

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 24

Originating Summons (Mental Capacity Act) No 2 of 2022

In the Matter of Section 20 of the Mental Capacity Act (Cap 177A)

And

In the Matter of P, a person alleged to lack capacity

Between

(1) WLR

(2) WLS

... Plaintiffs

And

(1) WLT

(2) WLU

... Defendants

Originating Summons (Mental Capacity Act) No 3 of 2022

In the Matter of Section 20 of the Mental Capacity Act (Cap 177A)

And

In the Matter of P, a person alleged to lack capacity

Between

WLT

... Plaintiff

And

(1) WLR

(2) WLU

... Defendants

Originating Summons (Mental Capacity Act) No 4 of 2022

In the Matter of Section 20 of the Mental Capacity Act (Cap 177A)

And

In the Matter of P, a person alleged to lack capacity

Between

- (1) WLU
- (2) WMB

... Plaintiffs

And

- (1) WLR
- (2) WLT

... Defendants

Originating Summons (Mental Capacity Act) No 5 of 2022

In the Matter of Section 20 of the Mental Capacity Act (Cap 177A)

And

In the Matter of P, a person alleged to lack capacity

Between

WLU

... Plaintiff

And

WLR

... Defendant

JUDGMENT

[Family Law—Deputyship]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

WLR and another
v
WLT and another and other matters

[2023] SGHCF 24

General Division of the High Court (Family Division) — Originating
Summonses (Mental Capacity Act) Nos 2, 3, 4 and 5 of 2022
Choo Han Teck J
10 April 2023

11 May 2023

Judgment reserved.

Choo Han Teck J:

1 L married P in the early 1960s. They raised four children, G, T, J, and W, now aged 60, 59, 52, and 49 respectively. G has been living in Thailand for years and she is not involved in the family's business and affairs, including the current litigation. W is a pastor and teacher, and likewise, he is not involved in the family business, and is only peripherally involved in the litigation. The present dispute is a head-on confrontation between T and his sister, J. The issues before me are straight-forward — the first is whether J should be appointed together with Ms Low Siew Ling, a professional deputy as the Deputy and Co-deputy for the mother, P. J also wishes to appoint Ms Kwok-Chern Yew Tee, a lawyer, as a successor deputy to Ms Low. T objects to either alternative, and prays for an order that Mr Lau Chin Huat, a professional deputy and accountant to be appointed instead (the “Deputyship Applications”). The second issue is whether the Lasting Power of Attorney executed in 2019 by P should be revoked

(the “LPA Revocation Issue”).

2 L died at the age of 92 on 15 February 2021. P, now aged 84, is suffering from severe Alzheimer’s disease. It is not disputed that she is incapable of managing her affairs. The question of when exactly she was incapacitated by her illness is not relevant to the Deputyship Applications, but is relevant in the LPA Revocation Issue.

3 During their active lifetime L and P were close, and became wealthy, mainly from property investments. Initially, they worked as a team, and that team expanded when J, then nearing 30, was added to help in various aspects of the business. L and P jointly owned 17 pieces of real property, in addition to money in bank accounts and other assets. The wealth of the business is estimated to be millions of dollars — no specific figure is given. We do not know why G is not involved in this litigation. W, a pastor, presumably adhering to the Christian injunction “not to store treasures on earth”, declares that he is only applying to look after P’s personal welfare because he has and will continue to look after P. He is thus consenting to be jointly appointed as co-deputy with J, who may be more capable in managing P’s property and affairs. On the other hand, J and T, despite proclaiming otherwise, are the ones directly tussling to control the assets of L and P.

4 The family business started in the 1960s when L and P were in the business of leather trading. The couple eventually went into real estate investments. In 1967, [A] Corporation was registered, with L as the sole proprietor. [A] Corporation dealt primarily in the business of leather shoes and shoe components. In 1972, [H] Pte Ltd was incorporated, which L co-owned with his siblings. This company complemented [A] Corporation’s leather business. [H] Pte Ltd was sold to a Swedish multinational company in 2002. In

1986, [J] Pte Ltd was incorporated, with L and P holding one share each. P was the company secretary. L and P intended to use [J] Pte Ltd for their leather processing business, but eventually turned it into the holding company for their real estate investments. Two other companies were incorporated — [D] Pte Ltd and its 100% subsidiary, [C] Pte Ltd. T, J and P are directors of [D] Pte Ltd. L is the majority shareholder of [D] Pte Ltd with 45% of the shares, and P, T, J and W each holding 13.75% of the shares. At present, these companies hold the various residential and commercial properties that form the estate of L and P.

5 There is a dispute over the role that P played in the family business. J says that P was actively involved in the business. J’s counsel, Ms Lim Lei Theng, submitted that P was a “shrewd businesswoman who took care of the business and the family”. Ms Lim also submitted that the above-mentioned companies incorporated by the joint effort of L and P. On the contrary, Mr Adrian Tan, counsel for T, says that it was L who started the family business, and P was a traditional housewife who left all the business and financial decisions to L. He says, at best, P played a supporting role by helping to manage the accounts for [J] Pte Ltd and carrying out miscellaneous administrative tasks. Mr Tan further argues that P was made a joint tenant by L to many of the properties out of his love and affection for her.

6 T described his mother, P, as a “quick tempered, impatient [and] a vengeful woman” who “married for monetary reason”. In response, Ms Lim submitted that P a “shrewd businesswoman”. There is no independent evidence for me to form either impression of P. The narratives from T, J, and W, do suggest, however, that L was the driving force in the family business, but P had made significant contributions. Ms Lim refers to the records kept by P, which included diary entries of rental proceeds and loans made. This corroborates the point that P was involved in the family business. It is likely that that L probably

made the business decisions. P was bringing up four children — since 1960 — until they were more independent.

7 In addition to the assets held by the companies above, L and P also owned assets under different capacities:

(a) P held assets in her sole name, valued at \$3,879,970.49. These assets include shares, fixed deposits, a car, and certain insurance policies.

(b) L held assets in his sole name, valued at \$2,064,935.25. These assets include shares, bank accounts, and a car.

(c) L and P also held assets jointly, valued at \$1,334,590.58. These mainly comprise bank accounts and certain shares held in a joint portfolio. This value is before the alleged transfer of \$792,735.53 out of one of the bank accounts by T.

(d) L, P, T and J shared an account, valued at \$87,730.81. This is the account from which J claims L had withdrawn \$260,000 against the best interests of P.

8 The precise value of the assets is not in issue. In any event, the issues to be determined in the present proceedings do not depend on the value of the assets. L and P's wealth and assets are only relevant because the appointed deputy will have decision-making powers over the property and affairs of P, who has an equal share in most if not all of the assets. L died with a will which has not yet been proved, and that may be the subject of the next litigation.

9 The following applications were taken out by the Children in respect of the property and affairs of P:

- (a) HCF/OSM 2/2022 (“OSM 2”), filed on 26 August 2021, the application of J and Ms Low Seow Ling (a qualified professional deputy and a lawyer by profession) to be appointed as joint deputies over P’s property and affairs;
- (b) HCF/OSM 3/2022 (“OSM 3”), filed on 29 October 2021, by W to be appointed as deputy jointly with J and Ms Low Seow Ling;
- (c) HCF/OSM 4/2022 (“OSM 4”), filed on 29 October 2021, by T for Mr Lau Chin Huat (a qualified professional deputy and a chartered accountant by profession) to be appointed as sole deputy over P’s property and affairs; and
- (d) HCF/OSM 5/2022 (“OSM 5”), filed on 9 June 2022, by T to revoke P’s Lasting Power of Attorney (“LPA”) registered on 6 March 2019 (and currently in force) on the basis that P lacked capacity when it was executed.

10 OSM 2, OSM 3 and OSM 4, concerning the applications to appoint a deputy over P’s personal welfare, property and affairs (the Deputyship Applications), have two issues for my determination, namely, who should be appointed as deputy over P’s property affairs, and consequently, what ancillary orders are appropriate in the present circumstances.

11 OSM 5 concerns the application to revoke P’s LPA. The three questions I have to decide here are, whether P had the requisite mental capacity when the LPA was signed; whether J, the sole donee under the LPA, acted in P’s best interests; and whether P’s LPA should be revoked because of an irregularity in the LPA form.

The Deputyship Applications

Family Background

J's Account

12 J and T set out, at length, their perspectives on history of the family relationships. J asserts that from around May 2019, T began “hoarding” L. She claims that T, on multiple occasions, brought L to the office or out of the family home despite his old age and ill health. She further claims that as a result of these actions, L became increasingly distant from her, and closer to T.

13 J refers to several events involving L which she claims was uncharacteristic of his behaviour. The first concerned L’s intention (according to T) to give to T, J, and W, commercial and industrial property units belonging to [J] Pte Ltd. But J claims that this cannot be true because it goes against L and P’s business philosophy in respect of family and business assets. More importantly, she says that a disposal of these assets is against P’s interests since she holds those assets with L in joint names and thus have a say on how the assets are to be dealt with.

14 The second point of dispute concerns the multiple trips which L made with T to various banks and law firms from July to November 2020. J claims that those trips were to have L certified mentally fit to execute a fresh LPA appointing T as L’s sole donee, and for the execution of a fresh will on or before 26 November 2020. That will is the subject of a separate probate action.

15 The third event is a withdrawal of \$260,000 by L on 20 November 2020, from a UOB joint account in the names of L and P. This UOB account was used by L and P to receive all rental income from their residential and commercial properties they jointly own. This account was also used to pay for all their

expenses, including their personal, medical and household expenses. This withdrawal of \$260,000 was made after P had lost mental capacity and was done without J's knowledge. It is J's assertion that T was aware of L's decision to withdraw the moneys in the account.

16 The fourth event is the withdrawal of \$792,755.07 by L on 25 November 2020 from another UOB joint account shared by L and P (the "I-Account"). J asserts that T and his wife began to monitor the letters at L's and P's home. Even though T and his wife did not live with L and P, they took the letterbox key from the helper, and opened the letterbox daily. On 25 November 2020, B, G's son who lived with L and P, received some letters and one of them showed that the I-Account had been closed, and the entire sum of \$792,755.07 had been transferred to an account ending with 730-7. T knew of the closure of the I-Account, and that the sum of \$792,755.07 was then transferred into an account ending with 4451 under the names of T and L.

17 J says that those four events alarmed her, and so she instructed solicitors to write to L, informing him that his actions are in breach of his obligations as Joint Donee of P's property and affairs because his actions were not in the best interests of P. J is asking for an order to investigate the four events above, particularly the actions of L after P had lost mental capacity.

T's version of events

18 I now turn to T's version of the events. His counsel described J's behaviour as "mercenary conduct" — that in the two years prior to L's death, J acted "mercenarily towards her parents". T says that L and P became suspicious of J's intentions because J refused to give L updates of his fixed deposits and rental receivables from his private and commercial properties. Thus, L turned

to T for help. T asserts that L told him that he was worried that J would misappropriate his money to her own benefit after he dies. T explained that L wanted to amend his 2019 will because he regretted executing it as it would disinherit G. Thus, he executed a new will in June 2020.

19 T says that J and W consistently objected to L's decisions concerning his properties and personal matters. For example, on 4 July 2020, L executed an LPA which appointed T as the sole donee over his personal welfare, property, and affairs. J and W were allegedly unhappy, and W wrote down a list of reasons why L should not appoint a sole donee. In November 2020, T claims that J and W had started harassing L in his own home regarding his and P's finances. On 17 November 2020, T found a recording device in L's bedroom, and a police report was made. The police confirmed that the audio recording device was still in recording at the time of the report. The device was an iPhone 8 Plus which B bought from D (B's brother). T alleges that W, J and B used the iPhone 8 Plus as a recording device in L's bedroom.

20 In relation to the legal letters sent to L, T claims that J had brought P to be certified as mentally incapacitated, and use P's LPA to unilaterally freeze P's joint bank accounts with L. According to T, L was distressed and angered by J's conduct — receiving lawyer's letters from one's own daughters was a disrespectful act to an Asian family patriarch. Finally, T explained that the withdrawal of monies from the I-Account and the other UOB account was to prevent J from taking control over the family assets.

21 Following these events, the relationship between J and L rapidly deteriorated, according to T. These were demonstrated by the removal of J from all bank accounts for all the companies within the family business. L, through his solicitors, wrote to J on 18 January 2021, requesting that she vacate the house

at King's Walk, the house owned by L which she had allowed J to stay in for more than 14 years. J refused to comply with this request. Furthermore, on 2 February 2021, L terminated J's employment within the family business.

22 The events which both J and T described in detail, relate to L, who is not the subject of this present application. The evidence led above are more relevant to the probate dispute in relation to L's will. The applications before me concern P's deputyship applications and P's LPA. The above is only relevant so far as motives and conduct of the parties are concerned.

Relationship between P and the Children

23 It is clear that T is closer to L and J is closer to P — at least towards the last years before L's death (J claims that hitherto, she was close to both parents). T has a poor opinion of P and their relationship is estranged — lengthy excerpts of T's grievances and disapproval of P are set out in Ms Lim's submissions. P clearly does not trust T and his wife. T does not dispute the difficult relationship between himself and P, and he also does not trust J.

24 The legal claims between P and the estate of L, now that L has died, is a little complicated, but some of the issues are relevant here. J claims that P has a claim against [A] Corporation (the sole proprietorship owned by the late L). Thus, P has a claim against the estate of L for unpaid salary, loans and accrued director's fees, which Ms Lim says amounts to \$1,853,268.00. J says that P is entitled to these money because of her sacrifice when [J] Pte Ltd faced cash flow difficulties and could not pay all the salaries. In response to these allegations, T says that P never had the intention of suing L or the family business for any alleged unpaid debt. He says that before she had lost mental capacity, P "had every opportunity to withdraw monies from her joint bank

accounts but did not choose to do so”. T further claims that it was agreed that the declared salary of P was purely for tax mitigation purposes. Therefore, T says that there is no basis for such a claim by P, and that it only reveals the self-serving motives of J to make claims in the name of P.

J’s Application to be deputy (OSM 2)

J’s Arguments in support of her application

25 J claims that she is most suitable to be the deputy of P. Her counsel’s submissions are mainly directed at discrediting Mr Lau Chin Huat, T’s proposed deputy, rather than suggesting reasons why J should be appointed as deputy for P. Counsel says that Mr Lau Chin Huat is unqualified and careless, and that T’s resistance to J’s application is self-serving. Little is said about J’s own contributions to P, save for the following points.

26 First, she says that L and P trusted J. J says that she was L and P’s personal assistant and had worked closely with them. Thus, J claims to know what L and P wished to do with their property, assets and investments. J provided details as to the thinking behind L and P’s succession plan. That included their intention to hold assets jointly, and they were fully aware of the right of survivorship. This was also consistent with the mirror wills they executed where the surviving spouse would inherit the assets of the other. Again, J’s counsel also submits in detail to discredit T in her submissions, setting out P’s alleged disdain toward T on multiple occasions. However, it is unclear how this information is relevant since T is not applying to be a deputy for P. It is also not J’s case that T’s professional deputy is biased toward T.

27 Secondly, it can be inferred from the criticism of T’s poor relationship with P, and Mr Lau Chin Huat’s lack of understanding toward P’s asset and

means, that J would thus act in P's best interests as her deputy. She emphasised that she had always been the one to take care of P, and the status quo should thus remain.

28 Third, she says that Ms Low Seow Ling, the professional deputy which J has chosen to act jointly with her is an experienced deputy who has a long-standing reputation as a professional deputy. J says that in contrast to Mr Lau Chin Huat (T's proposed professional deputy), who has not taken a professional deputyship role since his qualification in 2018, Ms Low has been serving as a professional deputy even before the Office of the Public Guardian ("OPG") instituted the professional deputyship certification. Furthermore, J says that Ms Low's professional experience as a lawyer would be useful in advising on the alleged investigatory work and potential legal actions which may ensue.

T's opposition of J's application

29 In response, T says that J should not be appointed as the deputy of P. He has three reasons, namely, that J has not acted in P's best interests, that she seeks to preserve P's property for her own benefit, and she is not competent to manage P's property and affairs.

30 On the first point — that J did not act in P's best interests, T says that J isolated P from other family members. He claims that J abused her powers as a donee under the LPA to dictate who could visit P. Ever since L's passing, J required family members to seek her approval before visiting P. T claims that J denied P's sister, AH, the opportunity of celebrating her 84th birthday with P, despite their close relationship. AH has affirmed in her affidavit the details of this incident. She says that J did not allow her to celebrate her birthday with P,

without J being present. She said that even though J initially agreed, she changed her mind, claiming that AH had already met P a few days before.

31 T further says that J acted irrationally in her decisions relating to P's health. In support of this assertion, T raises examples of J failing to administer P's dementia medication, failing to instruct the nursing home, where P is now staying (during the day), to administer P's medication, J exposed P to covid by allowing B (when he was living with P) to host group gatherings in breach of prevailing Covid-19 government regulations.

32 On the second point — that J seeks to preserve P's property for her own benefit, T claims that J has taken the position that it is in P's interest to keep the property within the family because it had always been P's intentions to keep family properties within the family, and to use them to generate rental income as opposed to making capital gains. T says that this is inconsistent with L and P's practice when they were still actively in business, where they had sold six properties. T says that J, despite knowing of these sales, had deliberately and inaccurately claimed that the properties are not meant to be sold.

33 T points to J's application in OSM 2, where she prays to be reinstated as a financial administrator and manager of [J] Pte Ltd and [C] Pte Ltd, with a monthly remuneration of \$4,000. T says that granting directorships and employment through OSM 2 is beyond the ambit of the powers of the court under the MCA.

34 Finally, T says that J lacks the requisite competence to manage the assets of P. He says that J's role in the family business were "limited and transient". He also points to certain mistakes which J made in the course of her duties, such

as miscalculating amounts payable to employees for CPF contributions and overpaying the refund of a tenant's deposit.

35 In relation to J's proposed co-deputy, Ms Low, T says that she is employed by Eden Law LLC, J's former solicitors who had previously sent letters to L accusing him of misconduct. He says that there is a risk that Ms Low will not be an independent proxy decision maker. Furthermore, T says that Ms Low is not an accountant and not qualified in financial literacy, thus making her ill-suited for the management of the substantial and complex assets of P.

36 T also says that Ms Kwok-Chern is an unsuitable successor deputy to J. T says that Ms Kwok-Chern, being a lawyer, is not certified and competent in financial and accounting practices. T says that given the substantial and complex nature of P's properties, Ms Kwok-Chern is not a suitable candidate.

W's application to be a deputy (OSM 3)

W's arguments in support of his application

37 W says that he is willing to act jointly with J if the court grants his application in OSM 2. He says that he shares a close relationship with P and that he had been a caregiver to P since young. He has annexed pictures of their travels over the years from 1994 to 2009. W says that even after his marriage in 2004, he continued to travel with them until 2009 when L and P stopped travelling due to age concerns. He says that even when he moved out after his marriage, he visited them regularly, and went on outings with them, with his wife and children. W says that he was the only child who made the effort to bring P out of her home for different activities to keep P's spirits up when her health was deteriorating. W exhibited photos of his outings with P to various parks in Singapore, visited between 2019 and 2021.

38 W says that even after P went to a nursing home, he would fetch P from home to the nursing home on four days in the week, and pick her up from the nursing home on three days in the week. Thus, W says that he spends three evenings each week with P and then stayed with her until she had fallen asleep.

39 In summary, W's application speaks of nothing toward P's estate, but simply about the history of W's caretaking efforts toward P. W openly states that he had never taken an active role in the family business, pursuing various pastoral roles previously and now working as an adjunct tuition teacher.

T's opposition of W's application

40 T acknowledges that W has never been substantially involved in the family business. However, he opposes W's application to be a deputy on the basis that his application is motivated by self-interest. T points to prayer 5(b)(2)(v) of W's application in OSM 3, which sought reimbursement of \$20,853.99, being the legal advice that W personally incurred from 5 November 2020 to 2 May 2021. T says that there is no explanation as to why W sought legal advice on P's property and affairs. T further claims that this expense for legal advice was incurred only because W declined to be P's donee. Thus, T says that W is not entitled to such reimbursement. I am of the view that this is an irrelevant point in the present proceedings, and in any event, W's personal legal advice should not be charged to anyone else.

41 Secondly, T claims that W is not acting in the best interests of P. He claims that W rarely took the effort to bring P to the nursing home when L was still alive, and that W never brought P for any medical appointments. Moreover, T claims that W was involved in multiple large group gatherings at the height of the Covid-19 pandemic which presented a health risk to P.

J's objections against W's application

42 J also objects to W's application, on the basis that W is impulsive and lacks the experience and tenacity that is required of a deputy of P. In support of her contention, she points out that W had previously declined P's offer to make him a donee under her previous LPA. J also says that W is not competent to manage P's assets, having only worked in Christian and non-profit organisations.

43 In response, W says that he had valid reasons to disclaim his donee appointment. He says that P's LPA contained amendments which rendered the LPA defective and that OPG's email to W caused him to be uneasy. Secondly, W says that the circumstances and tension which had arisen after L's passing caused him to be concerned that any action taken would be opposed and challenged. He says that T's challenge in OSM 5 to P's LPA proved his concerns to be true.

T's application for Mr Lau Chin Huat to be deputy (OSM 4)*T's arguments in support of Mr Lau Chin Huat's suitability*

44 T says that given the acrimonious relationship among the siblings, it is best to appoint a professional deputy to manage P's properties and affairs. He says that if one of the children is appointed as deputy, his or her decisions would not be accepted by the others, and may result in further disputes.

45 T suggests that Mr Lau Chin Huat, being a chartered accountant, tax practitioner and insolvency practitioner, has the necessary financial experience and qualifications to manage P's sizable estate. Mr Lau is also a certified ISCA Financial Forensic Professional, who is trained to investigate white-collar crime

and unethical behaviour in accountancy matters. Furthermore, T says that he has no prior connection to the parties and is independent.

J's objection to Mr Lau Chin Huat's appointment as deputy

46 J has three objections to Mr Lau's appointment. First, she says that Mr Lau is not meticulous and does not take a "considered approach" to his duty as a deputy. She says that Mr Lau has "utterly failed to fulfil the promise of being an independent and experienced professional". In support of her assertion, she points to the fact that Mr Lau Chin Huat did not conduct a full review of P's financial records for the purpose of his application to be a sole deputy, and had only undertaken a brief review of the financial records. She also raises the fact that Mr Lau admits that the figures in the joint affidavit were provided by T. J further points to his omission of the I-Account with the transfer of \$792,755.07, as well as the withdrawal of \$260,000 which J is disputing. She says that he ought not to have missed this document in J's affidavit when cross checking J's affidavit against T's affidavit.

47 The second ground on which J objects to Mr Lau's appointment is that he is not an objective deputy who has proper regard for the best interests of P. J bases her assertion on Mr Lau's failure to address the closure of the I-Account, and the withdrawal of \$260,000 from the other UOB account. As to Mr Lau's impartiality, J says that Mr Lau is "far from objective and impartial, considering that he relies blindly on T for information concerning [P]'s property and affairs for the purposes of T's application".

48 The final ground on which J objects is Mr Lau's inexperience. J says that Mr Lau has yet to be appointed as a professional deputy since his qualification to be a professional deputy in 2018. She also adds that Mr Lau's

qualification as an Insolvency Practitioner is irrelevant. J repeats her submission as to Mr Lau's inattentiveness to the details of this application.

49 J had raised other reasons about T's self-serving nature — including his withdrawals of monies from the joint accounts and the alleged denial of P's unpaid salary. However, as I have said above, I am of the view that these are not relevant given that T is not seeking for himself to be appointed as deputy for P.

My decision on the Deputyship Application

50 We can see that the main protagonists, J and T, distrust one another. They make similar allegations that the other had or had been unduly influencing L and P respectively. By her own admission, J was close to both L and P during the long years that she worked with them. The fact that they listened to her is something T might claim to be undue influence. It is the same situation in the later years when J claims that T was unduly influencing L when L was cloistered with T.

51 The truth in such matters is usually submerged in the murky past and the available oral evidence tends to be self-serving. One thing is clear, however, and that is, J has been looking after her mother's well-being. There is no dispute in that regard, and that alone is good enough reason for her to continue. This is, in fact, the most important consideration. But given the present circumstances, I am of the view that the responsibility for P's well-being, and the safeguarding of her financial interests, may also lay with J as a counter balance to T. There is more litigation to follow — this deputyship application is not the main litigation. One of the considerations I think important as well, is to maintain a balance so that both L and P's interests and assets are preserved — it is not in the interests

of P to have her deputy appointed by T who may be in a conflict of interests so far as his interests and P's are concerned. Hence, just as it is desirable that J keeps T in check, there should be another deputy to keep J in check. That should be either Ms Low, or W. I am of the view that W is sufficiently neutral to be an appropriate joint deputy with J for P. Adding Ms Low is excessive. Two deputies are adequate.

52 For the abovementioned reasons, I appoint J and W as deputies over the personal welfare and property affairs of P. They are to act jointly in all matters, and they shall be granted the general powers of deputies under Part 5 of the MCA. T's application for Mr Lau to be appointed as deputy is dismissed. One of J's specific prayers is to be appointed to the board of directors of [J] Pte Ltd, but I do not think that this court has that power to do so here. Section 23(1)(d) is the most relevant provision under the MCA, but I do not think that appointing the deputy to the board of directors is within its purview. That provision confers on the deputy the power to: "[carry] on, on P's behalf, of any profession, trade or business". In any case, I am of the view that the general powers are more than sufficient for the preservation of P's assets. Although J may not be a director of [J] Pte Ltd, J can exercise the powers conferred on her as deputy to pursue legal action on behalf of P (under s 23(1)(p) of the MCA), who is a shareholder of [J] Pte Ltd, should there be any breach of directors' duties prejudicial to P's interests.

The LPA Revocation Application

53 P's LPA was executed on 10 January 2019. Under P's LPA, L and J were appointed as joint and several donees over P's welfare, and her property and affairs, and W was appointed as a replacement donee. T did not know of the

execution of the LPA at the time it was executed, and he now applies for it to be revoked. T advances three arguments in support of the revocation.

54 First, he says that there is an irregularity in P's LPA. This irregularity which T refers to is a handwritten amendment to Part 3(B)(b) of the standard template LPA application form, which reads: "My donee shall not sell, transfer, convey, mortgage or charge my residential property at...". When P's LPA form was filled in, the words "all of" were handwritten in front of the words "my residential property". This handwritten amendment obviated the need for P's numerous residential properties to be exhaustively listed in the lines provided after that clause. I am of the view that this irregularity is insufficient to revoke the LPA. T has not pointed to any provision in the MCA under which this irregularity is a ground for revocation. In fact, in the OPG's email in response to W's inquiry, it is stated that "[P]'s LPA should have been rejected [...]. However as [P]'s LPA has been registered, it remains valid". In any case, I do not think that the irregularity is sufficiently material to justify a revocation.

55 Secondly, T says that P lacked mental capacity when she executed her LPA on 10 January 2019. He based his assertion on W's affidavit filed on 29 September 2021, where W disclosed that on the day P's LPA was executed, L and P were examined by Dr Adrian Wang, who issued a memo to certify that L was medically fit to execute a will. However, Dr Wang did not issue a memo for P. T pursued this point in pre-action interrogatories. Dr Wang responded to T's pre-action interrogatories by way of an affidavit dated 25 May 2022. This contained his detailed medical examination of P. It transpired that P was brought to Dr Wang four times, but the relevant visits are the visit on 7 December 2018 and 10 January 2019, when the LPA was executed.

56 On the visit on 7 December 2018, Dr Wang noted that P was suffering from “significant cognitive decline” and that P “was not able to provide coherent or correct answers in the gross cognitive testing conducted”. Dr Wang also noted that P could not tell him what a will was and could not recall when she had last prepared one. P could not recall her exact date of birth, her age, or the day of the week. Dr Wang’s medical opinion in the circumstances, as written in his affidavit, was:

My opinion at that visit was that [P] appeared to suffer from a significant cognitive decline that rendered her unfit to execute a Will. This means that she would equally have been unfit to execute a Lasting Power of Attorney.

However, Dr Wang provided a caveat that P’s impaired cognition could be a result of performance anxiety, and thus requested that P returned in two to four weeks for a re-examination.

57 This led to the subsequent visit on 10 January 2019. At this visit, Dr Wang confirmed that P’s cognitive deficits were still present — she could not state her age, and could not recall what she had eaten for dinner the night before. In the circumstances, Dr Wang maintained his opinion that “she had suffered significant cognitive decline [...] which caused her to be unfit to execute a Will at that point in time. This means that she would equally have been unfit to execute a Lasting Power of Attorney”.

58 In response, counsel for J, Ms Lim, says that P was certified to have lost mental capacity only after 18 December 2019. Ms Lim relies on medical reports from one Dr Joshua Kua. Dr Kua produced three reports on P after his examinations of P, dated 7 August 2020, 24 August 2020 and 18 December 2020 and one supplemental report on 1 July 2021. According to Dr Kua’s report dated 7 August 2020, P lacked the mental capacity to make decisions in relation

to financial and property related affairs. He wrote in his report dated 24 August 2020 that P had mental capacity in respect of her personal welfare, but she had no mental capacity in respect of property and affairs. It was only in his report dated 18 December 2020 that Dr Kua stated that P completely lost mental capacity.

59 Ms Lim says that these reports show that P fully lost mental capacity only from the date of the certification, 18 December 2020. Thus, she says that the presumption of existence of mental capacity under s 3(2) of the MCA applies, such that P must have had capacity when she executed the LPA in January 2019. Ms Lim says that Dr Adrian Wang did not certify that P lacked capacity, but rather that “All that happened was that Dr Wang failed to issue a medical certification as to [P]’s capacity to execute a will and LPA”.

60 The evidence led by Ms Lim proves that P lacked capacity on 18 December 2020. However, this does not mean that P had capacity on 10 January 2019. Although there is a presumption of capacity under the MCA, it was clear from Dr Wang’s response that he was of the opinion that P lacked the capacity to execute an LPA. J’s purpose for bringing L and P to Dr Wang was to certify their capacity to execute a will or LPA. The fact that Dr Wang only certified L and not P should have raised concerns as to P’s mental capacity. The evidence of Dr Wang is not refuted by medical evidence. Ms Lim appears to compare the thoroughness of Dr Kua’s medical reports with Dr Wang’s answers to interrogatories. This comparison, however, is not appropriate or helpful. Dr Kua and Dr Wang’s assessments are not mutually exclusive because Dr Kua’s assessment was done 6 months after Dr Wang’s. It may have been different had Dr Kua certified that P possessed full mental capacity (both personal welfare and financial and property affairs) in his first report on 7 August 2020. However, this was not the case. T’s position is not that Dr Kua’s

assessment was inaccurate — in fact, it is not disputed that by the time of Dr Kua’s report, P had already lost her mental capacity. What is relevant is Dr Wang’s opinion that on 10 January 2019, P had already lost her mental capacity. This is not rebutted by J.

61 Accordingly, I find that by 10 January 2019, P had lost her mental capacity, and therefore, the LPA executed on 10 January 2019 is invalid and I set it aside.

62 The third argument which T raises in support of his revocation application concerns the standard of P’s care, including P’s limited contact with family members and insufficient support for P. It is unnecessary for me to address this point in view of my finding that P lacked the requisite mental capacity at the time of the execution of the LPA.

63 For the reasons above, I order as follows:

(a) In respect of OSM 2, I grant an order in terms save for the following amendments:

- (i) In Prayer 4, J shall be the sole deputy appointed;
- (ii) In Prayer 5, no order as to subsections 15 and 16 which concern [J] Pte Ltd and the appointment of J as a director.

(b) In respect of OSM 3, I grant an order in terms save for the following:

- (i) In Prayer 4, that W be appointed jointly with J only, instead of J and Ms Low;
- (ii) In Prayer 5, no order is made as to subsection 2(v).

(c) OSM 4 is dismissed.

(d) In respect of OSM 5, I grant an order in terms.

64 I will hear the question of costs at a later date if parties are unable to agree costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Lim Lei Theng (Allen & Gledhill LLP) for the Nominal 1st and 2nd
Plaintiffs;
Hu Huimin and See Tow Soo Ling (CNPLaw LLP) for the Nominal
3rd Plaintiff;
Adrian Tan Gim Hai, Ong Pei Ching, Angela Chai Rui Min and
S Lingesh Kumar (TSMP Law Corporation) for the Nominal
Defendant.
