

Teng Yeow Fatt (as executor of the estate of Teng Mong Fong, deceased) v Teng Siew Kee
[2006] SGHC 156

Case Number : OS 871/2006
Decision Date : 08 September 2006
Tribunal/Court : High Court
Coram : Sundaresh Menon JC
Counsel Name(s) : Shashidran s/o Nathan and Navin Joseph Lobo (Harry Elias Partnership) for the plaintiff; Hee Theng Fong and Tay Wee Chong (Hee Theng Fong & Co) for the defendant
Parties : Teng Yeow Fatt (as executor of the estate of Teng Mong Fong, deceased) — Teng Siew Kee

Probate and Administration – Distribution of assets – Whether assets in question were validly gifted before death of the deceased or formed part of the estate available for distribution

8 September 2006

Judgment reserved.

Sundaresh Menon JC:

1 Teng Mong Fong came to Singapore from China in 1936 at the age of 19. A short while after that, he established a business under the trade name “Kim Thong & Company”. In 1941, he married Che Yoke Chin. They were happily married for almost 62 years until Mdm Che passed away at the end of 2002. In that period of 62 years, they had seven children: five sons and two daughters. The children had done well; among them were a teacher, an engineer, a lawyer, an architect and a businessman. Teng Mong Fong’s business interests had grown: Kim Thong & Company gave way to Kim Thong Industries Pte Ltd (“KTIPL”); another company was formed in Malaysia known as Mahsing Textiles Industries Sdn Bhd. He had acquired some real estate. In fact, he had become a wealthy man owning, on top of these assets, some bank deposits of some millions of dollars.

2 In many respects, this could have been the success storey of a self-made man. But there is a tragic twist in the tale. Although he seemed to have lived his life to provide better opportunities for his wife and children, he left behind a legacy of acrimony, suspicion and deep divisions within a fractured family. His last years appear to have been marked, among other things, by sorrow over the loss of his beloved wife, misgivings over the lack of harmonious relations with at least some of his children and anxiety over his health.

3 He suffered a stroke after his wife passed away and then, even before he died, the fighting had started. His six surviving children appear to have formed two camps, one led by his fifth son, Teng Yeow Fatt, who is the plaintiff before me, and the other by his elder daughter, Teng Siew Kee, who is the defendant. In one of those great ironies of life, these were the two children he had appointed as the executors to administer his estate.

4 It is perhaps a source of some consolation that by the time open hostilities had broken out, Teng Mong Fong was probably not in a position to realise this.

5 The plaintiff brought this action *qua* executor against his sister. The originating summons prayed for the following reliefs:

- (a) a declaration that a sum of \$400,000 said to be in the possession of the defendant was

not validly gifted by Teng Mong Fong to the defendant and is therefore to be returned by the defendant to the estate (I refer to this as "the first sum of \$400,000");

(b) a declaration that a further sum of \$400,000 said to be in the possession of the defendant is to be returned to the estate (I refer to this as "the second sum of \$400,000");

(c) an order that the defendant give an account of Teng Mong Fong's cash reserves amounting to \$100,000 prior to his demise, failing which the said sum is to be returned to the estate;

(d) a declaration that the plaintiff as executor be entitled to declare the said sums to the Commissioner of Estate Duties; and

(e) a declaration that certain expenses incurred by the defendant prior to Teng Mong Fong's demise amounting to \$34,918 are not a debt due by the estate to the defendant.

6 The defendant counterclaimed declarations to the opposite effect in respect of the first sum of \$400,000 and the expenses which she claimed was largely medical expenses she had incurred in looking after her father prior to his death. She further sought an order that the plaintiff pay her the sum of \$30,000 in respect of some shares in KTIPL which she had transferred to some of the siblings in accordance with her father's wishes but for which she had been paid nothing. As to the second sum of \$400,000 and the sum of \$100,000 in respect of which the account was sought, she sought that these prayers be dismissed as she denied the existence of any such sums. I heard the evidence (including the closing arguments) over eight days, some of which were partial hearing days. Both counsel agreed that the only issues before me were matters of fact.

7 All six siblings gave evidence before me: the plaintiff was supported by his two brothers, Teng Joon Whatt and Teng Nam Fatt, while the defendant was supported by her brother, Teng Hin Fatt, and her sister, Teng Lee Yin. It is probably not surprising that the evidence was given with much emotion, bitterness and even rancour. An element of subjectivity in such circumstances is perhaps not unusual or unexpected. The real issue is the extent to which these emotions may have so clouded the perceptions of the individuals concerned as to render them liable to be mistaken in their recollection of certain events or perhaps even to lie.

8 None of the witnesses left an overall impression that was totally favourable. I note that of all the witnesses, Teng Hin Fatt, who gave evidence for the defendant, stood alone as having nothing to gain or lose from the evidence he was giving. However, Mr Nathan, counsel for the plaintiff, observed that Teng Hin Fatt was especially emotive in certain aspects of his evidence. This is true. This highlights the importance of not treating the evidence of any particular witness with a broad brush in a case like this. Rather, I consider that where feelings run strong and there is much emotional baggage accumulated over the years, it is important to separate the strands somewhat and to pay closer attention to the evidence given by the witnesses generally on the key issues that were contentious and to assess, in relation to those issues, which version was more probably the truth. I also consider it relevant to assess the probabilities in the light of what Teng Mong Fong himself had said or done as well as in the light of the objective facts, and to test the impressions I formed about the veracity of a witness's evidence from his or her demeanour against the objective facts. This is appropriate in my view in the light of such decisions as *Farida Begam d/o Mohd Artham v PP* [2001] 4 SLR 610 at [9], and more recently *Jagatheesan s/o Krishnasamy v PP* [2006] SGHC 129.

9 In this regard, I was referred to a number of letters and notes Teng Mong Fong had written in the last few years of his life. Both counsel accepted that I could properly have regard to those as

providing a window into his thoughts and feelings when he wrote those documents. Mr Nathan cautioned, however, that I should look at each document in its entirety and all the documents as a whole as it sometimes appeared to be the case that the writer contradicted himself. I accept that it would be wrong to analyse these documents in a way which results in particular words or sentences being accorded undue weight ignoring what had been said on other occasions. Nonetheless, I did find these documents of some assistance.

10 The broad picture was not as contentious as certain specific incidents were.

11 Teng Mong Fong and his wife lived at 150 South Bridge Road, #20-01 Fook Hai Building ("Fook Hai"). The defendant had lived there with them for some time. From 1988, the property was held in the joint names of Teng Mong Fong, his wife and the defendant. At about that time, Teng Mong Fong apparently also transferred the shares in Mahsing Textiles Industries Sdn Bhd to his sons.

12 Sometime in or about 2001, Teng Mong Fong decided that it was time for him to retire from KTIPL. The shares at that time were held by each of the family members. Teng Mong Fong decided that the shares held by him and Mdm Che would be given in equal shares to his four surviving sons. However, 20,000 shares were also held by each of the two daughters (*ie*, the defendant and Teng Lee Yin) and by Teng Hui Zhong who is Teng Mong Fong's grandson by one of his sons who had already passed away.

13 Teng Hin Fatt undertook the task of implementing Teng Mong Fong's wishes. He discussed the matter with each of these three persons. In accordance with Teng Mong Fong's wishes, the shares were transferred and Teng Lee Yin and Teng Hui Zhong were each paid a sum of \$30,000 for their shares.

14 This was paid initially by Teng Hin Fatt even though the share transfers were executed in favour of different brothers. Teng Hin Fatt was then reimbursed by the other brothers. No issue arises with respect to these two transfers. The defendant, however did not receive any payment even though her shares were also transferred.

15 Her evidence was that she wanted payment but was told that one or more of her brothers lacked the means to make payment. Teng Hin Fatt said that the defendant had agreed to forgo her entitlement to receive any payment subject to Teng Mong Fong's consent. However, Teng Mong Fong did not agree to this as he considered it unfair since Teng Lee Yin and Teng Hui Zhong were going to be paid.

16 The other three brothers stated that Teng Hin Fatt attended to the arrangements and left them with the impression that the defendant did not wish to be paid and was willing to waive or forgo her entitlement to be paid. Reference was also made to a contemporaneous document written by Teng Hin Fatt to his father in which he stated "[the defendant] does not want compensation".

17 Having considered the evidence, I am satisfied that although the shares on the face of the transfer forms were transferred by the transferors to specified transferees, this was merely for convenience. The arrangement was that the shares in question would be transferred to all the surviving brothers equally. However, I am also satisfied that as to the following:

- (a) There is no basis for the defendant in any event to seek the full payment from the plaintiff.
- (b) While it is clear that the transfers were part of a consolidated re-organisation of the

shares so that all the brothers benefited, the claim, if any, is against each of them and not against any one jointly. It is true Teng Hin Fatt made the initial payments for all the brothers but I consider that he did this for convenience and perhaps out of a sense of moral duty to his father rather than because he was legally obliged to.

18 However, on the evidence before me, I am satisfied that the defendant voluntarily agreed that she would transfer the shares without consideration. Notwithstanding Teng Hin Fatt's evidence that Teng Siew Kee's agreement to forgo payment was subject to her father's consent, I am not persuaded on a balance of probabilities that Teng Siew Kee in fact retained an entitlement to be paid. In my view, in effect she gifted the shares. This is borne out by the contemporaneous document I have referred to and the absence of anything to suggest this was in issue until the outbreak of the present hostilities. The defendant's counterclaim in this respect is therefore dismissed.

19 I turn to the principal claim. It was not disputed that in his later years, the defendant was Teng Mong Fong's primary care-giver. She was unmarried, resided with him before as well as after his wife's death and there are several instances in Teng Mong Fong's writings from this period where her role and contribution to his care and his dependence upon her are referred to.

20 By the middle of 2002, Mdm Che's health had taken a turn for the worse. According to the defendant, sometime in October 2002, Teng Mong Fong handed her a sum of \$1.2m. This was the first time she became aware of the money. The money was given to her by way of 1,200 pieces of \$1,000 bills. These bills were old in the sense that they were no longer in circulation although undoubtedly they were legal tender. In the course of the evidence given by the defendant, reference was made, perhaps euphemistically, to the fact that Teng Mong Fong wanted the existence of these bills to be treated confidentially and for it not to be made known to people outside the family. It was eventually explained that this cash stash had been accumulated by Teng Mong Fong from his business over the years and that he had not disclosed these earnings to the tax authorities. He therefore harboured concerns that there would be trouble if the money came to be discovered either by the Commissioner of Estate Duties or by the Comptroller of Income Tax when he passed away. Whether or not this was in fact the case, I am satisfied from the evidence of the defendant as well as Teng Hin Fatt that Teng Mong Fong did have such concerns. This is critical because it explains much of what Teng Mong Fong later did. Unfortunately, perhaps out of a mixture of loyalty to her father and a desire not to violate his trust, the defendant prevaricated on this issue for quite some time before finally explaining the reason for her father's sensitivity about this.

21 By October 2002, Teng Mong Fong had had a stroke and his wife was suffering from various ailments. According to the defendant, Teng Mong Fong asked her to keep the currency bills in a safe deposit box. She opened a personal safe deposit box account shortly after this and on my request, a copy of the account opening form was produced. This revealed that the defendant did indeed open a safe deposit box account on 15 October 2002. It was not in dispute that at all times thereafter, she had access to the money and was able to and did on her own open the box from time to time to retrieve portions of this sum.

22 According to the defendant, Teng Mong Fong told her to keep this money and use it to support his wife in case he predeceased her. I accept her evidence on this and note it is also consistent with a number of the surrounding circumstances. It is apparent that Teng Mong Fong was sensitive about this money and the prospect of it being discovered by the Government's revenue officers. He was therefore anxious that the existence of this money not be disclosed in the estate duty returns when he died. By the time he handed it to the defendant, he had already suffered a stroke and, given that his wife was in poor health, it made sense that he should entrust the money to the defendant with instructions that it be *spent* on her mother's upkeep if he should predecease her

mother. I also note that the defendant's evidence on this issue was corroborated by the evidence she was able to produce on my request of her having opened a new safe deposit box account. Furthermore, this evidence did not advance her own case but rather was neutral to it.

23 Events then took an unexpected turn. Barely two months after this, Mdm Che passed away on 10 December 2002. Teng Mong Fong was obviously grieved by this but almost at once he made a decision to give away this money.

24 Evidence was led as to events that transpired on 15 and 16 December 2002. The defendant's evidence was that Teng Mong Fong told her on the night of 15 December 2002 that he intended to give this money equally to his six children. However, he wanted the defendant to keep the share meant for the younger sister, Teng Lee Yin, until he gave further instructions. This is to be seen in the context of the fact that there had been some tension between the rest of Teng Mong Fong's family and Teng Lee Yin and her husband who had set up a business that competed in some respects with the Teng family business.

25 The defendant also testified that she told her father that she had some anxiety about the difficulties she and Teng Lee Yin would encounter in changing their share of the old bills (amounting to \$400,000) into current bills. Mr Shashi Nathan acted for the plaintiff and his cross-examination of the defendant on this point was directed at why this should be difficult for someone such as her, given that she was educated and seemed adept at managing financial matters. This was a fair enough line to take but it does not pay due regard to the fact that these were moneys that were apparently tainted and I accept the defendant's evidence that she believed this was so by then. Under the best of circumstances, one walking into a bank with several hundred \$1,000 bills invites suspicion; when these are uniformly bills that are out of circulation, one expects greater unwanted scrutiny; and when the person owning the bills knows that there is an inconvenient but hidden truth about the money, that person is inevitably going to have a heightened sensitivity to being seen with it. This confluence of circumstances explains, in my view, why Teng Meng Fong decided to employ a somewhat complicated mechanism to manage the conversion of a part of the funds. He decided to first give each of his four sons 100 old \$1,000 bills and when they had converted these and returned the money in 100 new \$1,000 bills, they were promised that they would each be given a further 200 old \$1,000 bills for them to retain.

26 Nobody else was party to the conversation between Teng Mong Fong and the defendant on 15 December 2002 and in spite of Mr Nathan's able and carefully measured cross-examination, I generally accept the defendant's evidence on this.

27 What was heavily contentious was what happened on 16 December 2002. That was the seventh day following Mdm Che's death and some rituals and prayers had been planned. At some stage that day, all the children went to Fook Hai; at least some went to lunch with Teng Mong Fong at a restaurant called the Meijiang Restaurant; at least some of the children went back to Fook Hai and the four sons were each handed \$100,000 of old bills pursuant to the mechanism I have just referred to. In the evidence that was given, there were discrepancies on certain details. But these discrepancies are not unnatural when people try to recall events that took place four years ago and I was not concerned by those that were not important. Indeed, the unnatural absence of any such discrepancies might point towards an attempt having been made to rehearse the evidence. However, where there was an accumulation of contradictions and inconsistencies in any given instance, then the position would be different.

28 In my judgment, the central question was: What did Teng Mong Fong say to his children on 16 December 2002? However, much cross-examination was also directed at these issues:

(a) Did Teng Lee Yin and Teng Hin Fatt go for lunch at the Meijiang Restaurant?

(b) Did Teng Mong Fong make an announcement about his intentions in relation to the sum of \$1.2m at lunch or at Fook Hai after lunch or at both venues?

29 All the witnesses for the defendant stated that Teng Lee Yin and Teng Hin Fatt did not go for lunch. The plaintiff's witnesses generally went the other way but I did form the impression in the cross-examination of Teng Nam Fatt that he was attesting to the presence of Teng Hin Fatt and Teng Lee Yin at the lunch not because he remembered this specifically but because this had developed as the party position on the plaintiff's side. This impression was borne out by a great many contradictions and internal inconsistencies in Teng Nam Fatt's evidence. At one stage, he said that the sum of \$100,000 in old bills was handed to the brothers after lunch in the presence of each other and of Teng Mong Fong. Shortly after this, he said he was not sure. At one point, he said he was unsure if Teng Mong Fong had repeated his declaration at Fook Hai. He later said positively that Teng Mong Fong had done so. He said at one stage that he was unsure if Teng Hin Fatt joined the group at Fook Hai. He later reversed this. He said he was unsure if Teng Hin Fatt's wife had joined the lunch at Meijiang restaurant but later said she had not when he was shown what the plaintiff had said on this point. At one stage, he even specifically resiled from a part of his affidavit dealing with these matters. What was disturbing was that many of these points were matters he attested to on a Friday afternoon (4 August 2006). After the weekend, on the following Monday morning (7 August 2006), he reversed himself on a number of issues to bring his evidence back into conformity with what the plaintiff had said. Yet despite the haziness that apparently clouded his recollection on all these issues, he doggedly maintained that Teng Hin Fatt and Teng Lee Yin did attend the family lunch at the Meijiang restaurant. When asked how he was so sure of this single fact, he could offer no sensible explanation. It is also noteworthy that at another point when cross-examined on what Teng Lee Yin had said at a family meeting on 23 October 2004, he contradicted what he had earlier said in order to "support" what his brother Teng Joon Whatt had testified.

30 All this did not leave me with a favourable impression. As each side prepares its case and attempts to reconstruct its recollection of events there is a tendency to fill in the gaps and this came through to me in the course of the cross-examination of Teng Nam Fatt in particular. It appeared to me that he was trying to give the "right" evidence.

31 As against this, I formed the impression that the evidence of each of the defence witnesses on this issue was substantially unshaken and bore a ring of truth.

32 It is significant to note that there was nothing to be gained by Teng Lee Yin in her saying that she was neither at lunch nor at Fook Hai after lunch. If she was prone to lie, it would have been far easier for her to lie that she had heard Teng Mong Fong say that which the defendant and Teng Hin Fatt attributed to him. Instead, by taking the position she did, she was not helping her own position or her sister's case and this enhances the ring of truth I have just referred to.

33 Here, I mention also the evidence of Teng Hin Fatt. He too had nothing to gain from lying about his absence at lunch. After all, the defendant and the other three brothers all agreed that Teng Mong Fong did speak about his intentions concerning the sum of \$1.2m at lunch.

34 Mr Nathan submitted that Teng Hin Fatt was so consumed by hatred for Teng Joon Whatt that his evidence should be rejected. I agree that Teng Hin Fatt's evidence was marked with animosity when speaking about Teng Joon Whatt in particular and in recounting how the bad blood between the two camps had started. But even taking that on board, he struck me as a truthful witness and I found his evidence helpful once he managed to focus on the issues at hand. If he was

so driven by ill will towards his brothers that he was prepared to come to court and lie as suggested by Mr Nathan, then it could not have been lost on him that by saying he was not at the lunch he was depriving himself of the opportunity to offer corroborative evidence as to what was said by Teng Mong Fong at lunch.

35 On this issue, I therefore prefer the evidence put forward on behalf of the defendant and find that Teng Lee Yin and Teng Hin Fatt were not at lunch at the Meijiang Restaurant. I also find that Teng Hin Fatt but not Teng Lee Yin went back to Fook Hai after the others returned from that lunch.

36 As to what happened at lunch, the evidence of the four siblings who I have found were present at the lunch was that Teng Mong Fong did make an announcement concerning the said sum of \$1.2m.

37 The evidence of the plaintiff and the brothers who supported him was that Teng Mong Fong announced that he wanted his four sons to each take \$100,000 in old currency notes and have them changed to new notes. This was to be done and returned within a month whereupon he would give each son a gift of \$200,000 in old currency notes. According to the plaintiff, Teng Joon Whatt and Teng Nam Fatt, nothing was said about any gift of the new notes to the daughters. It is important to note that the case for the plaintiff was not that Teng Mong Fong expressed a positive intention *not* to make a like gift to his daughters but only that he said nothing about it.

38 As against this, the defendant asserted that Teng Mong Fong did express an intention to distribute the sums equally among his children. She also maintained he repeated this at Fook Hai after lunch and Teng Hin Fatt corroborated her on the latter point. Having considered the evidence given by the witnesses on both sides, I generally preferred that which was adduced for the defence.

39 I reiterate what I have said about Teng Hin Fatt's evidence and the fact that he stood to gain nothing at all from giving the evidence that he did. Indeed, Mr Nathan candidly accepted that Teng Hin Fatt in fact stood to benefit if the plaintiff succeeded. As such, at least from a material point of view, he was in fact giving evidence against his own interest. Teng Hin Fatt was cross-examined on the seeming inconsistency between his evidence that Teng Mong Fong had declared his intention to give the sum of \$400,000 to his daughters and the contents of a letter he (Teng Hin Fatt) had written on 22 February 2005 to his siblings. In that letter, he had stated that when he returned the money to his father, as far as he was concerned, it belonged to Teng Mong Fong. His explanation on this was simple but convincing. He explained that in that same letter, he had stated that once the money was returned, Teng Mong Fong would then have to take his next step. In relation to the daughters that next step, *ie*, to complete the gift to them, was only to be taken when all the brothers had returned the money they were to change. In my view, his evidence on this was not shaken. This, coupled with his demeanour when giving evidence on the key issues, led me to place significant weight on his testimony.

40 Coupled with this, are the following points:

(a) It would be inappropriate to consider the evidence on this issue without due regard being given to the fact that these dealings all concerned a stash of cash that Teng Mong Fong was extremely sensitive about. His main concern, according to both the defendant and Teng Hin Fatt, was to ensure that the Government did not learn about the existence of this stash.

(b) He was apparently concerned that this fear could be realised if the stash was to form a part of his estate. According to the defendant, he therefore wished to avoid the money being included in his estate duty disclosures upon his death.

(c) He had initially contemplated keeping the money for the upkeep of his wife but when she predeceased him, it is evident that he almost immediately decided to part with the money. It is significant, in my view, that he announced this decision just days after the demise of his wife.

(d) He acted upon his decision at once and in fact parted with most of the money within a month or so. This was consistent with his desire to ensure that the money did not form any part of the estate.

(e) There was no need for him to be concerned about retaining this money for his own needs given the fact that he had access to substantial sums of money in bank accounts which he operated for quite some more time and which he spoke of in some of his letters. Similarly, the fact that he apparently allowed the defendant to retain possession of the new notes when it was returned by his sons also militates against the idea that he wished to retain any interest in this money.

(f) To the same effect is the fact that this sum was never mentioned in the discussions that later took place concerning the preparation of his will (see [51]–[53] below).

41 Accordingly, having regard to the oral evidence I have heard, and the matters I have just referred to, I am satisfied that the plaintiff's case is untenable. In my judgment, when the sum of \$400,000 was eventually returned in current bills, as far as Teng Mong Fong was concerned, it was going to be given to his daughters. The idea that Teng Mong Fong intended to retain ownership of this money is not sustainable in my view. I am also satisfied and I find that Teng Mong Fong did on 16 December 2002 articulate the intention to distribute the sum of \$400,000 to his daughters. In my judgment, this was done at least to the defendant and to Teng Hin Fatt though I have no reason to think that he was seeking to conceal this from his three other sons. Perhaps they did not hear Teng Mong Fong say this because they were preoccupied with the sizable gift they had just been promised or perhaps they were mistaken.

42 In the following month or so, each of the sons did exchange the old currency bills for the new bills and returned these. This was done in a variety of circumstances. According to Teng Hin Fatt, he returned the new bills to his father in the presence of the defendant. There was some inconsistency here between the evidence given by Teng Hin Fatt and the defendant. Teng Hin Fatt was clear that he returned the money to his father although the defendant was present and witnessed it. The defendant, on the other hand, maintained that initially it was handed to her in her father's presence, and later, that her father saw the money and touched it before it was given to her. The defendant's version was put to Teng Hin Fatt and I was impressed with the straightforward manner in which he disagreed with it.

43 I am satisfied that Teng Hin Fatt's evidence was to be preferred over the defendant's on this issue. Indeed, her evidence on the circumstances in which the money was returned after each of the brothers had converted the sum of \$100,000 into new bills was simply not satisfactory. She was subjected to able and penetrating cross-examination by Mr Nathan and he succeeded in showing that she had been untruthful both before as well as during the hearing in court on this issue.

44 There was correspondence written by her past and present solicitors in which she had taken the position that the money was returned by the plaintiff and the other brothers directly to Teng Mong Fong and not through her when it was eventually accepted that this was plainly untrue. In fact, except for Teng Hin Fatt, the other brothers had returned the money to the defendant directly though they maintained that she was receiving it on behalf of Teng Mong Fong.

45 Under cross-examination, the defendant's evidence as to why she had falsely instructed her solicitors was incoherent at times. She suggested at various points that:

(a) She had been advised to take this position by her former solicitors M/s Alfred Tan & Co. Although the solicitor concerned was invited to approach the court to clarify the position if he wished to, he chose not to do so.

(b) She had lied because of the duty of confidentiality imposed by Teng Mong Fong given the apparently tainted nature of these funds.

(c) She had lied because, as far as she was concerned, her brothers were lying. It was not initially clear what the brothers were alleged to have lied about or why this should have prompted her to lie.

46 None of these explanations was entirely satisfactory but they are to be seen in the context of two points of some importance:

(a) The defendant was plainly alive to Teng Mong Fong's preoccupation with keeping the existence of this money out of the knowledge of anyone outside the family. This might explain her unwillingness to discuss this openly even in court.

(b) Mr Hee Theng Fong, who appeared for the defendant, explained in his closing submissions that the lies she had communicated through her solicitors were part of a misguided attempt to protect her position. He explained that because she felt the plaintiff and his brothers were seeking to attack the fact of the gift made to her by Teng Mong Fong, and were allegedly lying that he had made no such gift, she wanted to protect her position. According to Mr Hee, she thought it would be better for her if she maintained that the money had reached her *via* Teng Mong Fong rather than directly from the brothers lest it be suggested that she had misappropriated the money when it had been returned. In short, she thought it might be better for her to maintain that the money had been handed to her by her father.

47 Mr Hee's explanation was the best available. Nonetheless, the fact remains that the defendant was far from forthcoming on this issue during cross-examination. This is unfortunate and not something I condone. In my view, her willingness to deviate from the truth may have contributed to a number of misunderstandings that have given rise to these proceedings and caused them to escalate as they did.

48 I say this because when the defendant responded through her solicitors to the plaintiff's solicitors' letter of 2 February 2005 in terms which were patently untrue, this inevitably fuelled the suspicions that were already in existence and took matters to a new depth. A measured truthful response directed at achieving an understanding was what was in fact called for at that time and had it been given, matters may well have been resolved without reaching this stage.

49 After the money was returned by the brothers, it was kept by the defendant in her safe deposit box. There is no dispute that Teng Mong Fong knew and intended that each of the sons would receive the sums of \$200,000 in old bills when they returned a sum of \$100,000 in new bills. This transaction was consummated. In my view, it cannot be disputed that Teng Mong Fong knew the total sum of \$400,000 in new bills had been returned to the defendant and that she had handed over the total sum of \$800,000 in old bills. I am also satisfied that the defendant retained possession of the returned bills at all material times. This was done when Teng Mong Fong was still mentally able. The fact that Teng Meng Fong did not seek to take possession of these bills or deposit them in one of

his own bank accounts or a safe deposit box in his own name is indicative that he no longer considered them to be his own. It is also consistent with the defendant's evidence that the entire sum had been handed to her on the basis that she was to retain Teng Lee Yin's portion until she was told to hand it to her.

50 This is further supported by the next sequence of material events. It appears to be common ground that this stash was not mentioned again by Teng Mong Fong to his sons. Sometime in March 2004, Teng Mong Fong was hospitalised. According to Teng Lee Yin when she visited her father, he informed her that he had left a sum of \$200,000 with the defendant and this would be given to her later.

51 Shortly after this in 2004, Teng Mong Fong decided that he wished to prepare a will. To this end, he consulted the plaintiff, the defendant and his own solicitor in preparing the will.

52 A draft was prepared. It was dated 23 April 2004 and it was discussed until 26 May 2004 when it was executed in its final form. There is no doubt that Teng Mong Fong was in possession of his faculties at this time. There is also no dispute that the plaintiff was consulted on the draft will. He commented on it and the solicitor's note of charges shows that the solicitor attended on both the plaintiff and the defendant to take instructions on the will.

53 It is also clear that:

- (a) in the draft will, Teng Mong Fong mentioned his assets, including money maintained in current and fixed deposit accounts, but made no mention whatsoever of the said sum of \$400,000;
- (b) in the final copy of the will, no assets were listed at all but rather bequests were made of the estate as a whole;
- (c) in both the draft and the final will, Teng Mong Fong's intention was to apportion what remained of his estate equally among his six surviving children leaving aside one portion to establish a trust fund.

54 I consider that each of these matters is significant in the present context. First, in listing his assets in the draft will, I do not accept that Teng Mong Fong was choosing to set out only some of the assets he wished to distribute. There is no reason at all for him to have so limited himself and not to have dealt with the said sum of \$400,000 if he considered that this still belonged to him. After all, this was a draft will he had prepared for discussion with his children and his solicitor. Further, if he felt he still owned the money and wished to distribute it equally among his children but not as part of his estate for the reasons I have mentioned, then by far the more logical course for him to take would have been to distribute that sum among all six children during his lifetime. Yet he did not do this either. Furthermore, it is important to note that Teng Mong Fong never intended to make any specific bequest of any part of his estate to any particular beneficiary. Rather, at all times, his intention was that the estate be realised and then divided equally among the surviving children, with a portion set aside for a trust for the purposes of financing ancestral worship services. This strongly indicates that in setting out the assets listed in his draft will, Teng Mong Fong was making clear to his intended executors what assets would be available for distribution. This is also borne out by the fact that immediately after the assets were listed in the draft will, Teng Mong Fong had written "The aforesaid estate shall be distributed ...". This clearly pointed to those being the only assets that he considered were being dealt with in his will.

55 Subsequently, in the final version of the will, given that there were no specific bequests, the assets were not specifically listed. But significantly the key directive to the executors was for them to liquidate his bank accounts which, aside from his Central Provident Fund assets, were all he still had. In the circumstances, the fact that he made no mention whatsoever of the sum of \$400,000 provides strong corroboration that he did not consider this an asset that belonged to him and that was to be distributed as part of his estate. Indeed, for the reasons I have already mentioned, I consider that he wanted to part with this money before his death in the hope that by doing so, the existence of this money would not be picked up by the revenue authorities.

56 I also consider it significant that the plaintiff reviewed this draft, and made various comments upon it, but nowhere did he make any observation or raise any inquiry about the sum of \$400,000. When he was cross-examined on this, he gave a rather curious response. He first said that he did not raise any issue because this sum of \$400,000 was not on his mind and then he said that he had not done so because he had read a book on estate duty which satisfied him that the general bequest extended to both movable and immovable properties. I note first that these are inconsistent. If he had thought about it after reading the book on estate duty and was satisfied that the general bequest covered this money, then it must have been on his mind. In any case, if he considered at that time that the sum of \$400,000 properly formed a part of Teng Mong Fong's property, I consider he would and certainly should have raised it. Had he done so, the matter would have been put beyond doubt. As it transpired, he did not. But I am satisfied that certainly by this stage, Teng Mong Fong himself did not consider this money to be a part of his estate. The plaintiff also sought to argue that Teng Mong Fong's failure to list the sum of \$400,000 in his draft will was irrelevant because the will in its final form did not list *any* assets. I do not agree. This misses the points I have made above at [53]–[55].

57 Before leaving this, I should add one further observation. The will itself provides for Teng Mong Fong's estate to be divided equally among his surviving children. The plaintiff's position is that after Teng Mong Fong had given the sum of \$200,000 to each of the sons, the remaining sum of \$400,000 formed a part of the estate and was to be divided equally. This would mean of course that in substance this money would have ended up being divided quite unequally. However, it is noteworthy that as early as February 2001, in a letter to his children written at a time that was before any part of this stash had been distributed, he had articulated his intention to give his estate away in line with his understanding of the intestacy laws, *ie*, 50% to his wife and the balance to his children equally. For all the submissions that were made to me about Teng Mong Fong's alleged biases in favour of his sons, I saw nothing to bear this out at least in the later years of his life. This is a significant point in that this further undermines the plaintiff's case that Teng Mong Fong intended to favour his sons in the distribution of the stash. I do not accept that. Rather, as Mr Hee submitted, having regard to Teng Mong Fong's emotions towards the defendant in particular as expressed in a number of his letters, it would have been illogical to think he intentionally wanted to deny her an equal share in this asset.

58 Very shortly after the will was executed, according to the defendant, she was instructed by Teng Mong Fong to hand over the sum of \$200,000 to Teng Lee Yin. She did so in June 2004. This was confirmed by Teng Lee Yin.

59 Teng Mong Fong suffered a stroke in August 2004 and then had a period of poor health which ended in his becoming incapacitated in October 2004. By then, he was in no position even to operate his bank accounts.

60 This is the prelude to the next sequence of events. It was not in dispute that sometime in October 2004, the defendant called a family meeting to discuss how Teng Mong Fong's medical

expenses were to be met. She explained that as he was incapacitated and it was not known for how long he would continue in this state, she wanted to get a commitment of support from all the siblings. It was also not in dispute that:

- (a) the first meeting called a few days earlier ended abruptly and without any result when Teng Joon Whatt and Teng Hin Fatt got embroiled in a heated quarrel; and
- (b) the second meeting was called for 23 October 2004 and held at Fook Hai but Teng Hin Fatt was not invited so as to prevent a recurrence of the earlier quarrel.

61 Sadly, Teng Mong Fong lay incapacitated in Fook Hai while the second meeting took place.

62 By way of background, Teng Nam Fatt said that the defendant had first called him in August to seek a contribution of \$300 per month towards Teng Mong Fong's medical expenses. He stated that he refused this on the spot. There was apparently a further unsuccessful attempt in this direction and this was the precursor to the October meeting at Fook Hai. Before the meeting, the plaintiff, Teng Joon Whatt and Teng Nam Fatt had met on their own. They knew that the defendant had called the meeting to discuss how their father's expenses were going to be met in the circumstances and decided among themselves that they would not make any contribution towards these expenses. However, after their own meeting, even though they had made this decision they had not yet decided "how to go about it". It was also common ground between the plaintiff and Teng Nam Fatt that they knew about the sum of \$400,000 before the meeting at Fook Hai but Teng Nam Fatt also maintained, however, that this was not on his mind when he and his brothers took the position that they were not going to make the requested contribution. This seemed to me to be contradictory.

63 The evidence of what transpired at the Fook Hai meeting must be seen in this light. The plaintiff, Teng Joon Whatt and Teng Nam Fatt had gone to the meeting having already decided that they were not going to accede to the defendant's request for a contribution to meet Teng Mong Fong's expenses. Given the emotions of the moment, it made for a potentially explosive setting.

64 According to Teng Nam Fatt, their preoccupation at this time was to protect themselves from the defendant's request on the basis that Teng Mong Fong had sufficient funds. I had some difficulty understanding this. The amounts in question were rather small and whether or not the plaintiff had enough assets, the point simply was that given his state he was patently not in a position to access whatever funds that were kept in his bank accounts. They must therefore have approached the meeting thinking that the defendant was holding cash that originated from Teng Mong Fong, and having decided that the defendant should be made to use those funds to meet the expenses in question. The meeting rapidly degenerated with hurtful things being said.

65 In this light, I consider the evidence. The plaintiff's evidence was that at that meeting the defendant admitted that:

- (a) she had taken a sum of \$400,000 and had shared it with Teng Lee Yin because Teng Mong Fong had given the brothers a similar sum;
- (b) she had kept the stash of \$400,000 in new currency bills, which the brothers had returned, in her safe deposit box for herself; and
- (c) Teng Mong Fong had reserves of around \$100,000 which had been spent on his maintenance.

66 This is the sole basis for some of the reliefs sought.

67 The defendant denied this. She maintained there was never any mention of the second sum of \$400,000 or the sum of \$100,000. She maintained that the quarrel was over the sum of \$400,000 new notes which the plaintiff and the other two brothers wanted her to use to settle Teng Mong Fong's expenses.

68 In cross-examination much time was spent exploring the words allegedly used and the sequence in which various things happened at the meeting. I approached the evidence on both sides with caution but I am satisfied that on the balance, the evidence given by the defendant and Teng Lee Yin is to be preferred and I accept it and I so hold. Their evidence on this issue withstood the cross-examination whereas the evidence given by the plaintiff and his two brothers seemed again to have been coloured by an element of mutual reinforcement. Indeed at one point, as I have noted, Teng Nam Fatt contradicted his own evidence as to what transpired at this meeting in order to support what Teng Joon Whatt had said. Mr Hee also made the point that it would have been illogical, indeed senseless, for the defendant to have said at one and the same conversation that she had taken the entire sum of \$400,000 for herself (referring to the converted currency bills) and then had shared a further sum of \$400,000 with Teng Lee Yin *because the brothers had earlier taken their share of \$200,000*. I agree this makes no sense and it was not sensibly explained even though it was raised in cross-examination. I further note that the evidence of the defendant and Teng Lee Yin is consistent with the findings I have made for the reasons I have already stated as to Teng Mong Fong having given the first sum of \$400,000 to his daughters.

69 I also consider the following points material:

(a) The plaintiff and his brothers approached the meeting with a fixed agenda and their recollection of events should be even more cautiously assessed.

(b) The reference to two sums of \$400,000 was uncannily coincidental and was mostly likely the result of confusion over what was said amidst a heated quarrel. Significantly, the plaintiff stated in his evidence that he and his brothers retired to Teng Joon Whatt's house after the quarrel at Fook Hai. There, they discussed the sum of \$400,000 they had returned earlier but had some doubt about the second sum of \$400,000. Further, his evidence was that when the meeting ended at Fook Hai, mention was only made of the first sum of \$400,000 when the defendant was allegedly told she ought not to keep it.

(c) If these sums had been kept in a bank account operated by Teng Mong Fong, then it would have been easy to establish from a perusal of bank records over the last few years whether such a sum had been withdrawn. Yet there was nothing to suggest this.

(d) If, on the other hand, this was a further stash of cash then it is incredible that it was never mentioned by Teng Mong Fong in 2002 when he had decided to divest his stash of \$1.2m or indeed at any other time.

70 My findings on this issue are also borne out by the following facts. Immediately after the family meeting broke up, the plaintiff and his brothers left for Teng Joon Whatt's house. According to Teng Nam Fatt, their major preoccupation at this meeting was how to resist the defendant's efforts in pressing them with her claim for a contribution towards the medical expenses of Teng Mong Fong. This was also borne out by Teng Joon Whatt. The defendant's request at that time was for a sum of a few hundred dollars. Yet if the plaintiff and his brothers at that time had left Fook Hai with the clear impression that the defendant had in effect *stolen* from Teng Mong Fong a sum of between \$400,000

and \$500,000 which they did not even know existed until then, one would have expected this to have been the predominant matter occupying their attention. Yet it was not. Furthermore, while they did consult solicitors at some point of time after this, what is noteworthy is that nothing was forthcoming for almost three months, and in the letter dated 2 February 2005 from the plaintiff's solicitors, Harry Elias Partnership, which is the first communication on this issue, there is a remarkable absence of any reference whatsoever to this sum of \$500,000 which is now in part the subject of these proceedings. Instead, the letter mentioned *only* the first sum of \$400,000.

71 Accordingly, I am satisfied there are no other sums of money than the first sum of \$400,000.

72 Teng Mong Fong passed away on 3 April 2005. Until his death, the defendant bore his medical expenses with some contributions from Teng Lee Yin and Teng Hin Fatt. There was no real dispute that the expenses had been incurred. The plaintiff's only basis for resisting the defendant's claim to be reimbursed from the estate was that she had access to and in fact used Teng Mong Fong's own assets. It follows from my foregoing findings that this was not the case.

73 The will provides that the estate shall reimburse any child who has borne any medical expenses for Teng Mong Fong. These expenses claimed by the defendant amount to \$34,918.70. This included a sum of \$2,500 paid by the defendant by way of solicitors' fees. On perusing the bill which is addressed to the defendant in her personal capacity, it would appear the solicitors were consulted in connection with resisting the plaintiff's claims as to the first sum of \$400,000 and as to a contemplated application for a committee to be appointed of the person and estate of Teng Mong Fong under the Mental Disorders and Treatment Act (Cap 178, 1985 Rev Ed). In the event, no such application was made by the defendant. I am satisfied this sum of \$2,500 should be treated as a personal expense of the defendant and not as an expense chargeable to the estate. On the evidence before me, the same matters were also the subject of consultation by the plaintiff of his solicitors and there is no suggestion that the expenses he has incurred should be treated as expenses of the estate.

74 In closing, I note that the burden of proof on the primary claims fell upon the plaintiff. The plaintiff and his brothers accepted that they did not know how Teng Mong Fong might have used his money and were in no position to say if he had parted with it in favour of his daughters. The basis for their claim appears to have been their belief that nothing was said by Teng Mong Fong on 16 December 2002 or subsequently about his wanting to give this sum of \$400,000 to his daughters, and what they believed was said by the defendant during the quarrel of 23 October 2004. To this might be added the patent falsehoods set out in the defendant's solicitors' letters in 2005 alleging that the brothers had handed the money directly to Teng Mong Fong rather than through her. In short, it was a case of a claim founded on a slender basis that was then fuelled by suspicion borne out of what they knew was a lie being told by the defendant. While I might understand how the plaintiff's action might have been driven to some degree by the defendant's unsatisfactory conduct in this respect, having heard the evidence and weighed the impressions I formed of the witness against the objective and extrinsic facts, I am satisfied that the plaintiff has failed to discharge his burden of proof.

75 In the premises, I dismiss the prayers sought by the plaintiff in these proceedings and I grant the prayers sought in paras 82.1, 82.3 and 82.4 of the defendant's affidavit dated 2 June 2006 by way of counterclaim save that the amount allowed under para 82.4 should be for an amount of \$32,418.70. I dismiss the prayer sought in para 82.6 of the defendant's said affidavit and make no order on para 82.5.

76 I will hear the parties on costs.

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