Bermuda Trust (Singapore) Ltd v Richard Wee and Others
[2002] SGHC 22

Case Number	: OS 949/1997, SIC 602463/2001
Decision Date	: 07 February 2002
Tribunal/Court	: High Court
Coram	: Judith Prakash J
Counsel Name(s)	: Suhaimi Lazim (Shook Lin & Bok) for the plaintiffs; TPB Menon (Wee Swee Teow & Co) for the 5th defendant
Parties	: Bermuda Trust (Singapore) Ltd — Richard Wee; Wee Soon Siew, Raymond; Estate of Ronald Wee Soon Whatt; Hongkong & Shanghai Bank (Singapore) Trustee Ltd; Anthony Wee Soon Kim

Judgment

GROUNDS OF DECISION

Background

1. The plaintiffs in this originating summons, Bermuda Trust (Singapore) Ltd ('the Trustees') were the trustees of a 'Sinchew' trust set up by cl 9 of the will of Wee Kay Siang, deceased. Anthony Wee Soon Kim, the fifth defendant ('Mr Wee'), is a grandson of Wee Kay Siang, deceased.

2. By a judgment dated 26 November 1998, I held that the Sinchew trust had failed as it had by then become impossible and/or impracticable to perform the objects of the trust. Subsequently by an order of court dated 30 July 1999, I made the following orders:

> '1. The Sinchew House and the capital and income held by the Plaintiffs pursuant to Clauses 9 and 10 of the Will in relation to the Sinchew Trust are held on Trust for Anthony Wee Soon Kim, being the eldest male person who is alive on the date that the Court declared the Trust under Clause 9 had failed and who is on that day nearest in the direct line descent to Wee Kah Kiat;
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> ….
>
> 4. The Plaintiffs' remuneration for their services as trustees be revised to allow the Plaintiffs to charge their current fees as opposed to the Plaintiffs' scale fees contained in the Plaintiffs' booklet published in 1953 with effect from the 25th day of August 1997.
>
> 5. The costs of these proceedings in respect of all parties except the 3rd Defendant to be taxed on an indemnity basis and be paid out of the trust fund;
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> 6. There be liberty to apply.'

3. On 25 October 2001, Mr Wee took out a summons in chambers asking for various reliefs. I heard the parties and made certain orders in November 2001. Mr Wee is dissatisfied with the whole of my decision.

The application and my decision

(i) The Trustees' costs

4. The first order applied for by Mr Wee was a declaration that the Trustees were only entitled to charge an administrative fee for work done for the period 1 January 1998 to 30 July 1999 (date of the order of court) amounting to $2,399.07 (ie $1,515.21 for 1998 plus $883.85 pro-rated for the period from 1 January 1999 to 30 July 1999). The essence of this prayer was that Mr Wee did not accept the manner in which the Trustees had calculated the fees due to themselves and asserted that if these were correctly calculated the amount due would total only $2,399.07.

5. On 30 July 1999, I had made an express order allowing the Trustees to be remunerated for their work in accordance with their then current standard scale of charges. This remuneration order was made retrospective to 25 August 1997. The Trustees' then standard scale of charges had come into operation on 1 January 1994 and it provided that the Trustees were entitled to be paid an administration fee of one percent of the gross value of the assets under administration.

6. The Trustees had furnished their Revised Tax Invoices to Mr Wee's solicitors in October 2001. By these invoices the Trustees charged administrative and investment fees of $42,964.78 for the year 1998 and $28,391.10 for the first six months of 1999 on the basis that these sums were equivalent to one percent (1%) of the gross value of the trust fund. The bulk of the charges arose from the Trustees' valuation of the property no. 16 Mohamed Sultan Road ('the property') as being worth $3 million.

7. Mr Wee objected to the charges. His grounds were as follows:

> (1) the property was impressed with the Sinchew trust until 30 July 1999. It was in a dilapidated state and had not been maintained by the Trustees;
>
> (2) the property had not generated income for a long time because it was impressed with the trust and therefore the Trustees' assertion that the open market value of the property was $3 million based on a valuation done in May 1997 could not be correct as no prudent purchaser would be prepared to pay $3 million for a dilapidated rent controlled property impressed with a Sinchew trust;
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> (3) the trust accounts furnished by the Trustees for the period from July 1957 to 31 December 1999 showed that the capital value of the property was only $16,000. The Trustees had taken the value of the property to be $3 million so as to inflate the value of the trust and produce tax invoices on the inflated value;
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> (4) the Trustees' Balance Sheet and Capital Account for the year ended 1998 showed the administrative, discretionary and investment fees to total only $1,515.21 yet by the year ended 1999 the fees had escalated to the astronomical figure of $51,945.99. At best, the Trustees were entitled $1,515.21 as their fees for 1998 and a sum of $883.85 (pro-rated for seven months) for the period 1 January 1999 to 30 July 1999.

8. The Trustees' stand was that they were entitled to calculate their charges on the basis that the gross value of the property was $3 million in 1998 and the first half of 1999. They relied on a valuation report dated 19 May 1997 issued by Chesterton International Property Consultants Pte Ltd. In this report, the valuers had opined that the open market value of the property, with vacant possession and free from encumbrances, was $3 million and that the open market value of the

property, subject to a rent controlled tenancy at a rental of $49.40 per month, was $2.9 million. It should be noted that at the material times, the property was vacant.

9. The Trustees also clarified why their fees had been shown as $1,515.21 in their Balance Sheet and Capital Account for the year 1998 and had apparently escalated to an astronomical fee of $51,945.99 in mid June 1999. The reason that there was an increase in the administrative fee in 1999 was due to an accounting entry. In December 1998, the administrative fee for the year 1998 had yet to accrue as the Trustees were waiting for the decision of the High Court in respect of the fees payable for administration of the Sinchew trust before charging these fees. It was only after that decision was given and the Trustees were entitled to charge, with retrospective effect, a fee of one percent of the gross assets, that the fees were correctly assessed and then included in the June 1999 accounts.

10. I accepted the Trustees' argument that they were entitled to value the property at $3 million as this was the open market value given to it by a reputable valuer. The fact that the property was dilapidated had already been taken into account in the valuation which described the general state of repair of the property to be poor as at the time of the inspection by the valuers in 1997. Further, the fact that the property was subject to the Sinchew trust was irrelevant to the valuation as the valuers were asked to value the property on an open market basis. The Trustees' standard scale of charges allowed them to charge on the basis of 'gross value of assets under administration'. Although the term 'gross value' was not defined in the scale, I considered that it should be given its ordinary meaning and that in this context, the Trustees were entitled to equate gross value with open market value on an unencumbered basis. If encumbrances were to be taken into account, the value given would be a net value rather than a gross value. On this basis, it was my opinion that Mr Wee had no ground to assert that the proper fee for the period from 1 January 1998 to 30 July 1999 was $2,399.07. Accordingly, I made no order on his first prayer.

(ii) Payment of interest to Mr Wee

11. Mr Wee's second prayer was for the following:

> 'that the Plaintiffs as trustees of the Will of the Testator be ordered :
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> > (a) to pay the balance of such capital and income standing to the credit of the estate (after deduction of their fees amounting to $2,399-07) to the solicitors for the 5th Defendant forthwith which is only to be released to the 5th Defendant after payment of the Plaintiffs' solicitors' taxed costs.
> >
> > (b) to pay interest on such capital sum and income to the solicitors for the 5th Defendant at 6% per annum
> >
> > > (i) on the total sum standing to the credit of the 5th Defendant for the period 30th July 1999 to 21st September 2001.
> > >
> > > (ii) on the balance (after deduction of

> $400,000 paid to the 5th Defendant on 21st September 2001) for the period 22nd September 2001 to the date of payment.'

12. Mr Wee asserted that once it was clear from the order of court of 30 July 1999 that the capital and income held by the Trustees were held on trust for him, the Trustees had two options. They could have:

> (a) released the monies due to him to his solicitors immediately after the date of the court order subject to the retention of a reasonable sum to meet their invoices and their solicitors' taxed costs in relation to the originating summons; or
>
> (b) released the monies due to him to his solicitors immediately after the date of the court order subject to his solicitors' undertaking to retain a reasonable sum to meet their invoices and their solicitors' taxed costs.

13. The Trustees did not pursue either option. Mr Wee stated that he had been deprived of the use of the trust funds for more than two years. The Trustees only released part of the trust funds ($400,000) to him on 21 September 2001. He asserted that the Trustees as professional trustees were obliged to account to him for the interest lost on the trust funds between the date of the court order and payment of part of the trust funds to him as follows:

> (a) on the total sum standing to his credit for the period 30 July 1999 to 21 September 2001; and
>
> (b) on the balance (after deduction of $400,000) for the period 22 September 2001 to the date of payment.

14. In response the Trustees referred to the order of court made on 18 April 2000 whereby I had ordered them to pay the capital and income of the trust to Mr Wee after deduction of their remuneration upon being furnished the necessary account details by Mr Wee. They had then proceeded to tax the legal costs of the solicitors for the other defendants in the main action (as these costs were payable by the fund) and when this was complete had tried to release funds to Mr Wee. They had not been successful because Mr Wee had not given them the necessary account details.

15. The Trustees referred to a letter dated 24 August 2000 to Mr Wee's solicitors from their solicitors whereby they had enquired when Mr Wee expected the Trustees to hand over to him the assets and files in respect of the trust. There was no reply to this letter. By a subsequent letter dated 7 September 2000, the Trustees' solicitors asked for Mr Wee's instructions as to how he proposed the assets should be transferred. There was no reply to this enquiry either. On 30 November 2000, the Trustees were informed by their solicitors that Mr Wee's solicitors had no instructions to accept payment of funds on Mr Wee's behalf.

16. I considered that as far as those assets of the trust which were held in cash were concerned, the Trustees did not need account details in order to make payment to Mr Wee. They could easily have sent him a draft for the amount due via his solicitors. The only uncertainty was the amount payable since the Trustees' solicitors' bill for the main action had not been finalised. The estimated amount of this payable could, however, have been deducted and the balance paid out to Mr Wee as indeed was

done in September 2001. By the time of the hearing, however, the taxation of this bill was imminent. It was, therefore, pointless to make another payment less retention of the estimated amount of the bill. Accordingly, I made an order that the Trustees should pay the balance of the capital and income to the solicitors for Mr Wee forthwith upon conclusion of the taxation of that bill.

17. I was informed by the Trustees' solicitors that as at 30 July 1999, the Trustees had held cash in the amount of $775,516.40 on trust for Mr Wee. As of the date of the hearing, the Trustees' bill totalled $128,495.84 and the solicitors' bill for taxation came up to $113,000. Thus the expenses to be deducted from the cash amounted to $241,495.84 and the balance payable to Mr Wee as at that date was approximately $534,020.56. Out of this $400,000 had already been sent to Mr Wee.

18. Since it was my view that the Trustees should have paid whatever could reasonably be estimated to be due to Mr Wee on 18 April 2000 forthwith upon the making of the court order and that they had no reasonable excuse for delaying this payment, I agreed with Mr Wee's counsel that interest would have to be paid in relation to the delay. The question was what was the correct amount of interest. Mr Wee in his application had asked for six percent per annum. That seemed to me to be unduly high bearing in mind current low interest-rate levels for savings and fixed deposit accounts. Further, the Trustees would have earned only a one percent fee on the value of the assets (though of course they were not entitled to charge that fee in respect of assets that should have been paid over since the assets were no longer theirs to be managed) and they had acted in good faith, albeit in a rather lackadaisical fashion in that they had waited to be told what to do rather than taken the initiative. In view of these circumstances, I considered that it would be sufficient to order them to pay interest calculated at the rate of one half of one percent on the amount that should have been paid earlier. I therefore made the following orders:

> (1) the plaintiffs [the Trustees] shall pay the fifth defendant [Mr Wee] interest of half percent per annum on the following sums:
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> > (a) the sum of $400,000 from 18 April 2000 to 21 September 2001; and
> >
> > (b) the sum of $134,000 from 18 April 2000 up to the date of payment of the principal sum.
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> (2) the above interest payments have been calculated on the basis that the plaintiffs' bills as presented are correct and in accordance with their scale fees.

19. The final issue was one of costs. Each party had succeeded on one issue and failed on another. I therefore ordered that each party should bear its/his own costs and that for the avoidance of doubt the plaintiffs/Trustees should not deduct their costs in relation to the application from the estate.

Sgd:

JUDITH PRAKASH
JUDGE

This does not merit reporting.

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