

THE COURT OF FINAL APPEAL

Tan Cheng Gay & Ors. v Tan Choo Suan & Anor.
FACV No. 3 of 2015

Appellants: Tan Cheng Gay, Tan Yok Koon, Tan Choo Pin and Tan Chin Hoon
Respondents: Tan Choo Suan and Secretary for Justice
Hearing Date: 29 September 2015
Judges: Chief Justice Ma, Mr. Justice Ribeiro PJ, Mr. Justice Tang PJ, Mr. Justice Fok PJ and Lord Neuberger of Abbotsbury NPJ
Counsel for the Appellants: Mr. Patrick Fung SC and Mr. Johnny Ma
Counsel for the 1st Respondent: Mr. Wong Yan Lung SC and Mr. Derek Hu
Subject Matter: Construction of wills; construction of s. 23B of the Wills Ordinance (Cap. 30)

Issues:

1. Whether the words “我們名下所有... 的財產” (“*all the properties under our names*”) contained in a joint will cover only assets held in the name of the Deceased excluding assets held on trust for him, or whether they cover all assets beneficially belonging to the Deceased, including assets held on trust for him.
2. What is the proper scope and application of s. 23B of the Wills Ordinance (Cap. 30), in particular, whether the words “名下... 的財產” contained in the Joint Will are ambiguous and would trigger the application of s. 23B of the said ordinance.

Facts: This case concerns the interpretation of a joint will made by the Deceased and his wife (“**Joint Will**”). The Deceased was a businessman, whose assets included shares (the “**Shares**”) in one Afro-Asia International Enterprises PTE Limited (“**AAIE**”), which in turn has interest in one Singaporean listed company, EnGro Corporation Ltd (“**EnGro**”). The Shares are registered in the names of the Deceased’s 2 daughters, the 3rd Appellant and the 1st Respondent. It is the 1st Respondent’s case that the 2 daughters hold the Shares on trust for the Deceased.

The Deceased and his wife made the Joint Will in Chinese prepared by lawyers in 2008. The Joint Will governs the Deceased’s and Madam Ng’s assets described as “我們名下所有... 的財產” (“*all the properties under our names*”). The Joint Will specifically stated that the Deceased’s residuary estate would be donated to charities, and the Deceased’s children would not receive anything from the estate.

The Deceased passed away in 2008. The 1st Respondent, the appointed sole executrix, listed the Shares as the Deceased’s assets held on trust by the 2 daughters. The Appellants, who are the 3 sons and 1 daughter of the Deceased, brought proceedings seeking the Court’s construction of the Joint Will, contending that the Joint Will governed only assets held in the name of the Deceased. They contended that assets held on trust for the Deceased, including the Shares, are not under his name, and hence not covered by the Joint Will, and so should be dealt with in accordance with the rules on intestacy. The 1st Respondent disagreed, contending that the Joint Will covered all of the Deceased’s assets, including those held on trust for him.

In the Court of First Instance, the Appellants argued that the meaning of “名下... 的財產” is clear and refers only to assets held in the Deceased’s name. The Appellants further argued that there is evidence outside the Joint Will that suggested that the Deceased considered giving away the Shares to the children, and wished to adduce this under s. 23B of the Wills Ordinance (Cap. 30). DHCJ B Chu (as she then was) disagreed and dismissed the Appellants’ claim. The Court of Appeal upheld the judge’s decision, holding that the testamentary intention of “名下... 的財產” is clear, embracing all of the Deceased’s assets held beneficially, reasoning that if the Joint Will did not cover assets held on trust, it would create a partial intestacy entitling the children to the assets, which is contrary to the expressed intention of the Joint Will. The Court of Appeal further held that the words “名下... 的財

產” are unambiguous and hence s. 23B of the Wills Ordinance is not engaged. The Appellants now appeal to the Court of Final Appeal.

Decisions of the Lower Courts

Court	Date of Judgment	Order
Court of First Instance (DHCJ B Chu)	6 September 2013	Appellants’ claim dismissed.
Court of Appeal (Lam VP, Kwan JA and Poon J)	23 May 2014	Appellants’ appeal dismissed.
Court of Appeal (Lam VP, Kwan JA and Poon J)	5 September 2014	Appellants’ application for leave to appeal refused.
Court of Final Appeal (Ribeiro, Tang and Fok PJJ)	4 February 2015	Appellants’ application for leave to appeal granted on the ground that the true construction of the will poses particular difficulties and raises issues as to the proper construction and application of s. 23B of the Wills Ordinance (Cap. 30).

