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CBB v Wong and *Bhojwani v Bhojwani*

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CBB v Wong Tien Leong William [2026] 3 SLR 1481

- William Wong acted for Madam BKR settling a trust("new trust").
  - *Re BKR* [2015] 4 SLR 81 CA found that Madam BKR when living with her daughter in Hong Kong, AUT, lacked mental capacity.
- Applicant is son of Madam BKR and complained against Wong.
- When Wong met BKR she was 76 years old.
- 25 October 2010 and 26 October 2010 – visited two doctors.
  - Both doctors gave verbal assurances on her capacity to settle a trust.
  - Reports were released in November 2010.

The Trusts

- 26 October 2010 – discretionary trust documents were signed. Trustee was JC Trust Ltd.
  - Wong was appointed director of KS Ltd – holding company of JC Trust Ltd.
  - Beneficiary is B Ltd and a class of beneficiaries “charities to be determined”.
  - Excluded person is the Applicant.
  - AUT is the protector. Her wishes was stated to be as important as BKR’s Letter of Wishes.
  - BKR’s LOW stated B Ltd was to hold S$ 5 million and be topped up to S$ 10 million when she passed away.
- BKR had previously settled two trusts.
  - JP Morgan Trust to provide for her needs during her lifetime.
  - UBS trust for the benefit of BKR’s descendants and charity.
    - All BKR’s children were beneficiaries.

Conflicting Instructions

- BKR signed a limited power of attorney authorizing UBS to accept instructions from AUT.
- BKR apparently want to transfer all assets from JP Morgan and UBS to DBS.
- Conflicting instructions:
  - 8 November 2010 – UBS received a letter with BKR's signature instructing transfer to DBS.
  - 10 November 2010 – when UBS called BKR, BKR cannot remember the 8 November letter and told UBS not to act on it.
  - 19 November 2010 – another letter with BKR's signature asking why the transfer has not occurred and demanding it to be done immediately.
  - 22 November 2010 – UBS called BKR and she cannot recall all the letters.
  - 23 November 2010 – UBS arranged face to face meeting. BKR said she cannot recall the meeting.
  - 24 November 2010 – DBS visited with letter of instructions to transfer JP Morgan's assets to DBS. BKR refused to sign.

Wong's Involvement

- Wong went to HK on December 2010 and met with JP Morgan and UBS where he spoke on her behalf.
- Wong and Mayer Brown JSM drafted instructions to send a letter before action to BKR's other children using BKR's email address and copied AUT (who amended a draft).
  - Letter is to BKR's other children not to harass BKR.
- UBS through Drew & Napier wrote to BKR about conflicting instructions.
- Wong advised BKR to appoint Senior Counsel to address issues raised by UBS.
- BKR was examined again by two doctors on 13 January 2011 who assessed that she had the capacity to make statutory declarations on her intention to transfer the assets to DBS.
- MCA proceeding began in February 2011.
- Wong assisted drafting BKR's will in 2011.
  - Entire estate to be bequeathed to the new trust.
- Wong drafted a deed of understanding in 2012.
  - New trust would provide for BKR during her lifetime.

The Mental Capacity Act proceedings

- Proceedings began in February 2011 – 11 December 2012.
  - Foo Tuat Yien SDJ held that BKR lacked mental capacity.
- Appeal before the High Court before Lai Siu Chiu.
  - 1 October 2013, Lai J allowed the appeal – BKR had mental capacity
- Appeal before the Court of Appeal.
  - 19 May 2015, CA allowed the appeal – BKR had no mental capacity.

Law Society Charges

- Seven group of charges brought against Wong before Disciplinary Tribunal ("DT").
  - Charges were dismissed and tribunal held that there was no misconduct.
    - Burden of proof was beyond reasonable doubt.
  - Applicant filed an application to review DT's determination.
- Valerie Thean J set aside DT's finding and directed Wong to appear before the Court of Three Judges.
- Wong had notice of BKR's mental capacity and failed to exercise due diligence.
  - Wong did not follow up with BKR on her previous trusts even though he did have notice.
  - The new trust did not advance BKR's interests suggesting undue influence.
    - The previous trusts could achieve the purposes of the new trust.
    - AUT was given preference over the two siblings.
  - Transfer of assets during conflicting instructions.
  - Had notice of possibility of undue influence.
  - AUT gave instructions to Wong.
  - Wong worked for BKR in the appeal against SDJ Foo's orders.

Reliance on Medical Opinion

- Medical reports unsatisfactory.
  - Should have checked previous medical records.
  - There were 2005 reports and 2010 reports.
    - “significant impairment”, “suggestive of a dementing process”, “impaired ability to encode and retrieve” materials and “executive functioning in terms of abstract reasoning and flexibility are impaired.”
  - Trust executed on 24 October 2010 but saw doctors on 25 and 26 October 2010.
    - The doctors were not given terms of the trust.

Bhojwani v Bhojwani

- Sajan was trustee of a family discretionary trust created in 2006.
- The beneficiaries were his three sons and their mother.
- Trust assets included ordinary shares and one Founder's Share in SEPL.
- The Founder's Share carried important control rights and 10% of SEPL's annual profits.

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Trustee's Conduct

- In 2008, Sajan supported resolutions removing the Founder's Share rights.
- The share was "converted" into an ordinary share without compensation to the trust.
- The beneficiaries were not informed of the trust.
- After they questioned him, Sajan excluded two beneficiaries.
- At the High Court: Goh Yihan J held there were multiple breaches of trust.
- For the Founder's Share, Goh J assessed loss at date of breach in 2008.
    - This was a breach of management duty. Sajan had a right to convert the share.

Holding of the Appellate Division: Share "Conversion" – See Kee Oon JAD

- The Founder's Share was a bundle of legal rights.
- Those rights were themselves part of the trust property.
- Their extinguishment was an unauthorised disposal, not merely mismanagement.
- Sajan breached his duty to preserve the trust assets.

Holding: Beneficiaries and Exclusion

- Named discretionary beneficiaries must generally be informed of the trust.
- This applies where they have a realistic prospect of benefiting.
- The exclusion of two beneficiaries was invalid.
- Its timing supported a finding of bad faith and fraud on the power.

Holding: Compensation

- The remedy was falsification because the original rights could not be restored.
- Compensation was assessed at the date of judgment and not date of breach.
- The court considered the increased value of the lost rights and unpaid profits.
- The award increased to approximately S$29.99 million.

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Implications

- Trust property includes the legal rights attached to company shares.
- Trustees must protect those rights, not merely the registered shares.
- Discretionary beneficiaries may have a duty to be notified.
- Exclusion powers must be exercised in good faith and for proper purposes and genuine consideration must be given.