

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY, MALAYSIA.
[CIVIL SUIT NO. WA -22NCVC -489 -09/2022]**

BETWEEN

1. BRIAN LIM YEN WEI

(NRIC NO.: 930516-10-5569)

2. EUGENE LIM YEN YONG

(NRIC NO.: 910515-10-5315)

3. ESTELLA LIM YEN YIEN

(NRIC NO.: 971011-10-5492)

... PLAINTIFFS

AND

1. NG GEOCKSIN

(NRIC NO.: 320524-04-5254)

2. LIM KIM PORE

(NRIC NO.: 570829-04-5003)

... DEFENDANTS

GROUND OF JUDGMENT

Introduction

[1] This action relates to the plaintiffs' allegations that the 2nd defendant, having intermedDied in the Estate of the deceased, acted as an executor *de son tort* in relation to the Estate of the late Lim Kim Seng who died intestate.

[2] The plaintiffs, being the biological children of the deceased, seek declarations and orders compelling the 2nd defendant to account for his dealings with the assets of the Estate. The 1st defendant, the mother of the deceased, filed a counterclaim seeking for the proper administration of the Estate.

- [3] The trial was conducted over three days in March 2025. The plaintiffs called three witnesses and produced extensive documentary evidence. At the close of the plaintiffs' case, the defendants elected to submit a no case to answer.
- [4] The defendants' counterclaim was subsequently resolved by a consent judgment. Pursuant to the consent judgment, Amanah Raya Berhad was appointed as the sole administrator of the Estate.

Brief background of facts

- [5] The deceased, Lim Kim Seng, died intestate on 11.04.2021. He was survived by three children, the plaintiffs in this action and his elderly mother, the 1st defendant.
- [6] At the material time, the 1st plaintiff resided with the deceased for approximately seven years at the Five Stones Condominium. The 2nd and 3rd plaintiffs were residing overseas in Germany and the United Kingdom respectively.
- [7] On the day of the deceased's death, the 2nd defendant instructed the 1st plaintiff to vacate and move out of the condominium suggesting concerns about the premises being "unclean" connoting the existence of "spirits". The 1st plaintiff, then in a state of shock and grief, complied and surrendered the keys to the 2nd defendant. On the same day, the 2nd defendant lodged a police report requesting that no autopsy be performed and no investigation be carried out in relation to the death.
- [8] In the weeks that followed, the 2nd defendant exercised exclusive control over the Five Stones Condominium. When the 2nd and 3rd plaintiffs returned to Malaysia sometime in early May 2021, they requested the return of the keys. Upon regaining access, they discovered that numerous items were missing. These included gold bars, silver certificates, digital devices and cash. Torn fragments of

what appeared to be a note from the deceased concerning his assets were also found.

- [9] Later, the plaintiffs contacted the 2nd defendant to enquire about the missing items. During the conversation, the 2nd defendant admitted that he had removed several items from the condominium. These included the deceased's digital devices, personal belongings, gold bars, silver certificates and cash.
- [10] The 2nd defendant further disclosed that the deceased had opened a joint account with him approximately one week before his death. Following the death, the 2nd defendant had transferred the entire balance from the joint account into the 2nd defendant's personal account. Allegedly, this was done to avoid the joint account from being frozen.
- [11] On the following day, the 2nd defendant returned the digital devices to the plaintiffs. Upon examination, the plaintiffs discovered that the devices had been accessed while in the 2nd defendant's possession. The event logs on the laptop revealed user activity and a file titled "INFORMATION NECESSARY TO SECURE ASSETS.docx" had been opened on 06.05.2021 at 11:15pm and subsequently deleted from the deceased's laptop.
- [12] The 2nd defendant eventually returned the physical assets including gold bars weighing approximately 8 kilograms, silver certificates and RM450,000.00 in cash. The 2nd defendant also issued a cheque for RM3,436,609.53 representing funds from the joint account. However, this amount was RM466,100.00 less than the balance he had earlier shown to the plaintiffs.
- [13] Following the deceased's death, arrangements were made for the 1st defendant to renounce her entitlement in the Estate in favour of the plaintiffs. On the scheduled date for signing the renunciation

documents, the 2nd defendant took the 1st defendant away from the premises.

[14] A handwritten note subsequently emerged purportedly from the 1st defendant stating that she no longer wished to renounce her share. The note was written in English, notwithstanding the 1st defendant's inability to read or write in that language.

[15] At the end of December 2021, the plaintiffs filed an originating summons to obtain letters of administration. This was later converted into the present writ action following the intervention of the 1st defendant. During the proceedings, Administrators *Pendente Lite* ("APL") were appointed. The reports produced by the APL disclosed that the 2nd defendant had transferred RM2,511,599.89 from the joint fixed deposit account into a new joint account held jointly by the 2nd defendant and his son.

[16] On 17.03.2025, the parties recorded a consent judgment (Enclosure 257) appointing Amanah Raya Berhad as the sole administrator of the Estate. This resolved the dispute regarding the administration of the Estate. However, the plaintiffs' claims against the 2nd defendant for acting as executor *de son tort* remain litigated.

Analysis and findings

Legal framework for no case to answer

[17] In *Jaafar bin Shaari & Anor (suing as administrators of the estate of Shofiah bte Ahmad, deceased) v. Tan Lip Eng* [1997] 4 CLJ 509; [1997] 3 MLJ 693 SC; [1997] 1 MLRA605; [1997] 4 AMR 3744, the Supreme Court ruled that where a defendant elects not to call evidence, all evidence adduced by the plaintiff must be treated as true. However, this presumption does not relieve the plaintiff from the duty to prove the claim on a balance of probabilities. (See: *Syarikat Kemajuan Timbermine Sdn Bhd v. Kerajaan Negeri*

Kelantan Darul Naim [2015] 2 CLJ 1037; [2015] 3 MLJ 609 FC; [2015] 2 MLRA 205; [2015] 2 AMR 124).

Definition and elements of executor de son tort

- [18] The defendants contend that despite the presumption of truth attaching to the plaintiffs' evidence, the plaintiffs have not discharged their legal burden. The defendants argue that the evidence fails to establish intermeddling and that the 2nd defendant acted with the deceased's authority. These positions must be assessed against the entirety of the plaintiffs' evidence which now stands as unchallenged and presumed accurate.
- [19] The defendants contend that the 2nd defendant's conduct does not amount to intermeddling sufficient to establish the status of executor *de son tort*. In *Singapore Gems Co v. The Personal Representative for Akber Ali (deceased)* [1992] 2 SLR 254, the Singapore High Court held that even a very slight act of intermeddling with the goods of the deceased would be sufficient to make a person executor *de son tort*.
- [20] Similarly, the Federal Court in *Kerajaan Malaysia v. Yong Siew Choon* [2005] 4 CLJ 537; [2006] 1 MLJ 1; [2005] 2 MLRA 185, referred to the authoritative text in *The Law of Wills, Probate Administration and Succession in Malaysia and Singapore* by Mahinder Singh Sidhu and affirmed that an executor *de son tort* is one who intermeddles with the goods of the deceased or does any other act characteristic of the office of executor or administrator without lawful appointment.
- [21] The defendants' contention, that the deceased had entrusted assets to the 2nd defendant, cannot, even if accepted, justify the degree of control exercised by him. I find that the 2nd defendant's immediate seizure of the property keys, his month-long exclusive possession of the premises, the unauthorised removal of substantial assets without

disclosure to the beneficiaries and his interference in the process of administration of the Estate through the 1st defendant, collectively amount to conduct that far exceeds any purported authority arising from the joint account arrangement.

Digital device tampering

[22] The defendants dispute the plaintiffs' allegations of digital device tampering, relying on the absence of expert forensic evidence. In my considered finding, the objective evidence constitutes sufficient circumstantial proof of such fact. These consist of the event logs, deleted files and user activity discovered during the 2nd defendant's exclusive possession. The 2nd defendant's denial of accessing the devices is directly contradicted by these technical evidence.

[23] In the English Court of Appeal case of *Phipps v. Boardman* [1965] Ch 992, His Lordship Lord Denning MR held that a person who assumes authority without legal entitlement is accountable just as if he had in fact the authority which he assumed. In the present case, the deletion of a key document relating to the Estate while the laptop was in the 2nd defendant's exclusive custody amounts to serious interference with the administration of the Estate.

Missing funds

[24] The defendants fail to provide a satisfactory explanation for the RM466,100.00 discrepancy between the amount initially shown to the plaintiffs and the amount ultimately returned. The defendants' claim that this sum represented funeral expenses is not supported by any documentary evidence. It was also not pleaded in their defence.

[25] Although it may be argued that the 2nd defendant's unilateral transfer of funds from the joint account into his personal account was permitted under the terms of the joint account, the 2nd defendant's unilateral transfer of funds from the joint account into his personal

account constitutes an assumption of authority. Further, it was made without proper disclosure to the beneficiaries.

- [26] The transfer of RM2,511,599.89 from the 1st defendant's fixed deposit account into a joint account held by the 2nd defendant and his son, as disclosed in the APL reports, provides strong evidence of continued financial manipulation. The defendants' argument that the transfer was made to protect the 1st defendant's interests is not convincing as the funds were placed under the control of the 2nd defendant rather than retained in the name of the 1st defendant.

Manipulation of the 1st defendant

- [27] It was argued that the 2nd defendant acted to protect his mother's interests in the Estate. However, the evidence establishes a pattern of systematic manipulation aimed at preserving the 2nd defendant's control over the Estate. The removal of the 1st defendant from the appointment for the renunciation, the production of a handwritten note in English despite the 1st defendant's inability to read or write in that language and the subsequent prevention of contact between the 1st defendant and the plaintiffs collectively demonstrate a deliberate obstruction of proper administration of the Estate.
- [28] The defendants' contention that the 2nd defendant was merely discharging filial duty does not justify the extensive control he exercised over the Estate. The 2nd defendant's actions exceeded the scope of protecting his mother's interests and clearly reflect an assumption of authority over the entire Estate without lawful appointment.

Assessment of credibility and evidence

- [29] The defendants rely on alleged inconsistencies in the plaintiffs' testimony to challenge their credibility. While certain witnesses appeared defensive during cross-examination, these concerns do not displace the objective documentary evidence supporting the

allegations of intermeddling by the 2nd defendant. The event logs from the digital devices, financial transfer records and contemporaneous audio recordings of the 2nd defendant's admissions provide strong and independent corroboration of the plaintiffs' claims.

- [30] The defendants' election not to adduce evidence leaves the 2nd defendant's version of events untested and unsupported. In *Yoong Sze Fatt v. Pengkalen Securities Sdn Bhd* [2010] 1 CLJ 484; [2010] 1 MLJ 85 CA; [2009] 3 MLRA 112; [2010] 1 AMR 448, the Court of Appeal held that a party's failure to call evidence without adequate explanation invites adverse inferences under section 114(g) of the Evidence Act 1950. The 2nd defendant's silence on critical matters, including the missing funds, access to digital devices and interference with the 1st defendant warrants the drawing of such adverse inferences.

The defendants' counterclaim

- [31] The 1st defendant's counterclaim for appropriate administration of the Estate was resolved by the consent judgment. The appointment of Amanah Raya Berhad as sole administrator constitutes substantial answer on the 1st defendant's alternative prayer. The evidence supports the 1st defendant's concerns regarding the unsuitability of the 1st plaintiff as sole administrator particularly in light of inconsistencies in testimony and the plaintiffs' premature distribution of assets comprised in the Estate.
- [32] As a beneficiary entitled to one-third of the Estate under the Distribution Act 1958, the 1st defendant possessed clear standing to seek proper administration. The 1st defendant's intervention was both necessary and successful.

Conclusion

- [33] Upon careful consideration of the evidence and the submissions, I find that the plaintiffs have successfully proved, on the balance of probabilities, that the 2nd defendant acted as an executor *de son tort*. The cumulative evidence including the immediate assumption of control over the deceased's residence, unauthorised removal of substantial assets, financial manipulation involving unaccounted funds, tampering with digital devices and the systematic obstruction of the administration of the Estate through manipulation of the 1st defendant establishes intermeddling that far exceeds the minimal threshold required by law.
- [34] The 2nd defendant's conduct reflects a comprehensive and unlawful assumption of executorial authority. The 2nd defendant's subsequent return of most assets does not negate the initial intermeddling which were clearly unauthorised. The pertinent focus must lie on the assumption of authority, not on the eventual disposition of property. In the circumstances of the present case, the defendants' election to submit a no case to answer, while procedurally permissible, proves fatal in light of the overwhelming evidence.
- [35] Accordingly, I allow the plaintiff's claim and make the following orders:
- (a) for the plaintiffs, prayers 38(d)(i), (iii), (iv), (v), 38(e) and 38(f) are allowed. For purposes of prayers 38(d) and 38(f), the period of 30 days is allowed,
 - (b) costs of RM80,000.00 is allowed for the 1st plaintiff against the 2nd defendant,
 - (c) costs of RM80,000.00 is allowed for the 2nd and 3rd plaintiffs against the 2nd defendant,
 - (d) for the 1st defendant, costs of RM40,000.00 is allowed against each the 1st, 2nd and 3rd plaintiff.

In respect of the counterclaim, with the appointment of Amanah Raya Berhad as the sole administrator of the Estate, I record its resolution by a consent judgment.

Dated: 10 OCTOBER 2025

(AHMAD SHAHRIR MOHD SALLEH)

JUDGE

HIGH COURT OF MALAYA

KUALA LUMPUR.

Counsel:

For the 1st plaintiff - Alicia Goh Ai Chen & Tan Jing Yi; M/s KP Lu & Tan

For the 2nd dan 3rd plaintiffs - Cyndi Chow Li Kian, Chan Wei Yang & Lee Jia Fu; M/s Josephine L K Chow & Co

For the defendants - Gunaseelan S Thambinathan & Kumaradevan Rajadevan; M/s Gunaseelan & Associates