

HONG KONG / JUDGMENT

RE CTK

COURT

Court of First Instance

DECIDED

23 August 2007

CASE / FILE NUMBER

HCMP764/2007

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCMP 764/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS NO. 764 OF 2007

IN THE MATTER of Part II of the Mental Health Ordinance, Cap. 136 (the Ordinance) and IN
THE MATTER of an alleged mentally incapacitated person CTK

Before: Hon Fung J in Chambers (not open to public) Date of Hearing: 17 August 2007 Date of
Judgment: 17 August 2007 Date of Reasons for Judgment: 23 August 2007

REASONS FOR JUDGMENT

Application has been made by 2 daughters of CTK, Ha and SM, to be appointed the Committee of CTK under Part II of the Mental Health Ordinance (Cap. 136) (). The application is supported by some but opposed by other children of CTK. At the hearing, I gave leave to the opposing parties to file out of time 2 medical reports as to the mental condition of CTK. I was satisfied that CTK was incapable by reason of mental incapacity of managing and administering his property and affairs. However, I did not see fit to appoint a Committee. I now give my reasons.

Issues

The opposing parties contested that:

- (1) CTK is not incapable by reason of mental incapacity of managing and administering his property and affairs;
- (2) In the event that CTK is adjudged to be mentally incapacitated, the Committee should include some member(s) of the opposing parties. To that, I add :

(3) Whether the appointment of a Committee is in the best interest of CTK.

Background

CTK is 91 years old. His wife died on 19 May 1999. CTK has 10 children. The children are divided into 2 camps: the 2 applicants, and 4 others who consented to their appointment as the Committee (Group A). The other 4 children opposed the application (Group B). CTK used to lived alone in a public housing estate unit. He brought his daily meals from the local caf . In January 2007, CTK suffered from congestive heart failure and left pleural effusion. He was admitted to the Tuen Mun Hospital for a week. Shortly after discharge from hospital, CTK was admitted into a private nursing home. The costs are about \$8,000 to \$9,000 per month. CTK used to have joint bank accounts with daughters Luen (aka Woon) and Hing of Group B. There were 2 fixed deposits jointly with Luen totalling about \$560,000, and savings deposit jointly with Hing of about \$200,000. The bank deposits were about \$760,000 in total. On about 25 October 2006, \$600,000 were transferred to Luen, Hing and son KH (of Group B), leaving about \$260,000. The recipients said the transfers were gift to them by CTK. Out of the \$260,000, Hing took another \$30,000 as reimbursement for her late mother s medical expenses 10 years ago, leaving \$230,000. At present, the \$230,000 are in a joint name account of Luen, Hing and KH. They agreed that such sum are held for the maintenance of CTK. Mr. Choi, solicitor for the opposing parties, indicated that Hing is willing to refund the \$30,000. CTK used to own a 3 storey village house in the New Territories jointly with his deceased wife. He did not occupy this house, and it had been left vacant for sometime. On 21 December 2006, CTK executed a Deed of Gift before a solicitor giving 1/5 each to KH, Luen and Hing, and 1/5 to KH on trust for son KK (of Group B), and 1/10 each to KH on trust for daughters Han and Lan (of Group A). Group A challenged the validity of the bank transfers and the Deed of Gift on the ground that CTK might not have understood the nature and effect of the money transfers and the Deed of Gift at the material time. The present application was brought for the purpose of, inter alia, the appointment a Committee to set aside the Deed of Gift (N.B. the draft order for relief did not include litigation to set aside the monetary transfers and Mr. Tam, solicitor for the applicants, so confirmed). In parallel, application has been made by the Director of Social Welfare for a Guardianship Order under Part IVB of MHO in June 2007. The application is awaiting hearing by the Guardianship Board in the near future. Mental incapacity The 2 medical certificates by Dr. Samson Fong and Dr. Ng Fung-shing in support of the application stated that CTK was mentally incapacitated for the purpose of part II, MHO by reason of senile dementia. The 2 medical reports by Dr. Ho Pang-nin and Dr. Chow Lok-yee submitted by the opposing parties agreed on this. Mr. Tam objected to the filing of the 2 reports of Dr. Ho and Dr. Chow as : (1) they were late by 2 weeks; (2) Dr. Ho s report referred to the condition of CTK in January 2007 tending to indicate that he had faculties of comprehension as to the course of medical treatment. However, Mr. Tam could not point to any prejudice, nor made any consequential application. Hence, the late filing was accepted. On the bases of all the medical evidence, I was satisfied that CTK is incapable by reason of mental incapacity of managing and administering his property and affairs. The committee Under section 11(1) of MHO, if the court is satisfied that the patient is incapable by reason of mental incapacity of managing his property

and affairs, the court may, if it think fit, appoint a committee of the estate. Under section 10A of MHO, the court shall have regard to the requirements of the mentally incapacitated person as a the paramount consideration. In *In re LLC HCMP 2656/2006*, Lam J said that where there is possible future legal proceedings involving the estate of a patient, whether in the context of Part II or otherwise, it is desirable that the court should have the assistance of a neutral and impartial committee. As the proposed Committee consists only of children of Group A, the Official Solicitor's view has been sought as to the appropriateness of the Committee, and the acting as the Committee by the Official Solicitor. The Official Solicitor does not support the appointment of a committee for the purpose of commencing litigation in respect of the money transfers and the Deed of Gift. It was observed that CTK is unable to give instructions or evidence for the proceedings, and the evidence at hand does not seem to be sufficient to mount a suitable case of recovery. CTK does not have the fund to commence or sustain long drawn out litigation. The Official Solicitor suggested the applicants to fund the litigation at their own resources as next friends of CTK. The Official Solicitor suggested that the problem of CTK's maintenance might be resolved upon the appointment of the Director of Social Welfare as the guardian of CTK. Upon such appointment, the guardian is empowered to receive and pay the monthly sum of up to \$10,000 per month from the joint account of \$230,000 for the maintenance of CTK. Further, in view of the likely cost of remuneration, the Official Solicitor does not consider its appointment as the Committee as desirable. As the judge of the inquiry, I am not placed to determine the dispute on the Deed of Gift (or the money transfers as the case may be). But in relation to the appropriateness of the appointment of the Committee, I must form a preliminary view on the proposed litigation. As an application for the appointment of a Committee is on foot, the resort to litigation by next friends is not apposite. In any case, the consideration as to the merits of the proposed litigation is the same. The medical reports in support of the application stated that CTK has been suffering from senile dementia for 2 to 4 years. The doctors based their opinions to a very large extent on information from the children of Group A as opposed to direct case history. Dr. Chow for the opposing parties said that mental incapacity is issue specific, and was unable to give a definite opinion save that the condition of CTK deteriorated after the admission to hospital in January 2007. Dr. Ho quite rightly admitted that he was unable to determine the veracity of the different versions of CTK's past conditions by the rivaling camps. However, Dr. Ho observed that in the report of Dr. Ma Pui-shan of Tuen Mun hospital dated 17 July 2007, Dr. Ma stated that [CTK] remained alert and conscious during the hospital stay. He could self-feed although he needed some assistance during walking, dressing and toileting. He showed good understanding and competency of signing the consent form when I was briefing the risks and benefits of performing pleural tapping. Dr. Ho said that suggested CTK's mental condition was not so bad and he could not understand the giving of consent as to require a guardian to sign it on his behalf in accordance with the MHO. In the absence of any other signal and independent and objective evidence to the contrary, I think Dr. Ho has got a point. That adds to the consideration of the value of the estate (even if the money transfers were also to be contested), the undesirability of appointment of relatives of one or both of the rivaling camps as the Committee, the costs of the Official Solicitor as the Committee, CTK's relatively short expectancy and mode of frugal living past and present, as well as the imminent appointment of the Director of Social Welfare as the

guardian of CTK. Practically speaking, the power of the guardian to receive and pay the monthly sum of \$10,000 under the guardianship order pursuant to sections 59R(3)(f) and 44B(8) of MHO is sufficient for the purpose of the maintenance CTK in this case. I also bear in mind the power of the court to order maintenance without appointing a Committee under section 24 of MHO. At my suggestion, Mr. Choi sought consent from the opposing parties to pay into court the sums of \$230,000 and \$30,000 within 14 days from the hearing. In the event that the Director of Social Welfare be appointed the guardian of CTK, I can order the payment out to the Director for the maintenance of CTK in a direct and inexpensive manner as envisaged under section 24. Mr. Tam did not raise any objection to the postponement of the consideration of litigation until and unless more evidence is gathered to forecast a higher prospect of success. In the premises, I declined to make the appointment of the Committee as sought. My I echo the Official Solicitor s suggestion that the 2 camps do enter into discussions with a with to a compromise. After all the welfare of CTK is paramount, and children have moral obligation to support their parent, especially having regard to how CTK had provided for them, and what is left in the fund for his own maintenance. Although the application is not wholly successful, it is not entirely futile that costs should be disallowed. The Official Solicitors commented that the draft skeleton bill of Mr. Tam is reasonable. Hence, I ordered the payment of the costs of the application as per the draft bill out of the estate. (B Fung) Judge of the Court of First Instance High Court Mr Gary K W Tam of Messrs Gary K W Tam & Co., for the Applicant Mr Choi Tak Shing of Messrs Leung Kin & Co., for all Defendants Ms C Ling, Government Counsel (Director of Legal Aid), for Official Solicitor PAGE - 1udk 1udk H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V p0{ i\$&`G <`O< `2IR p0{ <`O< hccw (for Susan Kwan only).dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=58325

CASE PAGE https://chat.esheria.ai/case-law/hong-kong/re-ctk-2007

Prepared on 27 October 2026 · Esheria