IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2025] SGHCF 24

Suit No 12 of 2021

Between

WPA

… Plaintiff

And

(1) WPB
(2) WPC
(3) WPD
(4) WPE

… Defendants

Between

(1) WPD
(2) WPE

…Plaintiffs-in-Counterclaim

And

WPC

…Defendant-in-Counterclaim

JUDGMENT

[Probate and Administration — Grant of probate — Revocation]

WPA
v
WPB and others

[2025] SGHCF 24

General Division of the High Court (Family Division) — Suit No 12 of 2021
Choo Han Teck J
5–7 March and 10 April 2025

17 April 2025 Judgment reserved.

Choo Han Teck J:

1 This action commenced in 2021 has a long history. W (the father) married Y (the mother) in 1947, and they had eight children — three sons and five daughters. The plaintiff is the eldest son, aged 69. The first defendant is the eldest daughter, aged 75. The second and third defendants are the second and third sons, aged 61 and 58, respectively. The fourth defendant, a 26-year-old undergraduate, is the son of the third defendant (and also the eldest grandson of W). W had a successful hardware business, and seemed to have invested well. When he died, his estate devolved to his widow, Y, who held some portions of his property on trust for their sons. Y died in 2012, leaving behind an estate, estimated between A$128m and S$150m, to the three sons and her eldest grandson. The daughters inherited nothing. The boys are fighting.

2 The present action before me is a straightforward application by the plaintiff to remove the first and second defendants as the executor and executrix

of Y's estate. He wants to be appointed as the sole executor in their place. The third and fourth defendants join issue with the plaintiff in that they too, want the second defendant removed. They are of the view that the first defendant should remain as the executrix. However, they want to be appointed as the executors instead of either the second defendant or the plaintiff. The third and fourth defendants (father and son) claim to be able to work with the first defendant.

3 The plaintiff and the third and fourth defendants want to remove the second defendant because they claim that the second defendant has been acting in conflict of interests, mixing his personal interests with that of the estate's. They also claim that he has been tardy and has not acted with due diligence in the discharge of his duties as an executor. The plaintiff makes the same claim of tardiness against the first defendant, but not the allegation of conflict of interests.

4 The first defendant says that there is no sufficient cause to revoke the grant of probate. She says, however, that if the court finds that the grant should be revoked on the basis that the second defendant breached the no-conflict rule, she should be granted an indemnity against the second defendant for any costs which may be ordered against her. The third and fourth defendants also have a claim that disputes the suitability of the plaintiff to act as an executor of the estate. They do not object to the first defendant remaining as executrix but want to have either or both of them joined as co-executors — without the plaintiff. The third and fourth defendants agree with the plaintiff insofar as the claim that the second defendant is in a position of conflict of interests is concerned. They plead that the second defendant was sued by Y's litigation guardian, *ie*, the first defendant, in Australia in 2007 for removing assets of the estate. That action ended with a settlement agreement signed on 2 June 2009 (the "2009 Settlement Agreement").

5 Thus, there are two main questions in this trial. First, should the first and second defendants be removed as executors and trustees of the estate of Y? Secondly, if so, who should replace them, the plaintiff or the third and fourth defendants? There are permutations to be considered, such as whether the first defendant be allowed to remain, and if so, who should join her — whether it is the plaintiff or the third and fourth defendants, or the plaintiff and one of them.

6 Section 32 of the Probate and Administration Act 1934 (2020 Rev Ed) provides that any probate may be revoked or amended for any sufficient cause. This requires the court to consider whether there has been an undue or improper administration of the estate in total disregard of the interests of the beneficiaries (*Jigarlal Kantilal Doshi v Damayanti Kantilal Doshi (executrix of the estate of Kantilal Prabhulal Doshi, deceased) and another* [2000] 3 SLR(R) 290 at [12]). Where, for instance, the executors are found to be tardy in distributing the assets of the estate or acting in conflict with the beneficiaries' interests, the court may revoke a probate (*UVH and another v UVJ and others* [2020] 3 SLR 1329 at [73]–[74]).

7 Whether the first and second defendants should be removed therefore depends on the secondary questions — whether they had acted in conflict of interests or, alternatively, they had been dilatory in their duties as executors to the extent that warrant their removal. These questions cannot be understood, let alone determined without tracing the main events. I am of the view that the relevant events began in 2004. That was the year when, on 30 April, Y executed the first of her wills in which the first defendant and P (the third daughter) were appointed as executors, along with one Cheong Kai Liang Benjamin from a management consultant firm. P is not involved in this action. The will was drawn up by a lawyer named Jiang Siew Ming. The first defendant and P were to be paid S$100,000 each to administer the will. The second and third

defendants were to inherit the shares in specified companies, with the residuary estate going to the second, third, and fourth defendants.

8 It was superseded by a second will, dated 9 December 2004, in which the first defendant was the sole executor. The second and third defendants were to inherit the shares in specified companies, the plaintiff was to inherit the shares in public companies that Y held, and the fourth defendant and his sister were entitled to the residuary estate.

9 By the third will (the "2006 Will"), which is the subject of this action, Y appointed the first and second defendants as the executors of the estate, and the beneficiaries of the entire estate are the plaintiff, the second, the third, and the fourth defendants. The estate is to be divided equally among them. All the daughters of Y, including the first defendant, are excluded. The questions for determination in this action cannot be answered without an examination of the background. Counsel for the plaintiff submits that the narrative crucial to this case began in 2009 when the siblings, including the daughters, reached an agreement regarding their quarrels. The 2009 Settlement Agreement was reached after mediation before Mr L P Thean. However, it is important to understand why the 2009 Settlement Agreement came into being, and that has to do with events that occurred in 2006.

10 It transpired that on 23 February 2006, Y went to a lawyer named Aloysius Wee of Central Chambers Law Corporation to draw up the 2006 Will. It is not known who brought Y to Mr Aloysius Wee, but on the very same day, the second defendant brought Y to a different lawyer, one named Steven Lam Kuet Keng, to execute six deeds of gifts and five declarations of trusts in favour of the second defendant. Neither Mr Aloysius Wee nor Mr Steven Lam testified at trial. The documents signed were in respect of her entire shares, which were

worth about A$128m in total at that time, in various companies. One of the declarations of trust, for instance, was a peculiar document in that Y declared that the assets named had been given by her to the second defendant, and that by this trust document, she declared herself as a trustee of the shares in the two companies that she had already given to him.

11 Sometime in late 2006 or early 2007, Y moved from her bungalow in a prime location to a Housing and Development Board ("HDB") flat owned by the third defendant, but only the first defendant went to live with Y and looked after her there. The plaintiff and the third defendant remained at the bungalow. It is not clear where the second defendant was staying at this point. What is not disputed is that two of her sons stayed at the bungalow when Y was staying in a HDB flat.

12 It was at this time that some of Y's daughters suspected that Y had lost her mental faculty. They brought her for a medical examination by Dr Brian Yeo and he referred her to Dr Shirley Tan, a clinical psychologist. Dr Tan examined Y and conducted tests on her on 2 February 2007 and affirmed an affidavit stating her opinion as follows:

> [Y] is suffering from moderate dementia, with symptoms of forgetfulness and confusion. She will require residential care or full support and help at home.
>
> I am of the opinion that [Y] is of unsound mind and is incapable of managing herself and her affairs.

13 Based on Dr Tan's opinion and other affidavits, I granted an application on 24 October 2007 by the daughters through their counsel Mr Philip Jeyaretnam SC, to appoint a committee of the person and estate ("COP") over the affairs of Y. Four of the daughters (without the first defendant) and the plaintiff were named as the COP of Y.

14 In the meantime, that is, on 23 February 2007, the first defendant commenced proceedings in Australia against the second defendant to recover assets belonging to Y that the second defendant claimed had been given to him by way of transfer. She applied for the transfers of shares by Y to be rendered void by reason of her mental incapacity. Dr Tan stated in her report that when she examined Y on 2 February 2007, Y appeared confused and forgetful and that Y "could not remember specifically giving away her shares". Dr Tan also noted that Y said that her second son "was always giving her papers to sign". Her second son was, of course, the second defendant.

15 The details of the protracted Australian litigation need not be repeated as they are largely irrelevant. What is relevant is that the parties to the Australian litigation agreed to mediation before Mr L P Thean. The mediation was successful in that it resulted in the 2009 Settlement Agreement that was signed by all Y's children — both sons and daughters. The 2009 Settlement Agreement was approved by Justice Andrew Ang on 13 July 2009 and the Supreme Court of Victoria on 2 April 2012. Essentially, by this agreement, the second defendant reinstated the assets that he had previously claimed to have been given to him by Y. The assets thus formed part of Y's estate when she died in April 2012.

16 On 7 November 2014, the Australian administrator of Y's estate filed proceedings in the Supreme Court of Victoria to appoint a valuer regarding certain sections of the 2009 Settlement Agreement ("Australian Clarification Proceedings"). The parties were ordered to attend mediation as they could not resolve several disputes in respect of the implementation of the 2009 Settlement Agreement. On 23 October 2019, the plaintiff agreed to a settlement with the second defendant and the third defendant, and this was recorded in a document known as the "Deed of Settlement and Release". The plaintiff did not participate

in further negotiations thereafter and the second and third defendants continued their mediation, leading to an agreement known as the Heads of Agreement ("HOA") being signed by both on 24 October 2019.

17 Some residual legal proceedings in Australia between the siblings continue unresolved even now. In the meantime, no one could find the original 2006 Will and an application was made by the executors to have a copy of it be admitted for the grant of probate. A copy of the will was produced through Ms Gan Kam Yuin of Bih Li & Lee which she had obtained from Mr Aloysius Wee. An application for probate was filed on 8 August 2019 and probate was granted on 11 March 2021.

18 On 5 June 2021, the plaintiff discovered that the second defendant and the third defendant had entered into the HOA. By the HOA, the second and third defendants agreed on certain payments in settlement of their rights and obligations under the 2009 Settlement Agreement, and it provided that it was to take precedence over the 2009 Settlement Agreement. This might have been regarded as a variation of the 2009 Settlement Agreement except that some parties to the 2009 Settlement Agreement (including the plaintiff) were not parties to the HOA. In fact, they were not aware of it until later.

19 The subject of the HOA was primarily to allow the payment of interest from Y's estate to the second defendant, a matter that appears to have been overlooked in the 2009 Settlement Agreement. If so, the 2009 Settlement Agreement had to be varied by consent or litigated, not adjusted in private by some and not all the signatories to the 2009 Settlement Agreement. Ms Wong, counsel for the first defendant, and Mr Ch'ng, counsel for the second defendant, submit that there was no conflict of interests because the HOA was expressly subject to the approval of the Australian administrator and the Supreme Court

of Victoria, and even today, the HOA has not been fully approved by either party. Further, that the second defendant was representing himself, and thirdly that the plaintiff knew about the HOA. Mr Ch'ng claims that the estate was represented by the Australian administrator's counsel at the mediation and that it was the plaintiff who chose not to participate in the mediation on 24 October 2019, leaving the second defendant and the third defendant to mediate on the further issues. Ms Wong also says that the second defendant obtained the informed consent of the Australian administrator when he entered into the HOA. They maintain that the terms of the HOA were merely to facilitate the implementation of the 2009 Settlement Agreement.

20 All that missed the point of what a conflict of interests means. It is precisely that the second defendant was representing himself, seeking payments out of the estate that affects his position as an executor. The act created a conflict of interests whether or not the Australian administrator had approved it. And even if the plaintiff had known about it, it was by then a *fait accompli*. I am satisfied that no one other than the signatories of the HOA knew about it when it was concluded and signed. Even the first defendant, despite being an executrix, did not know about the HOA until late April 2021. She testified at trial and in her case, that she had difficulties assessing the Dropbox link which purportedly contained the HOA in late 2019. This was corroborated by the plaintiff, who said that he faced similar difficulties in 2019. The third defendant, being a party to the HOA, also conceded that the HOA was "agreed to be kept confidential" at least until it was made known to the Australian courts and Australian administrator.

21 It is, therefore, one of the grounds of the plaintiff's claim in this action, that the court finds the second defendant in a position of conflict of interests between his duties as an executor of Y's estate and the negotiation and

distributing of assets from the estate to himself and the third defendant. The second ground of the plaintiff's claim is that the executors had not performed their duties as executors with due diligence and speed.

22 Given the facts as I have found above, I am satisfied that the plaintiff has proven both claims. The HOA was concluded between the second defendant and the third defendant just after a three-day mediation in October 2019, during the Australian Clarification Proceedings. It was concluded without the participation or knowledge of the plaintiff or any other signatories to the 2009 Settlement Agreement. Insofar as the HOA involves assets of Y's estate and the 2009 Settlement Agreement, the parties behind the HOA cannot be relied upon to discharge the duties as executors of Y's estate.

23 When Y died in 2012, the issues regarding her will had been resolved and the Australian proceedings would have to take into account the terms of the will. Given the sheer size of the value of the estate, estimated many years ago to be about A$128m, or as much as S$150m by another estimate, it behoved the executors to realise the assets and distribute them in accordance with the will as soon as possible. However, the first defendant's testimony convinced me that although honest and well-meaning, she does not seem to know what she has to do as an executrix. At trial, she testified that she had contacted her sisters (who were the treasurers of the COP) more than five years ago for information on the estate's assets. However, they told her that they were "busy" and "unable to do so" and she has not heard from either of them since. The first defendant also said that she "did not entertain the idea of writing letters if [she could] avoid it" as they are her siblings. The first defendant may also not have as much vigour as she showed in prosecuting the Australian proceedings, but nonetheless, she appears to be the one sibling who is able to reach out to the other daughters of Y. This may prove useful if their help is required in ascertaining the assets of

the estate. She might not have performed her duty as an executor diligently, but unlike the second defendant, she has no personal gain as she is not a beneficiary. In my view, her passive attitude towards the administration of the estate does not constitute sufficient cause to replace her as the executrix.

24 That brings me to the plaintiff's second point against the first and second defendants, and that is, no effort has been made to ascertain the full list of the assets, let alone the valuation of the estate. The second defendant does not even know what the bungalow is worth today. At trial, and in their case, the executors claim that there is some outstanding issue regarding tax obligations in Australia. They say that on 22 December 2020, the Australian administrator had flagged out the "possibility of the estate being subject to double taxation" if the Singapore probate proceedings were to proceed. The Australian administrator thus recommended that the Singapore probate proceedings be held in abeyance pending their specialist advice, and only gave their approval to proceed on 27 April 2022. The executors claim that by that time, the present suit had already begun, rendering any further steps taken to prepare the Schedule of Assets a "costly and unnecessary endeavour". That is no excuse, especially when neither of them know precisely what the legal problem is. The executors had appointed Harry Elias Partnership LLP as the estate's lawyers, but the lawyers have not been called to tell me what legal problem in Australia is holding up the executors' administration of the estate here. There is no evidence that Harry Elias Partnership LLP had even reached out to the Australian lawyers in an attempt to identify the problem — if any.

25 There are only four beneficiaries to this estate, the second defendant is the only beneficiary who is an executor. He is also the one who has been managing much of the assets. There is no excuse in not administering the estate

diligently. After so many years, the executors are unable to even provide a full list of the assets, let alone the valuation.

26 For the same reasons as to conflict of interests, I am of the view that although the third defendant was not an executor and was technically not in a position of conflict of interests, nonetheless, he was a participant in the HOA and that might place him in an awkward position should he be made an executor or administrator of Y's estate. The third defendant also admitted at trial that the HOA appears to be prejudicial to the estate's interests and that he "[should not] have signed the HOA". I am thus not inclined to have him administer Y's estate in the present circumstances. The fourth defendant has not convinced me that he is independent or capable of administering an estate as large and complicated as this.

27 The second, third and fourth defendants say that the plaintiff is not suitable to be the administrator because he is "only interested in resolving his disputes with [the second and third defendants] over the sums owed to him" under clauses 21 and 22 of the 2009 Settlement Agreement. They point out that despite being a COP member, he was "selfish" and sought to obtain monetary rewards amounting to S$2.5m in consideration for "not obstructing the terms" of the 2009 Settlement Agreement. They claim that the plaintiff has not acted in the best interests of the estate by refusing to acknowledge the risk of double taxation and pushing for "undue haste" in administering the estate. They also claim that the plaintiff gave false evidence on when he first came to know of the HOA. I do not think that these claims, even if true, make the plaintiff unsuitable to be an administrator, especially when one considers that the second and third defendants entered into a HOA by themselves to receive payment out of Y's estate without the consent of the plaintiff, who is also a beneficiary.

28 For the above reasons, I grant the plaintiff Letters of Administration with Will Annexed in respect of the estate of Y, deceased (as pleaded in prayer (b) of the Statement of Claim) in substitution of the second defendant. The first defendant shall remain as the executrix. There will be liberty to apply.

29 Counsel will submit on costs in writing within 10 days from the date of this judgment.

- Sgd -
Choo Han Teck
Judge of the High Court

Chan Wai Kit Darren Dominic and Noel John Geno-Oehlers (Characterist LLC) for the plaintiff;
Wong Hur Yuin and Marcus Chia Hao Jun (Wee Swee Teow LLP) for the first defendant;
James Ch'ng Chin Leong and Neo Wei Liang Anneson (A.Ang, Seah & Hoe) for the second defendant;
Lai Swee Fung and Connie Kuan (UniLegal LLC) for the third and fourth defendants.