

HONG KONG / JUDGMENT

RE TSANG KAM LAN

COURT

Court of First Instance

DECIDED

4 October 2007

CASE / FILE NUMBER

HCMP1713/2007

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bjbj HCMP 1713/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS NO 1713 OF 2007

IN THE MATTER of Section 45(e) of the Trustee Ordinance, Cap 29, Laws of Hong Kong and IN
THE MATTER of the Property known as All That piece or parcel of ground registered in the Land
Registry as The Remaining Portion of Section B of Lot No 744 in Demarcation District No 194 and
IN THE MATTER of an application by TSANG KAM LAN

Before: Hon A Cheung J in Chambers Date of Hearing: 4 October 2007 Date of Judgment: 4
October 2007

J U D G M E N T

This is an application by the applicant, Tsang Kam lan, for a vesting order to vest the estate, right, title and interest of Chim Tsang shi, alias Tsang Kiu, deceased, in the subject property in the applicant's favour. Chim Tsang-shi was the mother-in-law of the applicant. She had two sons, namely Chim Shek and Chim Tim. Chim Tim was the late husband of the applicant. The two brothers inherited the subject property from their late father back in 1954; but at that time Chim Shek was in Canada, so the property was succeeded to by Chim Tim together with Chim Tsang-shi, the mother, as trustee for Chim Shek. In 1977, the two brothers made a gift of the property in favour of their mother, Chim Tsang-shi. In 1994, Chim Tsang-shi sold the property for \$150,000 to the applicant. Chim Tsang shi passed away in 1996. It is quite clear from the facts described above that the applicant has become the beneficial owner of the property by virtue of the sale and purchase of the property between her as purchaser and Chim Tsang-shi as vendor in 1994. The applicant in these proceedings seeks a vesting order from the Court on the basis that Chim Tsang-shi was (and her estate is) still a trustee of an interest in the property, notwithstanding

what has been described above. That view is based on the fact that nothing specific has been done to terminate or otherwise bring to an end the trusteeship. It is feared that if nothing is done, it may give rise to a conveyancing difficulty in future. I am of the view that nothing needs to be done. Before 1977 (and putting aside the interest of Chim Tim in the property to simplify the discussion), Chim Tsang-shi was the trustee of the property and Chim Shek was the beneficiary under the trust. However, in the 1977 transaction, Chim Shek assigned by way of gift his beneficial interest in the property in favour of Chim Tsang-shi, his trustee. That transaction therefore merged the legal and beneficial titles to the property in Chim Tsang-shi. That brought to an end, in my view, the trust that had previously existed prior to the transaction. In other words, Chim Tsang s trusteeship of the property came to an end in 1977 when she became the beneficial owner of the property. In those circumstances, it is, in my view, quite unnecessary for the applicant, as successor-in-title to Chim Tsang-shi, to seek any relief from the Court to bring an end to the trusteeship or to vest Chim Tsang s interest in the property as a trustee in herself. In my view, Chim Tsang-shi s trusteeship has already come to an end in 1977. In those circumstances, the present application of the applicant is dismissed. The application has been taken out on an ex parte basis, and the estate of Chim Tsang-shi has not been joined. This is a procedural defect, because the relief sought affects the estate of Chim Tsang-shi. But as I am dismissing the application, this procedural defect does not matter, save that as the representatives of the estate of Chim Tsang-shi are not involved in the proceedings, there is no need to make any order as to costs against anybody. I make no order as to costs. (Andrew Cheung) Judge of the Court of First Instance High Court Mr Rene Hout of Messrs Rene Hout & Co, for the applicant PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B C D E 1udk 1udk L M N O P Q R S T U V i\$&`G 7^d.ZF Mm=\ Ht7} Ht7} 7^d. HCMP.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 25 October 2026 · Esheria