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HSBC Trustee (Singapore) Limited
v
Carolyn Fong Wai Lyn & 4 Ors

[2016] SGHC 31

High Court — Originating Summons No 904 of 2013
Quentin Loh J
25 July; 9 September 2014; 6 March; 24 April; 14 August; 26 November 2015

Probate and administration — Administration of assets

4 March 2016

Quentin Loh J

Introduction

1 Originating Summons No 904 of 2013 was an application brought by the plaintiff, the professional executor and trustee of the late Peter Fong's estate ("the Estate"). For ease of reference, where necessary, I will refer to the plaintiff as the "executor of the Estate". The plaintiff sought three prayers for relief:

(a) first, that it be discharged as executor of the Estate ("Prayer 1")

(b) secondly, that the fees, costs and expenses incurred by it from the date of its appointment as executor on 2 March 2012 up to the date of the order be paid out of the assets of the Estate ("Prayer 2"); and

(c) thirdly, that it be authorised to take up further mortgages on two properties held by the Estate for the purpose of discharging the Estate's outstanding liabilities ("Prayer 3").

The two properties referred to in Prayer 3 are No 37 Pepys Road #02-01 Northcrest, The Peak, Singapore and No 37 Pepys Road #03-03 Northcrest, The Peak, Singapore. I shall refer to these two properties as the "Peak 1 Property" and the "Peak 2 Property" respectively, and as "the Properties" collectively.

2 At the hearings before me on 25 July 2014 and 9 September 2014, I urged the parties to consider mediation as an option. The parties attempted to do so but, unfortunately, the mediation did not bear any fruit. The parties made their submissions before me on 14 August 2015. After hearing the parties' arguments, I delivered an oral judgment on 26 November 2015. I dismissed Prayer 1 but granted the plaintiff liberty to apply as and when it is able to nominate a viable replacement. I granted Prayer 2 with the qualification that the fees, costs and expenses to be paid out by the Estate must be shown to have been reasonably incurred. As for Prayer 3, I granted an order in terms. The fourth and fifth defendants have since filed an appeal against my judgment and I therefore set out my detailed grounds of decision.

3 When I delivered the oral judgment on 26 November 2015, I also directed the parties to tender written submissions on the issue of costs. Having perused these submissions, I will set out my decision as to costs in the present grounds of decision as well.

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Background facts

The parties

4 The plaintiff is HSBC Trustee (Singapore) Limited, a professional trustee which was appointed to manage the Estate by an Order of Court dated 2 March 2012 ("the Plaintiff").[1] Prior to its appointment, the Estate was managed by four individuals who were specifically identified to serve as executors in Peter Fong's will ("the Former Executors").[2] The Order of Court which directed that the Plaintiff be appointed in place of the Former Executors was made pursuant to an application by the first to third defendants on 5 September 2011 (*ie*, OS 764/2011/V) to have the Former Executors discharged.

5 The first to third defendants are Peter Fong's daughters by his third wife. Collectively, they form one faction. They will be referred to as "the Fong Sisters".

6 The fourth and fifth defendants are Alice Lee Pei-Ru (*ie*, Peter Fong's 4th wife) and Fong Wei Heng (*ie*, Peter Fong's son) respectively. Together, they form another faction.

The will

7 Pursuant to the will of Peter Fong, dated 24 January 2007, the Peak 1 and Peak 2 Properties were to be divided amongst the defendants in the following manner:

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1 Plaintiff's Bundle of Relevant Cause Papers ("PBRCP"), Tab 3, para 8.

2 PBRCP, Tab 1, p 1.

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(a) The Peak 1 Property was devised and bequeathed to the fifth defendant, So long as he continues to hold the property, the fourth defendant shall be entitled to reside in it as a life tenant for as long as she lives or desires, provided that she does not remarry and provided that she does not permit her siblings to reside in the property (see cl 15.1 of the will).

(b) The Peak 2 Property was devised and bequeathed to the Fong Sisters in equal shares as tenants-in-common absolutely (see cl 16.2 of the will).

8 Subsequently, a codicil dated 21 March 2008 was executed by Peter Fong, wherein he revoked cl 16.2 of the will and instead devised and bequeathed the Peak 2 Property in five equal shares which are as follows:[3]

(a) one share to the fourth defendant;

(b) one share to each of the Fong Sisters; and

(c) one share to be divided equally between Peter Fong's five sisters.

The validity of the codicil is being challenged by the Fong Sisters in S 883/2012 although more will be said of this later.

Events leading up to the application

9 Since taking over as executor of the Estate, the Plaintiff has had to manage numerous legal proceedings involving the Estate. This led to a

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[3] PBRCP, Tab 1, p 30.

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significant reduction of the Estate's available assets. A summary of the pending suits against the Estate is as follows:[4]

(a) OS 687/2015 - an action brought by the fourth defendant for the Peak 2 Property to be sold and for her share of the sale proceeds to be paid to her.

(b) S 883/2012 – a challenge brought by the Fong Sisters to the validity of the codicil against the Estate.

(c) S 426/2012 – an action brought by the fourth defendant against the Estate in respect of an alleged loan to Peter Fong during his lifetime.

(d) S 1015/2012 – a claim by the receivers and managers of Airtrust (Singapore) Pte Ltd ("Airtrust") against several individuals for breach of director's duties and conspiring against Airtrust wherein the Estate has been brought in as a third party.

(e) S 550/2013 – an action brought by the fifth Defendant for the Peak 1 Property to be vested in him in advance of him turning 25 years of age.

10 As a result of having to defend the various suits, the Estate no longer had sufficient liquid assets to meet its outstanding and future expenses. The Plaintiff claimed that it had not been paid for its services since 2013[5] and this was one of the premises on which the present application was brought.

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4 Plaintiff's Written Submissions, para 14.

5 Minute Sheet of Quentin Loh J, 14 August 2015, p 2.

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The parties' case

The Plaintiff's case

11 Apart from the fact that the Plaintiff had not been paid for a significant period of time, it raised two other reasons why it should be discharged as executor of the Estate. First, it argued that the Fong Sisters would be in a better position to defend the various claims against the Estate as they had more intimate knowledge of Peter Fong's matters as well as a direct interest in the outcome of the claims as residuary beneficiaries of the Estate.[6] Secondly, it argued that having the Fong Sisters serve as executor would ultimately save costs for the Estate.[7]

12 As for Prayers 2 and 3, the Plaintiff contended that the expenses it had incurred on behalf of the Estate were reasonable and justified, and it should also be allowed to take up further mortgages on the Peak 1 and 2 Properties so that the liabilities of the Estate may be discharged.

The Fong Sisters' case

13 The Fong Sisters proposed that Prayers 2 and 3 be determined before Prayer 1 as my determination on those matters might have a material bearing on Prayer 1. In that regard, the Fong Sisters took no objections to both Prayers 2 and 3, except to say that the costs of the Estate had to be shown to have been incurred reasonably.[8]

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6 Plaintiff's Written Submissions, paras 45 and 50

7 Plaintiff's Written Submissions, para 51.

8 Fong Sisters' Written Submissions, paras 14–15.

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14 Given the above position, the Fong Sisters submitted that the Plaintiff should not be discharged as executor since there would now be funds to meet the fees owed to it and other future expenses.[9] Alternatively, if the Plaintiff was to be discharged, the Fong Sisters did not object to being appointed as the replacement executors.[10]

The fourth and fifth defendants' case

15 With respect to Prayer 1, the fourth and fifth defendants did not object to the executor being discharged as executor. However, they disagreed to the Fong Sisters being appointed as replacement. According to them, it was untrue that the Fong Sisters had the requisite knowledge of Peter Fong's matters.[11] More materially, the fourth and fifth defendants averred that the Fong Sisters would not be able to act independently and impartially *vis-à-vis* the various suits against the Estate. This was because the Fong Sisters were adversely positioned against the Estate with respect to several of the pending lawsuits and, as beneficiaries of the Estate, they would also have separate duties and interests which would directly conflict with their duty as executors of the Estate.[12]

16 As for Prayer 2, while the fourth and fifth defendants initially took the position that I should determine whether the entirety of the Estate's expenses were reasonable in the proceedings before me, they subsequently altered their position and agreed for those costs to be taxed instead at a separate hearing.[13]

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9 Minute Sheet of Quentin Loh J, 14 August 2015, pp 2–3.

10 Fong Sisters' Written Submissions, para 28.

11 Fourth and fifth defendants' Written Submissions, para 39.

12 Fourth and fifth defendants' Written Submissions, paras 42–48.

13 Minute Sheet of Quentin Loh J, 14 August 2015, p 6.

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17 The fourth and fifth defendants submitted that Prayer 3 should be rejected and that, instead, the sensible and practical solution would be for the Peak 2 Property to be sold to meet the estate's expenses. According to them, a mortgage of the Peak 1 and 2 Properties would not resolve the issues of funds in the Estate but would only result in the incurring of greater costs in the servicing of the mortgage.[14] Additionally, granting a mortgage on both Properties would cause injustice to the fifth defendant because, pursuant to cl 16.1 of the will, he would have to maintain and service any mortgage taken out on the Peak 1 Property.[15] In contrast, the will and subsequent codicil did not require the beneficiaries of the Peak 2 Property to be personally liable for all expenses pertaining to that property.[16] Further, a sale of the Peak 2 Property would not cause any injustice because there were nine beneficiaries to the property and it would therefore be improbable, if not impossible, that the beneficiaries would exercise their right to live in the property.[17]

My decision

18 I accepted the Fong Sisters' submission that a determination on Prayers 2 and 3 may have a material bearing on Prayer 3. I will first provide my detailed grounds for Prayers 2 and 3.

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14 Fourth and fifth defendants' Written Submissions, para 110.

15 Fourth and fifth defendants' Written Submissions, para 107.

16 Fourth and fifth defendants' Written Submissions, paras 108–109.

17 Fourth and fifth defendants' Written Submissions, para 117.

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Prayer 2 – expenses to be paid out of the Estate

19 I noted that with respect to Prayer 2, there was no disagreement among the parties that the Plaintiff should be allowed to claim its reasonable fees, costs and expenses from the Estate. The only disagreement was whether the fees claimed were reasonable. The question of reasonableness, however, was already the subject of Bill of Costs 34/2014 ("BC 34/2014"). BC 34/2014 concerned work done by the Plaintiff's solicitors from 1 January 2013 to March 2013. I was informed at the hearing on 14 August 2015 that, although BC 34/2014 pertained only to a fraction of the legal costs which were being claimed against the Estate, all the parties were amenable to having a separate taxation for the entire outstanding amount.

20 It was on that basis that I granted an order in terms for Prayer 2, with the qualification that the fees, costs and expenses to be paid out of the Estate must be shown to have been reasonably incurred.

Prayer 3 – mortgages to be taken out on the Properties

21 The Plaintiff's application to mortgage the Properties was based on s 56 of the Trustees Act (Cap 337, 2005 Rev Ed) which provides the court with the power to authorise a trustee to take out any mortgage in the management or administration of any property vested in the trustee. The Plaintiff further relied on s 57(4) read with the Second Schedule of the Probate and Administration Act (Cap 251, 2000 Rev Ed) ("the PAA"). Section 57(4) of the PAA provides that where the estate is solvent, as was the case on the present facts, administration expenses shall be payable in the order mentioned in the Second Schedule. In this regard, the parties were all in agreement that if the PAA were applicable, the next category of properties which was to be applied under the Second

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Schedule was that of "[p]roperty specifically devised or bequeathed, rateably according to value", *ie*, the Peak 1 and 2 Properties.

22 The fourth and fifth defendant, however, contended that because a fee agreement had been entered into between the Fong Sisters and the Plaintiff,[18] the statutory order for application of assets under the PAA may be derogated from. They relied on the decision of *Petterson v Ross and others* [2013] EWHC 2724 (Ch) ("*Petterson v Ross*") to support their position. In my judgment, their reliance on *Petterson v Ross* was misplaced. In *Petterson v Ross*, it was held (at [4]) that "[i]n the absence of agreement between the parties", the judge had to apply the statutory order for the application of assets under the First Schedule of the 1925 Administration of Estates Act, which is in *pari materia* to the Second Schedule of the PAA, and had no discretion to decide otherwise. My reading of the case was that an agreement had to be reached between *all* the beneficiaries before there could be a derogation from the statutorily determined order for the application of assets. The fee agreement between the Fong Sisters and the Plaintiff clearly did not represent an agreement between all the beneficiaries. In the light of this, I did not have to answer the question whether the fee agreement may even be interpreted to have the effect of imposing personal liability for the Plaintiff's expenses on the Fong Sisters.

23 I also disagreed with the fourth and fifth defendants' position that the Peak 2 Property may simply be sold. At the time of my decision, the Peak 2 Property was the subject-matter of two pending suits – OS 687/2015 and S 883/2012. It further bears emphasis that OS 687/2015 was an application brought by the fourth defendant to have the Peak 2 Property sold and for her to

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[18] PBRCP, Tab 7, p 20.

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receive her share of the sale proceeds, a course of action which was being resisted by the Fong Sisters. As noted by the Fong Sisters, the effect of ordering such a sale would be to resolve the disputes in favour of the fourth defendant without the merits being fully ventilated and adjudicated in court.[19] This position was similarly taken by the Plaintiff.[20] I was therefore not minded to order a sale of the Peak 2 Property.

24 I also did not think that the fourth and fifth defendants' objection that granting a mortgage on both Properties would cause injustice to the fifth defendant was meritorious. The basis of this objection was cl 16.1 of the will which, according to the fourth and fifth defendants, meant that the fifth defendant had to solely, and personally, maintain and service any mortgage taken out on the Peak 1 Property. In my view, this interpretation of cl 16.1 was erroneous. Clause 16.1 provided as follows:[21]

> … Upon my death, it is my wish that my son Fong Wei Heng will bear all expenses pertaining to the first apartment from his own funds (even if the trust herein subsists), for which I have in my lifetime made provision. The provisions of clause 11.1 shall not apply to, and the provisions of clause 13 and clause 15.1 and 15.2 shall apply to, the first apartment.
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> [emphasis in original]

25 As was noted by Sundaresh Menon JC (as he then was) in *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453, there are several principles which are pertinent in the construction of a will:

> 58 The principles governing the proper construction of a will are many: see generally, C H Sherrin et al, *Williams on Wills* (Butterworths, 8th Ed, 2002) ("*Williams*"), vol 1 at ch 50; and

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19 Fong Sisters' Written Submissions, para 21.

20 Plaintiff's Written Submissions, para 73.

21 PBRCP, Tab 1, p 17.

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Clive V Margrave-Jones, *Mellows: The Law of Succession* (Butterworths, 5th Ed, 1993) ("*Mellows*") at ch 10. For the purposes of the present application, the following principles may be noted.

59 First, the overriding aim of any court construing a will is to seek and give effect to the testamentary intention as expressed in the words employed by the testator: see Williams at para 50.1. The court's function is not to rewrite the will or to seek to "improve upon or perfect testamentary dispositions": *Re Bailey; Barrett v Hyder* [1951] Ch 407 at 421.

60 *Second, the general rule for ascertaining the meaning of the words used is to read the will as a whole without regard to particular canons of construction*. The following passage from *Williams* at para 50.2 (omitting citations) provides a concise summary:

> **General rule for ascertaining the meaning of words**. For the purpose of ascertaining the intention, the will is read in the first place without reference or regard to the consequences of any rule of law or canon of construction. Words are given the meaning which is rendered necessary by the context of the whole will, the particular passage being taken together with whatever is relevant in the rest of the will to explain it. Where the court finds on the face of the will a clear, general or paramount intention to which effect can be given, and a particular or subordinate intention to which, by reason of some rule of law, the court cannot wholly or partially give effect, or which is inconsistent with or does not carry out all the intentions which the testator has or is presumed to have, then the particular intention must be rejected or modified, and the general intention of the testator carried into effect. … The will itself is taken as the dictionary from which the meaning of the words is ascertained, however inaccurate such meaning would be in ordinary or legal use. The only qualification on the application of this general principle is that a clear context is required in order to exclude the usual meaning of a word.

61 Third, because a court is to construe the will as a whole and is not to adopt a clause-bound view of each part of the will (see *Mellows* at para 10.13; *Leo Teng Choy*, [13] supra at [25]–[26]), a court should pay particular attention to two things. One is the overall architecture of the will, meaning the structural placement of certain words and phrases. If certain clauses are found in one area of the will but not another, this cannot readily be dismissed as being without significance, unless the context indicates otherwise. *The second point is that the intratextual use*

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> *of words, phrases and language is often important. A court should compare and contrast identical words used in different parts of the will so as to elucidate the most complete meaning or intention that should be ascribed to the words used.*
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> 62 Finally, there is a presumption that effect should be given to every word: *In re Sanford; Sanford v Sanford* [1901] 1 Ch 939. A court should not disregard parts of the will as long as some meaning can be ascribed to it and that meaning is not contrary to some intention plainly expressed in other parts of the will: Williams at para 50.15. A testator, in other words, does not will in vain.
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> [emphasis added]

26 From the above passages, it was clear that when interpreting a will, the court should not construe any particular clause in isolation but should interpret that clause against the backdrop of the entire will and take into account, in particular, the words used in other parts of the will. In my judgment, although the phrase "all expenses pertaining to the first apartment" as used in cl 16.1 was seemingly broad, this did not mean that expenses for the overall administration of the estate (*ie*, testamentary expenses), which are incurred through taking out a mortgage on the Peak 1 Property, would fall within its ambit. In this respect, regard should be had to cll 11.1 and 11.3 of the will, which provided as follows:

> 11.1 Subject to the payment of my debts, estate duties and funeral *and testamentary expenses*, and subject further to the provisions of clauses 15.1 and 16 hereof, I give all my real and personal property whatsoever and wheresoever (excepting the rest of my shares or interests in the Company and the Airtrust Group of Companies not comprised in My Shares as hereinbefore defined) comprised in such personal assets (including any property over which I may have a general power of appointment or disposition by will) to my trustee upon trust for my 3 daughters in equal shares …
>
> …
>
> 11.3 It is my wish that all beneficiaries who receive a share of my personal estate bequeathed in this clause shall be liable to pay all liabilities pertaining to the share of my personal estate received by her or him, including estate duty, mortgage loans (if any) of properties and *all expenses incidental to such share of*

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> *my personal estate such as property tax and maintenance fees of properties*, payable from the date of my death.
>
> [emphasis added]

27 While cll 11.1 and 11.3 did not apply to cl 16.1, the words used in those clauses evinced that the testator intended to draw a distinction between "expenses incidental" to the share of the personal estate received and "testamentary expenses". In Francis Barlow et al, *Williams on Wills Volume 1: The Law of Wills* (LexisNexis, 10th Ed, 2014) ("*Williams on Wills*"), the learned authors note that the term "testamentary expenses" signifies expenses which are incidental to the proper performance of the duty of the executor and this would include costs in proceedings properly brought to administer the estate. The mortgages being sought on the Properties were for the purpose of facilitating the administering of the estate and would, therefore, fall within the ambit of "testamentary expenses". It is very unfortunate in this case that the testamentary expenses have become so large as a result of the numerous and protracted disputes.

28 Accordingly, in my view, the phrase "all expenses pertaining to the first apartment", as used in cl 16.1 of the will, was not meant to refer to the servicing of mortgage loans which are taken out on the Peak 1 Property for the purpose of administering the Estate. To interpret this phrase otherwise would lead to the capricious result that this would be the *only* property under the will whereby personal liability would be imposed on the beneficiary of that property, notwithstanding that the expenses which pertained to that property were incurred for the benefit of administering the Estate as a whole. The following passage in *Williams on Wills* at para 51.8 is instructive:

> **Presumption in ambiguous cases.** Without some clear intention on the part of the testator, however, the court does not attribute to him a capricious intention, or a whimsical or harsh result to his dispositions, where the words of the will can

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> be read otherwise. Accordingly, if the language used in a will admits of two constructions, according to one of which the property will go in a rational, convenient and ordinary succession, and according to another in an irrational and inconvenient course, such that the court is driven to the conclusion that the testator is acting capriciously, without any intelligible motive, and contrary to the ordinary mode in which men act in similar cases, the court leans towards the former as what was intended, although a meaning is thereby given to the words different from their ordinary meaning.

Indeed, the Fong Sisters and the Plaintiff take the similar position that the costs of the Estate should be borne proportionately across the assets of the Estate.[22]

29 Accordingly, I rejected the fourth and fifth defendants' argument that injustice would be caused to the fifth defendant if a mortgage on the Peak 1 Property was allowed. While I did recognise that the taking out of such mortgages would inevitably lead to increased expenses being incurred as a whole, this option was preferable to selling the Peak 2 Property (see above at [23]). I also agreed with the Fong Sisters' argument that with mortgages being taken out on both the Properties, it "would … have the benefit of acting as a disincentive to the beneficiaries to commence or proceed with frivolous legal actions which would ultimately deplete the Estate's assets".[23]

30 In the light of all the circumstances, I allowed Prayer 3 in terms.

Prayer 1 – discharge of the Plaintiff as executor

31 Having decided as I did for Prayers 1 and 2, the Estate would now have funds to meet both the outstanding and future expenses incurred for

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[22] Fong Sisters' Written Submissions, para 23; Plaintiff's Written Submissions, para 76.

[23] Fong Sisters' Written Submissions, para 24.

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administering the estate. This had a significant bearing on my decision to refuse the Plaintiff's application to be discharged as executor.

32 I also took into account the fact that when deciding whether to discharge an executor, the interests of the beneficiaries had to be the primary concern (see *eg*, *Ligar Fernandez v Eric Claude Cooke* [2002] MLJ 77; *Jigarlal Kantilal Doshi v Damayanti Kantilal Doshi* [2000] 3 SLR(R) 297 at [17]). This consideration would be equally pertinent in a case such as the present, *ie*, where the executor is seeking its own discharge as compared to the more common scenarios where the beneficiaries are the ones seeking a discharge of the executor. In *Gonder v Gonder Estate* [2010] ONCA 172, the motion judge allowed an application of the estate trustees to have themselves discharged on the basis that their continued service would work substantial hardship on them, both physically and financially, and also that through no fault of their own, they now had a conflict of interest with the beneficiaries as they were now creditors of the estate (see [15]). On appeal, the Ontario Court of Appeal remitted the issue back to the motion judge. The Court of Appeal observed that the removal of a sole trustee without appointment of a replacement was an extreme remedy and would be inappropriate in most cases. It went on to hold that although the facts of that case were so exceptional as to warrant a discharge of a sole trustee without the appointment of a replacement, the motion judge had erred in failing to craft a mechanism by which the estate could continue to be administered without the service of a trustee. It was, therefore, evident that the interest of the beneficiaries and the continued effective administration of the estate were the primary concerns undergirding the Ontario Court of Appeal's decision.

33 On the present facts, given the slew of lawsuits which the Estate still had to defend, it was evident to me that the Estate required the services of an executor. No viable replacement, however, was suggested to me should the

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Plaintiff be discharged. At the various hearings before me, I asked the parties whether they could propose a viable nominee – none of them were able to assist. The Plaintiff's suggestion to appoint the Fong Sisters was clearly not feasible since the Fong Sisters were adversely positioned against the Estate in S 883/2012. In addition to that, OS 687/2015 was a case which pitted the interests of the Fong Sisters against those of the fourth defendant. As noted in *Halsbury's Laws of Singapore* vol 15 (LexisNexis, 2013 Reissue) at para 190.056, the court will not appoint a new executor where the effect will be to consider only the wishes of some beneficiaries as against the others. I also took into account the fact that the beneficiaries were in a fractious relationship, in particular as between the Fong Sisters and the fourth and fifth defendants. Mr Jason Chan, counsel for the fourth and fifth defendants, confirmed that his clients could proffer no one who could be a replacement executor. Mr Chan also very correctly and fairly accepted that none of the beneficiaries were suitable as executors due to the various legal proceedings that were afoot and if the Plaintiff was discharged, it would be necessary to appoint another professional executor. In the circumstances, I did not think that it was appropriate for me to appoint the Fong Sisters as replacement executors of the Estate.

34 Further, I did not think that significant prejudice would be caused to the Plaintiff if they remained executor of the Estate now that funds would be available to it. While I noted that the Plaintiff had expressed some unwillingness to continue working with the beneficiaries, in particular, the Fong Sisters,[24] friction and hostility between representative and beneficiary is not of itself a reason for removal of the representative (see *William, Mortimer and Sunnucks*

[24] Minute Sheet of Quentin Loh J, 14 August 2015, p 6.

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on Executors, Administrators and Probate (John Ross Martyn and Nicholas Caddick gen eds) (Sweet & Maxwell, 2013) at para 62–1).

35 Therefore, I dismissed Prayer 1 but granted the Plaintiff liberty to apply as and when it is able to nominate a viable replacement.

Costs

36 Having considered the parties' submissions on costs, I grant the Plaintiff costs in the sum of $15,000 all in. While the Plaintiff did not succeed on Prayer 1, it did succeed on Prayers 2 and 3. I also take into account the fact that, not having been paid since 2013, the Plaintiff was left with no option but to bring the present application. The costs to be paid to the Plaintiff are to be borne equally as between the Fong Sisters and the fourth and fifth defendants. This means that $7,500 will be paid by the Fong Sisters and $7,500 will be paid by the fourth and fifth defendants.

37 As between the Fong Sisters and the fourth and fifth defendants, I note that there was no material difference in their positions with respect to Prayers 1 and 2. However, as for Prayer 3, the Fong Sisters had to rebut the fourth and fifth defendants' argument that a sale of the Peak 2 Property should instead be ordered. Therefore, insofar as the Fong Sisters were "successful" with respect to Prayer 3, and the fourth and fifth defendants were not, I order that the fourth and fifth defendants are to pay costs in the sum of $7,000 all in to the Fong Sisters.

Conclusion

38 In conclusion, I would take the opportunity, once more, to urge the parties involved to seek an amicable resolution to their disputes. As they

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continue their feuding, they will only deplete the assets of the Estate and there will come a point in time when all the assets have to be liquidated to pay the professionals so employed. This would be of no benefit to any of the beneficiaries.

Quentin Loh
Judge

Sarjit Singh Gill, SC, Stephanie Wee and Vincent Lim (Shook Lin & Bok LLP) for the plaintiff;
Kee Lay Lian and Rachel Chow (Rajah & Tann LLP) for the first to third defendants;
Jason Chan, Clement Tan and Seow Wan Jun (Allen & Gledhill LLP) for the fourth and fifth defendants.

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