IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGFC 9

FC/OSM 262/2021

HCF/DCA 131/2025

Between

XYF

… *Plaintiff*

And

1. XYG
2. XYH

… *Defendants*

GROUNDS OF DECISION

[Mental Capacity – Cognitive Impairment – Functional and Clinical Components – Capacity to execute documents]

CONTENTS

XYF
v
XYG and XYH

[2026] SGFC 9

Family Justice Courts – FC/OSM 262/2021

District Judge Shobha Nair
4 August, 9 October, 15 October 2025

24 January 2026

District Judge Shobha Nair

Introduction

1. Many assumptions are often made of the cognitive abilities of the elderly. These tend to be from observations by those living with or having associations with this vulnerable group. While these observations are important and provide some degree of insight into the capacity of an aged individual to make decisions for himself, it often are inferences garnered from the words that are used, the tone that is taken and the divergence of behaviour from previous

patterns. Such inferences must always be considered in its context, especially if words, tone and behaviour are recorded by individuals to be utilised in court proceedings. The Mental Capacity Act 2008 (2020 Rev. Ed.) (MCA) provides at s 4(3) that a lack of capacity cannot be established merely by (a) reference to a person's age or appearance; or (b) a condition of the person, or an aspect of the person's behaviour, which might lead others to make unjustified assumptions about the person's capacity. These provisions were useful reminders in my determination of the issues in this case.

2. The plaintiff is a son of the 2nd defendant (P). He alleged that P lacks mental capacity to make decisions that relate to his personal welfare and property and affairs. The plaintiff sought that documents executed by P after September 2017 be declared invalid on account of his mental incapacity. The concerns arose largely from finding out that P intended to marry the 1st defendant, whom he has been in a romantic relationship with for more than 50 years. I dismissed the application and the plaintiff appeals against the same.

Facts forming the backdrop

3. P is 97 years of age. He set up a thriving chemical manufacturing company in the early 1960s. He remains a director of this company on his re-election in July 2023.[1]

4. P was married in 1950 and from this union, he has 3 sons, the second son being the plaintiff. In 1971, he entered a romantic relationship with his

[1] Paragraph 9 of P's affidavit of 23 August 2024

secretary who is the 1st defendant in these proceedings. From this relationship, they have a son. P's wife came to know about the mistress but continued in the marriage with P. Both families stayed apart. P's wife passed away in 2014 and some 2 years later, the 1st defendant moved into P's home where one of the plaintiff's sons and his family also resided.

5. In September 2017, P had a fall at his home, and the plaintiff submits that his father has not been cognitively the same ever since. In June 2021, the 1st defendant informed the plaintiff's older brother that she and P had decided to get married on 11 June 2021. This led to a meeting on 6 June 2021 between P and P's sons from his marriage. The plaintiff alleged that P appeared unaware that he was going to get married. This meeting was recorded and a transcript of the audio recording presented in evidence. When the 1st defendant joined the meeting shortly after, the exchange became heated and the 1st defendant was alleged to have stated that she would leave the home if she could not get the blessing of the family and that the children from the first marriage could take care of P.[2] She shared that the reason for the marriage was because as a Catholic, she felt it necessary to take this step. After some time, P said that he too wanted to marry the 1st defendant which then brought the meeting to an abrupt end.[3]

6. On 7 June 2021, the plaintiff's son lodged a caveat against the registration of the intended marriage. The grounds of the objection were that P "*is unable to make, commit and remember significant personal and corporate decisions even when in writing and based on personal communications with*

[2] Paragraph 26 of the plaintiff's affidavit of 25 June 2021

[3] Ibid. @ paragraphs 27-28

[P], he did not give consent to the notice of marriage filed in May 2021".[4] P was very unhappy with the lodgement of the caveat. P and this grandson met on 8 June 2021. The grandson recorded this meeting without the consent of P and this was presented in evidence. The grandson was of the view that P could not recall that there was to be a marriage between him and the 1st defendant and even found difficulty remembering that there was a meeting that happened between P and his sons on 6 June 2021.[5]

7. The plaintiff claimed that he was concerned about the way P was speaking with regards the upcoming marriage and consulted a geriatrician, Dr carol Tan, to obtain her views on the mental capacity of P. The plaintiff provided the audio and video recordings and authorised her to review P's medical records.

8. On 13 June 2021, the 1st defendant asked the plaintiff and his son to attend a meeting with P which she claimed was on P's request. The plaintiff and his son did not attend but the plaintiff's son wrote a letter dated 14 June 2021 instead saying why he did not attend. A letter was in turn received by the plaintiff's son from P [Disinheritance Letter] referring to the caveat as "*utter nonsense*" and P informed that he had executed a codicil which sought to exclude the plaintiff and his son from P's will unless the caveat was withdrawn and the plaintiff and his son stop falsely claiming that the P did not have the ability to make his own decisions. He also gave them a date by which the plaintiff's son and family were to leave P's home. In this Disinheritance Letter,

[4] Page 405 of P's affidavit of 23 August 2024

[5] Page 13 @ paragraph 11 of the plaintiff's son (P's grandson) of 7 March 2025

P offered to meet the plaintiff and his son again on 14 June 2021. The plaintiff and his son chose not to meet.

9. It was the plaintiff's son's position that the Disinheritance Letter was not written by P and that someone "*must have tricked or cajoled him into signing it*"[6]. Subsequently, P appeared to have left his home, and a police report was filed as the family did not know where he was. On 15 June 2021, the plaintiff was informed that P was in his office. The plaintiff's son wrote another letter to P stating that he did not believe the Disinheritance Letter was written by P, that the 1st defendant prevented him from speaking to P and that he did not believe P understands the Disinheritance Letter.

10. On 16 June 2021, the plaintiff's son received a handwritten letter from P stating that the former was ungrateful to have lodged a caveat and that if there were to be a meeting, P's close friend (M) and his cousin (N) would have to be present. The plaintiff's son and the plaintiff did not believe that this letter was written by P. Around the same time, a report by Dr Carol Tan was received which stated concerns about the mental capacity of P. She based her concerns on the recordings and brain imaging reports but said that "*I would strongly recommend that [P] be brought to see a medical specialist for appropriate assessment and care*".[7] The plaintiff then sought the opinion of a neurologist, Dr Calvin Fones, who was given similar material to base his opinion on.

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[6] Paragraph 17 of Dr Tan's report found in the plaintiff's affidavit of 25 June 2021@ page 91

[7] Ibid. @ paragraph 45

11. On 18 June 2021, the plaintiff met with P at the latter's office. The 1st defendant who was present proceeded to call on M and N. Only N arrived shortly after. P was asked by the plaintiff if the Disinheritance Letter was fair and the plaintiff alleges that P did not answer. What P did say was that he was sad and he had built his company by himself without any money left to him by his father.[8]

12. On 19 June 2021, the plaintiff's son asked to meet with P through M. The plaintiff and his son then met with P. M and N were present. P read from his handwritten letter that was sent earlier and appeared to be angry. The plaintiff felt that P was not able to decide about the wedding but instead used words like "*I am greatly saddened*", "*No one challenges me and my decisions*" and "*I was made to look like a bloody fool*" during this meeting.[9] The plaintiff claimed that P had no recollection of the Disinheritance Letter that he sent a few days earlier as he kept repeating that he would disinherit the plaintiff's son even though this was made explicit in the Disinheritance Letter.[10]

13. On 22 June 2021, the plaintiff received a report from Dr Fones who was of the view that P likely suffers from Major Neurocognitive Disorder due to Traumatic Brain Injury and onset of this disorder was after the fall in September 2017.[11] Dr Fones went on to speak of likely abuse of P and his inability to protect his interests. He also expressed concern that P had been deprived of contact with

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[8] Ibid. @ paragraph 53

[9] Ibid. @ paragraph 55

[10]Ibid. @ paragraph 57

[11] Paragraph 6 of the report found at pages 96 – 99 of the plaintiff's affidavit of 25 June 2021

his family. It is unclear from the report who provided information on the concerns highlighted.

14. After the present application was filed by the plaintiff in June 2021, P commenced S 744 against the plaintiff for the recovery of S$3.8 million allegedly extended by P's company to the plaintiff and S 755 against the plaintiff's son for civil trespass on account of the plaintiff's son and his family changing the locks to Ps home and their refusal to vacate the home.

15. In the application before this court, a series of documents executed or actions done by P since his fall in September 2017 were challenged on the basis that P did not have the mental capacity to do so and the plaintiff sought declarations that these are accordingly invalid. This included:

(a) The execution of a Lasting Power of Attorney (LPA) in April 2019 where the 1st defendant and a close friend (M) were appointed his donees;

(b) The setting up of 2 trusts on 20 October 2019 where the shares in the chemical manufacturing business were transferred to the trusts and which will be used for the benefit of the 1st defendant, P's children and grandchildren;

(c) Any alienation, encumbrance of any property owned by P directly, P's companies and/or any trusts or the trusts referred to in (b) above;

(d) The appointment of the 1st defendant and P's cousin (N) as directors of P's personal investment holding company, where P was the sole shareholder and director. The appointment the plaintiff alleges, was not in keeping with P's intentions over the past decades;

(e) The appointment of the 1st defendant's son to the Board of Directors of the chemical manufacturing company which the plaintiff claimed was suspicious;

(f) The execution of a codicil in June 2021;

(g) The ability of P in his capacity as sole shareholder and director of his investment company to commence 2 suits (S 744 and 745) in September 2021 and the ability to instruct solicitors for this purpose.

16. P was made party to these proceedings after a contested application to determine his ability to participate in these proceedings without a litigation representative (summons 3276/2021) was successful.

17. The plaintiff was of the view that medical opinion on P's capacity was divergent and sought via prayer 1 of the present application, the engagement of medical specialists to provide what he saw as a more independent assessment of P. In this regard, 3 specialists, namely, Dr Chan Kin Ming (a geriatrician), Dr Michael Yap Hock Leong (a neurologist) and Dr Lim Yun Chin (a psychiatrist) were appointed.[12] These medical experts (JME) produced a joint report which essentially informed that P has the mental capacity to make his

[12] Orders were issued on 3 March 2023 and 1 June 2023

own decisions as it relates to his personal welfare and property and affairs and more specifically, had the capacity to execute the documents that were of concern to the plaintiff.

18. Having received the JME report, the plaintiff was dissatisfied with the panel's views and sought to cross-examine the JME (summons 2807/2024). Additionally, the plaintiff sought to have Dr Calvin Fones and Dr Carol Tan provide their views on the JME's report (summons 2815/2024) and cross-examine 4 persons which included the 1st defendant and P. I permitted a concurrent hearing where questions could be posed to the JME and a clinical psychologist who administered a Mini-Mental State Examination (MMSE) but dismissed the requests for Dr Fones and Dr Tan to provide their views on the JME's report on account of the fact that the very appointment of the JME was to address the plaintiff's concerns over what he saw as divergent medical opinion. I also dismissed the application for the cross-examination of the defendants largely on account of the numerous affidavits that had already been filed and the extensive medical evaluation of P's capacity.

Does P have the mental capacity to make decisions?

Legal Principles

19. A statutory definition of mental incapacity is found at section 4(1) of the MCA. A person is said to lack capacity in relation to a matter if at the material time the person is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain. This embraces a functional component, that is, whether P is unable to

make decisions on his own and a clinical component, which is that this inability stems from an impairment of the mind.[13]

20. Section 5 of the Act informs of the need for an individual to be able to understand, retain, use or weigh relevant information in making decisions and then to communicate those decisions. Section 5(2) specifically provides that a person is not to be regarded as unable to understand the information relevant to a decision if the person is able to understand an explanation of it given to him in a way that is appropriate to his or her own circumstances (talking, sign language or any other means). Further, the fact that a person is able to retain the information relevant to a decision for a short period only does not prevent the person from being regarded as able to make the decision.[14] S 5(4) states that relevant information includes information about the reasonably foreseeable consequences of deciding one way or another or failing to make a decision.[15]

21. Under s 19 (1) of the MCA, a court can make declarations as to whether a person has or lacks capacity to make decisions specified in the declarations. The plaintiff called for such declarations in relation to a wide variety of documents P had executed since September 2017.

22. The functional and clinical components were assessed by reference to the following evidence:

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[13] ***Re BKR*** [2015] 4 SLR 81 at 55

[14] Section 5(3)

[15] See in this regard its application in the context of LPAs in ***XXG*** v ***XXF*** [2025] SGHCF 66

Evidence of the plaintiff and P's family

23. It was the position of the plaintiff that P has no capacity to make decisions on his own as it relates to his personal welfare and property and affairs and in particular, that P had no capacity to execute various documents after the injuries he sustained from his fall in September 2017. He based his position on:

(a) observations of P from September 2017 as compared to P's words and actions prior to that date;

(b) what he perceived as a disconnect between what can be observed on the video recording of the examination of P by the JME and the JME's findings presented in their report; and

(c) the medical reports of Dr Carol Tan and Dr Calvin Fones.

24. The position that the plaintiff took as regards the lack of capacity of P came only after he learnt that P wanted to marry the 1st defendant in June 2021 while the premise on which he alleged that P lacks capacity is a fall P sustained in 2017. Despite this fall, the plaintiff and his son continued to work at the chemical company under the guidance of P without fear of any inability of P to guide them. In 2019 P appointed the plaintiff's son as General Manager of the company as he wanted to give him an opportunity to lead the company.[16] These decisions were not questioned.

[16] Paragraph 38 of the 1st defendant's affidavit of 23 August 2024

25. The lodgement of the caveat by the plaintiff's son to stop the marriage between P and the 1st defendant led to P executing a codicil to cut the plaintiff and his son out of his will should the plaintiff's son choose not to remove the caveat. The court was informed that the caveat was in fact withdrawn in September 2025, prior to the resumption of the hearing before me on 9 October 2025. The reasons for the withdrawal are unclear. The defendants' take the position that the concern was never about the marriage but rather more that the plaintiff and his son did not want to be cut off as beneficiaries of P's estate. I make no finding on the plaintiff and his son's motives. What is important however is that in withdrawing the caveat, the suggestion is that the plaintiff's son no longer believes that P has no capacity to consent to marriage.

26. P in my view, was not acting out of character after his fall in September 2017 in ways that should cause concern of incapacity. In the past, he had expressed that he would ensure that the management of his businesses would be kept within the family. He assured financial security to the children from his marriage. This was said when his wife was alive and when the 2 families lived separately, without P showing any obvious favour of one over the other. After September 2017, P continued to care for his children from his marriage. This is seen in the provisions he made for all of them when he set up the 2 trusts and the provisions in his will. P even set up a separate trust for the eldest son. P did not want to cut his children off, simply that he wanted to cater for the 1st defendant too. The relationship between P and the 1st defendant is not a brief affair that suggested a predatory attempt by the 1st defendant to consume the wealth of P. They have been together longer than most marriages last and from the union, they have a son who P appears to trust and wants to provide for too.

In P's words, "*After I had a fall in 2017, I decided to put my affairs in order and asked my lawyers to prepare documents as part of my estate planning. I alone decided the terms of my will and the trusts I had set. These decisions were mine to make. In my entire life as a successful businessman and community leader, I have never allowed anyone to make or question any of my decisions, whether business or personal. Not my late wife, [the 1st defendant] or anybody. I was not about to start*".[17]

27. As for the plaintiff's position that the JME's findings were discordant with the recording of the examination, I found no basis for such a position. While I am in agreement that the court is not bound by the findings of the JME, I was guided by their views both in their report and their answers to questions posed by the plaintiff's counsel. I was of the view that the explanations were largely satisfactory.

28. I was concerned about the plaintiff's dissatisfaction with medical assessments by doctors who had the opportunity to meet P and his heavy reliance on recordings of P to convince the court that P lacks capacity. On 6 June 2021, P was asleep when his sons approached him. P was forced to wake up so that he could address their questions on the intended marriage. He must have been disorientated and surprised. The subject was not something he appeared to want to talk about. P is hard of hearing and as the JME reported, does on occasion have short term memory lapses. The JME also spoke of how he took his time to respond which did not in their assessment relate to an inability to answer but in keeping with the way he tended to deflect questions

[17] Paragraph 18 of P's affidavit of 23 August 2024

until he is ready to answer them. There is in my view, very little that can be concluded from the audio recording.

29. The meeting between P and the plaintiff's son on 8 June 2021 which was also recorded, does not in my view show P as someone unable to make decisions.[18] The grandson produced the transcript to show that P was unaware of the marriage that was scheduled to take place on 11 June 2021 and that he did not appear to have the capacity to contract a marriage. I do not agree. I noted that there were certainly times when P seemed forgetful. This again appears aligned with the findings of the JME. However, his responses were cogent and clear in the main. Oftentimes the grandson appeared to be convincing his grandfather that the idea of marriage to the 1st defendant was not something his grandfather agreed to or was even aware of and at other times he appears to be reminding P of what he had said in the past. When casual family conversations like this are recorded without the knowledge of the one being recorded, it lacks context and is of little probative. An example of the exchange which shows that despite the grandson's attempts, P appears to genuinely want to and understand his decision to marry is as follows:[19]

P: *So what do we want to do? Stop the marriage?*

Grandson: *Yes*

P: *Why?*

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[18] Exhibit BLY-2 in the grandson's affidavit of 7 March 2025 @ pages 42-49

[19] Ibid. @ paragraph 44

Grandson: *Because you have told me before, you don't want to do it. After Nai Nai passed away.*

P: *You see ah, it is not fair to her you know. I cannot be enjoying all this and just leaving her like that it's not fair….*

30. Typically, those around individuals of a very advanced age such as P may feel that they do not have the mental capacity to make decisions, if these individuals appear disoriented, slow to respond or require words to be repeated. The question is whether these signal age related impairments or something more. Even when neurodegenerative illnesses are diagnosed, one cannot be quick to point to a lack of mental capacity. S 3(2) of the MCA provides that autonomy must be assumed. What needs to be exercised in cases where there is a diagnosis of a neurodegenerative disorder however, is greater care when assessing such individuals[20] which require in my view, professional knowledge, skills and experience with patients who suffer from such illnesses. Indeed it was the plaintiff himself who recognised this need in seeking the appointment of the JME. The importance of the vast work of various doctors who had assessed P prior to the appointment of the JME and the work of the JME themselves, cannot in my view, be ignored or minimised in favour of what the plaintiff, his son and his other brothers perceive, especially considering their silence prior to the discovery of P's intention to marry. Either they knew of his incapacity but chose to remain silent as many of P's acts benefitted them *or* they have no real belief

[20] 4.2 and 4.3.1 of the MCA Code of Practice (September 2023)

that P's condition was anything other than age related mild cognitive impairment.

Further evidence relied on by the plaintiff: Testimony of P's friend

31. The plaintiff relied on the evidence of a friend of P who was a former director of P's company. This friend spoke of how P was inclined to include his son from his relationship with the 1st defendant, as a member of the company's Board of Directors. P's friend was not keen on such inclusion and advised P against it. During a meeting between P and his friend when the latter repeated his objection, he felt that the 1st defendant was likely to have heard the conversation. This was because the door to the room they were in was ajar and the 1st defendant was in close proximity. The next day, he received a letter seeking that he cease working at the company. He eventually resigned after 11 years at the company and was of the view that the 1st defendant was behind the request for his resignation.

32. P's friend gave in evidence that after P's fall in 2017, he observed concerning behavioural changes. P appeared at times to forget things he may have spoken of previously. In particular, the friend found it incomprehensible that P did not appear to understand or react to the company being issued a heavy fine for a chlorine gas leak at a storage facility.[21] The incident occurred in September 2016 prior to P's fall. In my view, if he had reacted then, it would be equally odd for P's friend to expect P to react again at the hefty fine, imposed 2 years later. Regardless, I accepted the evidence of P's friend insofar as it related

[21] Paragraphs 27-30 of affidavit of 7 March 2025

to his observations of the difference in P's behaviour before and after his fall in 2017. It is however not disputed that there was a brief period of time when P was recovering from his fall. From tests conducted over 2017 and 2018, P has from a medical standpoint, recovered. Additionally, this friend left the company in June 2019 making his observations limited. This witness is also an individual who had been asked to leave the company and he was of the view that the 1st defendant was behind it. The evidence should in my view be accorded less weight than the collective position of M, N and P's solicitor for his estate matters, which is elaborated on later in these Grounds.

Evidence of the 1st defendant and 2nd defendant (P)

33. It was the 1st defendant's position that P had asked her to move in with him in 2016 so as to care for him.[22] She said that she did so out of love and care for him and there was no suggestion at the time from family members that P had lost his mental capacity.

34. The 1st defendant spoke of how after P's fall in September 2017, his neurosurgeon said that P was fit to travel. The couple flew to various places such as Japan and Hong Kong and 2 years later in 2019, further away to the U.S.

35. The 1st defendant commented that the meeting between P and his sons on 6 June 2021 was confrontational and that the sons did not give P enough time to answer their questions nor did they take any step to assist P in answering the

[22] Paragraph 20 of 1st defendant's affidavit of 23rd August 2024

questions. She claimed that she too was "*bombarded with questions about why we had to get married*".[23]

36. P was represented by counsel in these proceedings. His evidence is that he was hard of hearing and that his short-term memory was not good. He spoke of his recovery from his fall in September 2017. He said that "*despite these issues, I am of sound mind and possess mental capacity*".[24] He spoke of M as his "*long time trusted friend and confidante*"[25], making his appointment as a co-executor of his will and co-donee of his LPA intentional. His appointment of the 1st defendant similarly, is well in keeping with his choice of persons that he trusts.

37. It was P's position that he had discussed marriage to the 1st defendant a few years prior to this litigation as the 1st defendant wanted to do the right thing from a religious standpoint although P "*considered us already husband and wife but I decided that I should put matters right and have [the 1st defendant] officially recognised as my wife…..the only matter that stood in the way of the weeding was religion I am a staunch Buddhist….and wanted to die as Buddhist….As it turned out, I did not have to convert…[the 1st defendant] did not coerce me in to marrying her*[26]

[23] Ibid. @ paragraph 53 - 55

[24] Paragraph 4 of P's affidavit of 23 August 2024

[25] Ibid. @ paragraph 5 and 6

[26] Ibid.@ paragraphs 19-22

38. P spoke of how he was angry with the plaintiff's son for having lodged a caveat and that to send him a message, he issued the Disinheritance Letter. He said that for all meetings with his sons or the grandson, he wanted either M or N to be present as he saw them as impartial and could act as his witness.[27] P who acted in these proceedings without a litigation representative, articulated these views to his counsel in the preparation of his affidavits. There was nothing in evidence that suggested that these were not the expressed positions of P.

Evidence relied on by the Defendants: Testimonies of P's close friend, a close relative and a solicitor who acted for P in estate planning efforts

39. The evidence of P's close friend, M, who is an accountant by training, provided a rather more objective view of P's capacity since 2017.[28] Prior to his retirement, M spent about 38 years at a large company providing audit, tax and financial services and he got to know P sometime in 1985. He audited P's company for more than 10 years and according to M, he was told by P that he trusted him.[29] He spoke of how P started estate planning from 2018 and that this took about a year to complete. P was able to instruct his solicitor on estate planning matters. P called on his sons to hear his eventual decisions at a meeting on 8 November 2019 and read a note prepared by his solicitor. All his sons except for the plaintiff were present. M and the solicitor were present. The 1st defendant was not. When the 3rd son questioned certain decisions and the legal advice provided, especially in relation to an alleged conflict of interest in

[27] Ibid. @paragraph 30

[28] 2nd affidavit of M dated 30 August 2019

[29] Ibid.@ paragraphs 4-5

appointing the 1st defendant as an executor of the will and a donee under the LPA, P was seen by M as having stood firm by his decisions. There was no application filed at the time for a declaration that the documents were invalid by reason of a lack of capacity. Even M had suggested that the 1st defendant not be a co-donee under the LPA so as to minimise any tension between his first and second families, but P insisted on it.[30] The absence of the 1st defendant at this meeting militates against any suggestion of undue influence by the latter on the former's decision-making process. P appears to know what he wants and why. As M stated, "*He then explained that [the 1st defendant] could be trusted, and he believed she would be guided by me if any problems relating to his estate came up. He trusted that I would make decisions on his behalf that he would agree with*".[31]

40. P's first cousin, N, held various positions within the civil service prior to his retirement and spoke of a close relationship with P. He shared how P was a doting and fair parent and grandparent and a man of strong character who would never allow anyone to make decisions on his behalf.[32] He also gave in evidence that on finding out that a caveat was lodged by P's grandson, P was very angry. N and his wife accompanied P and the 1st defendant to the Registry of Marriages (ROM) on P's insistence. P and the 1st defendant spoke to the Registrar in private and informed N that the Registrar could not decide on whether the marriage licence could be issued on account of the allegations in the caveat. N also gave evidence that P was very angry that the plaintiff and the

[30] Ibid. @ paragraph 14

[31] Ibid. @ paragraph 14 (d)

[32] Paragraph 11 of N's affidavit of 23 August 2024

plaintiff's son chose not to meet him on 14 June 2021 and that he was not willing to accept a request by the plaintiff's son's to meet P at a location other than P's office. N confirmed that P instructed his lawyers to issue the eviction letter for the grandson and his family to leave P's home.[33]

41. The solicitor engaged to handle P's estate planning matters is a senior partner and Co-Head of his firm's Trust, Estates and Wealth Preservation practice. He spoke of how he met P sometime in August 2018. Most of the meetings with P took place in P's office. The 1st defendant was largely absent during the meetings and if she happened to be present, P did not seek her views. The solicitor informed that P did however seek the views of M.[34] The solicitor stated that "*From my observations of [P] over the years and from the meetings I attended with [P] and [M], it was clear to me that [P] knew what he was doing. While he may have sought [M's] opinion at times, ultimately he was the one that made the decisions*".[35] The solicitor ensured that medical assessments supported the ability of P to execute documents relating to his estate and the solicitor was confident arising from his own observations and the medical assessments, to issue the LPA certificate.

42. P appeared to have formed the intention to marry the 1st defendant and intended to execute the codicil as a response to what he saw as his grandson's overreach in filing the caveat. The solicitor who handled P's estate planning matters took the cautionary step of obtaining medical assessments even though

[33] Ibid. @ paragraph 23

[34] Paragraph 6 of the solicitor's affidavit of 23 August 2024

[35] Ibid. @ paragraph 17

he was of the view that P "*was alert, and able to appreciate and understand all the issues and documents that were discussed. [P] was very engaged at all our meetings and clear in instructing me on the terms of the new will, lasting power of attorney (LPA) and trusts that he wanted to set up and/or execute. Based on my observations of [P's] behaviour during our meetings, I never doubted that [P] possessed mental capacity to make decisions and give me instructions regarding his property and affairs*.[36] There was no real challenge mounted against the observations of the solicitor and the assessments of the doctors for purposes of executing the estate planning documents other than the continued perception that it was implausible that P could have the capacity to do so.

43. The weight of the evidence from M, N and P's solicitor favoured a conclusion that P had the mental capacity to execute the documents in question despite the fact that P took time to respond, had short term memory losses and needed assistance at times. It bears repeating that the philosophy behind the MCA is to protect the interests of those who find their mental capacity impaired and this would include taking all reasonable steps to ascertain their true intentions, in the face of such impairment. Mental impairments are much like physical injuries. One may not be able to kick a ball forcefully with an injured ankle but one may still be able to kick it well. More importantly, the leg has not lost all utility. s 3(2) of the MCA provides that "*A person is not to be treated as unable to make a decision unless all practicable steps to help the person to do so have been taken without success*". Any step taken by P's friends or family to have him understand or remember something that was said in the past or

[36] Paragraphs 8-9 of P's solicitor's affidavit dated 23 August 2024

articulate his views, are not in themselves reasons to conclude a lack of capacity. It is whether *with* such efforts, P is able to understand, remember and articulate. In this case, I did not doubt he could.

Medical History and the Evidence of the JME

44. The 3 doctors appointed to assess the capacity of P presented their findings in a report dated 26 April 2024. The purpose of their appointment was to determine whether P has mental impairment based on observable symptoms and any other diagnostic systems available and if so what the impairment is, what effect it has on his cognitive abilities and when it began to have such effect. In the event P was determined to suffer from a mental impairment to make decisions in relation to his personal welfare and property and affairs, the JME was asked to provide an opinion on his mental capacity in relation to the documents identified at paragraph 15 of these Grounds.[37]

45. The JME relied on volumes of documents which included medical reports from other doctors who had assessed P, the audio recording of the meeting between P and his sons on 6 June 2021, the JME interview of P held at P's office on 3 August 2023 and the video and transcript of this, interviews with a Catholic priest who met with the 1st defendant and P (to discuss the possibility of marriage in a Catholic church), interviews with the 1st defendant and her son, the plaintiff, his younger brother, the plaintiff's son and M.

[37] Paragraphs 3 and 4 of the JME report

46. The medical history of P was instructive to my determination. I had no cause to reject the positions expressed by the doctors. There was no suggestion of bias, a lack of robustness in approach or analysis nor any material inconsistency across the reports. The various medical doctors and the neuropsychologist who saw P prior to the JME had the benefit of examining P at the time the various documents were executed. This would provide the best evidence of the state of P's health at the relevant period.[38] The JME themselves were of the view, correctly in my mind, that the execution of documents contemporaneously or shortly after mental examinations offer the best evidence of health when they said "*...we realise that, prior to every major decision that he made, he actually saw someone who assessed him. And that would have been the most accurate, because it is difficult for us to examine him several years later to do a retrospective estimate*…"[39]

47. After P's fall in September 2017, he was diagnosed as having suffered traumatic subdural haemorrhage and intracranial haemorrhage. A doctor administered Abbreviated Mental Tests (AMT) and Chinese Mini-Mental Status Examination (CMMSE) on 4 occasions between 25 September 2017 and 15 January 2018 which showed gradual improvement. The January 2018 AMT score was 9 where normal cognitive functioning is a score of 8 and above. The CMMSE score in January 2018 was 21 where normal cognition is any score from 22. The doctor referred him to a psychiatrist to evaluate P's mental capacity to execute a LPA. The assessment by this psychiatrist was conducted

[38] ***ULP and others*** v ***ULS*** (2021) SGHFC 19

[39] Certified Transcript (4 August 2025) @ page 76, lines 11-16

on 7 March 2019 and he opined that although short-term memory showed a mild impairment, P had the capacity to make the LPA. Further assessments were done by this psychiatrist on 23 July 2021and 12 October 2021 for the purpose of making a will and similarly, the psychiatrist confirmed capacity. He also assessed P for the purposes of ascertaining his ability to conduct legal proceedings relating to his demand that the plaintiff return S$3.8 million to P and evicting the plaintiff's son from P's residence. P articulated various reasons for each of the decisions which the psychiatrist found to be cogent and which indicated that P had the mental capacity to do so.[40]

48. The psychiatrist referred P to a neuropsychologist for "cognitive characterisation and mental capacity evaluation for the purpose of his intention to sign legal documents relating to his Will, Trust Deed and Deed of Gift".[41] The assessment was conducted on 1 October 2019 and while highlighting that P's cognitive profile pattern suggested possible mild vascular neurocognitive disorder without significant behavioural disturbance, it was the neuropsychologist's position that P had sufficient intellectual and cognitive capacity to make informed decisions regarding his legacy planning and distribution of family assets independently. "*P clearly and consistently repeated key information, and his broad intentions about the distribution of his inheritance*".[42] A second evaluation was conducted on 8 August 2020 to determine if P could decide on the transfer of assets into his Trust. Again, apart from occasional memory lapses, the neuropsychologist was able to conclude

[40] Paragraph 38 of the JME report

[41] Ibid. @ paragraph 39

[42] Paragraph 41 (d) of the JME report

from P's responses which included P's ability to seek clarification of matters which were relevant to the decision to transfer his assets into his Trust, that he possessed the capacity to make the necessary decisions.[43]

49. Further assessments were conducted on 10 June 2021 to determine the capacity of P to execute his codicil. It was the neuropsychologist's position that P had provided "*consistent, logical and reasonable responses with robustness, lucidity, and clarity" on the intended amendments to the will*.[44]

50. Further reports by 3 other doctors for assessments done on different dates were submitted to support the application of P to participate in the present proceedings without a litigation representative. A separate court allowed the application in no small part due to the fact that the doctors were all of the view that P had the capacity to act without a litigation representative, to appoint counsel, execute letters and even make decisions on his personal welfare which embraced aspects such as the consent to marry. I was mindful that there was an apparent difference between the diagnoses of 2 of the doctors. One who conducted tests on 21 and 22 July 2021 was of the view that P suffered from mild cognitive impairment while the other who conducted his assessments on 4 August 2021 and 25 August 2021, which included administering the Montreal Cognitive Assessment (MoCA) on which he scored 18/30, was of the view that P qualified for a diagnosis of dementia with mild severity, predominantly affecting his short-term memory recall. Given that the scope of their assessment was largely to consider P's capacity to conduct court proceedings by himself

[43] Ibid. @ paragraph 43

[44] Ibid. @ paragraph 45

and their confirmation of P's ability in this regard, I looked to the other evidence to identify if there was any cause for concern in this apparent difference to issues beyond participation in court proceedings.

51. The only doctors who appear to fundamentally differ in their assessments of the capacity of P to make decisions on his personal welfare, property and affairs were Dr Carol Tan and Dr Calvin Fones. They were also the only doctors who did not meet with P but reviewed the audio and video recordings, medical reports, Computed Tomography (CT) scan and Magnetic Resonance Imaging (MRI) reports. Dr Carol Tan did not rule out the possibility of recovery and Dr Fones expressed that it is "*imperative for P to undergo an assessment of his mental capacity*".[45] In other words, even the reports by Dr Tan and Dr Fones which gave the plaintiff concern over P's mental health do not provide evidence that P lacked mental capacity but that more needed to be done for a proper assessment. They appear to recognise the limitation of "desktop opinions".[46]

52. During the JME's interview with P, he obtained a score of 20/30 on the MMSE. Clinical observations were documented by the JME. While recognising that at times P took a longer time to reply, if at all, and made "irrelevant utterances", it appeared to the JME that P wanted to exercise caution and deliberation before responding and he tended to say things to deflect from having to answer until he was ready. He often relied on humour to give him that

[45] Paragraph 61 of the plaintiff's affidavit of 25 June 2021

[46] ***Goh Tze Chien*** v ***Tan Teow Chee*** [2024] SGHC 1, affirmed by the AD on appeal

time. His answers to various questions[47] were of a nature that enabled the JME to conclude that P had the ability to understand, retain, use or weigh his decisions before communicating them. He spoke of the 1st defendant favourably and viewed the family's resistance to his marriage as one coloured by financial concerns. He said "*I've given them everything, yet they are not satisfied, yet they want to bite the hand that feeds them*".[48]

53. While the JME did speak to the parties and the larger family, it had less significance than the statements of M, if only for the fact that the others come into the interview space with personal agendas. M had little to gain from providing the JME and the court, his observations. He shared that P did not trust his children and that a lot of money had been lost by his eldest son and the plaintiff who are discharged bankrupts. It was M's position that P thought of his son with the 1st defendant as capable of managing P's business but that this son did not want to be involved.

54. While a decline in short term memory and slower processing speed were noted by the JME, the unanimous opinion of the JME was that P suffers from mild cognitive impairment and that the deterioration in his cognition could be attributed to a combination of old age, severe hearing impairment and a sequalae of his head injury as a result of the fall. It was the view of the JME that P had and still has the mental capacity for the specific tasks identified and that this conclusion was derived from the interview with him, the medical reports and information gleaned from interviews with other relevant individuals.

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[47] Paragraph 78 of the JME report

[48] Ibid.@ paragraph 85

55. Under questioning by the plaintiff's counsel, the JME explained that when one speaks of memory loss, it can be subjective, objective or because of mild cognitive impairment. In the case of mild cognitive impairment, age related memory impairment is medically recognised and the doctors opined that "*there is nothing wrong with the person*".[49] When there is cognitive impairment, dementia could be an alternative diagnosis. Dementia is an umbrella term covering various conditions such as Alzheimer's Disease and Vascular Dementia and varying degrees within these varied conditions.

56. The JME referred to MMSE scores, medical reports from previous doctors who had treated and/or assessed P in the past and took great pains to explain that "*Other than scores, clinical judgment – from perspective of 3 professors in different areas*" guided them to their conclusion. They confirmed that their conclusion was unanimous[50] and that:

> *"[P's] memory only one domain affected in cognitive impairment – if gone from mild cognitive impairment to mild dementia – there would be other tell tale signs….All three of us have different specialities of brain – geriatrician, neurologist and psychiatrist, we all see a lot of patients with dementia. And it's obvious to the three of us, he is not demented, but only mild cognitive impairment"*.[51]

[49] Certified Transcript (4 August 2025) @ page 6, lines 23-24

[50] Ibid. @ page 9, line 1

[51] Ibid. @ page 9, lines 12-28

57. The JME also emphasised that they were strict with the allocation of scores for the tests that they administered. As an example, when P was asked to fold a piece of paper and place it on the floor, he chose not to place it on the floor and questioned its prudence as it would be a waste of the paper. Even though P had a good reason in the JME's view, for not placing the paper on the floor, they did not give him a mark on account of him not complying with the instructions strictly.

58. Another test was to determine P's attention and mental calculation skills. To prevent any possibility of coaching, the JME asked that he subtract 7 from 80 instead of 100 which is what would typically happen during such tests, and to continue to subtract 7 from each answer provided. When the plaintiff's counsel questioned why the answer given by P was written for him, the JME pointed out accurately that in assessing mental capacity, reasonable assistance was to be afforded to the person being assessed, so long as they do not inadvertently substitute answers on behalf of P.[52] They emphasised that the answer was given by P and it was written down for him in order to assist him to do the next mental calculation which was well within the idea of reasonable assistance. I accepted this position. If the test was to determine attention and mental calculation, writing down the answers given appears well in order to support the assessment of a 97-year-old man.

59. The JME was also questioned about P's behaviour during the time he was examined by the JME and suggested that P needed a lot of assistance to orientate himself to where he was and why. P had also asked if the JME and the

[52] ***BUV*** v ***BUU*** [2020] 3 SLR 1041 (HCF)

psychologist present were lawyers. The JME was of the view that he wanted to protect himself given his often-expressed distrust of lawyers. The JME explained that:

> "*Because we started off with the premise that he already has mild cognitive impairment – so whatever – it will take a bit of longer time for him to fully understand what is happening, what's the purpose, and for forth. So this reminding is also part of the process of helping him, assisting him so that, you know, as far as we are concerned, so that he can be cooperative during the assessment*."[53]

> "*I need to add that what Dr Chan has said, our impression was we are dealing with a very wily, elderly Chinese gentleman – whatever we thought, whatever reserve, whatever cognitive reserve that he has, he's a guy who can use it to his advantage. There are times when we think that the longer time to reply, because of his memory impairment, the delay in memory recall. And he uses this, we think. As a strategy by deflecting it, making jokes, and then when he got the answer right, he answered. So again, this reinforces the notion that the longer time to reply may be part of a strategy. Maybe he actually ought to deliberate. Earlier, we say he's preamble in this whole report was, I need to protect myself. I don't think he's comfortable with 4 people looking at him, because he was looking at each one of us before he answers. So he was assessing us, even as he thought that we were asking him*".[54]

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[53] Certified Transcript (4 August 2025) @ page 29, lines 21-28, [Evidence of Dr Lim]

[54] Ibid.@ page 30, lines 12-30

60. The JME also spoke of the long pause and emotions that P displayed when he was reminded of the Disinheritance Letter. By P sharing that his grandson had failed to meet him, it was the opinion of the JME that this displayed an appropriate response on being reminded of the Disinheritance Letter. The JME shared that:

> "*If you have not faced dementia patients and asked them questions, then you won't understand what we're trying to say…..The way dementia patients respond, no way this gentleman responded, the way you see on the video, that a – that a dementia patient does not exhibit this detail of ability, to manoeuvre, you know…when gave inheritance letter – long pause - then answer a few steps ahead – "He did not want to meet me. Why?" 2 days ago he wrote to grandson – come and meet me let him come again – 4 o'clock – didn't come – so that sets off the disinheritance letter*."[55]

61. The responses of the JME under questioning provided clarity on the probable reasons P acted or responded in the ways he did which the plaintiff viewed as indicative of P's lack of capacity. I was of the view that the responses were reasonable. For example, there was an incident in May 2018 where P had allegedly groped his grandson's wife. The JME was of the view that this was probable after suffering the fall in September 2017 as the injuries sustained could result in disinhibition for a period. This did not affect his capacity to decide his own affairs. They also clarified that P did not suffer from paranoia[56]

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[55]Ibid. @ page 37, lines 18-30 and page 38

[56] Ibid. @ page 55, line 11

and that even if P made a mistake in the plaintiff or the plaintiff's son's motivations in preventing the marriage, this would not affect the assessment of P's cognitive ability.[57]

62. The plaintiff suggested that the JME was somewhat partial towards P and disagreed with the JME's interpretation of P's words and actions as suggestive of a man with capacity. While I accept that doctors in the mental health arena can find themselves subconsciously concluding a diagnosis on a subjective reading of their patients, I could not conclude that the JME was mistaken in their assessment or that it fell short in any material way. They worked with a lot of material. P was expressing himself in ways not typical of patients with dementia. He could even articulate that "*I had given them everything and yet they are not satisfied*"[58] when asked about the disinheritance and the motives of the plaintiff and grandson in stopping him from entering into a union with the 1st defendant. The very appointment of the JME was on account of the vast amount of evidence supporting P's ability to execute the documents in question. When the JME's position aligned with that evidence, the position the plaintiff took was that the JME's report cannot be relied on. The JME was a panel comprising doctors from 3 relevant and interrelated areas in geriatric health, and they collectively concluded, from the standpoint of geriatric psychiatry and neurology, that P continues to have mental capacity today. The 3 doctors were not related to the parties nor would they benefit from their findings. When we speak of the clinical component involved in mental capacity

[57] Ibid. @ page 54

[58] Ibid. @ page 53, line 12

assessments, it is important to appreciate the need for clinical judgment arising from personal contact with patients. While mental assessment tests like the MMSE and MoCA are important tools and provide a start point to assessments, they are simple tools, unable to replace good doctor-patient interaction which remains the cornerstone of sound medical judgments. I had no doubt that the JME provided the correct analysis of the state of P's mental health.

63. The plaintiff also took issue with the presence of a clinical psychologist at the JME's interview of P and who had administered the MMSE, on the basis that this was only made known to him when the recording of the session was made available. He sought to cross-examine the JME and Ms Tan and I had permitted instead that all be present at a concurrent hearing. The plaintiff however chose not to call on Ms Tan to attend this hearing, which he stated was due to the costs that would be incurred. In any event, while the test administered may have guided the doctors, its utility is low.

64. What the plaintiff appears to be suggesting is that all the doctors who personally assessed P were wrong in their conclusions and so too the JME who were brought in on his request. While I appreciate the perspective of the plaintiff who has witnessed his father move from a robust and active businessman to a physically vulnerable 97-year-old, who takes his time to speak and appears to ask many questions, this deterioration can be safely attributed to age related impairment.

65. The plaintiff's counsel took the position that even if the JME's assessment were to be accepted, it did not address the capacity of P in executing each of the documents at the time each was executed. I was of the view that a

finding of capacity today to make decisions on all matters would necessarily mean that the court no longer needed to look at whether there was capacity to make a decision at a particular point in time in relation to a particular document or action. In cases of dementia, this would be an important exercise given that there will be periods of lucidity and a lack of it. In any event, the assessments of doctors prior to the appointment of the JME pointed to P's ability to execute the various documents in question. There was no evidence that cast doubt on the sufficiency of these assessments at various points in time.

66. It was also in my view necessary to suspend judgment on why a 97-year-old would want to remarry. It is about respecting choices if capacity is established. The position of his children from the first marriage can easily be appreciated. Their mother, P's wife, has passed away and she lived in the knowledge that her husband was having an extramarital affair for the larger part of her marriage to him. However, on P's capacity to decide how he wanted to lead his life, there is nothing unusual about his decision to marry after his wife's passing. The 1st defendant and P have been in a relationship for decades. The 1st defendant looks after P although there was some dispute on who the primary caregiver is. Given the 1st defendant's position that she wanted to marry P because of her faith and the position of P that the only thing that stood in his way was his resistance to any idea that he may have to convert to Catholicism shows a man who was well able to decide for himself, what he wants to do and conversely, what he was not prepared to do. The JME also commented that P's insistence that he did not want to change his religion helped put to rest any

suggestion that he was capable of being unduly influenced to act in ways that did not reflect his wishes.[59]

67. The JME on being asked about the positions taken by Dr Carol Tan and Dr Calvin Fones, expressed that it was entirely possible to conclude in the way they did because they were presented with audio recordings and scans where there were long pauses and graphic images, respectively. Dr Tan and Dr Fones did not see P and they did not assess P. Little weight can be attached to their evidence.

Was there Undue Influence exerted by the 1st Defendant?

68. Although the Originating Summons (Amendment No.5) did not specifically seek a declaration that the documents executed by P after September 2017 be set aside or invalidated on account of undue influence exerted by the 1st defendant, the plaintiff's counsel made submissions to this effect.[60] In ***Re BKR*** the court provided that the proven or potential presence of undue influence is relevant to the issue of mental capacity in three ways:[61]

> *First, it is material whether P is able to retain, understand or use the information that relates to whether there might be undue influence being applied, for instance whether P can understand that a third person may have interests opposed to his; and if not, whether that inability is cause by a mental impairment.*

[59] Ibid. @ page 72, lines 23-25

[60] Part C of written submissions filed on 1 October 2025

[61] Paragraphs 125 and `126 of the Judgment

> *Second it much be considered whether P's susceptibility to undue influence is caused by mental impairment; if so, and if the result of such undue influence is that P's will is so overborne that he is unable to use and weigh information relevant to the decisions in question, P would be unable to make decisions because of mental impairment.*
>
> *The third way in which undue influence is relevant is that it might mean that P cannot realistically hope to obtain assistance in making decisions, In such a situation, P may be found to lack capacity because of a mental impairment operating together with the lack of assistance".*

69. Relying on ***BUV*** v ***BUU & UWP***[62] where undue influence was established, the plaintiff submitted that the 1st defendant and P were constant companions thus creating a presumption of undue influence and that the execution of legal documents after 2017 called for explanations that were not forthcoming. I did not agree. While the 1st defendant and P were clearly very close, P was not dependent nor vulnerable. In fact at many points in time, he showed himself to be someone who will not retract from a position once he made up his mind. Even when his close friend M suggested that he choose someone other than the 1st defendant as donee under the LPA, he rejected it. M was also present at the meetings P had with his solicitor who assisted in matters relating to P's estate planning and confirmed P's understanding of the documents that were executed. N followed P and the 1st defendant to the ROM where P spoke with the Registrar after the caveat was lodged indicating P's own resolve and desire to marry the 1st defendant. The JME's observations were also

[62] [2019] SGHCF 15

that P was a man who knew what he wants and would not change his mind easily. The execution of the legal documents was done only after medical assessments were made of P's capacity to do so and P was legally represented through the course of estate planning which took some time to complete. To suggest that explanations were not forthcoming on the reasons for the execution of legal documents after September 2017 goes against the collective tone of the evidence.

Conclusion

70. When P chose many decades ago to start an extramarital relationship with the 1st defendant, the children from his first marriage must have felt the pain of their mother (P's wife) and perhaps, I speculate, a larger sense of consternation that their father did not or could not see his children as sufficient reason to maintain fidelity. At the heart of the application before the court is the expression of that hurt decades later when P has chosen to marry again. It is not implausible that they were concerned about the financial consequences on them as children of P. I did not agree however that the plaintiff was motivated by greed in bringing this action but rather more that he, his brothers and one of his sons felt that P should not make a decision that would change the status quo. There were always 2 families that were kept distinct and apart and provided for by P with the implicit assurance that his extramarital affair would not alter the balance he preserved between the 2 families.

71. The duty of this court is to allow P's decisions to be respected and, in this regard, to ascertain whether it was in fact P's wishes that were articulated. It is not the morality of his decisions nor even the logic of the same although a

lack of logic could certainly in the context of other facts, suggest mental incapacity. This case demonstrates that advanced age and atypical decisions are not reasons in themselves to dismiss decisions if they were made with sound capacity. Indeed a 97-year-old may wish to marry the lady he has been with for more than 50 years and who wishes to be with him. He may choose to arrange his financial affairs to provide for her and their son and to deny others. It would not be for this court to say that he cannot do so if these are choices made freely and with necessary capacity, even if arguably, social constructs prevent such contemplation. Indeed, "*man is condemned to be free*".[63]

Shobha Nair
District Judge

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63 Sartre, Jean-Paul. *Existentialism Is a Humanism*. Translated by Carol Macomber, Yale University Press, 2007.