

PHUA CHUI HAR v AMANAH RAYA BERHAD

CaseAnalysis

[2002] MLJU 512

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HIGH COURT (KUALA LUMPUR)

AZMEL J

SAMAN PEMULA NO S6-24-4879-2001

19 September 2002

Case Summary

Trusts and Trustees — Wills — Creation of trusts — Appointment of trustee by testator — Application by sole beneficiary to discharge trustee in order to save costs — Whether sufficient grounds to discharge trustee — Trustee Act 1940, s 40

Succession — Will — Trusts — Appointment of trustee by testator — Application by sole beneficiary to discharge trustee in order to save costs — Whether sufficient grounds to discharge trustee — Trustee Act 1940, s 40

C.J. Tam (Rajindar Singh Veriah & Co), Abqary Bin Abdul Aziz (Amanah Raya Bhd)

GROUNDINGS OF JUDGMENT

Through a Will made on 23.7.2001 the Deceased, Goh Swee Giak, created a trust in respect of her estate and appointed the Defendant as the executor and trustee of her estate. The Plaintiff in this case is the only beneficiary of the [*2]

Deceased's estate. The Plaintiff applied to this Court to extinguish the trust created by the said Will. The only ground given for the application was in order to save expenses in terms of fees that the Defendant may charge when it undertakes to administer the said estate.

I have requested Counsels from both parties to give their written submissions. After having considered all the circumstances of this case including the Counsels' submissions I arrived at the conclusion that the Plaintiff's application had no merits and I dismissed it with costs. My reasons are as follows.

Firstly, the terms of any will cannot be simply ignored and the wishes must be fully adhered to. In this case the Deceased had categorically stated in the Will that she wanted the Defendant to be the executor and trustee of her estate. She must have specific reasons for wanting to appoint [*3]

the Defendant to be the trustee of her estate. However, the Court is under no duty or obligation to determine the reasons.

Secondly, appointment of a new trustee is governed by [S.40](#) of the [Trustee Act 1949](#). The relevant sub-section (1) of the said Act reads:-

PHUA CHUI HAR v AMANAH RAYA BERHAD

"40(1) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of Malaysia for more than twelve months or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or is a minor....."

Hence sub-section (1) of [S.40](#) of the [Trustee Act](#) clearly stipulates the grounds for which a trustee may be discharged. [*4]

Saving expenses that the Defendant may charge when administering the estate is not envisaged as a ground under S.40(1) of the said Act. By whatever standard used, I find it very difficult to be convinced that ground to be a valid ground. Assuming that the Defendant is discharged, the Plaintiff may still have to appoint a solicitor to do the necessary legal works before the properties in the estate can be transferred to the Plaintiff. I am unable to say that the solicitor's legal fees would be cheaper than those that would be charged by the Defendant.

Thirdly, the Defendant's main function is dealing with administration of trust matters. It is fully equipped with the necessary knowledge expertise and personnels. As such the likelihood that the Defendant would not be able to carry out its duties and obligation are very remote.

Finally, the Defendant has not begun the work towards administering the Deceased's estate yet. As such [*5] whatever valid grounds for applying to discharge a trustee as stated under S.40(1) of the [Trustee Act](#) have not been shown yet. In other words this application is premature. Only when it has been shown that the Defendant has committed any act as mentioned under S.40(1) of the [Trustee Act](#) which merits a trustee to be discharged can this Court consider granting the Plaintiff's application.

In the circumstances and for the reasons as I have explained above I dismissed the Plaintiff's application with costs.