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Doctrinal limits

Shobna Chandran explains the thorny limits of the Re Rose doctrine in recognising imperfect gifts in Singapore

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What is the issue?

The application of the *Re Rose* doctrine, a key equitable principle that allows property transfers or gifts to be treated as complete when a donor has done all within their power to effect the transfer, even if legal formalities remain pending.

What does it mean for me?

The adage ‘it is the thought that counts’ is often used to indicate that it is the intention to gift that is paramount, regardless of how the gift is received. Recent developments in Singaporean case law point to a contrary view.

What can I take away?

Given the fact-centric nature of this assessment, advisors should be familiar with the recent application of the Doctrine, in order to provide timely and accurate advice on the validity of gifts.

The *Re Rose* doctrine, originating from the English and Welsh case *In re Rose: Rose* v *Inland Revenue Commissioners,*[1] illustrates that in a case where a donor has done all that is necessary to transfer title to the donee, but the transfer has not happened for reasons outside of their control, equity assumes the equitable interest to be vested in the donee.[2] As such, equity could treat a transfer as complete, in cases of imperfect gifts, if the donor can show that they have taken all necessary steps to transfer ownership, even if formal registration or other legal actions are pending.

WDS v *WDT*

In Singapore, the application of the Doctrine was recently clarified in *WDS* v *WDT*,[3] where the Appellate Division of the Singapore High Court examined its limits in the context of a disputed *inter vivos* gift. This case, alongside *BTB and BTC* v *BTD*,[4] reflects the nuanced application of the Doctrine by the Singapore courts, emphasising the importance of donor intent, the sufficiency of actions taken and the impact of statutory frameworks on equitable claims.

The seminal case of *WDS* determined whether the deceased, who had intended to make a cash gift of SGD1.5 million (the Gift) to her daughter but failed to follow through with the dispositive processes required at law, had indeed done 'all that was necessary and in her power to effect the Gift'. At the court below, the applicability of the Doctrine was rejected, as the General Division of the High Court (Family Division) had found that the deceased had not done all that was necessary and, in her power, to do so. Crucially, the deceased had not signed the deed of gift and provided it to the bank where the cash was deposited. The deed also did not contain information on the specific bank account from which the Gift was supposed to be debited so that the bankers or lawyers could effect the Gift.[5]

This was upheld on appeal, as the intention to make the Gift (or the donee's knowledge that she was to receive the Gift) were sorely insufficient for the purposes of perfecting the Gift using the Doctrine. The legal test is not whether the donor had done all that they 'thought' they needed to do, but rather whether the donor had done all within their power to procure the transfer. As a practical point, lawyers (and advisors) should ensure that the donor:

- takes steps to provide specific and accurate information to their lawyers or bankers;
- specifies the account/s from which the gift is to be taken from; and
- does all that is 'necessary' for the transfer of the gift to be recognised at law, to protect the gift from challenge.[6]

BTB

Additionally, the courts are unlikely to apply the equitable maxim 'equity treats as done that which ought to be done' in cases where the donor has not demonstrated clear intent to transfer the property or when the transfer occurs in the context of a statutory framework, which imposes limitations on such a transfer. In the case of *BTB*, the applicants sought to invoke this maxim to claim an interest in their father's Central Provident Fund (CPF) monies,[7] based on his text messages indicating he had applied to withdraw the funds due to his terminal illness. However, the High Court of Singapore (the High Court) found that the father's actions did not indicate a clear intention to gift the funds to his sons. Unlike in the England and Wales Court of Appeal case of *Re Rose* and the Supreme Court of New South Wales case of *Blackett* v *Darcy,*[8] where the donors had executed necessary steps to effect the gift,

the father in *BTB* had merely initiated the incomplete withdrawal process before his death. Moreover, the statutory regime governing CPF monies imposes strict limitations on *inter vivos* dispositions, preventing the creation of trusts over CPF monies. The High Court emphasised that the maxim cannot be applied in situations where the legal requirements for a transfer have not been met, and where the donor's intent was not unequivocally to make a gift. Ultimately, both intention and action need to be proven in order for the equitable maxim to be applied.

Exceptions to the rule

Under what circumstances, therefore, will an incomplete transfer of a gift be recognised at equity? Apart from the exception in *Re Rose*, the cases of *T Choithram International SA & Ors* v *Pagarani & Ors* [9] and *Pennington & anor* v *Waine & Ors*[10] stand for rare exceptions.

> ***Whether advising clients on gifts or estate planning, wealth professionals must emphasise the importance of not only expressing an intention to gift but taking concrete steps to execute that intention expeditiously.***

In *Choithram*, the donor had made an oral declaration to gift all his wealth associated with his companies to a foundation that he had the intention of setting up. To this end, he had also signed a deed setting up the foundation, declaring himself and six others as its trustees. Even though the foundation had yet to come into existence, the court in *Choithram*found that it was fair to construe the donor's words as amounting to a self-declaration of a trust.

In *Pennington*, the court held that an imperfect gift can be treated as completely constituted if the circumstances are unconscionable for the donor to recall the gift. On the facts, the donee in *Pennington* had relied on an intended gift of shares in a company to become a director of the said company, making it unconscionable for such a gift to be retroactively recalled. However, in *WDS*, there were no specific words written by the deceased that could be fairly construed as declaring a trust over the SGD1.5 million gift in favour of her daughter, nor could the beneficiary be said to have relied on such a gift, so meaning it would have been unconscionable to recall it.

The lesson for advisors

As a practical point, it should be noted that in contentious probate disputes the court will have to make a factual finding on matters that are subjective. For example, regarding the intent to make the gift, or whether it would be unconscionable to recall the gift because the beneficiary has relied on the declaration of the gift. Even for an oral trust made by a deceased donor, it could be a challenge to find contemporaneous evidence supporting the declaration. In such cases, the outcome may be unpredictable even after the full court process.

In a recent case, the author's firm represented a party who was a beneficiary of a gift under a will, which was contested by other beneficiaries. There were evidential gaps on both sides due to the lack of records and contemporaneous documents. Fortunately, the firm was able to obtain a mediated settlement for the client to bring her closure, as the gift made to her had personal significance.

In another case, in which the author's firm was instructed on appeal, gifts and receipts of monies in a family company were tested in the context of the patriarch's will. The appellate court ordered an account of the entire estate, which would have been time-consuming and costly. Fortunately, parties were able to reach a commercial settlement instead of pursuing the account of the estate.

These two brief illustrations show that much thought and effort should go into making clear the parties' intent at the time the gift is made, as well as ensuring that sufficient action to perfect the gift or effect the transfer has been taken. Failing this, parties could find themselves embroiled in years of courtroom litigation, with unpredictable outcomes. Wealth professionals must now take extra care to ensure that their clients complete the correct formalities, such as properly signing and executing deeds, specifying the relevant bank accounts and ensuring all statutory requirements are met.

Conclusion

In conclusion, the cases analysed above highlight the necessity of both intent and tangible action (either a declaration of a trust or clear steps to effect the transfer of the gift). The courts are increasingly reluctant to recognise incomplete transfers without clear evidence that the donor has done all within their power to effect the transfer. As illustrated in cases like *WDS* and *BTB*, advisors must be vigilant in ensuring that all procedural requirements are met to ensure a gift is legally valid and enforceable. Whether advising clients on gifts or estate planning, wealth professionals must emphasise the importance of not only expressing an intention to gift but taking concrete steps to execute that intention expeditiously. In an era of increasing complexity in both family dynamics and statutory regulation, a meticulous and proactive approach is essential to ensure that donors' wishes to make gifts are honoured without costly and protracted disputes.

[1] [1952] 1 Ch 499

[2] [2022] SGHCF 12 at [27]

[3] [2023] SGHC(A) 7

[4] [2018] SGHC 203

[5] *WDS* v *WDT* at [8]

[6] *Equity and Trusts* (2022) 23 SAL Ann Rev 469

[7] CPF is a mandatory benefit account in Singapore, providing for retirement funds through mutual employee and employer contributions.

[8] [2005] NSWSC 65

[9] [2001] 2 All ER 492

[10] [2002] 1 WLR 2075

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