

Lim Lina v Estate of Quick Cheng Gee, deceased

[2011] SGHC 267

Suit No: Originating Summons No 388 of 2011 Decision Date: 19 December 2011

Court: High Court Coram: Lee Seiu Kin J

Counsel: Kee Lay Lian and Vimaljit Kaur (Rajah & Tann LLP) for the plaintiff;
Zaminder Singh Gill (Hillborne & Company) for the defendant. Subject Area /

Catchwords Insurance – Probate and Administration – Trusts

Judgment

19 December 2011

Lee Seiu Kin J:

1 This is an application made by the plaintiff, seeking moneys which she claims to be entitled to pursuant to three insurance policies that her deceased husband, Mr Quick Cheng Gee (“the Deceased”), had purchased after their marriage and which she has been named the sole beneficiary of. Background facts

2 The plaintiff was married to the Deceased on November 1991. They have no children. The Deceased died intestate on 30 March 2005. Madam Lu Bah Bee (“Mdm Lu”) is the mother of the Deceased. Pursuant to r 4 of s 7 of the Intestate Succession Act (Cap 146, 1985 Rev Ed), both the plaintiff and Mdm Lu are entitled to half of the Deceased’s estate (“the Estate”).

3 Both Mdm Lu and the plaintiff were appointed administratrices of the Estate under a grant of letters of administration extracted on 9 February 2007. Following the grant, Mdm Lu and the plaintiff opened a bank account to consolidate the Estate (“the DBS Estate Account”). Both Mdm Lu and the plaintiff are joint signatories to the DBS Estate Account.

4 The issue for this court’s determination concerns the proceeds of the following three insurance policies (“the AIA Insurance Policies”) purchased by the Deceased, which totalled \$339,125.37:

- (a) AIA policy No L531438918: \$255,990.05
- (b) AIA policy No L519010251: \$29,325.86
- (c) AIA policy No L110433554: \$53,809.46

5 On the application forms for each of the AIA Insurance Policies, the plaintiff’s name, viz “Lim Lina”, was written as the sole name under the box labelled “Name of Beneficiary”. Her relationship as the Deceased’s “wife” is also indicated under the box labelled “Relationship”.

6. The proceeds of the AIA Insurance Policies were paid into the DBS Estate Account. The plaintiff believed that this payment was erroneous as the proceeds of the AIA Insurance Policies were actually due to her. Through her solicitors, she corresponded with Mdm Lu to request her approval for the proceeds of the AIA

Insurance Policies to be taken out of the DBS Estate Account. However, Mdm Lu refused to approve the release of the proceeds.

7 Accordingly, the plaintiff made the present application for a declaration that she was entitled to the proceeds of the AIA Insurance Policies that have been paid into the DBS Estate Account, and that the same should be released to the plaintiff solely. The Plaintiff's argument in support of her application was that the monies paid under the AIA Insurance Policies did not form part of the Estate, and instead belonged solely to her.

The law

8 Section 73(1) of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) ("CLPA") sets out that monies payable under certain policies of assurance do not form part of the estate of the insured in the following terms:

Moneys payable under policy of assurance not to form part of the estate of the insured

73. —(1) A policy of assurance effected by any man on his own life and expressed, before the date of commencement of section 10 of the Insurance (Amendment) Act 2009, to be for the benefit of his wife or of his children or of his wife and children or any of them, or by any woman on her own life and expressed, before the date of commencement of section 10 of the Insurance (Amendment) Act 2009, to be for the benefit of her husband or of her children or of her husband and children or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured or be subject to his or her debts.
[emphasis added]

9 Section 73 of the CLPA had its predecessor in s 11 of the Married Women's Property Act 1882 (UK) (see *CH v CI* [2004] SGDC 131 ("*CH v CI*") at [14]). The rationale for the English provision was to allow an insured person to set up a separate fund exclusively for his immediate family on which creditors could not possibly lay their hands, thus protecting the immediate family members from the policyholder's creditors (see Yeo Hwee Ying, "Life Policies under a Statutory Trust" [1996] SJLS 342 at 342 and Debbie Ong Siew Ling, "Section 73 CLPA: Assurance for the Spouse and Children" (1997) 9 SAcLJ 82 at 83). As explained by Deane J in *Re Yeo Hock Hoe's Policy* (1938) MLJ 33 at 34, in the context of the then-equivalent of s 73 of the CLPA:

In other words the legislature viewing with sympathy any effort by a man to provide for his wife and family after his death has provided that a man may insure his life at any time for their benefit and any monies payable under the policy shall not go to pay his debts, but shall be held in trust for his family.

10 I pause briefly to note that the legislative framework surrounding s 73 of the CLPA was amended pursuant to the enactment of the Insurance (Amendment) Act 2009. According to Hansard, such a change was made because under the s 73 framework, there was some uncertainty surrounding the disbursement of insurance

policy proceeds (see Singapore Parliamentary Debates, Official Report (4 February 2009) vol 85 col 1630 (Mr Lim Hng Kiang, Minister for Trade and Industry)). The Insurance (Amendment) Act 2009 was to “clarify the current uncertainty surrounding the disbursement of insurance policy proceeds and give policy owners the assurance that the proceeds from their insurance policies will be disbursed as they intended” (ibid). Given, however, that the AIA Insurance Policies were effected before the amendments were made to the legislative framework, s 73 of the CLPA remains applicable to the present case.

11 The key matter of interest in the present case was whether the AIA Insurance Policies were “expressed” to be for the benefit of the plaintiff, for the purposes of s 73 of the CLPA. It appears from decided cases that there is no fixed format of “expression” required in order for s 73 of the CLPA to be brought into operation. For instance, in *Eng Li Cheng Dolly v Lim Yeo Hua* [1995] 2 SLR(R) 577 (“Dolly Eng”) the policy contained the provision “Beneficiary. Mdm Eng Li Cheng, wife of the life assured”. This was found to be sufficient expression for the purposes of s 73 of the CLPA.

12 It should further be noted that s 73 of the CLPA need not be expressly mentioned in the policy of assurance because such express mention is not a requirement in s 73 (*Dolly Eng* at [14] per G P Selvam J). On the facts of *Dolly Eng*, notwithstanding that s 73 of the CLPA was not expressly mentioned, Selvam J held that s 73 of the CLPA applied to the facts of the case. More recently, in *CH v CI*, the district court held – citing *Dolly Eng* – that “it is not necessary to specifically invoke Section 73 in the life insurance policy documents in order for a Section 73 trust to be created” (*CH v CI* at [17]).

Application to the facts

13 In the present case, as mentioned above (at [5]), the plaintiff’s name was written under the column labelled “Name of Beneficiary”, and her relationship as the Deceased’s “wife” is also clearly indicated under the column labelled “Relationship”. This is therefore sufficient to indicate that the policies were “expressed ... to be for the benefit of his wife” for the purposes of s 73 of the CLPA. As such, s 73 of the CLPA was brought into operation, and a trust was immediately constituted in favour of the plaintiff. The proceeds of the AIA Insurance Policies thus do not form part of the Estate.

14 I accordingly allowed the application. I also ordered that costs of these proceedings to be paid by the Estate, on solicitor and client basis.