

**COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION**

No. 1766 DE OF 2006

**E-Filing No. 1001028297
Control No. 100211**

ESTATE OF MARY NGUN HOW CHIN, Deceased

OPINION ON REMAND

Stephen Chin, son of Mary Ngun How Chin, filed an Appeal to the Superior Court from a Final Decree which I signed on May 14, 2010. Said Appeal bears Superior Court Docket Number 1717 EDA 2010.

Upon consideration of the Record made at a Hearing before me, I entered an Adjudication dated December 31, 2009, in which Adjudication I held that Mary Ngun How Chin ("Decedent") validly sold all of her interests in four corporations to her son named Edwin Chin, on January 5, 1990, for \$ 20,000.00 cash. Said sales are the subject of four Bills of Sale which were marked and received into evidence as Stephen's Trial Exhibit "P-2". In keeping with said holding, in said Adjudication, I Dismissed certain Objections which had been filed by Stephen Chin to the First And Final Account of his brother, Edwin Chin, as Executor of their mother's Will, seeking to recover the mother's shares in the aforementioned corporations.

Also in my Adjudication dated December 31, 2009, I held that the signatures of the Decedent on a Power of Attorney dated May 10, 1993 are forgeries,

and, that the Decedent did not make a valid gift of her one-seventh interest in properties known as 126 North 10th Street, 128 North 10th Street, and, 130 North 10th Street, all in Philadelphia, to Edwin Chin and his wife, Josefina Chin, by a certain Deed dated May 14, 1993 and recorded on May 24, 1993, which Deed was marked and received into evidence as Stephen's Trial Exhibit "P-5". In keeping with said holding, in said Adjudication, I Sustained Stephen's Objections to Edwin's Account seeking to recover their mother's one-seventh interest in the aforementioned properties, and, awarded a one-seventh interest in each of the said properties, in equal, undivided, one-half shares, as tenants in common, to Edwin and Stephen.

On January 20, 2010, Stephen Chin filed Exceptions to my Adjudication of December 31, 2009. On April 22, 2010, I heard Oral Argument sur said Exceptions.

On May 14, 2010, I signed a Final Decree in which I Dismissed the aforementioned Exceptions, and, Affirmed my Adjudication of December 31, 2009.

On June 18, 2010, Stephen Chin filed an Appeal to the Superior Court from my Final Decree of May 14, 2010. Said Appeal bears Superior Court Docket Number 1717 EDA 2010.

In his Appeal, Stephen claims that Edwin produced two different sets of the bills of sale for the four corporations, which should illustrate the suspicious nature of the transactions.

Also in his Appeal, Stephen claims that because Edwin included V.O. Realty as a corporation in which Mary had an interest at her death in the Petition for Probate and Grant of Letters, he undermined Edwin's assertion that Mary transferred the same corporation to him in 1990.

Also in his Appeal, Stephen claims that the trial court's use of Bryan Chin's testimony was erroneous, due to Bryan's personal interest in the outcome of the case.

Also in his Appeal, Stephen claims that I failed to recognize that a confidential relationship existed between Edwin and their mother, and, that Edwin failed to rebut a presumption of invalidity that arises where such a relationship exists.

Also in his Appeal, Stephen claims that his mother owned a two-sevenths interest in the properties known as 126-130 North 10th Street, and, that I should have awarded a two-sevenths interest in each of the said properties, in equal, undivided, one-half shares, as tenants in common, to Edwin and Stephen.

On August 23, 2011, a panel of the Superior Court issued a memorandum in which it affirmed in part and vacated in part my Decree dated December 31, 2009. The panel remanded, directing me to make further findings of fact and conclusions of law.

Also in its memorandum, the Superior Court found waiver as to Stephen's claim that Edwin produced two different sets of the bills of sale.

Also in the Superior Court memorandum, in regard to Edwin's inclusion of V.O. Realty in his petition for probate, the Superior Court found no abuse of discretion in my finding that Mary transferred her interest in this company to Edwin notwithstanding the fact that the company was listed in the petition for probate as an asset of Mary's estate.

Also in its memorandum, the Superior Court found no abuse of discretion with regard to the credibility determinations I made in weighing the testimony of Bryan

Chin, Edwin's son.

Also in the Superior Court memorandum dated August 23, 2011, the panel of the Superior Court directed me, "...to make express findings of fact regarding whether a confidential relationship existed between ...[Edwin]...and the Deceased." Memorandum at Page 11-12 If I conclude that a confidential relationship existed, I am directed to, "...further consider whether ...[Edwin]...presented clear and convincing evidence that the transactions purportedly documented by the bills of sale ...[of stock]...were entered into freely, voluntarily and independently. *Kees; Frowen; Dziarski's Estate.*" Memorandum at Page 12

Also in the Superior Court memorandum dated August 23, 2011, in regard to the properties known as 126-130 North 10th Street, I am directed to consider certain evidence cited by Stephen, "...and make express findings of fact regarding the appropriate ownership interest due...[Stephen]...". Memorandum at Page 14 The cited evidence includes: Edwin's testimony at Page 18 of the Transcript of the Hearing held on May 14, 2009; the Deed dated May 14, 1993 and recorded on May 24, 1993 which transferred properties known as 939 Race Street and 126-130 North 10th Street and was marked and received into evidence as Stephen's Trial Exhibit "P-5"; and, Edwin's testimony at Page 42 of the Deposition taken on December 22, 2008 which Deposition was marked and received into evidence as Stephen's Trial Exhibit "P-13".

At issue are four Bills of Sale documenting the sale of Decedent's interest in four corporations which own real property in New York City and Philadelphia. Marked and received into evidence as Stephen's Trial Exhibit "P-2" are copies of these Bills of Sale dated January 5, 1990. These Bills indicate that Mary sold her interest in the

following corporations: Win Kee Properties, Inc., VO Realty Company, 59 Bayard Street Realty Corporation, and 61 Bayard Street Realty Corporation, to her son, Edwin, for the sum of \$5,000.00 each, totaling \$20,000.00. Each Bill of Sale is signed by Mary and states a consideration of \$5,000.00.¹

Conflict between the two brothers has arisen because the four corporations listed in the Bills of Sale were, according to Mary's Will, to be held in trust by Edwin for Stephen's benefit until Stephen's 55th birthday, at which point these interests were to be fully transferred to Stephen. Stephen argues that these transactions between Mary and Edwin, evidenced by the bills of Sale, should be invalidated due to a purported confidential relationship that existed between the mother and son.

The existence of a confidential relationship between two parties to a transaction does create a presumption that the transaction is voidable. Frowen v. Blank, 493 Pa. 137, 145 (1981). Once a confidential relationship is demonstrated, the party advocating the validity of the transaction must show that it was "fair, conscientious and beyond the reach of suspicion." Leedom v. Palmer, 274 Pa. 22, 25 (1922). The proponent must prove by clear and convincing evidence "that the contract was free, voluntary and an independent act of the other party, entered into with an understanding and knowledge of its nature, terms and consequences." Kees v. Green, 365 Pa. 368, 375 (Pa. 1950).

As to what constitutes a confidential relationship, it has been said to exist

"when the circumstances make it certain the parties do not

¹ I found the testimony of Stephen's handwriting expert, Mr. William Ries, to be persuasive. At Page 89 of the Transcript of the Hearing, Mr. Ries testified as follows: "I examined the four bills of sales that contained a purported signature of Mary Chin. Those four signatures on those four bills of sale do agree favorably with what I consider the genuine signatures of Mary Chin... [a]nd it's my opinion that those four signatures are, in fact, those of Mary Chin and were executed by Mary Chin." On the basis of this testimony, I found that Mary's signature was not forged on the Bills of Sale.

deal on equal terms, but, on the one side, there is an overmastering influence, or, on the other, weakness, dependence or trust, justifiably reposed; in both an unfair advantage is possible. When these circumstances appear, the law presumes the transaction void, unless the party claiming the benefit of such transaction shows affirmatively that no deception was used and the act was the intelligent and understood act of the grantor, fair, conscientious and beyond the reach of suspicion. No precise language can define the limits of the relation or fetter the power of the court to control these conditions.”

Leedom v. Palmer, 274 Pa. at 25. Neither kinship nor dependence alone is sufficient to give rise to a presumption that a confidential relationship existed. Id. at 25 and 27. As the party challenging the validity of the transaction, Stephen had the burden of demonstrating that there was a confidential relationship between Mary and Edwin.

Stephen cites Mary’s reliance on Edwin to run the family businesses, comprised of a parking lot, a restaurant, and several rental properties, to prove a confidential relationship existed. Edwin did testify at the Hearing that he ran the business affairs of his family before his father’s death, and that when his father died, nothing changed. N.T. 208. However, I find that Stephen was also involved in running the family business, through his support in the restaurant. Stephen testified that he was involved in collecting rent from some of the properties, and that he would make repairs to these properties when necessary. N. T. 225-26. Stephen’s further involvement in the family businesses is made apparent by Stephen’s Trial Exhibit “P-15,” which is an insurance certificate for 145 N. 10th Street. Both Edwin’s and Stephen’s names are listed as certificate holders. Additionally, Stephen’s Trial Exhibit “P-16” is a lease for 145 N. 10th Street, which has both Edwin’s and Stephen’s names on it. Stephen argues that Edwin kept Mary’s books and records. However, Stephen testified that the family’s

general practice was to deal in cash, and they seldom kept records. N.T. 129. In her deposition marked as Stephen's Trial Exhibit "P-10," Mary's daughter, Linda Lew testified that she would assist her mother when it came to certain business matters, like property leases and her Will. Stephen's Trial Exhibit "P-10" p. 32. I thus find that Mary relied on several of her children to carry out her wishes with regard to her property and business interests, and that control over these ventures was not entirely vested in Edwin.

Stephen argues that Mary was suffering from the effects of a stroke which occurred in 1983, which was compounded by the loss of her husband in 1988. He says that Mary was depressed, unable to communicate verbally, and needed the assistance of a cane when walking. There was testimony, however, that although Mary's verbal communication was extremely limited, she was still able to communicate with her family members. N.T. 196. I find that Mary relied on all of her children to assist her with translation into her native Cantonese. Although Mary's health and physical well-being were deteriorating, I find that this physical weakness did not manifest itself in such a way as to subvert her will to that of her son, Edwin. In other words, upon consideration of the record made by the parties to this matter regarding the Chin family dynamics, I find that although Mary was in a weakened physical state, Stephen failed to prove that Mary and Edwin did not deal on equal terms.

When asked about the relationship between Mary and Edwin, Linda Lew, Mary's daughter, testified at her deposition taken on March 12, 2009 that she rarely saw Edwin and Mary together, although she would visit Mary weekly. Stephen's Trial Exhibit "P-10" at Page 15. Linda also testified in her deposition that in 1990 Mary relied on

Stephen, who “took her to the doctor, to the hospital, and to the nursing home . . . He changed her diapers, he did her laundry and everything.” Id. at Page 14. At the Hearing, Stephen testified on Page 103 that he would feed her, bathe her and change her diapers. I find that Stephen and the rest of the family contributed to handling Mary’s personal care needs, and that Edwin did not occupy a unique position in this regard.

There was testimony from various family members that it was unlikely that Mary traveled to New York on the day the Bills of Sale were signed. Linda Lew testified in her deposition that she found it hard to believe that Mary would have travelled to New York. Stephen’s Trial Exhibit “P-10” p. 14. There was also testimony that Mary was mobile at this stage in her life and could travel on her own. See N.T. 196 (testimony of Bryan Chin that Mary would walk to and from the restaurant, and would take trips to New York and Atlantic City). On this point, I find the opinion of Stephen’s handwriting expert, Mr. William Ries, to be persuasive, and agree with his opinion that the signature that appears on the Bills of Sale is that of Mary.

Stephen also asserts that there is a Chinese tradition under which the oldest male in a family holds a dominant position, and that this tradition proves the existence of a confidential relationship between Mary and Edwin, her oldest son. I do not find this argument convincing. In her deposition, Linda, Mary’s daughter, answered questions posed to her as follows:

Q: In Chinese culture, does the first born son – is that something special in Chinese culture?

A: That was ancient time, emperor time. Not anymore, not even my parents’ generation.

Q: You don't think that had any role in your family?

A: No; I don't think so.

Stephen's Trial Exhibit "P-10" p. 17.

Stephen presented no evidence that Mary's will was subverted by Edwin. Although Stephen asserts that the family tradition honoring the oldest son applied in his family, Mary made a will in 1982 in which Stephen, the second son, was a primary beneficiary. Stephen's Trial Exhibit "P-1". I attribute no great weight to the argument that Chinese tradition indicates a confidential relationship between mother and son in this particular family.

On the record made by the parties in this matter, I hold that when these Bills of Sales were executed by Mary, a confidential relationship did not exist between Edwin and Mary. Thus, I find that Decedent validly sold her interests in Win Kee Properties, Inc., VO Realty Company, 59 Bayard Street Realty Corporation and 61 Bayard Street Realty Corporation for \$20,000.00 cash to Edwin Chin on January 5, 1990.

Having considered the evidence cited by Stephen to the Superior Court, in support of his claim that his mother owned a two-sevenths interest in the properties known as 126-130 North 10th Street, I find that evidence to be unconvincing.

Edwin's testimony, at Page 18 of the Transcript of the Hearing held on May 14, 2009, pertains to his mother's interest in a Pennsylvania corporation called V O Realty Company which corporation owns the property known as 139-145 North 10th Street in Philadelphia. Page 18 of the Transcript contains the following questions posed by Stephen's Counsel, and, Edwin's answers thereto:

“Q. So the property itself that VO owns is property that you currently live in and that your mother lived in, correct?”

A. Correct.

Q. Now, when your father passed away, you were executor of his Will also, correct?

A. Correct.

Q. And anything and everything he owned went to your mother?

A. Correct.

Q. And the deed for the properties that are there at those addresses, what does that state?

A. I don't know. It states – legally states VO Realty Corp..

Q. It was?

A. The deed is VO Realty Corp.”

The Deed dated May 14, 1993 and recorded on May 24, 1993, which Deed transferred properties known as 939 Race Street and 126-130 North 10th Street and was marked and received into evidence as Stephen's Trial Exhibit “P-5”, contains a sentence which reads as follows:

“ Being the same premises which Edwin Chin, Executor of the will of Arlen G. Chin, Deceased by Deed dated May 22, 1991 and recorded at Philadelphia in Deed Book F.H.S. 1871 Page 312, granted and conveyed unto Mary J. Chin, Widow, in fee.”

Edwin's testimony at Page 42 of the Deposition taken on December 22, 2008, which Deposition was marked and received into evidence as Stephen's Trial Exhibit “P-13”, contains the following questions posed by Stephen's Counsel, and, Edwin's answers thereto:

“A. One-seventh, right?

Q. One part it says.

A. One part.

Q Well, now, wouldn't she have owned two parts of it?

A She would own two parts of it with the father.”

Edwin's testimony at Page 42 of Stephen's Trial Exhibit "P-13" is only part of Edwin's testimony at Pages 40 through 42 which includes the following questions posed by Stephen's Counsel, and, Edwin's answers thereto:

“A. I wouldn't know that.

Q. You wouldn't know that?

Actually, on May 14th of 1993 in the same deed as you had for 939, you also had 126 North 10th Street, 128 North 10th Street and 130 North 10th Street, do you recall that?

A. Yes.

Q All those four properties were sold to you for a dollar?

A Yes, those are her shares.

Q. How many shares did she have?

A. 12, should be about seven or eight owners.

Q. Who were the seven or eight numbers?

A. Were all in my family.

Q. All your family?

A. Uh-hum.

Q. You mean your children?

A. Children.

Q. Okay. You told me you had four children.

A. Yes.

Q. So, that's four, you were five, Josefina, six. Who is Number 7 and 8?

A. One would be me and one would be Steve.

Q. Well, this doesn't state in here that it's just her share of it. It states that it's her property. It has title of Mary J. Chin, widow, of the County of Philadelphia, Commonwealth of Pennsylvania, by her attorney-in-fact, Edwin J. Chin, by Power of Attorney dated May 10th – is that what you mean by one-seventh?

A. One-seventh, right.

Q. One part it says.

A. One part.

Q. Well, now, wouldn't she have owned two parts of it?

A. She would own two parts of it with the father."

I find the above-quoted testimony of Edwin, and, the above-quoted language in the Deed which is Stephen's Trial Exhibit "P-5", to be confusing and unconvincing. I hold that the uncorroborated testimony of Edwin, and, the language in his Trial Exhibit "P-5", are insufficient to establish that Mary Chin held a two-sevenths interest in the properties known as 126-130 North 10th Street on the date of her death.

Stephen's father, Arlen Chin, died on June 22, 1988. Stephen did not offer a copy of any deed of record which is dated before June 22, 1988 to show who owned what interests in the properties known as 126-130 North 10th Street on the date of his father's death. Stephen did not offer a copy of the probated Will of his father. Stephen's Trial Exhibit "P-6" is a copy of the Petition For Probate and Grant Of Letters

which Edwin verified on November 21, 1997 in connection with the probate of his mother's Will dated November 8, 1982. Exhibit "P-6" includes a statement by Edwin that his mother owned a, "...1/7 Share of 126-30 N. 10th Street". On the Record made by the Parties in this matter, I issued my Adjudication of December 31, 2009 in which I awarded a one-seventh interest in the properties known as 126-130 North 10th Street to Edwin and Stephen. I do not believe that the Record supports Stephen's claim that his mother owned a two-sevenths interest in the properties in question. Said claim is based on speculation and not on competent, convincing evidence in the Record.

Dated: _____

O'KEEFE, ADM. J.

**Michael I. Mc Dermott, Esquire
for Stephen Chin**

**John C. Barnoski, Esquire
for Edwin Chin**