IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC 79

Originating Application No 1192 of 2024

In the matter of Section 54 of the Trustees Act 1967

Muhammad Naseer

… *Applicant*

JUDGMENT

[Trusts — Beneficiaries — Minors]
[Trusts — Trust for sale]

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Re Muhammad Naseer

[2025] SGHC 79

General Division of the High Court — Originating Application No 1192 of 2024
Choo Han Teck J
28 January, 16, 24 April 2025

29 April 2025 Judgment reserved.

Choo Han Teck J:

1 This is an application by one Muhammad Naseer (the "applicant") under s 54 of the Trustees Act 1967 (2020 Rev Ed) to sell a condominium flat in Singapore (the "Property") held on trust by the applicant's nephew for the benefit of the applicant's 15-year-old son. He asks for the net sale proceeds of the Property to be held on trust by his nephew for the benefit of his son for the next few years until his son turns 21 years old.

2 It would be a straightforward application if the court is satisfied that the sale is for the benefit of the beneficiary, and the trustee consents, in which event, the trustee ought to be the applicant. This application, however, is problematic because of its history. The applicant obtained a Housing and Development Board ("HDB") flat in his name on 19 November 2018. The HDB flat served as his family home. In July 2019, the applicant purchased the Property for his son, ostensibly so that his son would have a place of his own when he grows up. He has two other children but they have no share in the Property. As his son was

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below 21 years old at the time, the Property could not be purchased in the son's name. Therefore, on 5 August 2019, the applicant executed a deed of trust to purchase the Property (the "Trust Deed") and held it on trust in favour of his son. Clause 4 of the Trust Deed provided that if the Property were to be leased out, his son would be entitled to the exclusive benefit of the rental proceeds. The Trust Deed, however, did not provide for the sale of the Property by the trustee. The applicant says this is because when the Trust Deed was drafted, he intended for his son to live in the Property and use it for his benefit, or for his son to gain exclusive benefit of the rental income. Following the completion of the purchase of the Property on 30 September 2019, neither the applicant nor the son moved in because the Property was subject to an existing tenancy agreement. After the tenancy agreement ended on 30 April 2020, they decided not to move into the Property as the son was comfortable living in the HDB flat. As such, the applicant signed another tenancy agreement with the same tenants.

3 Around January 2021, the applicant and his family moved to France as his company's operations were expanding in France. The applicant and his son obtained their French residence permits and have been residing in France since then. At that time, the applicant applied to HDB to rent out his HDB flat since he was moving overseas. HDB notified him by a letter dated 8 November 2021 that he should not own another property in his name within the minimum occupation period ("MOP") of his HDB flat. The MOP refers to a period that HDB flat owners must physically occupy their flat before being allowed to sell it on the open market or rent out the whole flat. A section of the letter read:

> As HDB flats are meant for owner occupation, flat owners are required to fulfil the 5-year MOP, before they are eligible to acquire any interest in a private property *(including property on trust)*.
>
> HDB may compulsorily acquire the flat under Section 56(1)(b) of the Housing & Development Act ("The H & D Act"), since

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> Mr Muhammad Naseer had acquired another property. Alternatively, HDB can impose a financial penalty in lieu of compulsory acquisition of the flat.
>
> After careful consideration of your case, HDB is prepared to exercise leniency by allowing you to retain the flat without imposing any financial penalty, *subject to the condition that Mr Muhammad Naseer must dispose the private property within 4 months from the date of this letter and furnish us documentary proof of his disposal of the private property*.
>
> [emphasis in original]

4 On 21 December 2021, the applicant then executed a trust deed of appointment for his nephew, who was residing in Qatar, to be appointed as the trustee of the Property in his (the applicant's) stead. The applicant updated the Property's information *via* a transfer instrument at the Singapore Land Authority to reflect the change in trustees. Subsequently, on 25 January 2022, the nephew appointed the applicant as his attorney under a Power of Attorney ("POA") because he was not based in Singapore at the time. The POA authorised the applicant to manage the Property on his nephew's behalf while his nephew was not in Singapore. Between November 2023 and May 2024, the nephew returned to Singapore to work.

5 On 30 June 2023, the tenancy period ended and the applicant rented the Property out again to a new set of tenants from 1 September 2023 to 31 August 2025. However, the tenants gave notice of termination on 29 June 2024 and they moved out on 31 October 2024. The Property has been vacant since then. The rental proceeds from the various tenancy periods were deposited into an account jointly held by the applicant and his son (the "Trust Account"). The applicant claims that all the withdrawals of moneys from the Trust Account were solely for expenses incurred for the maintenance of the Property (*eg*, MCST charges, property tax, renovation and repair costs) and for the benefit of his son (*eg*, education and maintenance) who is presently 15 years old. According to

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the applicant, his nephew was unable to reside in Singapore for personal reasons and that is why he has yet to set up a joint bank account with the applicant's son. The applicant says that in any case, his nephew cannot open a bank account in Singapore for the purposes of trust management without proof of his Singapore residency.

6 The applicant claims that his son has since settled down in France and does not wish to move back to Singapore, except to fulfil his National Service obligations. His son also plans to pursue his tertiary education in France or another European country. The applicant himself intends to stay in France for some years for his business and family. As such, sometime around October 2024, the applicant asked his nephew to sell the Property and hold the net sale proceeds in trust for his son. The nephew agreed since he was also no longer based in Singapore and was facing difficulties in managing the Property.

7 Furthermore, the applicant says that his son's expenses in France are much higher than in Singapore, amounting to roughly S$66,595.16 per year. The applicant says that he would not be able to finance his son's living and education expenses much longer. Therefore, he wants the Property to be sold and for the net sale proceeds to be used for his son's living and education expenses until he turns 21 years old.

8 The terms and conditions for the purchase of a HDB resale flat provide that the buyer, his spouse and other essential family members cannot invest in private residential property during the five-year MOP of the flat. Pursuant to these rules, since the applicant purchased the HDB flat in November 2018, he should have only been able to purchase the condominium flat in November 2023.

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9 In my view, the applicant's execution of the Trust Deed for the benefit of his son appears to be intended to circumvent the HDB rules. The applicant was the trustee of the Property for more than two years before HDB found out and informed him that he was not allowed to do so. Although the applicant subsequently appointed his nephew as the trustee, the applicant became his nephew's attorney one month later. The nephew explains that this was because he was still living in Qatar at that point, but the applicant himself had also moved to France by that time.

10 By the POA, the applicant was, in effect, still managing the Property. The rental income from the Property was also deposited into the Trust Account jointly held by the applicant and his son. Some of the withdrawals from the Trust Account were listed as "Business Expenses", though the applicant claims that this was only because he "inadvertently selected it" as a description of the transactions. Although the applicant maintains that the rental proceeds have only been used for the benefit of his son, he has not adduced evidence that the Trust Account is a properly designated trust account. A joint account on its own is merely a joint account, though it can become a constructive trust under some circumstances. Furthermore, the applicant has not adduced any evidence from HDB stating that it consents to this application. The court will not assist the applicant in an application that appears to circumvent the HDB rules.

11 For these reasons, I make no order in respect of the application. I grant liberty to apply in the event the applicant has obtained the approval from HDB.

- Sgd -
Choo Han Teck
Judge of the High Court

C Selvaraj, Jonathan Ow and Gideon Chew Ming Kai
(Apex Law LLC) for the applicant.

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