



A summary of the Federal Court’s decision in *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019].

The concept of secret trust, which is part of the law of trust and is governed by the rules of equity and the common law of England, is applicable in Malaysia subject to the proviso to section 3(1) of the Civil Law Act 1956 unless there is an explicit abrogation, variation, restriction or modification by written law

Probate in relation to the estate of Chin Joo Ngan (“Deceased”).²

The Respondents are the children of the Deceased from the Deceased’s first wife marriage.³

The Grant of Probate application was based on the Deceased’s last will and testament dated 18.12.2013 (“Impugned Will”).⁴

BACKGROUND FACTS

In 2014,¹ Chin Huat Yean @ Chin Chun Yean and Chin Jhin Kim (collectively referred to as “the Respondents”) obtained a Grant of

Chin Jhin Thien and Chin June Song (collectively referred to as “the

¹ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 16

² *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 1

³ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 5 read together with paragraph 9

⁴ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 1



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Appellants”) are the brother and nephew of the Deceased respectively.⁵

The Appellants applied for a revocation of the Grant of Probate and a declaration that the Impugned Will was invalid and the Deceased had died intestate.⁶

HIGH COURT’S DECISION

The Appellants challenged the Impugned Will on the basis that:⁷

- i. The Deceased had no testamentary capacity to make the will as he was suffering from terminal cancer; and
- ii. The Respondents had cheated and unduly influenced the Deceased.

The Respondents denied the allegations and further contended that there was a secret trust created under the Impugned Will whereby the Respondents were trustees for the benefits of the Deceased’s second wife and her children.⁸

⁵ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 6

⁶ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraphs 1 and 17

⁷ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 18

⁸ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 19



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After a full trial, the High Court allowed the Appellants claim and granted the reliefs sought by the Appellants.

COURT OF APPEAL’S DECISION

The Respondents appealed against the High Court’s decision and were successful.⁹

Inter alia, the Court of Appeal held the following:

- i. the High Court judge misdirected herself when she combined the issue of secret

trust and testamentary capacity;¹⁰

- ii. the High Court judge did not properly appreciate the evidence;¹¹ and

- iii. the defence of secret trust was not demolished and there were good grounds to dispel any *mala fide* on the part of the Respondents.¹²

⁹ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 24

¹⁰ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 24(i)(b)

¹¹ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 24(ii)

¹² *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 24(iii)(d)



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FEDERAL COURT'S DECISION

The Appellants obtained leave to appeal to the Federal Court based on the following questions:¹³

- i. Whether the concept of secret trust is applicable to Malaysia as there is no decision regarding the applicability of secret trust?
- ii. Whether secret trust is applicable in a case involving the issue of testamentary capacity of a testator?
- iii. Whether secret trust is contradictory to the Malaysian Wills Act 1959 and/or is against

¹³ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 2

public policy as it can be abused?

The Federal Court answered the first leave question in the affirmative¹⁴ and held that the concept of secret trust, which is part of the law of trust and is governed by the rules of equity and the common law of England, is applicable in Malaysia subject to the proviso to section 3(1) of the Civil Law Act 1956 unless there is an explicit abrogation, variation, restriction or modification by written law.¹⁵

¹⁴ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 48

¹⁵ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 37



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The rationale was that “the Court upholds secret trust to prevent fraud on a testator and the rules of equity are applied to compel the trustee under a will to fulfill his promises to the testator.”¹⁶

As for the second leave question, the Federal Court was of the view that it was irrelevant to the appeal¹⁷ as the Appellants’ case is not related to the law on secret trust.¹⁸

Nevertheless, if it had to be answered, it would be answered in the affirmative.¹⁹

With regard to the third leave question, the question was answered in the negative²⁰ on the grounds that:²¹

- i. a secret trust, as a creature of common law, operates outside the formalities of Will Act 1959; and

¹⁶ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 42

¹⁷ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 85

¹⁸ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 49

¹⁹ *Ibid.*

²⁰ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 104

²¹ *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [Federal Court Civil Appeal No. 02(f)-29-04/2019], at paragraph 102

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- ii. secret trusts are enforced to promote the main policy principle behind the Wills Act 1959: to protect the testamentary freedom of testators.

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