

HONG KONG / JUDGMENT

RE WONG CHING HANG

COURT

Court of First Instance

DECIDED

14 June 2007

CASE / FILE NUMBER

HCMP522/2007

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bjbj A Cheung J in Chambers Date of Hearing: 14 June 2007 Date of Judgment: 14 June 2007

J U D G M E N T

I have before me an application to revoke the grant of letters of administration of the estate of the deceased that has been issued in favour of one of the deceased's children. The application is made by the widow of the deceased, the mother of the administrator. Originally, she enjoyed priority in applying for representation of the intestate estate following the death of her husband but because of ill health the mother signed a renunciation of administration so as to enable her son to apply for representation instead, which the son duly did. As I said, administration has been granted to the son. The son, as administrator, has partially administered the estate since the grant. The only outstanding matter in relation to administration is a claim made on behalf of the estate against a hospital arising from the death of the deceased. That claim is yet to be adjudicated on. The administrator wishes to be relieved of his duty because he says that due to his work commitments he simply does not have the time and capacity to represent the estate in pursuing the claim. On the other hand, the mother's health has improved and she is now prepared to take over the administration of the estate. She thus applies for the revocation of the letters of administration. She also asks for leave to retract her previous renunciation of administration. The purposes of such steps are to enable her to apply for a new grant of administration to her so as to carry on with the administration of the estate and to pursue the claim on behalf of the estate against the hospital. The mother's application has been made by means of an ex parte originating summons. At the hearing before the Court last time, directions were given for the service of the relevant papers on the administrator, who, by the nature of the application, must be given an opportunity to be heard. Pursuant to those directions, the administrator has put in an affirmation to explain his personal circumstances. It is plain from the papers that the administrator fully supports the application by the mother to revoke the letters of administration. At today's hearing, the administrator essentially adopts his mother's application as his own. The court does not lightly accede to this type of application to revoke letters of

administration. Tristram and Coote's Probate Practice (29th ed), paragraph 17.21, says: Application is occasionally made for revocation on the ground that the grantee, though not incapable, wishes to be relieved of his responsibility for some reason, such as increasing age. Such an application is allowed only by express direction of a district judge or registrar, which is not readily given. Williams, Mortimer and Sunnucks, Executors, Administrators and Probate (18th ed), paragraph 27-23, is to the same effect: Grants are occasionally revoked because grantees wish to be relieved of their duties, but special circumstances must be shown. To all this, I would add: according to the oath by the administrator, which is in the standard form, the administrator has undertaken to the court when applying for representation that he will well and truly administer and faithfully dispose of all such property and estate, rights and credits as the deceased at the time of his death was entitled to within Hong Kong. Indeed, in an old case known as *Re Heslop* 163 ER 1100 (1846), the court refused an application to revoke a grant of letters of administration, which was made on the grounds that revocation of the grant and making of a new grant in favour of another person would be convenient to the original administratrix and would enable the estate to be administered without resorting to an action before the Chancery Court. The court refused to accede to the application, observing that a very strong ground would have to be shown and a mere suggestion of convenience to avoid a Chancery suit was not such a strong ground. The reluctance of the court to relieve a grantee of his duty under a grant is self-evident. Taking up a grant is a serious responsibility as is evidenced by the contents of the standard oath that an intending administrator needs to make before his application for grant will be approved. Normally, an administrator is expected to complete the administration of the estate, which the grant empowers him to do. Inconvenience and lack of time are not generally accepted as good reasons for not performing such duty. Occasionally, the court would be prepared to relieve an administrator of his duty if, through advancing age, the administrator is no longer able to continue with his duty under the grant. See, for instance, *Re Galbraith* [1951] P 422. In light of the above discussion, it must be obvious that the present application for revocation of the letters of administration, which is in substance an application by the administrator to be relieved of his duty, is not particularly well grounded and the Court has great reluctance in acceding to the application. However, as has been pointed out by the court in *Re Galbraith*, at page 424, the court has to consider its objects in looking after the estate, in looking after the proper representation and, not least, in looking after the interests of the parties beneficially interested. See also *Re Loveday* [1900] P 154, a revocation case of rather different facts, where Jeune P stated in general terms the considerations of the court as follows (at p 156): the real object which the Court must always keep in view is the due and proper administration of the estate and the interests of the parties beneficially entitled thereto; and I can see no good reason why the Court should not take fresh action in regard to an estate where it is clear that its previous grant has turned out abortive or inefficient. If the Court has in certain circumstances made a grant in the belief and hope that the person appointed will properly and fully administer the estate, and if it turns out that the person so appointed will not or cannot administer, I do not see why the Court should not revoke an inoperative grant and make a fresh grant. In the instant case, though the administrator's attitude leaves much to be desired, the Court must not lose sight of the overall interest of the estate, its proper representation and, not least, the interests of all those who are beneficially

interested including of course that of the widow s. The due and proper pursuit of the legal claim against the hospital (assuming it is a viable claim) must be, by definition, in the interests of the estate and those beneficially interested in it. If the administrator is unwilling to carry on with his duty and to spend time on behalf of the estate to pursue the claim, then even if the Court were to force him to stay in his office, speaking realistically, that would not do the estate or beneficiaries any real good. In the present case, happily, the widow s health has recovered and she is now willing and apparently able to carry on with the administration of the estate in place of her son. The Court also bears in mind that originally the widow did enjoy priority over the son in terms of applying for administration. And it must not be forgotten that after all, the present application is still formally her application to revoke the grant on the ground that the administrator is not willing to perform his duty, although in reality the administrator is very much behind it. Having considered all circumstances relevant to the present case and despite its anxiety not to set any bad precedent for this type of application, the Court is prepared, in the particular circumstances of the present case, to accede to the application. To do otherwise, in actuality, would not be to the best interest of the estate given the attitude of the administrator, no matter how much the Court disapproves of it generally. So for all those reasons, the application to revoke the grant of letters of administration is allowed and for obvious reasons the widow s application for leave to retract her renunciation of administration is also granted. The purpose of the Court s order is to enable the widow to apply for a new grant of administration to her. In those circumstances, the Court also directs that following revocation of the letters of administration, which must be immediately lodged with the Probate Registry by the administrator, a grant of administration de bonis non be issued to the widow upon her retraction of the renunciation of administration and her complying with all usual formal and procedural requirements of the Probate Registry. As regards the costs of the application, it must be borne by the administrator. But not only that, the costs of the widow s application for a new grant must also be wholly borne by the administrator on a full indemnity basis. I make that as a condition for allowing the application to revoke the letters of administration. In other words, all costs must be borne personally by the administrator and not by the estate. I order as follows:

- (i) The grant of letters of administration be revoked on the condition that all costs and expenses for the application of a new grant be borne by the administrator personally on a full indemnity basis; (ii) The administrator do lodge with the Probate Registry forthwith the original grant of letters of administration; (iii) Madam Wong Ching Hang do have leave to retract her renunciation of administration dated 8 May 2006; (iv) A new grant of letters of administration de bonis non be issued to Madam Wong Ching Hang upon her retraction of the renunciation of administration and her compliance with all usual formal and procedural requirements of the Probate Registry;

- (v) Costs of these proceedings be paid by the administrator personally on a full indemnity basis. (Andrew Cheung) Judge of the Court of First Instance High Court Mr Ivan Chan, of Messrs Joseph Leung & Associates, for the applicant Mr Chan Pan Wang, administrator, appearing in person 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 XUok XUok hccw (for Susan Kwan only).dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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