

Foo Jee Boo and another v Foo Jhee Tuang and another (Foo Jee Seng, intervener)
[2015] SGHC 176

Case Number : Suit No 764 of 2013 (Registrar's Appeals Nos 396 and 397 of 2015, Summons Nos 786 and 787 of 2015)

Decision Date : 09 July 2015

Tribunal/Court : High Court

Coram : George Wei J

Counsel Name(s) : Philip Ling (instructed) (Wong Tan & Molly Lim LLC), Belinda Ang Poh Choo and Ho Wei Li (Belinda Ang Tang & Partners) for the plaintiffs; Manoj Prakash Nandwani and Ang Si Yi (Gabriel Law Corporation) for the first defendant; Christopher Anand s/o Daniel and Aw Sze Min (Advocatus Law LLP) for the second defendant; Intervener in person.

Parties : Foo Jee Boo and another — Foo Jhee Tuang and another (Foo Jee Seng, intervener)

Civil Procedure – Further Arguments

Civil Procedure – Leave to Appeal

Civil Procedure – Capacities

9 July 2015

Judgment reserved.

George Wei J:

1 Litigation involves navigating intricate procedural rules. The rules serve a variety of goals. These include defining and setting out the boundaries of the dispute in the interest of transparency, fairness and the proper and efficient administration of justice. Procedural rules do more than just provide the rules for the contest. In some cases, the procedural rule will interface with the very basis of the substantive right asserted or relied upon by the parties. Whilst there is no doubting procedural rules can be complex and may lead to protracted disputes, it stands to reason that a party's clear formulation of his or her case is essential. In making this observation, it is recognised that where the facts and circumstances are complicated in themselves, a party's formulation of his or her case may evolve and this may necessitate amendments to pleadings as the case develops. Nevertheless, clarity over the case presented (at whatever stage of the proceedings) is always important. The present case before me is one where confusion has arisen from the pleadings and the legal issues in respect of the capacities,

standing of the parties as well as the related rules on joinder of causes of action. Whilst these are not straightforward issues, the complicated legal arguments which have arisen belie the unfortunate reality of a family that has been torn apart by years of bitter litigation.

Brief factual background

2 Suit No 764 of 2013 ("S 764/2013") is part of a long standing family dispute over the distribution of the estates of Foo Tai Joong ("Late Father"), Yap Wee Kien ("Late Mother"), and Foo Jee Fong ("Late Brother"). The Late Father passed away in May 1979, the Late Mother passed away on 25 July 2005, and the Late Brother passed away on 19 July 2007.

3 Over the course of the present proceedings, the parties have come to accept that the claims in relation to the Late Brother's estate should not be part of the present litigation. I thus focus only on describing the Late Father's and Late Mother's estate.

4 The Late Father's estate consists primarily of proceeds from the sale of a bungalow. Foo Jhee Tuang ("the 1st Defendant") is the sole executor and trustee of the Late Father's estate. As mentioned, the Late Father passed away in May 1979, some 36 years ago. The Late Mother was the executrix and trustee of the Late Father's Estate. After her death, on 4 March 2010, the 1st Defendant took over as the executor and trustee of the Late Father's estate.^[note: 1]

5 There are seven beneficiaries under the Late Father's will, and each of them is entitled to 1/7th of the Late Father's estate. The seven beneficiaries are the Late Mother, the Late Brother, Foo Li Li ("the 2nd Plaintiff"), Foo Jee Seng ("the Intervener"), the 1st Defendant, Foo Jee Boo ("the 1st Plaintiff"), and Foo Chin Chin (another sibling not involved in the current litigation).

6 In relation to the Late Mother's estate, the 1st Plaintiff and the 1st Defendant are joint executors and trustees. The beneficiaries of the Late Mother's estate under her will are the 1st Plaintiff (50%), the 1st Defendant (25%), and the Intervener (25%). The litigation over the Late Mother's estate in the present proceedings concerns only her 1/7th share of the Late Father's estate.

7 After so many years, neither the Late Father's nor the Late Mother's estates have been fully administered. However, some monies from both estates have apparently been paid out by the 1st Defendant to himself pursuant to the beneficial interests and claims that the 1st Defendant has in and against the estates. No other beneficiary has received any pay-outs. Indeed, these pay-outs to the 1st Defendant form the heart of the dispute in S 764/2013.

8 A long history of acrimonious litigation between the parties precedes S 764/2013. The prior litigation included litigation in the State Courts involving the 1st Plaintiff and 1st Defendant over the Late Mother's medical expenses^[note: 2], as well as High Court proceedings by the 1st Plaintiff, 2nd Plaintiff and the Intervener against the 1st Defendant for an order that the Late Father's bungalow be sold and the proceeds distributed in accordance with his Will.^[note: 3]

9 By way of a court order dated 6 September 2012 made in Civil Appeal No 70 of 2011 ("CA 70/2011"), the Court of Appeal ordered the sale of the bungalow and distribution of the proceeds as per the instructions in the Late Father's Will. I do not find it necessary to go into the earlier proceedings in this judgment in any detail. The

only further reference I make to the previous proceedings relates to how TJH Law Corporation (“the 2nd Defendant”) became embroiled in the present family dispute. Pursuant to the Court of Appeal’s decision in CA 70/2011 on 7 August 2012^[note: 4], the Plaintiffs, the Intervener, and the 1st Defendant jointly appointed the 2nd Defendant as solicitors to act in the sale of the Late Father’s bungalow and to distribute the net sale proceeds to the seven beneficiaries of the Late Father’s estate. In the present proceedings, the plaintiffs bring several claims against the 2nd Defendant for breaches of its duties as solicitors jointly appointed by the parties to administer the Late Father’s estate.

10 While the draft statement of claim filed by the plaintiffs is long, complex and somewhat confusing as it stands, the claims found therein may be broadly categorised into the claims relating to the Late Father’s estate, and the claims relating to the Late Mother’s estate’s 1/7th share under the Late Father’s estate. These claims may be further categorised into the claims brought against the 1st Defendant, and the claims brought against the 2nd Defendant.

11 In Statement of Claim (Amendment No 1), the plaintiffs’ claim in the present suit was essentially concerned with the Late Father’s Estate. No claim was brought in respect of the Late Mother’s Estate or the Late Brother’s Estate.

12 Subsequently, the plaintiffs applied for leave to amend Statement of Claim (Amendment No 1), and the application came before me on appeal (see detailed procedural background below).

13 Without going into the details, I now briefly outline the gist of the claims brought by the plaintiffs (as found in the plaintiffs’ draft Statement of Claim (Amendment No 2) (“the Draft SOC”).

14 In brief, the amendments expanded or added details in respect of the claim against the 1st Defendant and the Late Father’s Estate. The amendments also sought to add *new* claims against the 1st and 2nd Defendants in respect of the Late Mother’s Estate and the Late Brother’s Estate. I say nothing more about the attempt to bring in a new claim in respect of the Late Brother’s Estate since there is no request for further arguments (or indeed application for leave to appeal) in respect of the dismissal of the amendments in respect of the Late Brother’s Estate.

15 Both the 1st Plaintiff and the 2nd Plaintiff bring the following claims against the **1st Defendant** in relation to the **Late Father’s estate**^[note: 5]:

- (a) failure to account for monies in the Late Father’s estate (including the proceeds from the sale of the bungalow, as well as the rental income received from the property before the sale);
- (b) failure to properly distribute the Late Father’s estate or to properly instruct the 2nd Defendant to distribute the Late Father’s estate;
- (c) failure to properly calculate the beneficiaries’ respective entitlements under the Late Father’s estate, especially in relation to the claims the 1st Defendant and the plaintiffs have against the Late Father’s estate; and
- (d) wrongfully releasing sums of money to himself above and beyond what he is entitled to as beneficiary or creditor.

16 Both the 1st Plaintiff and the 2nd Plaintiff bring the following claims against the **2nd Defendant** in relation to the **Late Father's estate**^[note: 6]:

- (a) wrongfully acting on the sole and unilateral instructions of the 1st Defendant in relation to the Late Father's estate without consulting the plaintiffs or independently verifying the 1st Defendant's instructions;
- (b) wrongly calculated the entitlements of each party, enabling the 1st Defendant to inflate his share; and
- (c) wrongfully paying the 1st Defendant sums from the Late Father's estate which exceeds the 1st Defendant's rightful entitlement.

17 Both the 1st Plaintiff and the 2nd Plaintiff bring the following claims against the **1st Defendant** in relation to the **Late Mother's estate**:

- (a) wrongfully instructed the 2nd Defendant to pay him excess sums out of the Late Mother's 1/7th share of the Late Father's estate, thereby unjustly enriching himself; and
- (b) failed to act fairly towards the beneficiaries when he admitted his own claims against the Late Mother's estate but not other similar claims of the plaintiffs.

18 Both the 1st Plaintiff and the 2nd Plaintiff bring the following claims against the **2nd Defendant** in relation to the **Late Mother's estate**:

- (a) wrongfully dealing with the Late Mother's estate when the 2nd Defendant was not engaged or authorised to do so;^[note: 7]
- (b) wrongfully paying out sums which the 1st Defendant is not entitled to from the Late Mother's estate to the 1st Defendant;^[note: 8]

19 With this factual backdrop in mind, I now explain the background to the specific interlocutory applications before me.

The applications before me

Application to amend the statement of claim

20 This judgment is broadly concerned with the plaintiffs' application to amend their statement of claim in S 764/2013.

21 On 18 September 2014, the plaintiffs filed SUM 4655/2014 for leave to amend their statement of claim in the manner found in the Draft SOC. The amendments proposed by the plaintiffs in the Draft SOC were quite significant. At the hearing before the Assistant Registrar ("the AR"), the Defendants did not object to a number of proposed amendments.^[note: 9] The AR allowed some of the contested amendments, but also disallowed a significant number of paragraphs in the Draft SOC. Both the plaintiffs and the 2nd Defendant were dissatisfied with

the AR’s decision. The plaintiffs thus filed RA 396/2014 (seeking to reverse the AR’s decision disallowing certain paragraphs of the Draft SOC), and the 2nd Defendant filed RA 397/2014 (seeking to exclude certain paragraphs allowed by the AR). The appeal then came before me.

22 Having heard the parties on 9 February 2015, I allowed the 2nd Defendant’s appeal in RA 397/2014 in full, and only partially allowed the plaintiffs’ appeal in RA 396/2014. For clarity and convenience, I set out the disputed paragraphs of the Draft SOC in the following table, and outline whether they have been allowed or disallowed following the AR’s decision in SUM 4655/2014, and my decisions in RA 396/2014 and RA 397/2014.

Paragraph	Description	Allowed/ Disallowed
Late Father’s estate		
[36(b)]	Facts relating to the 2nd Defendant’s handling of the Late Father’s estate	Allowed
Prayer 4(a)(i)-(iii)	2nd Defendant’s liability in relation to Late Father’s estate	Disallowed (parties were content to just have prayer 4(a)(iv))
Prayer 4(a)(iv)	2nd Defendant’s liability in relation to Late Father’s estate	Allowed
Late Mother’s estate		
[42]-[44]	Details of the 2nd Defendant’s breaches of duty in relation to the Late Mother’s estate	Disallowed
[45]	Facts relating to the expenses claims that the parties have against the mother’s estate	Allowed
[49]-[50]	The 2nd Defendant’s liability in respect of the mother’s estate	Disallowed
Prayer 4(b)	The 2nd Defendant’s liability in respect of the mother’s estate	Disallowed
[52]-[53]	<p>The 1st Defendant’s liability in relation to the mother’s estate.</p> <p>Note: [51] set out claims in respect of breach of duties by the 1st Defendant as a joint executor/trustee of the Late Mother’s estate. [54] sets out the claim for an account against the 1st Defendant in respect of monies taken from the Late Mother’s 1/7th share in the Late Father’s estate.</p> <p>[52]-[53] set out further and alternative claims in respect of the breaches alleged in para 51.</p>	Allowed (This was in light of [51] and [54] having been allowed before the AR as they were not contested.)
Foo Jee Fong’s estate		
[55]-[66], Prayer 3, 4(c)	Relating to Foo Jee Fong’s estate	Disallowed (no dispute now in the request for further arguments and/or leave to appeal)

Leave to appeal and further arguments applications

23 The plaintiffs were dissatisfied with my decision to disallow the paragraphs containing their claims against the 2nd Defendant in relation to the Late Mother's estate (specifically, [42]–[44], [49]–[50] and prayer 4(b) of the Draft SOC).

24 On 16 February 2015, the plaintiffs wrote a letter to the court requesting for further arguments. On 17 February 2015, the plaintiffs filed SUM 786/2015 and SUM 787/2015, seeking leave to appeal against my decision to disallow [42]–[44], [49]–[50] and prayer 4(b) of the Draft SOC. The only basis the plaintiffs rely upon in these leave to appeal summonses is that there is a *prima facie* case of error in my decision.^[note: 10]

25 Thus, the only question before me arising from the application for further arguments and the leave to appeal summons is whether I erred in disallowing the paragraphs containing the plaintiffs' claims against the **2nd Defendant** in relation to the **Late Mother's estate**. If I find that I did so err, I can either vary my original judgment, or grant the plaintiffs leave to appeal my decision.

26 The above matters were fixed before me on 14 April 2015. However, the 1st Defendant's counsel requested an adjournment because his client was in hospital. I granted the adjournment. Since parties were all present before me, I took the opportunity to request for further submissions on the specific issues of capacities in which parties are suing and being sued, and on joinder of causes of action in the present suit. These were issues which I felt needed to be more fully ventilated. The parties duly tendered their further submissions, and came before me for oral submissions on 28 May 2015. At the end of the hearing on 28 May 2015, I reserved judgment.

Issues that arise in the present judgment

27 To be clear, this judgment only concerns my decision on the plaintiffs' further arguments and leave to appeal applications, and the issues that arise therefrom. It is not the grounds of my decision in RA 396/2014 and RA 397/2014 as a whole.

28 The first issue that arises for consideration relates to the capacities the parties are suing and being sued in. As will be seen, this has a crucial impact on whether the plaintiffs have standing to bring the claims they seek to bring against the 2nd Defendant in relation to the Late Mother's estate.

29 The second issue that arises is whether I erred in disallowing [42]–[44], [49]–[50] and prayer 4(b) of the Draft SOC, which essentially contain the plaintiffs' claims against the 2nd Defendant in relation to the Late Mother's estate. Two sub-issues arise under this head. The first relates to whether the plaintiffs have standing to bring the claims against the 2nd Defendant in relation to the Late Mother's estate, and the second relates to the appropriateness of joining the causes of action in those paragraphs.

Capacities

30 I start by discussing the issue of capacities because this will have significant implications on my decision on the further arguments and leave to appeal applications (as will be seen subsequently).

31 It is well-established that the representative capacities in which parties are suing and being sued in must be made absolutely clear from the point an action is commenced. The onus, of course, is on the plaintiff commencing the action to ensure that this is the case. Indeed, O 6 r 2(1)(c) and (d) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") state:

2.-(1) Before a writ is issued, it must be endorsed-

(c) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues;

(d) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued;

32 Complying with this rule is not merely important for procedural neatness. Clarifying the capacities in which parties are suing and being sued forms a crucial backdrop to the plaintiff's claims and has significant *substantive* implications. In many cases, the capacities in which the parties are acting in will affect the rights and obligations they owe to each other. For example, if certain persons have special rights due to their representative capacities, such rights are usually only enforceable if the action is brought in those representative capacities. Without clarity as to the capacities in which parties are suing and being sued in, the court will not have sufficient context to properly assess the validity of the claims brought by the plaintiff against the defendant.

33 Looking at the writ and the Draft SOC in the present case, I found there to be significant uncertainty as to the capacities in which the parties were suing and being sued in. Given that no statement of capacity was endorsed on the writ pursuant to O 6 r 2(c) and (d) of the ROC, it appeared that the plaintiffs were suing in their personal capacities. However, the plaintiffs' pleadings and submissions strongly suggested that at least some of their claims concerned the 1st Plaintiff in his *representative capacity*. I therefore directed the parties to make further submissions to clarify their positions.

34 While I gave all parties the opportunity to make further submissions on the abovementioned issues, the issue on capacities is in reality a question *for the plaintiffs*. Given that this is the plaintiffs' action, they have the prerogative and also the duty, to make clear the capacities in which the parties are suing and being sued in.

The plaintiffs' position

35 In their written submissions and orally before me at the hearing on 28 May 2015, the plaintiffs unequivocally took the position that the parties were all suing and being sued in their *personal capacities only*. This is the case notwithstanding any suggestions to the contrary in their pleadings, submissions, affidavits, or correspondence. I note that the plaintiffs' counsel was unwavering in taking this position even in response to repeated probing and questions from the court.

36 I accept that it is the *plaintiffs' prerogative* to decide how they would like to bring and frame their claim. Further, I note that the plaintiffs' present position on capacities is consistent with the writ that was issued for S 764/2013 because there is no statement of capacities in the writ. In the absence of such a statement, the court will proceed on the basis that parties are suing in their personal capacities.

37 However, the plaintiffs' current position on capacities, clear and unequivocal as it was when articulated during the hearing of further arguments, appears to be a *radical shift* from the plaintiffs' previous position.

38 To demonstrate my point, I shall consider a few clear examples from the plaintiffs' previous submissions. In the plaintiffs' letter to the court dated 16 February 2015 requesting for further arguments, they stated at [22] that:

The 2nd Defendant's contention that the Plaintiffs have no locus to bring an action against them without also joining the co-executor of the Mother's estate is without merits. The authority of *Lee Han Tiong v Tay Yok Swee* cited by the 2nd Defendant stands for the proposition that if a co-executor does not consent to an action commenced by another co-executor, the former should be joined in the action as a defendant. The 1st Defendant as the co-executor of the Mother's estate has been so joined in this action.

39 It seems clear to me that the plaintiffs were stating that the 1st Defendant *as co-executor of the Late Mother's estate* is presently part of the action. Moreover, it is clearly implied that the 1st Plaintiff envisioned himself commencing the action relating to the Mother's estate in his capacity *as co-executor of the Late Mother's estate*.

40 A similar suggestion was made at [6] of the plaintiffs' first skeletal submissions dated 14 April 2015 tendered for the present applications:

Plaintiffs should not be shut out and precluded from making claims in relation to the Mother's estate

...

6. 1st Plaintiff and 1st Defendant are joint executors and trustees under Mother's estate – all necessary parties are before the Court in this action.

41 In the paragraph above, the plaintiffs appear to assert the 1st Plaintiff's and 1st Defendant's capacity as joint executors and trustees of the Late Mother's estate as the relevant capacity for the present action. More than that, they even seem to make a concession that the 1st Plaintiff and 1st Defendant *as joint executors and trustees of the Late Mother's estate* are necessary parties to this action.

42 It would appear from the above paragraphs that the 1st Plaintiff was bringing at least some of the claims in relation to the Late Mother's estate in his capacity as joint executor and trustee of the Late Mother's estate. Indeed, the above paragraphs also suggest that the plaintiffs were suing the 1st Defendant in his capacity as joint executor and trustee of the Late Mother's estate.

43 These are merely some examples that demonstrate the shift in the plaintiffs' position. While the plaintiffs' current position accords with the writ as it stands (which has not been endorsed with any statement of capacities), it is clear that confusion has arisen because of the plaintiffs' failure to clarify the position it was taking on this issue. I also acknowledge that the defendants were surprised (and rightly so) by the shift in the plaintiffs' position at this stage. I cannot emphasise enough how important and fundamental it is for litigants to apply their minds to the issue of capacities, and to *clearly* state the parties' relevant capacities (both in the writ and in the pleadings) when commencing an action. This is especially the case in litigation such as the present, where one party wears multiple "hats".

44 I pause to observe that I find the plaintiffs' insistence on the 1st Plaintiff suing only in his personal capacity somewhat puzzling. Why this is so will be seen more clearly later in the judgment. Nevertheless, as I mentioned above, it is ultimately the *plaintiffs' prerogative* to decide the capacities in which they are suing in and in which they choose to sue the defendants in. On this, I reiterate that the plaintiffs have now taken the clear and unequivocal position before me that the parties to the present action are all suing and being sued in their *personal capacities only*. Given that the plaintiffs' current position is consistent with the writ as it stands, there is no reason for me to proceed on any other basis than that the parties to the present case are indeed all suing and being sued in their *personal capacities only*.

1st Defendant's capacity

45 While the further arguments and leave to appeal applications concern only the *plaintiffs' claims vis-à-vis the 2nd Defendant*, at the hearing before me, matters to do with the *1st Defendant's capacity* were traversed. For this reason, I now make a few observations on the *1st Defendant's capacity*. The 1st Defendant may be sued in three possible capacities: personal capacity, capacity as executor and trustee of the Late Father's estate, and capacity as executor and trustee of the Late Mother's estate. At the oral hearing before me on 28 May 2015, there was some suggestion from the defendants that they assumed all along that the 1st Defendant was being sued in his representative capacity as executor and trustee of the Late Father's and Late Mother's estates, rather than in his personal capacity.

46 I would make clear that having considered the statutory provisions and relevant authorities carefully, I am of the view that the 1st Defendant is appropriately sued in his *personal capacity*, rather than in his *representative capacity* as executor and trustee of either the Late Father's or Late Mother's estate.

47 Order 6 r 2(1)(c) and (d) of the ROC requires that a plaintiff's and/or a defendant's *representative capacities* must be endorsed on the writ. Order 6 r 2(1)(c) and (d) of the ROC only apply when the plaintiff is suing as a representative, or when the defendant is being sued as a representative.

48 When suing an executor and trustee for breach of his duties in respect of his handling of the estate, it appears that the claim should be brought against the executor and trustee *in his personal capacity*: see generally Jeffrey Pinsler SC, *Singapore Court Practice 2014* vol 1 (Lexis Nexis, 2014) ("*Singapore Court Practice*") at para 15/1/4. This passage just cited from *Singapore Court Practice* at para 15/1/4 concerns O 15 r 1(b), which relates, *inter alia*, to the joinder of two separate causes of action against a person in his *representative capacity* as executor or trustee of an estate, and against the same person in his *personal capacity* in respect of the same estate. The learned author of *Singapore Court Practice* at para 15/1/4 observes that O 15 r 1(1)(b) deals with the case where there are two claims against an estate: one being against the *estate itself*, and the other against a *personal representative in respect of his handling of the estate*. Thus, a person may have a claim against the estate in respect of a debt owed by the deceased; in addition, he may also have a claim against the personal representative in respect of his handling of the estate. In such a case, so long as all the claims relate to the same estate, the plaintiff may join them without leave of the court. It appears to follow that claims are only brought against the executor and trustee in his representative capacity as executor and trustee when the plaintiff wishes to sue *the estate itself*.

49 Order 15 r 14 of the ROC lends weight to this interpretation of the rules. Order 15 r 14 concerns bringing claims "against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate". The rule is clearly concerned with enabling trustees, executors and administrators in their capacity as such to sue or be sued without their beneficiaries being joined, but so as to

bind them: *Singapore Civil Procedure 2015* vol 1 (G P Selvam gen ed) (Sweet & Maxwell, 2015) at para 15/14/2. It therefore appears that it is only necessary to sue a trustee and executor *in his representative capacity* if a claimant is seeking to sue and bind the natural or legal persons (eg, beneficiaries of the estate) the said trustee and executor represents.

50 In the present case, while the plaintiffs are suing the 1st Defendant for the breach of his duties as “the trustee of the Late Father’s estate” (the Draft SOC at [40]) and as “one of the joint executors and trustees of the Late Mother’s estate” (the Draft SOC at [51]), the plaintiffs are not suing the estates, but the 1st Defendant personally. Therefore, while the 1st Defendant’s alleged breaches of duties were committed in his capacity as executor and trustee of the respective estates, it is unnecessary and inappropriate to sue him in his *representative capacity* as executor and trustee of the Late Father’s or Late Mother’s estates. To do so would, in effect, be to bring a claim against the Late Father’s and Late Mother’s estates instead. This is clearly not the plaintiffs’ intention.

51 Of course, whether the plaintiffs may have to join the 1st Defendant in his capacity as co-executor and trustee of the Late Mother’s estate in order to prosecute claims *on behalf* of the Late Mother’s estate is not a question that I need to address at this juncture. It is for the plaintiffs to decide how they wish to proceed following my decision.

52 Having dealt with the issue of capacities, I now proceed to consider if I erred in disallowing the paragraphs containing the plaintiffs’ claims against the 2nd Defendant in relation to the Late Mother’s estate.

Whether there was a *prima facie* case of error

53 The main ground for the plaintiffs’ further arguments and leave to appeal applications is that I made an error in disallowing [42]–[44], [49]–[50] and prayer 4(b) of the Draft SOC, which contain the plaintiffs’ claims against the 2nd Defendant in relation to the Late Mother’s estate.^[note: 11]

54 It is well-established that courts will normally grant parties leave to amend their pleadings if the proposed amendments enable the real questions in controversy between the parties to be decided: *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 (“*Review Publishing*”) at [113]. This is unless the amendments would cause the other parties to suffer prejudice that is not compensable by costs: *Review Publishing* at [113]. However, the courts also have the discretion to look at the merits if it is apparent on the face of the amendments that the claims therein cannot succeed: *Kings Quality Homes Ltd v AJ Paints Ltd* [1998] 1 WLR 124 at 131. Indeed, I fully accept that as far as possible, courts ought to give the parties the liberty to plead their claims and defences as they wish.

55 In the present case, the 2nd Defendant does not object to the amendments in [42]–[44], [49]–[50] and prayer 4(b) of the Draft SOC on the ground that allowing the said paragraphs would cause it prejudice which cannot be compensated by costs. Instead, the objection is that the claims brought therein are clearly, on the face of the amendments, unmeritorious. To my mind, two key issues arise for determination:

- (a) First, does the 1st Plaintiff and/or the 2nd Plaintiff have standing to bring the claims in [42]–[44], [49]–[50] and prayer 4(b) of the Draft SOC?

(b) Second, if the issue of *locus standi* is overcome, should those separate causes of action against the 2nd Defendant in relation to the Late Mother's estate be joined in a suit primarily about the Late Father's estate?

56 If these questions are both answered in the positive, I would be inclined, after further arguments, to allow [42]–[44], [49]–[50] and prayer 4(b) of the Draft SOC. While I was invited by the 2nd Defendant to look further into the substantive merits of the specific claims brought by the plaintiffs against the 2nd Defendant, I am not inclined to do so at this juncture.

Standing

57 The plaintiffs submit that the 1st Plaintiff has standing to bring the claims in [42]–[44], [49]–[50] and prayer 4(b) of the Draft SOC in his personal capacity because he is a *beneficiary* of the Late Mother's estate. Before me on 28 May 2015, for the first time, the plaintiffs' counsel also submitted that the 2nd Plaintiff (who is not a beneficiary of the Late Mother's estate) also has standing to bring the said claims because she is a *creditor* of the Late Mother's estate. This submission appears to be based on the liability of the Late Mother's Estate for certain medical expenses. Late as this second submission may be, I am prepared to consider if the 2nd Plaintiff's creditor status gives her the requisite *locus standi*. At the hearing before me on 28 May 2015, the parties accepted that the claims in [42]–[44], [49]–[50] and prayer 4(b) of the Draft SOC are brought by the plaintiffs to preserve the assets of the Late Mother's estate generally. They are not brought only to preserve the 1st Plaintiff's portion of or entitlement to the Late Mother's estate. It bears repeating that the 2nd Plaintiff is not a beneficiary of the Late Mother's Estate. The beneficiaries are: the 1st Plaintiff, the 1st Defendant and the Intervener.

58 In these circumstances, the key legal issue that arises for determination is whether a beneficiary or creditor of an unadministered estate has standing to bring a claim to preserve the assets of the estate generally.

59 The leading local authority in relation to a beneficiary's standing to sue on behalf of an unadministered estate is the Singapore Court of Appeal decision in *Wong Moy v Soo Ah Choy* [1996] 3 SLR(R) 27 ("*Wong Moy*"). The plaintiffs accept that the principles articulated by the Court of Appeal in *Wong Moy* govern the issue of standing (both in relation to the 1st Plaintiff as beneficiary and the 2nd Plaintiff as creditor) in this case. I thus now turn to consider *Wong Moy*.

60 In *Wong Moy*, the plaintiff commenced an action against the defendant in her capacity as the administratrix of the estate of her late husband. The defendant was the "second wife" and the action was in respect of certain properties which the plaintiff asserted was held on trust for the late husband.

61 As mentioned, the action was originally brought by the plaintiff in her capacity as administratrix. The problem, however, was that whilst the plaintiff had obtained grant of letters of administration, she had not yet extracted the grant. This was due to issues relating to estate duty. The High Court noted that it was an established principle that it is the grant under seal (*ie*, after extraction of grant) and not the order of court which confers the status of personal representative. The matter was then adjourned so that the plaintiff could consider bringing the action in some other capacity. The plaintiff eventually brought the action in her personal capacity as a beneficiary of the deceased's estate as well as on behalf of her children (who were also beneficiaries). The High Court struck out the plaintiff's action on the ground that she had no standing to sue without the letters of administration. The matter went on appeal before the Court of Appeal. The key legal issue before the Court of Appeal was whether the plaintiff *qua* beneficiary of her deceased husband's estate was entitled to institute an action against the defendant to protect the assets of the estate.

62 The Court of Appeal allowed the appeal, and found that the plaintiff had the requisite standing to commence the action against the defendant. The court first clarified that ordinarily, beneficiaries have *no equitable or beneficial interest* in any particular asset comprised in an unadministered estate: *Wong Moy* at [11]. Indeed, I note in passing that this proposition of law was affirmed by the High Court in *Aamna Taseer v Shaan Taseer and others* [2012] 2 SLR 348 at [6], where the court held that a beneficiary of an unadministered estate did not have any direct, caveatable interest in the assets of the unadministered estate.

63 *Prima facie*, this leans against the conclusion that a beneficiary of an unadministered estate has standing to bring a claim to preserve the value of the estate. However, the court in *Wong Moy* (at [12]) held that there are certain limited, special circumstances under which a beneficiary of an estate which is unadministered or under administration may institute an action to recover assets of the estate. These special circumstances are not confined solely to cases where the personal representative has defaulted in acting to recover the property (*Wong Moy* at [24]). Instead, all the circumstances of the case should be considered and the court must ultimately decide whether it is “impossible or at least seriously inconvenient for the representatives to take proceedings” such that the beneficiaries ought to be given the right to sue: *Wong Moy* at [28].

64 On the facts, the Court of Appeal found that the plaintiff had done all she could to obtain letters of administration. Her failure to extract the grant of letters of administration was due to her inability to obtain clearance from the Commissioner of Estate Duty. Overall, the Court of Appeal was satisfied that she did her best in the circumstances to comply with the requirements but was faced with obstacles beyond her control. Thus, special circumstances were shown and she was allowed to bring the action as beneficiary: *Wong Moy* at [35]–[36].

65 It is noted that *Wong Moy* involved a situation whereby the plaintiff had obtained letters administration (in the sense of a court order) but had yet to extract the grant. It is only upon extraction that the person is clothed with the authority and power to deal with the property of the deceased. In the present case, there is no suggestion that the 1st Plaintiff has not yet been cloaked with the authority and power to act as joint executor and trustee of the Late Mother’s Estate. In *Wong Moy* at [28], it was stated that in deciding whether special circumstances exist to permit a beneficiary to sue, all the circumstances are to be considered including the nature of the assets, the position of the personal representative, and the reason for the default of the personal representative. The Court of Appeal added that it may also be pertinent to consider whether the circumstances made it impossible or seriously inconvenient for the representatives to take action.

66 The plaintiffs have urged me to take especial notice of the case *Joseph Hayim Hayim v Citibank NA* [1987] AC 730 (“*Joseph Hayim*”), as cited in *Wong Moy* at [20]. As the Court of Appeal stated in *Wong Moy* at [20], the beneficiaries in *Joseph Hayim* were allowed to sue to in relation to an unadministered estate because the trustee was the one who gave the disputed instructions to postpone the sale of a house. Clearly, the point the plaintiffs seek to convince me of is that similarly, in the present case, it is the 1st Defendant (as joint executor and trustee of the Late Mother’s estate) who is the alleged wrongdoer. Therefore, it would clearly be inconvenient to expect him to bring the suit. It follows that the beneficiaries (*ie*, the 1st Plaintiff) should have standing to sue.

67 I fully accept the legal principles articulated by the courts above. However, I find that on the facts, the plaintiffs have not been able to prove that it is “impossible or at least seriously inconvenient for the representatives to take proceedings” (*Wong Moy* at [28]). While it would be, at the very least, seriously inconvenient for the 1st Defendant to bring the present claims against the 2nd Defendant given that the 1st Defendant was instructing the 2nd Defendant at all material times (as was the case in *Joseph Hayim*), it hardly can be said to be inconvenient for the *1st Plaintiff* as joint executor and trustee of the Late Mother’s estate to bring the said claims. After all, the 1st Plaintiff has clearly shown himself *willing* and *able* to prosecute these claims in his personal capacity. Unlike *Wong Moy*, where the order had yet to be extracted and hence the plaintiff was not

cloaked with the authority to act for the estate, it appears that the 1st Plaintiff and 1st Defendant have been properly appointed as the executors and trustees of the Late Mother's Estate. There is no suggestion that the order of appointment has not been extracted.

68 Indeed, the plaintiffs' two responses do not deny the 1st Plaintiff's capacity to sue as the joint trustee and executor. First, they submit that the 1st Plaintiff cannot sue on behalf of the Late Mother's estate as *joint executor and trustee* if the other joint executor and trustee (*ie*, the 1st Defendant) does not consent to the action. This surely must be incorrect. In *Lee Han Tiong and others v Tay Yok Swee* [1996] 2 SLR(R) 833, an authority brought to my attention by the plaintiffs themselves (see [30] of this judgment), the High Court held (at [16]) that "all executors are necessary and proper parties [to an action brought on behalf of the estate] and ought to be joined either as plaintiffs *or if they do not consent then as defendants*" [emphasis added]. The plaintiffs have never disputed this proposition of law. Indeed, it would be difficult for them to do so given that they have themselves have relied on this precise legal proposition previously. The lack of consent from the 1st Defendant therefore is not an impediment to the 1st Plaintiff bringing an action on behalf of the Late Mother's estate as joint executor and trustee. The 1st Plaintiff simply needs to ensure that the 1st Defendant is joined as a defendant to the action.

69 The second point the plaintiffs raise is that there is a conflict of interest if the 1st Plaintiff sues as joint executor and trustee of the Late Mother's estate because he is also a beneficiary and creditor of the said estate. There are several problems with this submission. First, no authority was cited for the proposition that there exists a conflict of interest that would prevent a joint executor and trustee of an estate from bringing a claim on behalf of the estate when the said trustee is also a beneficiary and/or creditor of the estate. Indeed, this must be wrong if the law allows a beneficiary to simultaneously act as joint executor and trustee of an estate. Accepting the plaintiffs' submission would mean that a beneficiary who is simultaneously a joint executor and trustee of an estate would be severely hampered in the performance of his functions as joint executor and trustee.

70 Second, even leaving aside the lack of authority, the plaintiffs have not been able to demonstrate the actual conflict of interests. To my mind, it seems that the 1st Plaintiff as joint executor and trustee and as beneficiary or creditor of the Late Mother's estate would have the single interest of preserving the assets of the estate as far as the law permits. This means prosecuting the claims against the 2nd Defendant to the best of his ability. The fruits of litigation will not go directly to the 1st Plaintiff; it goes straight back to the estate. I therefore fail to see where the conflict of interests lies.

71 In light of the above discussion, I find that the plaintiffs *in their personal capacities* have no standing to bring the claims found in [42]–[44], [49]–[50] and prayer 4(b) of the Draft SOC. It is not impossible or seriously inconvenient for the 1st Plaintiff to bring proceedings *in his capacity as joint executor and trustee*. As such, I am of the view that I did not err in disallowing the said paragraphs. The claims as they stand are doomed to fail.

72 Before leaving the issue of standing, I would like to make two observations. First, my decision on standing has no impact on the plaintiffs' standing to bring the claims in relation to the *Late Father's estate*. This is because the sole executor of the Late Father's estate (*ie*, the 1st Defendant) is the alleged wrongdoer and hence it is clearly impossible, if not at least seriously inconvenient, for the trustee to prosecute the present claims on behalf of the Late Father's estate.

73 Second, however, my decision on standing does have an impact on the plaintiffs' standing to bring all of the claims they wish to bring in their personal capacities in relation to the Late Mother's estate. To be clear, this includes the claims *against the 1st Defendant* as well. However, given that the 1st Defendant never objected to the relevant paragraphs in the Draft SOC, and the issue is not before me, I say no more. It is for the parties to take the necessary courses of action they deem fit following my decision.

Joinder of causes of action

74 Given my decision on standing, it is strictly unnecessary for me to consider whether the causes of action relating to the Late Mother's estate should be joined in the present suit. However, I make a few brief comments on this.

75 The rules require that a plaintiff wishing to join more than one cause of action in a single suit must apply for leave of court under O 15 r 1(2) of the ROC unless O 15 r 1(a) or (b) of the ROC applies. *Prima facie*, and without the benefit of detailed submissions on this point, it seems to me that O 15 r 1(a) of the ROC would apply in the present case because (as asserted by the plaintiffs in argument) the plaintiffs and defendants are all suing and being sued in the same capacity (*ie*, their *personal capacities*).

76 However, even if the plaintiffs do not need the leave of court to join the causes of action, O 15 r 5 of the ROC gives the court the power to "order separate trials or make such other order as may be expedient" if the court considers that the joinder of causes of action or of parties "may embarrass or delay the trial or is otherwise inconvenient".

77 It thus appears to me that the key question I must consider in deciding whether the causes of action in the disputed paragraphs ought to be included in the present suit is if the joinder of causes of action (in relation to the Late Father's and Late Mother's estates) "may embarrass or delay the trial or is otherwise inconvenient".

78 If I had to decide the issue *in the present circumstances*, I would have been inclined to allow the joinder of the causes of action in [42]–[44], [49]–[50] and prayer 4(b) of the Draft SOC *only* because as things stand, the claims *against the 1st Defendant* in relation to the *Late Mother's estate* would be ventilated at trial anyway. It therefore would be convenient for the claims against the 2nd Defendant in relation to the Late Mother's estate to also be similarly ventilated as similar issues of fact are involved.

79 However, things would be quite different if I were considering whether *all the causes of action in relation to the Late Mother's estate* should be joined in the present suit, which appears to primarily concern the distribution of the *Late Father's estate*. I note that only four of the seven parties interested in the Late Father's estate have an interest in the Late Mother's estate. Of these, only three are beneficiaries. It may thus not be fair to the other beneficiaries to prolong the trial regarding the Late Father's estate. Moreover, separate and distinct issues of facts arise in relation to the distribution of the Late Mother's estate. It thus is not as clear whether a joinder of causes of action would be justified. Nevertheless, without the benefit of fuller submissions from the parties, I refrain from coming to a definitive conclusion on the matter.

Conclusion

80 In conclusion, I dismiss the plaintiffs' leave to appeal applications, and am not changing my order in RA 396/2015 and RA 397/2015 pursuant to the request for further arguments. Paragraphs [42]–[44], [49]–[50] and prayer 4(b) of the Draft SOC remain excluded from the pleadings.

[note: 1]SOC 2, at [6c]

[note: 2]DC No 2814/2012/L

[note: 3]OS 909/2010/W

[note: 4]SOC 2, at [12]

[note: 5]SOC at [40]

[note: 6]SOC at [36]–[39]

[note: 7]SOC at[43]

[note: 8]SOC at [44]

[note: 9]This was not recorded in the AR’s minute sheet, but parties informed the court that the AR’s judgment only touched on the paragraphs that the defendants objected to.

[note: 10]See the supporting affidavits of Foo Jee Boo dated 17 Feb 2015 filed in support of SUM 787/2015 at [4] onwards, and SUM 786/2015 at [7].

[note: 11]See the supporting affidavits of Foo Jee Boo dated 17 Feb 2015 filed in support of SUM 787/2015 at [4] onwards, and SUM 786/2015 at [7]; see also letter dated 16 Feb 2015 requesting for further arguments.

BACK TO TOP

Copyright Â© Government of Singapore.