have passed away yet.

30 If cl 13.3 was restricted to a single holder account, as appeared to be the case, what was the position for a joint account? As mentioned earlier, was OCBC entitled to pay only the estate of the deceased account holder but not to the other account holder or holders? Surely not in the absence of clear words to that effect.

31 In addition, cl 13.2(c)(iii) provided for joint account holders to indemnify OCBC from claims arising from any dispute between any joint account holder and any personal representative of a deceased account holder.

32 I was of the view that the short answer to Mr Chong's argument on cl 13.2(b) was that that

provision was meant only to regulate the relationship between OCBC and all the joint account holders but not the relationship or entitlement as between the joint account holders themselves. Indeed, there was no evidence that that specific provision was drawn to the patriarch's attention or that he intended it to somehow apply to the relationship or entitlement as between the joint account holder themselves.

33 Kam Chun had also alleged that the patriarch's marriage to the second wife was not a valid one in law and that Yen Sun was not the patriarch's legitimate child. I was of the view that such allegations were irrelevant. Yen Sun's claim was not based on the status of a beneficiary of the patriarch's estate as such. It was based on the patriarch's gift of the money in the first OCBC account, or at least the balance thereof, to the second family. She relied on the principle of survivorship to establish the gift. It was clear from the evidence that the patriarch had treated the second wife and Yen Sun as his wife and daughter respectively and had assumed the usual obligations of maintenance and advancement of a husband and a father. The presumption of advancement of the balance clearly applied to the second wife and Yen Sun. In any event, the evidence was clearly in favour of Yen Sun's claim without the aid of any presumption. It was clear to me that the patriarch had included Yen Sun as an account holder of the first OCBC account to reinforce his wish that the balance of the money in that account was meant for the benefit of the second family. This is reinforced by the fact that Kam Chun and apparently the rest of the first family were unaware of this account.

34 In the circumstances, I upheld Yen Sun's claim and dismissed the counterclaim of the patriarch's estate.

35 I would add that by all accounts, the patriarch was a wealthy man. Except for the gifts he had made to the second family, the first family is apparently entitled to all his other assets. I was informed by Mr Vijay Kumar, counsel for Yen Sun, that the shares in Continental Steel alone were worth much more than the balance in the first OCBC account. Unfortunately, the cordial relationship which I find to have prevailed between the two families when the patriarch was alive was a veneer. Apparently, the first family, or perhaps it was the first wife only, never truly accepted the second family and bore a grudge against them. Hence, the ill-treatment subsequently and this challenge to Yen Sun's claim in the face of obvious facts supporting her claim. The challenge even resulted in the fabrication of evidence as I elaborated above. On further reflection, I should have fixed the costs of the action on an indemnity basis, instead of on the usual standard basis.

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