ADP and others *v* ADT and others
[2014] SGHC 107

Case Number : Originating Summons No 212 of 2014

Decision Date : 30 May 2014

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Edwin Tong, Fong Shi-Ting Fay and Li Fang Yi (Allen & Gledhill LLP) for the plaintiffs; Alvin Yeo SC, Monica Chong and Chan Xiaowei (WongPartnership LLP) for the first defendant; Sarjit Singh SC, Terence Seah and Sarah Yazid (Shook Lin & Bok LLP) for the second and third defendants.

Parties : ADP and others — ADT and others

Succession and Wills – Determination of questions, etc without administration

30 May 2014

Choo Han Teck J:

1 The plaintiffs in this Originating Summons are the executors and trustees of the estate of a very wealthy man. The three defendants are sisters and are some of the beneficiaries to the estate. In 2011, the second and third defendants commenced proceedings under the Mental Capacity Act (Cap 177A, 2010 Rev Ed) for a declaration that the first defendant was unable, by reason of her mental incapacity, to make decisions in respect of her own affairs ("the MCA Suit").

2 On 11 December 2012, the district judge granted the second and third defendants' (as plaintiffs in that suit) application and, further, appointed the second and third defendants as deputies of the first defendant. The first defendant appealed to the High Court and on 1 October 2013, Lai Siu Chiu J allowed her appeal and set aside the district judge's orders.

3 On 15 November 2012, before the district judge's decision, the executors had resolved to make an interim distribution of £39,341,281 to the beneficiaries according to their share. There was no dispute as to the shareholding or that the first defendant was entitled to her share. However, as the proceedings before the district judge were still underway, the executors decided to withhold payment of the first defendant's share for that distribution. All the other beneficiaries had been paid their respective shares. After the district judge's decision, on 11 January 2013, the executors wrote to the solicitors for the second and third defendants, seeking to effect payment of the first defendant's share to them (as appointed deputies). They received no response. On 30 January 2013, the first defendant's solicitors notified the executors that the first defendant was appealing against the district judge's decision. As such, the executors made the decision to hold on to the first defendant's share for the time being. After the appeal was allowed by Lai J, the first defendant's solicitors wrote to the executors on 12 November 2013, seeking receipt of her share of the distribution. On the very next day, solicitors for the second and third defendants wrote to the executors as well, informing them they had filed an application for leave to appeal, and in the letter cautioned that the executors ought to "take all necessary steps and precautions to independently verify any instructions coming from [the first defendant]". The executors continued to withhold payment of the first defendant's share.

4 The second and third defendants applied for, and were granted, leave by the High Court on 27 December 2013 to appeal against Lai J's decision to the Court of Appeal. Judicial Commissioner George Wei who heard the application also heard the second and third defendants' application for a stay of the order of Lai J. Although Wei JC allowed leave to appeal, he declined the stay. The effect of this was that the order of the district judge was set aside and the second and third defendants were no longer appointed deputies of the first defendant. The executors were not party to any of these proceedings. However, they were kept informed by either party through their solicitors. In January 2014, after Wei JC's decision, letters were exchanged between the three parties. The first defendant sought her share from the executors while the second and third defendants took the position that the executors should not be releasing monies to the first defendant.

5 On 7 March 2014, Mr Edwin Tong, counsel for the executors, brought this Originating Summons under s 56 of the Trustees Act (Cap 337, 2005 Rev Ed) and O 80 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) for directions as to whether and how the interim distribution of the first defendant's share should be made. Mr Tong reported that he faced difficulty in advising the executors as to how they should decide these matters. This was because, on one hand, Mr Tong had Mr Sarjit Singh SC, counsel for the second and third defendants, telling him that as the issue (of whether the first defendant had the mental capacity to instruct the executors) was before the Court of Appeal, the executors should not pay out any money at the first defendant's directions. On the other hand, Mr Tong had Mr Alvin Yeo SC, counsel for the first defendant, telling him that as there was no stay of Lai J's orders, the order of the district judge appointing the second and third defendants, having been set aside by Lai J, had no binding effect, and hence the executors should distribute the sum owing to the first defendant as the first defendant herself directed.

6 It was not clear before me what exactly it was that Wei JC ordered in respect of the application for a stay of execution as the order of court was not extracted. Mr Tong was similarly not fully apprised of the history of the proceedings. He was handicapped by an application by the parties that the court file in the previous proceedings be sealed. Furthermore, Mr Tong was not present before Wei JC when the second and third defendants applied for leave to appeal and for a stay of execution. In a matter such as this, the executors ought to have been joined as a party, or at least have been notified of the application for leave to appeal, so that their counsel could have held a watching brief, and if necessary, address the court as to the effect of not granting a stay.

7 Although it was clear that Mr Tong faced conflicting demands and difficulty in advising his clients, the High Court cannot be asked to make the choice for the executors. Making difficult decisions on behalf of executors was not what O 80 or s 56 envisaged. The court may intervene by determining questions concerning the duties of the executors or the rights and interests of creditors and beneficiaries. However, the power of the court in those instances stops where the executors' duties begin. The court is not the executor of the estate.

8 The dilemma Mr Tong faced was not an easy one to resolve because it concerned a question of law that has been referred to the Court of Appeal. If the Court of Appeal decides that Lai J ought not to have set aside the trial judge's findings and orders, then the second and third defendants (if appointed deputies) will be the ones to direct how the first defendant's share is to be paid. If the Court of Appeal decides that Lai J rightly set aside the lower court's orders, then the second and third defendants will have no right to tell Mr Tong's client how to pay out the first defendant's share.

9 Given the circumstances, the decision whether to pay in the interim lies with the executors. They have to decide whether in the present situation it would be reasonable to pay (as the first defendant had requested) or to wait (as the second and third defendants had requested). A reasonable decision so reached does not endanger the executor to a suit for negligence; but it is,

nonetheless, a decision that the executors must make. Just as the executors have hitherto been making decisions to withhold the first defendant's share, so too should they address their mind to this most recent dilemma.

10 If this court were to direct one way or the other, it would be tantamount to saying that if it (the court) were the executors, it would have acted in that way, for the dilemma that presented itself to the executors is the same one that this court will have to resolve. The difference is that the dilemma arises from the conflict between an existing order that is intertwined with the subject matter of an appeal before the Court of Appeal. What Mr Tong asked of this court was beyond the reach of the court. The executors, on the other hand, are at liberty to determine the course of action it should take. They need only act in good faith and reasonably, whereas a decision by the court is final and must, therefore, be right – at least in theory.

11 Finally, counsel have asked that Originating Summons 212 of 2014 be similarly sealed. Counsel for all parties were united in this request. They informed me that the previous suits were sealed on application of the parties. Counsel said that the defendants are well-known in society and would not want details of this Originating Summons to be made public.

12 I have granted this request only to respect the decisions by the judges in the previous proceedings to have those files sealed. I say this because Mr Tong had extracted material from the sealed files in order to make this application in Originating Summons 212 of 2014. Nevertheless, I have granted this request reluctantly. I am of the view that sealing a court file on account of a party's wealth or fame is unjustifiable. Court proceedings are public proceedings and not secret trials. Court files should only be sealed on deserving grounds such as security, for example, of the state. Embarrassment to the rich and famous alone is not a good reason.

13 The mere fact of being an application under the Mental Capacity Act is not of itself sufficient to justify sealing the court file. Even if certain cases under the Mental Capacity Act may require anonymity, the solution is to redact the judgment – not seal the entire file.

14 Accordingly, I made no order in respect of Mr Tong's application.

Copyright © Government of Singapore.