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1. *DFS v NUHS Fund Ltd* [2024] 4 SLR 634

Charitable gifts - If a named charity has ceased to exist prior to the disposition of the gift under the will, does the gift lapse?

Key Facts

The Claimant, DFS, is the sole surviving executrix and trustee of the estate of the testator. The Claimant was the former daughter-in-law of the testator and became the sole surviving executrix and trustee when the testator's wife passed away.

A clause in the testator's Will, which was executed on **2 November 2006**, bequeathed a certain property ("Property") to the NUH Endowment Fund ("NUHEF"):

"upon the demise of my said wife my Trustees shall vest the [Property] to the NUH Endowment Fund" (the "Gift Clause")

Unbeknownst to the testator, prior to the execution of the Will, from in or around July 2006, there was an ongoing process to change the name of NUHEF to the NUH Patientcare Charity Fund ("NUHPCF") and the approval from the Ministry of Health was given on **19 October 2006**.

Subsequently, NUHS Fund Ltd ("NUHSF") (the Respondent) was incorporated, and NUHPCF transferred all of its assets and obligations to NUHSF on 15 August 2012. NUHPCF was then de-registered as a charity on 6 December 2012.

The testator passed away on 20 March 2018 and his wife passed away on 19 March 2020.



The Legal Proceedings



In sum, on the date the Will was executed, NUHEF had been renamed to NUHPCF. By the time of the Testator's death, and by the time the Property was to vest upon the death of the testator's wife, NUHPCF had been de-registered as a charity.



The Claimant applied to the General Division of the Singapore High Court ("HC") for a declaration that the gift of the Property had lapsed, and the Property should be distributed according to the residuary clause of the Will.



In response, NUHSF contended that the Gift had not lapsed as the Gift was intended not for NUHEF **simpliciter**, but for its charitable purpose which was continued by its successors (NUHPCF and NUHEF).

The question:



Where there is a gift in a will to an unincorporated charity, and that charity appears to have been altered in some way since the time of the will's execution, when can it be said that the charity has ceased to exist, and if that charity has ceased to exist prior to the disposition of the gift under the will, does the gift lapse?

Key Holding – Benignant Interpretation of Charitable Gifts



Outcome:
The HC
dismissed the
Claimant's
application and
found that the
Property should
vest in NUHSF.

- The Court laid out an analytical framework to analyse the questions.
- Key points:
 - The courts will generally apply a "**benignant interpretation**" when interpreting charitable gifts. Where a gift is capable of two constructions, one which would make it void and the other which would render it effectual, the latter must be adopted.
 - A gift to a named charity which has ceased to exist --
 - **will lapse** if it can only be construed as being intended for the particular charitable institution, i.e., the **continued existence** of the named charitable institution is **essential** to the gift;
 - **will not lapse** if the gift can be construed as **being for the purpose** of the named charity provided that (1) **substantially the same purpose** of that named charity was continued (2) by what can properly and reasonably be regarded as a **successor** of that named charity.
 - To avoid disputes or the Court making findings on its own on the basis of a benignant interpretation, **a will should be clearly and precisely drafted** and clearly express the testator's intention.

Key Holding – Benignant Interpretation of Charitable Gifts

On the facts:

- NUHEF and NUHPCF were undoubtedly the same charity, merely renamed.
- NUHEF/NUHPCF was a charitable trust. The underlying trust was not dissolved alongside NUHPCF, but was transferred to NUHSF. The gift therefore did not lapse.
- Even if the charitable trust underlying NUHPCF was dissolved, applying a benignant interpretation, the gift of the Property did not lapse.
 - There was nothing in the language of the Gift Clause which indicated an intention to gift the property to NUHEF specifically. Rather, the gift was for the charitable purposes of NUHEF.
 - Substantially the same charitable purpose of the NUHEF was continued through the NUHSF, its successor.

Key Takeaways:



- Equity favors charity, although the court must not strain the will for the charity. The Court will look at substance over form in determining whether charitable trust continues to exist or whether there is a successor to the original charity.
- To avoid disputes or the Court making findings on its own on the basis of a benignant interpretation, a will should be clearly and precisely drafted and clearly express the testator's intention.

2. British and Malayan Trustees Ltd v Ameen Ali Salim Talib and Others **[2024] SGHC 203**

A trustee's right of recoupment – a duty to exercise?

Key Facts

The Trust was established by Yemen-born Shaik Sallim Talib, who made his fortune in Indonesia and made Singapore his home. After his death in 1937, income from his large portfolio of properties continued to be divided among his numerous descendants who live all over the world, including Singapore and Yemen.

The claimants (the Talibs) were beneficiaries of the Trust. The defendant, British and Malayan Trustees (BMT), was the Trustee.

The Trust provided that if a beneficiary dies, his or her share in the Trust would devolve to his or her "issue". The dispute arose from the distribution of trust income when a beneficiary dies without issue.

Relying on legal advice, BMT adopted an interpretation where the deceased beneficiary's share would be divided amongst all other beneficiaries.

However, the Talibs contended that the correct interpretation was that the deceased beneficiary's share should be divided amongst only the beneficiaries in the same branch of the family (i.e., the deceased's siblings and/or their offspring).



History of the Legal Proceedings

***BMT v Lutfi Salim bin Talib and others* [2019] SGHC 270:**

The High Court affirmed the Talibs' interpretation of the Will. This meant that **BMT had, under an erroneous interpretation of the Will, made over- and under-payments** to several beneficiaries of the Trust for approximately two decades.

***Lutfi Salim bin Talib and another v BMT* [2024] SGHC 85:**

- The Talibs alleged breaches of various trustees' duties on the part of BMT, and applied for disclosure of various documents, including legal advice obtained by BMT. BMT claimed legal privilege over the advice given.
- The High Court held that the legal advice obtained by BMT was for the purposes of administration of the Trust and was therefore for the benefit of the Trust as a whole. Accordingly, the Talibs had a joint interest in these documents and were entitled to an order for production.

BMT v Ameen Ali Salim Talib and Others [2024] SGHC 203



The key question in this action was whether the over-payments made pursuant to BMT's erroneous interpretation of the Trust could be recouped and redistributed to beneficiaries who were underpaid. The erroneous payments were made between November 2001 to November 2019.



On 26 April 2024, a confidential settlement agreement was signed where BMT agreed to personally pay the total sum of under-payments from May 2014 to November 2019 into the Trust (\$1,185,281.61), and to distribute the amount between beneficiaries who were underpaid during that period.



Thereafter, there remained a question of recoupment for the overpayments from before May 2014. The first to fifth respondents (the overpaid beneficiaries) argued that there should be no recoupment, whereas the sixth and seventh respondents (the underpaid beneficiaries) argued that there should.

The Court held that BMT had the right to recoup the overpayments.

Key Holding – Trustees' Right to Recoup Overpayments



- This was **the first time** a Singapore court has considered a trustee's exercise of its right of recoupment.
- On the facts, it was undisputed that there had been over-payment.
- Pursuant to trustees' duty to properly administer the trust, **BMT had a right to recoup overpayments**, which **it was under a duty to exercise**. There is **no pre-requisite** to the exercise of this right by BMT.
- There was no acquiescence by the under-paid beneficiaries, as they were unaware that they were being underpaid. Awareness was key to establishing acquiescence.
- **The High Court approved BMT's redistribution proposal** – to deduct overpayments from future distributions to overpaid beneficiaries and redistribute them to underpaid beneficiaries.
 - The proposed recoupment would minimize inconvenience to overpaid beneficiaries as it would take place over 3 years.
 - The costs of the proposed redistribution are also not onerous.

The image features a large white speech bubble on the left side, set against a dark blue background. The background is decorated with vertical, blurred streaks of light in shades of teal, orange, and purple. The word "Questions" is written in a bold, black, sans-serif font inside the white bubble.

Questions

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