

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

[2024] SGHC 295

Originating Applications Nos 1100 and 1101 of 2024

In the matter of s 13(1) of the Trustees Act 1967

And

In the matter of two Deeds of Declaration of Trust dated 21 December 2020

And

In the matter of the application by

Cai Jinhong

... Applicant

JUDGMENT

[Trusts — Variation — Statutory jurisdiction of court]

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Re Cai Jinhong

[2024] SGHC 295

General Division of the High Court — Originating Applications Nos 1100 and 1101 of 2024

Choo Han Teck J

12, 19 November 2024

22 November 2024

Judgment reserved

Choo Han Teck J:

1 The applicant makes these two applications for the court's sanction to sell two properties which he is holding on trust, one for his daughter, aged eight, and the other for his son, aged 13. On 21 December 2020, the applicant signed two deeds of declaration of trust ("the trust deeds"). The trust deeds declared that the applicant had purchased two properties at Chin Swee Road under his sole name for the benefit of his daughter and son respectively. He declared that the first property (for the daughter's benefit) was purchased at \$1,434,000, with \$645,300 of that sum still outstanding. The second property (for the son's benefit) was purchased at \$975,000, with \$438.750 of that sum still outstanding. I shall collectively refer to these properties as "the properties".

2 The applicant now wishes to sell the properties. According to him, his savings are "fast dwindling", and he fears that he may not be able to continue paying the outstanding sums for the properties. This is compounded by his employment being subject to market forces, and the possibility of being let go

from his job (like some of his colleagues). His parents, who are advanced in age, also require monetary support from him. Finally, there is also an outstanding mortgage over the applicant's family home at Serangoon Avenue 3, which he is paying monthly through CPF and cash. In view of these financial demands and financial uncertainty arising from his employment, the applicant believes that it would be prudent, and in the interest and benefit of the children, to sell the properties while the market price for properties is strong. The applicant proposes to keep the net sale proceeds of the two properties in trust accounts for the daughter and son respectively. He then proposes to use these proceeds to either buy another affordable property, or use the proceeds to send the children to the United States of America or United Kingdom for their tertiary education. In the interim, the daughter and son will continue to stay with the applicant and his wife until they reach 21 years old.

3 The applicant, through his counsel Mr Troy Yeo ("Mr Yeo"), asks the court to sanction the sale pursuant to s 13(1) of the Trustees Act 1967 (2020 Rev Ed) ("the Act"). However, the applicant fails to meet the requirements for s 13(1) of the Act to apply. Section 13(1) provides:

13.—(1) Where a trust for sale or a power of sale of property is vested in a trustee, the trustee may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss.

4 It is clear that the trustee's power provided by s 13(1) of the Act is predicated on the trustee's power of sale as provided by a trust. The trust deeds, however, do not vest either a trust for sale or a power of sale of property in the trustee. Instead, they empower the trustee to deal with the properties "at the

request" of the daughter and son respectively. But the daughter and son are minors and thus have no legal capacity to direct the trustees to deal with the two properties. Aside from the power to deal with the properties as the beneficiaries direct (which stems from the trustee's basic duty to obey the beneficiaries' instructions), the trustee has no power under the trust deeds to sell the properties on his own accord. The applicant-trustee thus cannot rely on s 13(1) of the Act to sell the two properties.

5 In my view, the applicant should have applied under s 56(1) of the Act instead, which provides:

56.—(1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument (if any) or by law, the court may —

- (a) by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on any terms, and subject to any provisions and conditions that the court thinks fit; and
- (b) direct in what manner any money authorised to be expended and the costs of any transaction are to be paid or borne as between capital and income.

6 The applicant wishes to sell the two properties which he holds on trust for the children. The trust deeds do not grant him this power to do so without the children's consent. Such consent is impossible to obtain for now because the children presently lack the capacity to grant such consent, or otherwise direct the applicant to deal with the properties. The applicant has to apply for the court to confer upon him the power to sell the properties without the children's consent or directions. The applicant (or his counsel) must then persuade the court that the requirements under s 56 of the Act are satisfied. These

requirements are elucidated in *Ernest Ferdinand Perez De La Sala v Compañía De Navegación Palomar, SA and others* [2020] 1 SLR 950 (“*Ernest Ferdinand*”) at [22]:

- (a) an act unauthorised by a trust instrument,
- (b) to be effected by the trustees thereof,
- (c) in the management or administration of the trust property, and
- (d) which the court will empower them to perform if in its opinion the act is expedient.

7 In this case, the applicant did not apply under s 56(1) of the Act, or target his affidavit or submissions to that provision’s requirements. Nonetheless, in my view, the court may exercise its power under s 56(1) even if it is not asked to do so. This is especially so where an applicant has already provided facts and evidence which satisfies the court that the requirements under s 56(1) are met.

8 The first three requirements are clearly met in this case. The main issue is whether selling the properties is expedient. The element of expediency “requires that the proposed transaction be for the benefit of the whole trust, in that it facilitates better administration and management of the trust as a whole”: *Ernest Ferdinand* at [38]. In this case, the administration and management of the trust depends on the applicant’s financial means. If he is unable to make further payments for the properties, or is unable to pay off his other debts as a result of paying the two properties, the properties may have to be used to repay the mortgages over the properties, which would reduce the monetary value of assets available under the trust deeds. I thus find that it is expedient for the applicant to sell the properties.

9 For these reasons, the applications are allowed. I order that the properties be sold within six months of this Judgment. The applicant shall open

one trust account for the daughter and another for the son. After deducting the expenses of sale, he shall deposit the balance proceeds from the sale of the first property into the trust account for the daughter, and deposit the balance proceeds from the sale of the second property into the trust account for the son. The applicant shall be required to file an affidavit within two weeks after the completion of each sale, exhibiting the balance of the two accounts, the sale documents of the two properties, and documents showing the expenses arising from the sale of the two properties. This is to satisfy the court that all the balance proceeds from the sale be put in the respective trust accounts. Costs of this application may be paid out of the trust. There shall be liberty to apply.

- Sgd -
Choo Han Teck
Judge of the High Court

Yeo Siew Chye Troy (C K Tan Law Corporation) for the applicant.
