

**DALAM MAHKAMAH TINGGI MALAYA KUALA LUMPUR
(BAHAGIAN SIVIL)
GUAMAN NO: S6-22-411-2008**

ANTARA

1. NG KOK SENG

2. NG KWOK WENG.....PLAINTIF

DAN

NG MEI LING a.k.a MEI LING NG.....DEFENDAN

GROUND OF JUDGMENT

Enclosure 31 is the Defendant's Application to discharge paragraphs (a) and (b) of the Order dated 9.7.2008 in respect of Enclosure 4.

BACKGROUND FACTS

The late Ng Cheong Choy (the "Deceased") had 4 lawful children during his lifetime, i.e:

- (a) Ng Kwok Seng (the 1st Plaintiff) ;
- (b) Ng Kwok Weng, (the 2nd Plaintiff) ;
- (c) Ng Mei Ling a.k.a Mei Ling Ng (the Defendant) ; and
- (d) Ng Kwok Wai, who passed away on 3.3.2007.

Pursuant to a will dated 15.03.2007 made by the Deceased, the Defendant was appointed the sole executor and trustee of his Estate, and the Plaintiffs and the Defendant are beneficiaries to the Estate under the Will.

The Deceased passed away on 29.03.2007.

The Deceased in his lifetime had maintained the following Bank account which was held jointly in his name and the Defendant's:

- (a) Public Bank, Jalan Sultan Sulaiman, Account No. 3-I06-58943-6 ("the "PBB Joint Account");
- (b) HSBC, Bukit Bintang, Account No. 203-283833 (the HSBC Joint Account) ;
- (c) HSBC Private Bank Singapore Account No. 8212-331217-0001; and
- (d) Hong Leong Bank Singapore Account No. 90-00-05244-4.

The Plaintiffs' contend that the monies in the PBB and HSBC joint account form part of the Deceased's Estate and should therefore be divided amongst all his children in accordance with his will for the following reasons:

- (a) Prior to his death, the deceased had maintained a joint account with the late Ng Kwok Wai when the latter was alive to facilitate the withdrawals of the monies in the account for his daily needs and also due to his old age.
- (b) With the demise of Ng Kwok Wai, the deceased transferred RM 955,000.00 of his monies from the Hong Leong joint account no. 00100040472 previously held with the late Ng Kwok Wai to the PBB Joint Account held with the Defendant, out of which PBB Joint Account had been opened in June 2006.
- (c) The Deceased also transferred his monies (cash and unit trusts) from his personal account into the HSBC Joint Account after Ng Kwok Wai died.
- (d) After the death of the deceased, the Defendant sold the unit trusts, transferred all the cash proceeds and cash balances from the HSBC joint account to her personal account and closed the HSBC joint account.

The Deceased in his Will dated 15.03.2007 had bequeathed and devised all his assets including "all monies deposited with any financial institution or otherwise" to his beneficiaries.

The Deceased had also executed written statements of intent while he was alive evidencing his intentions that after his demise, the balances left in his joint accounts were to be divided amongst all his children and not merely to the joint account-holder .

The Defendant contends that all monies in the joint account including the PBB and HSBC Joint Accounts belongs to her solely and not to the Estate.

After the death of the deceased:

- the Defendant had withdrawn a sum of RM 956,870.27 from the PBB Joint Account as well as monies from the HSBC Joint Account and subsequently banked in the said sums into her own personal accounts; and
- the Defendant had transacted the sale of shares and securities held by the deceased himself under a Central Depository System (“CDS”) account in his sole name and paid the proceeds of the same into her own personal account.

The Plaintiffs therefore filed this suit vide Writ of Summons and Statement of Claim dated 04.04.2008 seeking, inter alia, the following reliefs-.

- (a) A declaration that the monies held or formerly held in the PBB Joint Account and the HSBC Joint Account belong to the Estate of the deceased; and

(b) That the Defendant provide a true and perfect account of all the moneys held or formerly held in the PBB Joint Account and the HSBC Joint Account. .

The Plaintiffs also applied to Court pursuant to Summons in Chambers dated 04.04.2008 (Enclosure 41) and Summons in Chambers dated 28.04.2008 (Enclosure 10) for interim relief, amongst others to preserve the monies derived from the PBB and HSBC Joint Account pending disposal of this suit.

The Plaintiffs' applications for interim relief in Enclosure 4 and Enclosure 10 were heard by the learned Judge and allowed with costs, as follows-

(a) Pursuant to the Order dated 09.07.2008 in respect of Enclosure 4 (the "Enclosure 4 Order"), it was ordered, inter alia, that:

- (i) The Defendant whether by herself, her servants and/or agents and or otherwise be restrained from removing or in any way disposing of and/or dealing with in any manner whatsoever and/or diminishing the value of the monies in the "PBB and or HSBC Joint Accounts or any other bank account wherever situated that is derived from and/or transferred from the PBB and/or HSBC Joint Accounts; and

- (ii) In the event that the monies or any part thereof that are derived from and/or transferred from the PBB and/or HSBC Joint Account have been paid out or utilized by the Defendant, the Defendant shall cause the payment of such sums into Court pending the Court's determination of this matter.

Pursuant to the Order dated 09.07.2008 in respect of Enclosure 10, it was ordered, inter alia, that the Defendant to produce to the Plaintiffs a true and perfect account of all the moneys held or formerly held in the PBB and/or HSBC Joint Accounts and/or moneys in any other account wherever situated that is derived from and/or transferred from PBB and/or HSBC Joint Accounts within 2 weeks from the date of this order.

The Defendant has appealed to the Court of Appeal against the Enclosure 4 Order and the Enclosure 10 Order, which to date have not been heard.

The Defendant's application in Enclosure 31

I dismissed the application of the Defendant in Enclosure 31 with costs for the following reasons:

- a) Court is functus officio and the matter is res judicata

Paragraphs (a) and (b) of the Order dated 9.7.2008 in respect of Enclosure 4 was an order given by the Court, and for this court to revisit the order, would tantamount to altering or varying the said

order. It is trite law that a final decision of a court could not be reopened. The power to reopen a dispute is with the Court of appeal. The only exception is where there had been a slip in drawing it up and where there had been an error in expressing the intention of the court. In our case none of these exceptions is present. The court is thus functus officio.

The matter or issues had been adjudicated upon and the principle of res judicata applies as parties cannot relitigate on the same issues which have been decided by the court;

b) Abuse of Process

The attempt by the Defendant to introduce new evidence i.e. the letter of Dato' Dominic Puthuchearry at this stage, is an abuse of process of this court. The Defendant is clearly trying to circumvent the provisions of the law as to the introduction of new or fresh evidence on appeal. The hearing herein is certainly not an appeal. It is effectively an application in disguise to set aside the previous order of the court in relation to Enclosure 4.

A point to note is that the purported "new evidence" is a letter from Dato' Dominic Puthuchearry and not made on oath. In any event, as of now it is not credible due to the following reasons:

- (i) Dato' Dominic Puthuchearry was the solicitor who drawn up the will and he was present at the reading of the will on 2.4.2007 when the issue of joint accounts

were raised and discussed between the Plaintiffs and the Defendant.

- (ii) There were numerous meetings between 2.4.2007 and the date of the letter 28.7.2008 at which Dato' Dominic Puthuchery, the Plaintiffs and the Defendants were present. However the Defendant only attempted to bring this "new evidence" on 14.7.2008 which is about 16 months after the reading of the will and also after the Court had granted the order for Enclosure 4.
- (iii) Dato' Dominic Puthuchery had purportedly been informed by the Deceased on 14.3.2007 that the monies in the joint accounts, which were the only bank accounts held by the Deceased at that time, were to be given to the Defendant and yet Dato' Dominic Puthuchery had at the very same time drawn up a will which was signed on 15.03.2007 providing that all monies of the Deceased deposited with any financial institution were to be divided amongst the beneficiaries.
- (iii) No explanation were adduced by Dato' Dominic Puthuchery as to the very late disclosure of his purported conversation with the Deceased on 14.03.2007.

c) Non Compliance of the Enclosure 4 Order

One of the orders of Enclosure 4 is for the Defendant to produce to the Plaintiff a true and perfect account of all the monies held or formerly held in the PBB and HSBC Joint Accounts and/or monies in any other account wherever situated that is derived from and/or transferred from the PBB and HSBC Joint Accounts within two weeks from the date of the order.

The Defendant has refused to provide the documentation requested for the Plaintiffs to verify the placement of the monies derived from the PBB and HSBC Joint Accounts. The Defendant however allowed the Plaintiffs to view documents relating to the PBB and HSBC Joint Accounts to confirm the amount withdrawn from the said joint accounts and transferred to the Defendant into her personal accounts.

From the documents it shows the following:

- there appears to be an unexplained shortfall of RM193,509.78 from the PBB Joint Account which remains unaccounted for.
- A further sum of approximately RM 270,751 being proceeds from the sale of shares belonging to the deceased, dividends and and capital repayments has not been accounted for by the Defendant.
- The HSBC Joint Account comprising a total sum of RM887,566.46 was closed by the Defendant after the Deceased's

death. However, the Defendant's personal HSBC Premier Account balance as at statement dated 16.09.2008 was only RM 273,885.19. There is therefore an unexplained shortfall of RM 613,999.07 from the HSBC Joint Account which remains unaccounted for.

The Defendant has however approximately some 15 Fixed Deposit Certificates totaling RM898,374.29.

The Defendant has not provided particulars as to where and/or which of the Defendant's personal accounts the joint account monies had been transferred to as well as the balances as at the date of the Order of Court.

Therefore the defendant has not fully complied with the Court Order.

To sum up, there is no ground for this court to exercise its discretion in granting the application prayed for. I therefore dismissed the application of the Defendant with costs.

Datin Zabariah Mohd Yusof

Tarikh : 10.6.2009

Bagi Pihak Plaintiff : Cik Nicole Wee & Cik Shobana Chandrasegaran
Tetuan Chooi & Co

Bagi Pihak Defendant : Encik Sean Yeow & R. Himahlini
Tetuan Lee Hishamuddin, Allen & Gledhill.