

Wong v Wong

2023 NY Slip Op 34454(U)

December 18, 2023

Supreme Court, New York County

Docket Number: Index No. 656436/2018

Judge: Melissa Crane

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESEN HON. MELISSA A. CRANE

PART 60M

Justice

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INDEX NO. 656436/2018

STEVE L. WONG, STEVE L. WONG, NGAN HOI WONG, DANIEL J. REITER AS REPRESENTATIVE OF THE ESTATES OF CHUN HING YAUWONG, INDIVIDUALLY AND ON BEHALF OF WAI-LOON INC., STEVEN L. WONG, DANIEL J. REITER AS REPRESENTATIVE OF THE ESTATES OF NGAN HOI WONG, INDIVIDUALLY AND ON BEHALF OF WAI-LOON INC.,

DECISION AFTER TRIAL

Plaintiff,

- v -

DIXON WONG, ERICA WONG, RICKY WONG, WAI-LOON, INC.,

Defendant.

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This lawsuit and trial are yet another chapter in the highly litigious relationship between brothers Steve Wong and Ricky Wong who seem determined to squander through litigation the fortune their hard-working parents so carefully built. Now, the dispute has descended to the next generation.

This case involves two irrevocable trusts that Mrs. Chun Hing Yauwong ("Mrs. Wong") and Mr. Ngan Hoi Wong ("Mr. Wong"), as husband and wife created in October 2016. The trusts were initially created to enable Mrs. Wong to qualify for Medicaid benefits, without first depleting the assets that husband and wife had spent many years accumulating.

This court held a bench trial on August 9, 10, 11, and 14 of 2023. The court thanks the lawyers for both sides for their stellar efforts in litigating this case. This decision sets forth the

court's findings of fact, credibility determinations, and conclusions of law following the four-day bench trial.

Findings of Fact

Mr. Wong arrived in the United States from China in 1970 (Trial Tr. at 14). Mrs. Wong arrived in 1978 with the couple's two sons, Ricky Wong ("Ricky") and Steve Wong ("Steve") (*id.*). Mr. Wong could not read or write English or Chinese, but could sign his name. Mrs. Wong could not read or write English.

In 1978, Mr. Wong formed a corporation named Wai-Loon, Inc ("Wai-Loon"). In 1978, Wai-Loon purchased 85 Chrystie Street (the "Building"), a small mixed-use rental building located in New York City (Plaintiff's Exhibit 1; Trial Tr. at 15). Steve helped his father manage the Building for decades.

In 2000, the Wong family purchased a condo apartment located at 50 Bayard Street, Unit 5V New York, NY (the "Condo"). Mr. Wong, Mrs. Wong, Steve, and Ricky each owned a 25% interest in the Condo originally (Trial Tr. at 22-23). Later, Ricky transferred half of his 25% interest in the Condo to each of his children, Dixon Wong ("Dixon") and Erica Wong ("Erica"). In 2009 and in 2012, Mrs. Wong suffered strokes.

The 2016 Trusts

In 2016, in order to qualify for Medicaid benefits, Mr. and Mrs. Wong had their lawyer, Steven Seung, create two *irrevocable* trusts that they executed on October 6, 2016. Notably, Mrs. Wong's irrevocable trust put "shares of stock of Wai-Loon Inc." into her Trust. The number of shares is not listed in the Trust instrument (see Ex. 3) The Trust Estate was not to be distributed until the death of the Trustor. In addition, in Section VIII K, both trusts reserved a "Special Power of Appointment" (POA) as follows:

Notwithstanding the foregoing, Trustor shall have the power to appoint, during her lifetime by acknowledged instrument in writing delivered to the Trustee, or by her will duly admitted to probate, all or any part of the remaining principal and undistributed income of the Trust...**No exercise of this power of appointment shall be effective unless it shall make specific reference to this provision.**"

(Ex. 3 pg. 18).

Thus, the Trustor could change the beneficiary of the Trust. Meanwhile, Mrs. Wong's will, dated July 11, 2017, gives "all the rest, residue and remainder of [her] property and estate" to the Trust.

(Ex I).

The trusts were each executed on October 6, 2016 and named Steve as the sole Trustee and sole beneficiary (Plaintiff's Exhibit 2-4). Mr. Wong and Mrs. Wong transferred nearly all their assets into the respective trusts. Although plaintiff now claims that 100% of Wai-Loon's stock was placed in the Trusts, it has consistently been plaintiff's position that 50 shares remained outside of the Trust. For example, Steve has admitted in an affidavit in a related case that "each trust contained 25 shares of Wai-Loon." (Ex FF ¶ 12). Because Wai-Loon was incorporated with 100 shares (see Certificate of Incorporation of Wai Loon, Ex. KK). This begs the question what happened to the remaining 50 shares?

The 2017 Documents

At some point in 2017, Mr. and Mrs. Wong became disenchanted with Steve. In addition to suing him, they changed the beneficiary and trustee of their respective trusts to their grandkids, Erica and Dixon, through the exercise of a POA dated July 5, 2017, explicitly pursuant to Section VIII K in the Trusts (see Exs 9 and 10 pg 1 [the 2017 POAs]).

The 2017 Litigation and the 2018 Settlement Agreement

In September 2017, Wai-Loon sued Steve in the Commercial Division, under the caption *Wai-Loon v. Wong, etc.*, Index No. 655901/2017 (the 2017 Litigation). Mr. Seung's office

represented Wai-Loon and Mr. Wong (*id.*). This lawsuit involved Steve's alleged unauthorized actions with respect to Wai-Loon.

On January 26, 2018, the parties signed a Settlement Agreement and other related papers in the 2017 Litigation (Ex. 29). Pang Au ("Peter") translated the settlement documents to Mr. Wong in the presence of Ricky, Dixon, Mr. Seung, Steve Marcus from Mr. Seung's office, and Steve's attorney. The signatories to the Settlement Agreement were Mr. Wong, Steve, Dixon and Erica. Under the Settlement Agreement, all signatories recognized that Mr. Wong's Exercise of Power of Appointment was null and void:

"Ngan's previous exercise of the Power of Appointment contained in Section K of Article VIII of the Trust Declaration, accomplished by written instrument dated July 5, 2017, is deemed null and void, without any legal effect"

(see Settlement Agreement, Ex 29, at ¶ 2 a). In paragraph 6 of the Settlement Agreement, Steve promised:

"he will not challenge the ownership interest of Dixon or Erica, or any other person claiming through or from them, or the ownership interest of Ngan Hoi Wong and Chun Hing Yauwong Trusts, as shareholders of Wai Loon Inc."

(*id.* ¶ 6). Thus, Steve not only promised not to challenge the grandkids' ownership interest in Wai Loon, but also his mother's.

On the same day, Mr. Wong signed over the Bay Street house to Steve and the rest of his estate in trust for Dixon and Erica. However, Mr. Wong reserved "the power to revoke appointment hereunder in whole or in part by an instrument in writing and further reserves the power to reappoint." Both he and Mrs. Wong exercised their power to reappoint several months later.

The 2018 Trust Documents

On October 16, 2018, Mr. and Mrs. Wong signed new designations of Trustee, once again naming Steve as the Trustee for each Trust, again with Peter translating (Plaintiff's Exhibits 13-

14). Additionally, Mr. Wong signed new powers of appointment, that directed Steve's reinstatement as the beneficiary of the Trusts (Exs 11-14).

The 2020 Power of Appointment

On August 12, 2020, after Peter had translated, Mr. Wong and Mrs. Wong signed additional Exercises of Power of Appointment (Plaintiff's Exhibits 32-33). Those additional exercises directed Steve, as the Trustee, to transfer to Steve, personally, each Trust's 25 shares of Wai-Loon stock as well as the Trusts' interests in the Condo. Mr. Wong and Mrs. Wong did not sign these exercises in 2020 until Peter interpreted and explained them.

Steve, as Trustee, signed deeds transferring both Trusts' interest in the Condo to Steve personally (Plaintiff's Exhibits 35-36; Trial Tr. at 54-55). Thus, he complied with the 2020 Exercises and made the transfers of the interests in the Bayard Street Condo by deeds dated August 19, 2020, and later recorded them with the City Register.

This Lawsuit

In December 2018, Steve L. Wong, As Trustee Of Ngan Hoi Wong Irrevocable Trust, Steve L. Wong, As Trustee Of Chun Hing Yauwong Irrevocable Trust, Ngan Hoi Wong And Chun Hing Yauwong, All Individually And On Behalf Of Wai-Loon Inc., commenced this case to set aside the documents Mr. and Mrs. Wong executed in 2017. Mrs. Wong passed away on February 17, 2021. On February 23, 2022, after Peter translated, Mr. Wong executed an additional Power of Appointment for his lawyer to hold in Escrow to be released only if the Court ruled that the January 26, 2018 exercise of Power of Appointment was invalid (Plaintiff's Exhibit 50). Mr. Wong passed away on February 18, 2023.

Witnesses

At trial the court heard from the following fact witnesses: Steve Wong, Ricky Wong, Dixon Wong, Stephen Seung, Pang Au, Erica Wong, Jeffrey Lubert, Sauk Ping Chou. The court has no

significant reason to assess the credibility of these witnesses, largely because this case turns on the legal interpretation of the relevant documents. In any event, the court's credibility determinations are outlined in this decision as appropriate.

Conclusions

The overarching issues are whether or not Mrs. Wong had any interest in Wai-Loon to give away to her grandchildren and what the effect of the 2017 documents are today. This analysis necessarily involves assessment of a series of sub issues.

1. Were the 2017 Documents Properly Executed?

Yes. Plaintiff has not carried his burden to demonstrate that the Grandparents did not know what they were signing (i.e. changing the beneficiaries to Dixon and Erica and naming them trustees of the 2016 Trusts via the 2017 POAs). The overwhelming evidence is that Grandfather understood Cantonese. His wife did not speak Fuzhounese, so husband and wife communicated in Cantonese. Also, the grandchildren, Dixon and Erica spoke to their grandparents in Cantonese. Mr. Seung the attorney who drafted the 2017 documents, as well as Dixon and Erica all testified that the documents were explained to their grandparents in Cantonese, as neither could read or write. Thus, Mr. and Mrs. Wong likely understood what they were signing and more likely so signed because they were annoyed with Steve at the time. After all, they sued him right afterwards, and then regretted it.

Nevertheless, whether the grandparents understood the 2017 documents or not is irrelevant. This is because they both changed the beneficiary back to Steve in 2018. If the 2017 POAs were a valid vehicle to change the beneficiary of the 2016 trust, and as **the trusts do not contain any limitation on the number of Exercises of Power of Appointment**, the 2018 POAs

are also effective. Nothing in the 2017 POAs precludes the trustors from changing the beneficiary again in the future via POA under section VIII K of the Trusts.

EPTL 10-5.1 states that “The scope of the donee’s authority as to appointees and as to the time and manner of the appointment is unlimited except as the donor manifests a contrary intention.” Here, Mr. and Mrs. Wong have manifested a contrary intention to the 2017 POAs in the 2018 documents.

Obviously, it was not possible to transfer trust assets via the 2017 Trust documents. This is because the assets of the trust only transferred upon death of the Trustor. At the time, the death of the Trustor had not as yet occurred. Therefore, merely the beneficiary and trustee changed from Steve to Dixon and Erica via the 2017 documents. The 2018 Trust documents promptly changed them back to Steve.

In addition, defendants neglect to mention that they signed the 2018 Settlement Agreement in which they acknowledged that at least Mr. Wong’s 2017 exercise was null and void. Having signed the Settlement Agreement, defendants are now stuck with their agreement. Mr. Wong’s 2017 exercise being null and void, all rights revert back to the 2016 designations whereby Steve is both trustee and beneficiary. In addition, once the lawsuit was settled, Mr. and Mrs. Wong again exercised their Power of Appointment to restore Steve as Trustee and beneficiary. This occurred on October 16, 2018. Like the 2017 POAs, the 2018 POAs expressly mention section VIII K of the trust document as required. Thus, the 2017 POAs AND the October 16, 2018 POAs are valid. This means Steve is the sole beneficiary of the Trusts. Now that both his parents have died, Steve is entitled to all the assets of both Trusts.

2. How many shares did Mrs. Wong Have in Wai-Loon?

In order to qualify for Medicaid, Mrs. Wong necessarily had to divest herself of her assets. Thus, she placed her assets into her irrevocable Trust (Ex 3). Yet, there is a great deal of confusion over how many shares of Wai-Loon, if any, Mrs. Wong possessed.

There was much ado at trial about Mr. Wong's signature on stock certificate no. 2 being a forgery. To the extent it matters, it is unlikely that Mr. Wong's signature is on stock certificate no. 2. The court heard uncontested testimony from plaintiffs' expert, Jeffrey Luber ("Mr. Luber"). Mr. Luber explained that Certificate #2, dated November 1, 1978, in the name of Yau Chun Hing, was a forgery. Specifically, Mr. Luber's expert report and testimony revealed that in 1978, Mr. Wong's signature was completely different than it appeared on Certificate #2. Mr. Luber also testified that Mr. Wong did not write his name with an upper case "g" until 1995 at the earliest (Trial Tr. at 314-315). Mr. Luber also pointed out that on Certificate #2, Mr. Wong's purported signature was right on the line provided on the pre-printed certificate. Mr. Luber further testified that Mr. Wong always signs his name above, as opposed to on, the line on virtually everything he signs (Trial Tr. at 314-315). Mr. Luber ultimately concluded that Mr. Wong's signature was likely simulated, or traced or directly copied from a model, onto the certificate by another individual (Trial Tr. at 314-315, 317-319). Defendants did nothing to controvert this testimony.

However, plaintiff's position that Mrs. Wong owned no shares in Wai-Loon is against the weight of the documentary evidence. The Certificate of Incorporation for Wai-Loon dated August 31, 1979 (ex KK), lists 100 shares for the company. Moreover, the stock ledger lists 50 shares of stock for Mrs. Wong in 1978. The documents establishing Mrs. Wong's Trust indicates she placed shares of Wai-Loon into that trust (Ex. 3). Thus, the signature of stock certificate 2 not being Mr. Wong's does NOT mean that Mrs. Wong did not own those 50 shares.

Rather, the weight of the evidence indicates that Mrs. Wong owned 50 shares of Wai-Loon, 25 of which she put into a trust. It is undisputed that Wai-Loon never had more than 100 shares. There is nothing to indicate that Wai Loon issued more shares beyond the original 100. The parties do not claim that Wai-Loon did issue more.

Although Mrs. Wong's affidavit (Ex BB) states that "In October 6, 2016, my husband transferred 25 shares of stock to me resulting in my having 75 shares" this statement is inadmissible hearsay. Moreover, Mr. Wong's affidavits contradict that his wife had 75 shares. For example, in the Affidavit of Lost stock certificate [Ex. W], Mr. Wong stated that as of September 27, 2017, he was the owner of 50 shares of stock in Wai-Loon. As both Mr. Wong and Mrs. Wong had previously and irrevocably each put 25 shares of stock into Trust, and as Wai-Loon had only 100 shares, it would appear by this statement that Mr. Wong held all shares in Wai-Loon that were not placed in trust. However, his affidavit is also hearsay.

Exhibit 39 is another affidavit dated 12/26/2018 from Mr. Wong. In paragraph 6 he attests "In October 2016, separate trusts were set up by my wife and me. At that time, transfers of Wai-Loon stock were made so that 25 shares of Wai Loon stock went into each trust. I retained ownership of the remaining 50 shares." However, this affidavit suffers from the same infirmity as Mr. Wong's other affidavit, it is not admissible because it is hearsay and Mr. Wong is no longer alive to testify to its contents.

Moreover, this statement contradicts exhibit ZZ in which Mr. Wong states "On July 5, 2017, my wife transferred 25 shares of Wai-Loon stock to Dixon Wong and 25 shares to Erica Wong. Thus, Dixon Wong presently owns 25 shares of Wai-Loon and Erica Wong owns 25 shares of Wai Loon" (Ex. ZZ Affidavit of Ngan Hoi Wong sworn to September 15, 2017 ¶¶ 16 and 17). However, this affidavit too is hearsay and not admissible. It does not qualify as a

statement against interest or an admission, because, at the time it was made, during the 2017 litigation, it was in Mr. Wong's interest to take this position. Finally, Mr. Wong's deposition, which arguably is admissible, is inconclusive. In that deposition, Mr. Wong was argumentative and evasive.

Thus, it would seem that the grandparents would attest to whatever was useful for them in the moment. Therefore, even if these affidavits were admissible, they have zero credibility.

What does matter are the business documents. Exhibit C, a stock ledger, indicates that Mr. Wong and Mrs. Wong both started with 50 shares each. We know that each put 25 into Trust, leaving 50 outstanding. There is also Ex JJ, a "record of certificates issued and transferred." This record indicates that as of 10/16/2016, Mrs. Wong held only 25 shares while Mr. Wong held 75, 50 of which he gave to Steve as Trustee. As Mrs. Wong placed 25 shares in her Trust, there was nothing left to give Dixon and Erica. Alternatively, if Mrs. Wong had 50 shares of stock and put 25 into her trust, she still could not have given Erica and Dixon 25 shares each, because she only had 25 left.

Wai-Loon originally listed 100 shares of stock. It is the position of both sides that Mr. and Mrs. Wong each put 25 of their shares into a trust. Notably, Steve has admitted in his affidavit that each trust contained only 25 shares of Wai-Loon (Ex FF p 12). The stock certificates attached to that affidavit show 25 in trust from Mrs. Wong and 25 in Trust from Mr. Wong (Ex GG).

The original (now voided, and bearing Mr. Wong's signature that someone else wrote) stock certificate # 2 from November of 1978 listed 50 of those shares belonging to Mrs. Wong. Exhibit 24, the stock ledger, indicates that originally, Mr. and Mrs. Wong each owned 50 shares

of Wai Loon. It is thus highly likely that Mrs. Wong originally owned 50 shares of Wai-Loon stock since the 1970s, and put 25 of those shares into an irrevocable trust in 2016.

It would appear that, in August 2017, Dixon, while the trustee, distributed to himself and his sister 25 shares each of Wai-Loon stock. **However, this he could not do.** This is because the corpus of the trust estate (as opposed to its income) could not be distributed until the death of the Trustors (i.e. Mr. and Mrs. Wong). Section C 6 entitled "Powers Regarding Securities" of the original document establishing the irrevocable trust (Ex 3) specifically states that "The Trustee shall not be permitted to sell or mortgage the shares of stock of Wai-Loon, Inc without the consent of the Trustor." Defendants have not proffered a single admissible document from either grandparent demonstrating consent to gift stock to Erica or Dixon. Mrs. Wong, at best having originally 50 shares and having placed 25 of those shares into her trust, held only 25 shares that did not go through her trust. Therefore, she could not have given Dixon and Erica each 25 shares of stock. As such, her transfer of 25 shares to each of them is a nullity and Steve, as the sole beneficiary under the 2018 POAs, owns 100% of Wai-Loon. Although Steve may have agreed in the Settlement Agreement not to challenge Dixon and Erica's ownership in Wai-Loon, they have no ownership interest to challenge.

Thus, the Court finds that: (1) the 2017 Documents were properly and knowingly executed, (2) stock certificate # 2 does not bear Mr. Wong's signature, and (3) Mrs. Wong's conveyance of shares to Dixon and Erica are void and therefore the court need not reach the issue of fiduciary duty, (4) the Settlement Agreement and Power of Appointment Mr. Wong signed on January 26, 2018 are valid, and (5) the October 16, 2018 Powers of Appointment executed by Mr. & Mr. Wong are valid.

The court has considered the remaining allegations of the parties and finds them unavailing.

Accordingly, it is ORDERED, ADJUDGED, and DECLARED that Steve is the owner of 57 Bay 25 Street, Brooklyn, New York, 100% of the shares of Wai-Loon, and 75% of the Condo.

The clerk is directed to enter judgment accordingly and mark this matter disposed.

12/18/2023

DATE



MELISSA CRANE, J.S.C.

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Case disposed

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