

Oh Chun Moy and others v Oh Bee Bee
[2011] SGHC 220

Case Number : Originating Summons No.183 of 2011/M
Decision Date : 30 September 2011
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Albert Teo (PKWA Law Practice LLC) for the plaintiffs; Eddie Lee (CP Lee & Co) for the defendant.
Parties : Oh Chun Moy and others — Oh Bee Bee

Probate and administration – administration of assets

30 September 2011

Lai Siu Chiu J:

1 On 7 March 2011, Oh Chun Moy, Oh Ah Yen and Oh Kim Kee (“the first, second and third plaintiffs” respectively) in their position as trustees of the estate of Oh Chin Seong (“the Estate”) filed Originating Summons No. 183 of 2011 (“the OS”) against Oh Bee Bee (“the defendant”) praying *inter alia* for the following orders under s 41 of the Trustees Act (Cap 337, 2005 Rev Ed) (“the Trustees Act”) and s 67 of the Probate and Administration Act (Cap 251, 2000 Rev Ed) (“the Probate and Administration Act”):

- (a) That the defendant furnish proper particulars and accounts of the assets and liabilities of the Estate;
- (b) An inquiry be held and an account of the funeral and testamentary expenses of Oh Chin Seong (“the Deceased”) be taken;
- (c) An inquiry be held to determine what sums have been expended or liabilities incurred by the plaintiffs and the defendant or some or one of them in respect of which they or some or one of them are entitled to be indemnified out of the whole or any part and what parts of the Estate; and
- (d) That upon the inquiries being held, the defendant take immediate steps to sign all cheques with the plaintiffs to complete the administration of the Estate and distribute the Estate to all six beneficiaries within one (1) month from this order.

2 Upon hearing the parties, I granted orders in terms of prayers (a), (b), (c) and (d) and awarded costs of \$800 to the plaintiffs excluding disbursements which would be paid on a reimbursement basis by the defendant.

3 In regard to prayer (c), I further ordered the plaintiffs as trustees of the Estate to reimburse the defendant the sums of \$1,763.91 and \$1,004 for funeral/probate expenses and expenses relating to the sale of the property situated at Block 672, Woodlands Drive 71 #08-77, Singapore 730672 (“the flat”). In addition and provided the defendant was able to furnish supporting documents by way of invoices and/or receipts, the defendant was entitled to be reimbursed whatever commission (limited

to 2%) that she had paid for the sale of the property excluding any service fee claimed by the defendant's husband (who was not entitled to the same). Other than the defendant, the second and third plaintiffs were entitled to be reimbursed \$1,763.91 each while the first plaintiff was entitled to be reimbursed \$1,853.91 for expenses similarly incurred by them.

4 Under prayer (d), I ordered that only the plaintiffs and the defendant were entitled to be paid their shares from the Estate. The shares due to Oh Kian Chun ("OKC") and Oh Kian Tong ("OKT") from the Estate were not to be distributed for a period of six months from the date hereof pending any claim by the defendant to their shares. If the defendant failed to make her claim by 1 December 2011, the plaintiffs were at liberty without the defendant's consent to release the shares to the aforesaid OKC and OKT which release would be a valid discharge at law to the plaintiffs as trustees.

5 The defendant is dissatisfied with the above orders and has filed a notice of appeal (in Civil Appeal No. 74 of 2011) against my decision. I now set out the reasons for my decision.

The facts

6 The facts for the OS are to be found in the affidavits filed by the parties, two joint affidavits were filed by the plaintiffs and one by the defendant. According to the first joint affidavit filed by the plaintiffs, they are the sisters of the defendant and all four are the administrators as well as beneficiaries of the Estate of the Deceased (their late father) who passed away on 10 June 2007. The beneficiaries of the Estate also included the parties' brothers OKC and OKT.

7 The plaintiffs alleged that the defendant was in control and continued to be in control of matters relating to the Estate especially the accounts. They deposed that the defendant had sold the flat in [3] which was an asset of the Estate, which sale was completed on 29 October 2010. The plaintiffs' solicitors had written on 22 October 2010 to the defendant to ask for accounts of the Estate. The defendant and her husband Ng Peng Guan ("Ng") had, in a meeting with the plaintiffs' solicitors on 27 October 2010 agreed to provide the accounts and to deposit the sale proceeds of the flat into a bank account to be set up for the Estate and which would be operated by all four administrators.

8 The Estate's bank account was duly opened with United Overseas Bank Limited on 29 October 2010 and the net sale proceeds (\$278,376.25) of the flat deposited into the same. However, although the bank account was opened in the names of the four administrators, the plaintiffs had no access to the monies as the defendant held the cheque book. The defendant had also collected the initial \$5,000 deposit paid by the buyers.

9 On or about 28 November 2010, the defendant and Ng met the plaintiffs' solicitors again to furnish the accounts. The documents included vouchers and receipts for expenses purportedly incurred on behalf of the Estate for which the defendant sought to be reimbursed.

10 Meanwhile, on 24 November 2010, the solicitors acting in the administration of the Estate furnished the plaintiffs' solicitors with details of various bank accounts of the Estate.

11 On 7 December 2010, the plaintiffs' solicitors wrote to the defendant to inform her of the items and quantum of expenses that the plaintiffs agreed or objected to, as being claimable from the Estate. The plaintiffs indicated they would not agree to the defendant's intention to pay Ng for various items of expenses that were not agreed by them nor would they agree to her claim for rent for keeping the Deceased's ancestral tablet at her residence. The plaintiffs also informed the defendant they did not wish to make a claim against some Maybank deposits/accounts that were held

in the joint names of the Deceased, OKT and OKC. Neither would the plaintiffs pursue any claims against two bank accounts of the Deceased, one maintained with UOB and the other with Maybank. The plaintiffs' solicitors made a proposal for distribution of the Estate in the same letter.

12 On 12 December 2010, the defendant rejected the plaintiffs' claims/proposals but gave no specific reasons, stating only that she would seek legal advice. The plaintiffs' solicitors sent the defendant a reminder on 17 December 2010 to which the defendant responded on 19 December 2010 repeating her intention to seek legal advice. On 4 January 2011, the plaintiffs' solicitors wrote again to the defendant giving her another two weeks to respond.

13 On 6 January 2011, the defendant made various allegations against the second plaintiff (that the second plaintiff and/or her husband was/were indebted to loan sharks who harassed the purchasers of the flat). The plaintiffs' solicitors pointed out the allegations were irrelevant to the matter at hand. Despite another reminder from the plaintiffs' solicitors dated 26 January 2011, the defendant did not respond.

14 After the commencement of the OS, the defendant finally responded to the plaintiffs' allegations by affidavit. In her affidavit, the defendant contended that the plaintiffs' allegations were misconceived claiming she had given full particulars of expenses incurred by her on behalf of the Estate.

15 The defendant alleged that after the demise of the Deceased, OKT and OKC made no attempts to apply for letters of administration despite the former being the eldest son of the Deceased. It was she who decided with the help of Ng, that she and the plaintiffs would apply for letters of administration. It was not an easy task as OKT and OKC refused to give their consent to the application and the plaintiffs/she had to apply to court for dispensation of the consent of the two brothers. It took two years for the grant of letters of administration to be issued on 3 February 2010.

16 The defendant deposed she objected when the plaintiffs wanted to distribute the net sale proceeds of the flat to all six beneficiaries including the two brothers as the latter had withdrawn \$110,159.77 ("the sum") from the UOB and Maybank accounts of the Deceased, which were part of the assets of Estate, without the consent or knowledge of the plaintiffs and yet, they chose not to pursue the matter. She disagreed with the plaintiffs' stand (as conveyed to her by the Estate's solicitors) that they would not take any action (in order to avoid further acrimony within the family, and also because it was not cost effective and they had no right to do so) and if the defendant wanted to take action against the brothers, she would have to do so in her personal capacity.

17 The defendant did not accept the plaintiffs' decision, pointing out that \$10,482.57 of the sum was withdrawn using an ATM card whilst the balance of \$99,883.89 had been withdrawn from a joint account the Deceased held with one of the two brothers.

18 The defendant disclosed in her affidavit a Tat Lee Bank statement dated 26 August 2000 showing total deposits of \$166,233.28 in the joint account maintained by the Deceased with his wife Poh Kim Ho (the parties' mother who passed away on 5 July 2005) and a fixed deposit advice from OCBC Bank of a joint account she had with the Deceased. She listed out (purportedly from a notebook kept by the Deceased) joint bank deposits that the Deceased had maintained with her late mother or with his various children but there were no independent bank documents from the defendant to support the list she produced.

19 The plaintiffs took exception to the defendant's allegations and assertions in their reply affidavit. First, they denied her allegation that they intended to distribute to the brothers their

brothers' shares of the Estate. The plaintiffs deposed that they had made proposals (through their solicitors) to the defendant to distribute what assets they could of the Estate and later resolve the dispute of the withdrawal of the sum with the brothers but the defendant had refused. The defendant had further insisted on being reimbursed certain sums that they did not agree to.

20 The plaintiffs pointed out that the defendant did not produce any evidence to corroborate the balances that were standing in the Tat Lee Bank and OCBC accounts of the Deceased on the date of his demise. Statements of the bank accounts would enable the plaintiffs to know what withdrawals had been made by comparing the balances as of 10 June 2007 (date of demise) with balances when the accounts were closed. Similarly, it would have been useful if the defendant had produced statements from UOB and Maybank showing the withdrawals of the sum by the two brothers and the balances when the two accounts were closed.

21 On the other hand, the plaintiffs deposed they had evidence showing that after the Deceased's demise, the defendant had made use of the flat as storage space for goods for the business she carried out with Ng who is a bankrupt. The plaintiffs surmised that it was because of Ng's bankruptcy that the defendant wanted to obtain money from the Estate.

22 Finally, the plaintiffs complained that the defendant had been uncooperative in her conduct. She failed to respond when the plaintiffs' solicitors wrote to her on 14 April 2011 asking that she let them know what was agreed or not agreed to in this OS.

The decision

23 I made the orders set out earlier in [\[1\]](#) because from a perusal of the affidavits filed by the parties and the exhibits attached thereto, it was clear to me that the defendant had not produced to the plaintiffs' satisfaction the accounts of the Estate as she claimed she had, and she was not truthful in her affidavit.

24 I start by referring to the expenses that the defendant claimed she had incurred on the Estate's behalf or, were allegedly owed to her by the Estate. The defendant had handed the alleged accounts to the plaintiffs' solicitors when she and Ng visited their office on 28 November 2010. The figures are placed in three categories below depending on whether the plaintiffs accepted liability for the items as well as the quantum, accepted liability for the items but not the quantum or totally rejected the items. The serial numbers stated were those set out in the plaintiffs' solicitors' letter dated 7 December 2010 to the defendant.

A. Items (including quantum) that the plaintiffs accepted

	Particulars	Amount
S/No.6	Lawyer's fees	\$4,745
S/No. 7	Commissioner for Oaths' fees	\$90
S/No. 8(a)	Sweeping of tomb and removal of grass	\$120
S/No. 9	Deceased's 1 st anniversary prayers	\$551
S/No. 10	Deceased's combined altar for 3 years	\$978
S/No. 11	Setting up of ancestral tablet at defendant's residence	\$185

S/No. 12	Change of lock	\$35
S/No. 15	Utilities	\$1188.28
S/No. 16	Registration fee of HDB for sale of flat	\$80
S No. 17	HDB's charges for transfer procedure	\$189.50
S/No. 18	Fee for Death Certificate	\$65
S/No. 19	HDB lawyer's fees	\$288.85
S/No. 20	HDB completion fee	\$38.30
S/No. 23	Photocopying charges	\$5.75
Total:		\$8,559.68

(Plaintiffs' counsel's figure of \$8,594.68 is incorrect.)

B Items accepted by the plaintiffs but at reduced amounts

S/No. 1	\$816 reduced to \$408 for funeral ancillary expenses.
S/No. 3	\$280 reduced to \$100 for red incense expense.
S/No. 4	\$580 reduced to \$200 for cleaning services.
S/No.5	\$650 reduced to \$200 for removal service charge.
S/No. 21	\$1,385 reduced to \$96 for red packet expenses for setting up a deity and prayer table.
Total	\$1,004

C. Items that were rejected by the plaintiffs

	Particulars	Amount
S/No. 2	Transportation expenses and salary of Ng for one week in November 2007.	\$750
S/No. 8(b)	Transport cost.	\$210
S/No. 13	3% service fee for Ng as agent. 1% fee to Ng.	\$12,600 \$4,200
S/No. 14	10 months' rental of ancestral tablet space at the defendant's residence.	\$6,000
S/No. 22	Being expenses for setting up deity and prayer table and rental for ancestral tablet space at the defendant's residence -\$600 x 6months.	\$3,600

Total:	\$27,360
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(Plaintiffs' counsel's estimate of \$23,760 is incorrect.)

I had totalled up a sum of \$7,055.65 in category A being the items the plaintiff had agreed to reimburse the defendant but as the plaintiffs had paid for the items equally, the defendant was only entitled to be reimbursed a quarter of those items. Consequently, I divided the sum by four so that the defendant's share was \$1,763.91 which sum was awarded to her. The first plaintiff's share was increased by \$90 (\$1,763.91 + \$90) as she had paid the entire \$90 in serial no. 7 which the other three administrators did not bear. It would appear from [24A] above that \$7,055.65 should now be substituted by \$8,469.68 (revised total of \$8,559.68 less \$90) and the defendant's one-fourth share should now be \$2,117.42 instead of \$1,763.91 while the first plaintiff's share should be increased to \$2,207.42 (\$2,117.42 + \$90).

25 For category B, the plaintiffs had reduced the defendant's five items of claim relating to funeral expenses to \$1,004 and I similarly awarded her the sum.

26 The defendant was not awarded any items that she had claimed in category C for the reason that she provided no supporting documents. However, my order in [3] gave the defendant an opportunity to furnish proof to enable her to be reimbursed (if she had indeed paid) the standard commission paid to estate agents of 2% of the sale price of an HDB flat for brokering the sale. Ng however was not entitled to any remuneration from the Estate as claimed or at all.

27 Cause book searches conducted by the plaintiffs which were exhibited in their second affidavit showed that Ng was the subject of various bankruptcy proceedings and was adjudged a bankrupt on 19 February 2009. When the sale of the flat was completed on 29 October 2010, Ng had been a bankrupt for more than a year. As an undischarged bankrupt, Ng's estate is under the charge of the Official Assignee ("OA") and if he was indeed employed as a housing agent or even acted on a freelance basis as one, he should have informed the OA as his creditors would be interested in his income therefrom and whether he earned enough to discharge his debts.

28 Further, apart from her bare statement on her husband's behalf, there was nothing to support the defendant's claim that Ng was instrumental in finding the buyer(s) of the flat. The plaintiffs had in their first affidavit exhibited a handwritten note purportedly from Ng addressed to the defendant that stated as follows:

1/7/2010

Re: Blk 672, Woodlands Defendant 71, #08-77, S (730672) – service fee

As agreed, 3% service fee if sale price will be given to achieve and perform the following:

- (a) clean and clear, maintain the flat for viewing
- (b) sale in high price (min \$400,000) at least within 1½ months only
- (c) to attend all viewing.
- (d) shift God's & Oh Chin Seong Mr, Mrs, grandparent tablet
- (e) housing agent fees
- (f) to attend to all other matters during the sale and purchase process.

As agreed

(signed) Oh Bee Bee

(signed) Ng Peng Guan

29 The handwritten note was at best self-serving. If indeed Ng found the buyers of the flat, he should have informed the plaintiffs (since they are the other administrators of the Estate) and obtained their agreement to his being paid a commission as well as the rate he claimed of 3%, for the six services set out above (assuming he provided them]. Obtaining only his wife's agreement to the commission payment would not suffice, as her agreement cannot bind the other administrators of the Estate. Equally self serving and unacceptable were two receipts issued by Ng to the defendant dated 1 November 2007 and 1 June 2008 in the sums of \$750 and \$816 respectively, purportedly for "transport and services during inquiry and finding buyers" and for "prayer 10 June 2007 to 10 June 2008".

The Law

30 Before going further, it would be appropriate at this juncture to look at the law relevant to the OS. The application was made under S 41 of the Trustees Act. The relevant provision in that section is actually 41S which states:

Trustees' expenses

(1) A trustee —

(a) shall be entitled to be reimbursed from the trust funds; or

b) may pay out of the trust funds,

reasonable expenses properly incurred by him when acting on behalf of the trust.

[45/2004]

(2) This section shall apply to a trustee who has been authorised under a power conferred by Part IVA or any other written law, or by the trust instrument —

(a) to exercise functions as an agent of the trustees; or

(b) to act as a nominee or custodian,

as it applies to any other trustee.

It is to be noted that the operative words used in subsection (1)(a) are "reasonable expenses properly incurred" in relation to a trustee being reimbursed expenses incurred on behalf of a trust.

31 The OS had also referred to s 67 of the Probate & Administration Act. The section states:

Testamentary and funeral expenses

(1) The court or a judge shall allow the executors or administrators the reasonable testamentary and other expenses incurred by them, and also proper funeral expenses and all reasonable expenses of subsequent religious ceremonies suitable to the station in life of the deceased.

The defendant as an administrator of the Estate is undoubtedly entitled to be paid reasonable testamentary and other expenses that she had incurred on behalf of the Deceased. However, the burden was on her to prove: (i) the expenses she incurred were testamentary in nature and/or incurred on behalf of the Deceased and (ii) they were reasonably incurred. Looking at the evidence tendered by the defendant, I was of the view that she had failed to discharge the burden save for the items set out in [24A] above.

32 By way of one example, the defendant had charged the Estate \$600 per month for ten months for the rental of ancestral tablet space in her home (see [24] *supra*) even though the plaintiffs wanted to move the tablet to a temple and were willing pay for the service. Having moved the tablet to her own home, the defendant had the gall to charge the Estate rent. Clearly, her actions were not motivated by filial piety for her late father but by pure greed.

33 The plaintiffs had produced photographs showing that the defendant and or Ng had made use of the flat before its sale, as storage space for her sole-proprietorship called Guan Bee Yi Trading which was in the business of handicrafts, collectibles and gifts. She did not pay rent for such usage.

34 On the one hand, the defendant complained that her two brothers should not be given their shares of the Estate because they had withdrawn funds from the Deceased's bank accounts. On the other hand, she was not above misusing her own position as an administrator and a trustee to try and make money from the Estate for herself and her husband.

35 It is trite law which does not need repeating, that the defendant owes a duty as an administrator at common law and as a trustee under the Trustees Act to act in the best interests of the Estate. Her conduct as reflected not only in the plaintiffs' affidavits but in her own affidavit showed that the defendant paid scant regard to her duties and obligations. Instead, she seemed bent on milking the Estate for as much money as she could (as the plaintiffs surmised in their second affidavit) perhaps because it was the only way she and Ng could make some money.

36 The defendant's unseemly conduct and failure to provide full accounts of the Estate and bank documents in particular, despite repeated requests by the plaintiffs, prompted this court to make the orders that the plaintiffs applied for in the OS, as set out in [1] earlier.