

Chee Mu Lin Muriel v Chee Ka Lin Caroline (Chee Ping Chian Alexander and another,
interveners)
[2009] SGHC 229

Case Number : Suit 238/2007
Decision Date : 14 October 2009
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Molly Lim SC and June Hong (Wong Tan & Molly Lim LLC) for the plaintiff; Giam Chin Toon SC and Wong Hur Yui (Wee Swee Teow & Co) for the defendant; Chew Kei-Jin and Guy Ghazali (Tan Rajah & Cheah) for the interveners
Parties : Chee Mu Lin Muriel — Chee Ka Lin Caroline (Chee Ping Chian Alexander and another, interveners)

Succession and Wills

14 October 2009

Judgment reserved.

Lai Siu Chiu J:

Introduction

1 This was a most unfortunate case where the unequal affections of a mother Madam Goh Hun Keong ("Mdm Goh") for her six children resulted in her second daughter Chee Mu Lin Muriel ("the plaintiff") suing her youngest and favourite child Chee Ka Lin Caroline ("the defendant") over the validity of one of two Wills which Mdm Goh had executed during her lifetime.

2 Alexander Chee ("the First Intervener") and Maureen Chee ("the Second Intervener") are a son and a daughter respectively of Mdm Goh. (Henceforth the First and Second Interveners are referred to collectively as "the Interveners" or where appropriate as "Alexander" and "Maureen" respectively). Besides the plaintiff and the defendant, the Interveners have two other siblings *viz* Chee Ping Swee ("Ping Swee") and Chee Ping Kong ("Ping Kong"). Ping Swee lives in Singapore while Ping Kong, like the Interveners, resides in the United States of America ("the USA").

3 The dispute between the plaintiff and the defendant centred on a Will executed by Mdm Goh on 21 August 1996 ("the 1996 Will"). The bone of contention arose from the fact that an earlier Will had been made by Mdm Goh on 16 March 1989 ("the 1989 Will").

4 In this action, the plaintiff sought to propound the 1996 Will, and in so doing, prayed for a declaration that the 1989 Will had been validly revoked and was therefore invalid. The defendant, on the other hand, denied the validity of the 1996 Will on various grounds and propounded the 1989 Will.

5 The Interveners supported the defendant's case while Ping Swee sided with the plaintiff. In supporting the defendant, the Interveners acted against their own interests, as shall become clearer later in the judgment. For the time being, it suffices to say that the Interveners' view was that the contents of the 1989 Will (as opposed to those in the 1996 Will) better reflected Mdm Goh's wishes.

Pleadings

6 The plaintiff alleged that on or about 18 August 1996, Mdm Goh had given instructions to a lawyer ("MO") to draft the 1996 Will. The 1996 Will was then drawn up by MO in accordance with

Mdm Goh's instructions to her.

7 The plaintiff's case was that on or about 21 August 1996, MO, accompanied by her partner ("W") and Dr Goh King Hua ("Dr Goh") who is the nephew of Mdm Goh, were all present at the plaintiff's house at 7 Greenleaf Place, Singapore ("Greenleaf Place"). The plaintiff averred that during that time, MO explained the content and purport of the 1996 Will line by line to Mdm Goh prior to its execution. Mdm Goh, in turn, read the 1996 Will by herself prior to executing it in the sight and presence of Dr Goh and the two witnesses, namely MO and W.

8 The plaintiff further alleged that Mdm Goh was a free and capable testatrix to the 1996 Will, which expressly revoked all testamentary dispositions (including the 1989 Will) previously made by her. The plaintiff therefore alleged that the 1996 Will was the true and valid last Will of Mdm Goh, as the 1989 Will had been revoked and was therefore invalid.

9 In her statement of claim, the plaintiff claimed the following:

- (a) a declaration pronouncing against the validity of the 1989 Will;
- (b) a declaration pronouncing for the force and validity of the 1996 Will;
- (c) a declaration that the 1996 Will was the true and valid last will and testament of Mdm Goh which revoked all former wills and testamentary dispositions including the 1989 Will;
- (d) that the order of court dated 26 July 2004 in Probate No 141 of 2004 granting the defendant's Petition for Probate of the 1989 Will be set aside; and
- (e) that a Grant of Probate of the 1989 Will in Mdm Goh's Estate should not be sealed in favour of the defendant.

10 Conversely, the defendant in her defence averred that Mdm Goh would not have executed the 1996 Will because she would have known that significant parts of the contents were factually incorrect or did not reflect her intentions. Further, the manner in which the 1996 Will was actually executed on 21 August 1996 indicated that in respect of certain aspects of the 1996 Will, the instructions of Mdm Goh were not even properly sought or not sought at all.

11 The defendant also contended that Mdm Goh did not have the mental capacity or competency to properly execute the 1996 Will.

12 The defendant added that Mdm Goh neither knew of nor approved the contents of the 1996 Will when she executed it. The defendant's position was that there were suspicious circumstances surrounding the execution of the 1996 Will which would arouse the vigilance and suspicion of the court. In addition, the defendant challenged the 1996 Will on the ground that the Will was not duly executed – that when the same was executed, Mdm Goh was not of sound mind, memory and understanding and that the execution of the Will was obtained by undue influence.

13 The defendant therefore counterclaimed as follows:

- (a) that the court pronounce against the 1996 Will propounded by the plaintiff;
- (b) that the court hold the 1989 Will to be valid and

(c) that Probate No 141 of 2004 be allowed to proceed to extraction of the Grant of Probate.

Factual Background

14 The plaintiff is a lawyer who is married to a National University of Singapore ("NUS") law lecturer, RB ("B"). The defendant is a doctor (an ophthalmologist) who is married to another doctor, Paul Chew Tec Kuan ("Paul").

15 Mdm Goh was born on 2 February 1921 and passed away on 9 June 2004 at the age of 83, outliving her husband, Dr Chee Siew Oon ("Dr Chee"), who breathed his last in October 1990. At the time of her death, Mdm Goh was survived by six children who in order of seniority are:

- (a) Alexander;
- (b) Maureen;
- (c) Ping Kong;
- (d) Ping Swee;
- (e) the plaintiff; and
- (f) the defendant.

16 Mdm Goh completed her secondary school education at Methodist Girls School and was trained as a teacher at the Teachers' Training College. After her training, she taught English at various schools. Mdm Goh married Dr Chee in August 1945 and had seven children six of whom survived. A few years after her marriage, Mdm Goh retired from teaching and became a very successful property investor. Indeed, as at her death, Mdm Goh had amassed several properties for investment and rental purposes. Her usual conveyancing lawyer was Mr Hin Hoo Sing ("HHS") of M/s Hin Rai & Tan.

17 As indicated earlier [\[5\]](#), the siblings had divided themselves into two camps. In one camp, there was the plaintiff and Ping Swee. In the other, there was the defendant and the rest of the siblings, namely the two Interveners and Ping Kong. The first camp refused to accept that the defendant was the favourite child of Mdm Goh, and insisted that Mdm Goh intended to divide her estate equally amongst the siblings. As shall become evident later, the second camp did not share the same sentiments. Indeed, the second camp maintained that the defendant was without doubt the apple of Mdm Goh's eye and that Mdm Goh's true wishes were reflected in the 1989 Will, not the 1996 Will.

18 The Interveners and Ping Kong had left for the USA for further studies in the 1960s-1970s and chose to settle down there. All the siblings gave evidence at the trial save for Ping Kong, who

declined to return to Singapore as he had not enlisted for National Service in his formative years. Counsel for the defendant had applied to have Ping Kong's evidence adduced via video link but the application was opposed by the plaintiff and disallowed before trial commenced in this court.

19 Much was said in court and will be said about the 1996 Will but before I turn to the same, I shall first look at the circumstances surrounding the execution of the earlier Will.

The 1989 Will

20 On 16 March 1989, about one month after Dr Chee had suffered a major stroke and became totally incapacitated thereby, Mdm Goh executed the 1989 Will which appointed the defendant as the sole executrix and trustee of her estate. The 1989 Will was drafted and witnessed by HHS and his clerk one Lim Bee Leng. In essence, the 1989 Will made the following bequests:

- (a) \$150,000 to Ping Swee;
- (b) No 25 and 25C Lorong Liput to the defendant;
- (c) Nos 173, 175A and 175B Jalan Loyang Besar were to be sold and the proceeds (interest first, and then principal) to be utilised to provide for the care of Dr Chee should he outlive Mdm Goh;
- (d) After Dr Chee's death, provision at the defendant's sole discretion for the education of Mdm Goh's grandchildren from any balance money left from his care and
- (e) The rest of Mdm Goh's assets including No. 470 Holland Road ("the Property") to be given to the defendant.

The 1989 Will gave the defendant almost Mdm Goh's entire estate, save for Ping Swee's receipt of \$150,000 cash and some provisions for Dr Chee should he outlive Mdm Goh. The 1996 Will as will be seen below, was a *complete* reversal of the 1989 Will.

Events that took place after the execution of the 1989 Will

21 At the time of Dr Chee's demise (October 1990), Ping Swee was the only sibling who was living with Mdm Goh at the Property. He subsequently moved out (in 1993) as there was friction between him and Mdm Goh (according to the defendant).

22 In 1992, the defendant and Paul left for the United Kingdom for their sub-specialty medical training; they returned in mid-1993 or thereabouts. On their return, they resumed their previous living arrangement of staying with Paul's parents. Towards the end of 1993, the defendant and Paul started to view various apartments in the hope of finding a home of their own; they had lived with Paul's parents for seven years. During this time, Mdm Goh was living with the plaintiff and B at Greenleaf Place, which is a stone's throw from where the Property is located.

The 1996 Will

23 On 21 August 1996, Mdm Goh executed the 1996 Will in which Dr Goh and the plaintiff were named as executor and executrix respectively. Both were also appointed trustees under the 1996 Will, which essentially provided the following:

- (a) The defendant and Paul were given the option to purchase Mdm Goh's half share in the Property, within one year of Mdm Goh's death, at the "prevailing market price as determined by two independent valuers of international repute". (Clause 2.2)
- (b) If the option was not exercised, the Property was to be sold "in the market". (Clause 2.3)
- (c) The stated reason for the above directions was that Mdm Goh had "transferred" the one half share of the Property to the defendant and Paul "at a discounted price of \$2.5 million in 1995". (Clause 2.1)
- (d) Clause 2.4 provided that Paul was expected to discharge the ASPF mortgage from his own funds; (ASPF was the academic staff provident fund of NUS where Paul worked and which was the university's equivalent of the Central Provident Fund).
- (e) After the payment of all debts, the remaining assets, including the half share of the Property or the proceeds of sale thereof, were to be divided amongst the Interveners, the plaintiff, Ping Swee and Ping Kong.

The significance of the 1996 Will was that it provided for the residual estate to be divided among the five siblings in equal shares to the total exclusion of the defendant.

24 I turn my attention now to Mdm Goh's assets, which value according to the plaintiff, was not less than \$10 million. Based on the voluminous evidence adduced at trial, Mdm Goh's assets consisted of the following:

- (a) The Property;
- (b) No. 25 and 25C Lorong Liput;
- (c) No. 23 Jalan Merah Sage #03-03;
- (d) Cash amounting to \$650,000 in OCBC Account No 4;
- (e) Unaccounted rental income in relation to No 782 Victoria Street, #01-782 (the Victoria Street property);
- (f) Batam properties; and

(g) Jewellery.

25 Item (a) was the main asset of Mdm Goh, and was the catalyst for this dispute between the plaintiff and the defendant. According to the plaintiff's evidence, the value of the Property was \$9 million in December 1994 and it approximated \$13 million at the time the plaintiff filed her AEIC (in January 2008). As alluded to briefly in the 1996 Will, Mdm Goh had transferred a half-share of the Property to the defendant during her lifetime. The Property was mortgaged to and financed by an overdraft facility from OCBC Bank under Account No 1.

26 Item (b) is a two-storey shophouse, which was bought by Mdm Goh using an overdraft facility under OCBC Bank's Account No 2. The defendant noted that the value of item (b) was significantly lower than that of item (a).

27 Item (c) is an apartment in Chip Bee Gardens, Holland Village, which was also purchased with an overdraft facility from OCBC under Account No 3. The defendant noted that the value of item (c) was again significantly lower than that of item (a).

28 As for item (d), the cash was transferred from Mdm Goh's personal account No 1 with OCBC Bank to a new joint account opened by the plaintiff, Ping Swee, Alexander and Mdm Goh with OCBC Bank. This sum of \$650,000 comprised part of the proceeds paid by the defendant and Paul for their half share of the Property. In the midst of the trial, it was discovered that this Account No 4 was eventually closed and the monies therefrom transferred to Standard Chartered Bank ("SCB") on 3 December 1997, in the names of the plaintiff, Ping Swee and Mdm Goh without Alexander's knowledge. The \$650,000 was withdrawn by the plaintiff and Ping Swee, a part thereof while it was still in OCBC and the rest from SCB. The evidence adduced showed that Ping Swee withdrew about \$498,859.65 (which he did not dispute) plus two other sums of \$17,600 and \$29,857.97 whilst the balance was taken by the plaintiff. The purpose of the withdrawals and the change of accounts from OCBC to SCB will be dealt with below at [\[197\]](#).

29 In regard to item (e), the plaintiff admitted that she collected the rental income for Mdm Goh from the Victoria Street property (it was a shophouse where Dr Chee had had his private practice). The rental income that she collected from 1996 to 2001 amounted to \$220,000 by the plaintiff's own estimate. The plaintiff admitted that she had spent the rent but repeatedly said that she would account for it. In this regard, the evidence adduced at the trial painted an unflattering picture of the plaintiff, revealing her unseemly behaviour in August 1999, and the extent that she was prepared to go and did go, to collect the rent from the tenant so as to deny the defendant the same, even though the defendant had informed the tenant she would accompany Mdm Goh to collect the rent direct from the tenant.

30 Item (f) consists of 75 units of residential houses in Batam. There was no valuation of this item provided at trial. Evidence was adduced from the defendant that the plaintiff (who did not dispute the same) had collected all the rental income before the defendant took over the task in 1999, and had also failed to account for the same.

31 In so far as item (g) was concerned, Mdm Goh accumulated a huge collection of jewellery during her lifetime. Again, the value of the jewellery was unascertained. The defendant alleged that the jewellery was currently, in the main, in the plaintiff's possession save for a few items which the plaintiff herself had given to Ping Swee after Mdm Goh passed away. In her AEIC, the defendant pointed out that it was yet to be ascertained if *all* the jewellery had been disclosed at the hearing. I should point out that in the midst of trial, the parties and or their representatives inspected the jewellery (which the plaintiff had placed in a bank's safe deposit box) to ascertain the quantity. As

with the rent of the Victoria Street property, the plaintiff repeatedly said in court that she would account for the jewellery.

The plaintiff's case

32 As mentioned earlier, the plaintiff sought in this action, to propound the 1996 Will and to have the 1989 Will revoked.

Events leading to the 1989 Will

33 Ping Swee alleged that Mdm Goh had executed the 1989 Will on 16 March 1989 as a stop-gap measure to ensure that adequate provisions were made for Dr Chee's medical and living expenses, in the event that Mdm Goh predeceased him. Ping Swee also alleged that it was he who proposed that the defendant, being medically trained, should be the one to take care of Mdm Goh (in both her financial and non-financial matters).

34 Ping Swee maintained that it was not Mdm Goh's intention to bequeath her residuary estate to the defendant solely, to the exclusion of her other five children. Ping Swee's understanding was that Mdm Goh intended (under the 1989 Will) for the defendant to hold the residuary estate on trust and for the benefit of all her children. (It is to be noted that both the plaintiff and Alexander testified that they did not know of the 1989 Will until after Mdm Goh's death). Ping Swee similarly claimed that he too did not know of the existence of the 1989 Will and that "[he] thought it would have been a trust, it could have been just a fund set aside. [He] did not know exactly what [Mdm Goh] did."

35 The plaintiff alleged that the defendant had already benefitted prior to the execution of the 1996 Will because the transfer of the half share in the Property to the defendant and Paul at "a discounted price" of \$2.5 million meant that the defendant would have received a far larger share of Mdm Goh's estate, as compared to what each of the other five remaining children would receive under the 1996 Will.

Sale of a half share in the Property

36 The plaintiff alleged that the defendant and Paul agreed to move into the Property and stay with Mdm Goh on the condition that Mdm Goh transferred the Property to them (the defendant and Paul). The plaintiff voiced her objections vehemently to the proposed arrangement. In her evidence, she claimed that there were various "implications", which included the following: "should the defendant predecease Paul, it would mean that the Property would go to Paul to the exclusion of the rest of Mdm Goh's children, there would be estate duties etc." The plaintiff elaborated that "it would not be fair to the rest of the siblings for the Property to go to the defendant and that it would cause resentment and unhappiness amongst the siblings since the Property was Mdm Goh's largest and most valuable single asset. The effect of the transfer would be that the defendant and Paul would get a disproportionately larger share of Mdm Goh's estate".

37 The plaintiff claimed that she found out about the transfer of the Property only in July 1995 or thereabouts. Prior to her discovery, the plaintiff wrote a letter dated 25 June 1994, ("the 25 June 1994 letter") to Alexander, expressing her strong objections and unhappiness over the transfer; she attempted to enlist Alexander's assistance to persuade the defendant and Mdm Goh against proceeding with the transfer. The 25 June 1994 letter was a crucial document in this case because its contents were uncannily similar to the terms of the 1996 Will. For that reason, I set out below its lengthy text in full:

Dearest Kor₂,

I've enclosed some newspaper clippings which may interest you.

The last few weeks, I've thought very deeply about family matters & I felt that I should let you know what has been discussed so that you will be in a better position to speak to Mum & Carol while they are in Seattle.

I had a few discussions with Mum & Carol on my return from the US. What I understood was they intended to transfer 470 Holland Rd to the names of Paul & Carol & they would stay with Mum there. The house is now worth about 7 million dollars at market price. But the bank has valued it at 4.5 million (Caroline told me about the bank valuation). One of my newspaper articles states that 2 houses nearby of about the same land area were sold for 8 million. Those would be brand new so I suppose our house should be able to sell for about 6 or 7 million. Carol never told us exactly what they were planning to pay Mum but I understood it to be about 2 or 3 million including the renovations that they were planning to make.

Swee & I felt that this transaction would not be fair to the rest of the siblings and we have explained to her how we feel. At one point, Ping Swee was not speaking to any of us because he was so upset over the whole matter. I was also very upset with Mum because she did not seem to want to listen to my concerns about their plans. I felt that there were many legal problems that could arise for example if Caroline died prematurely, the whole [Property] would go to Paul. Swee & I also felt that all 3 of us here are putting in a lot of effort to look after Mum & it wasn't fair that Paul & Carol should receive such a disproportionate share of her assets. In fact, the 3 of you there are also helping to look after her and you should also receive a fair share.

It was hard for me to explain our position to Carol and I think she's still not totally convinced that we are not being selfish greedy & unreasonable! She says that she has the support of Kong & Ah Mau. I think Carol did have good intentions but didn't realize the legal problems & other repercussions.

Anyway, as it stands now, Mum has realized how upset Swee & I are and things are at a stalemate. She now wants to renovate & rent out the 470 house & we're not sure exactly where she'll live. Her apartment at Holland Village will be ready soon & I personally think that's a good place for her to stay as long as she's still healthy & mobile. Our concern is that she may not have a place to go to if she ever really needed looking after. I am looking into renovating my house & I may be able to provide a room for her if ever it became necessary. I know the ideal situation would be for her to stay with Paul & Carol at 470 & it may still be possible if we can reach an amicable settlement on the distribution of her property.

I made a number of points to Caroline & I hope that you agree with them:-

- 1) we want the family to stay on good terms with each other and we need to cooperate with each other to make Mum's final years as happy & comfortable as possible.

- 2) Mum is often confused & irrational & tries to get us to compete with each other for her affection/wealth etc. We should all by now be aware of this & not allow ourselves to be divided. We must try to be open & communicate with each other as honestly as possible.
- 3) Carol & Kong are of the view that we have no right to expect anything from Mum. I have very mixed feelings about that. I would agree that if Mum wanted to leave everything to charity & she really had a well thought out plan to do good with her money, I would not try to stop her. In fact, I have encouraged her to identify good ways to use her money for example educational scholarships.
- 4) Problems arise if Mum gives a disproportionate share of her property to some of us e.g. Paul & Carol & not to the others. This will cause a lot of resentment & unhappiness as it already has with Swee & me. I have also frequently thought of Dad during this period. I know that he would not have wanted us to fight among ourselves the way his family did and I also think he would have wanted to make sure that his grandchildren are provided with a good education.
- 5) I have tried to persuade Carol that before Mum goes through with any transfers, she should go to a good lawyer & figure out how to avoid unnecessary estate duties. It may well be that she may have to transfer 470 – estate duties on that house alone may amount to \$800,000! I'm not sure how much the transfer fees will be. We also need to find out the amount of Mum's mortgage debts etc as the existing mortgages will also be considered when calculating estate duties.
- 6) If 470 has to be transferred, Mum may want to consider transferring it into the names of all 6 children. I spoke to Robert Chee's wife recently & found out that - old Mrs Chee's house was transferred into the names of her 3 sons after the death of her husband. When Robert Chee died, his daughter Gillian became his representative. If Carol & Paul want to keep the house later, they can buy over our share of the house.
- 7) If Mum doesn't want to transfer to all 6, & she really wants it in the names of Carol & Paul to keep it in the family & to have them look after her, Carol & Paul should be willing to pay a fair price for it and also persuade Mum that the money paid to her should be divided among the other siblings. I told Carol that she & Paul are in a good position to persuade Mum to do the right thing if she really wants them to take the major responsibility in looking after her in her later years.
- 8) I know that you and Kong & Mau also have your differences. I hope that you can take this opportunity to sort out your feelings & try & come to some agreement as to how we can deal with these family problems. It's by no means easy and I often wish that Mum had nothing to leave us. But the problem is real and we have to deal with it. Kong feels that Mum is entitled to do whatever she wants with her money. But I know that she is *not* entitled to use it to sow bitterness, frustration, anger and hurt in her children. She does not understand this and I don't know if she ever will. That's why I feel that it is up to us to keep talking & communicating & supporting each other.

- 9) I hope that Kong & Mau will understand my situation and Ping Swee's. We have to deal with Mum day to day & she can really wreak havoc when the mood seizes her. We cannot continue to help her & cooperate with Caroline if we feel that she wants to give Caroline so much but she has not considered our needs & our feelings. All we want is an assurance that our interests are also being considered when Mum and Carol are making plans for 470 etc. We have to continue to celebrate birthdays, Christmas, New Year, etc and it's really going to be awful when relationships between Carol, Swee & me are strained.
- 10) I really want the family to remain on good terms with each other. There is so much that we can do for each other & life will be so much richer for our children. Carol & Paul don't think it's possible to arrive at a "fair" settlement because we all have different opinions on what is "fair". I know that this problem is as old as the Old Testament. But I hope that we all have the courage & maturity to discuss it & be honest with each other. Whatever the outcome, we won't all be totally happy but as you have told me before, "life is full of compromises." We have to try and arrive at an acceptable compromise.

Kor-kor, *please* do not show this letter to Mummy. She won't understand & she's probably still angry with Swee & me for foiling her plans. And *please* don't show it to Kong & Mau without first discussing it with me. I'm really concerned about any further misunderstandings between the siblings. And *please* don't show it to Carol & Paul either. I know I'm putting you in a difficult position but I really hope that you'll be cautious & diplomatic in dealing with this. You might consider making your own notes and speaking to them about my concerns based on your notes.

I'll be starting my new job on 1st July & I really need to concentrate & work hard the first year or so. That's another reason why I don't want to be too distracted by family problems. Mummy by some miracle, must be convinced that her wealth which she has worked so hard to achieve, should not be wasted on taxes and should not divide her children. I told her that we want to remember her happily with love & respect. We want to respect her as someone who used her wealth wisely to help her children prosper & also to educate the next generation. Perhaps I'm being far too idealistic but I really hope not.

Please call me & let me know what you think & how things are going over there.

Take care of yourself & please send our best regards to Miyuki. It was very nice to spend time with her during our last visit.

Lots of love,

Muriel

38 In so far as the 25 June 1994 letter was concerned, two points (which the plaintiff did not/could not dispute) should be highlighted. First, as early as two years before the execution of the 1996 Will, the plaintiff had already expressed her discontent by writing to the First Intervener to urge him to dissuade Mdm Goh from transferring the Property to the defendant at a price which she (the plaintiff) perceived as lower than the market value. Second, the plaintiff suggested that the defendant and Paul should pay a fair market price for the Property and that the proceeds should then be shared equally among the other siblings.

39 Mdm Goh sold her half share of the Property at a price of \$2.5 million to the defendant and Paul. Completion of the sale and purchase of the half share took place on 12 June 1995. Renovations to the Property began in late 1994 and were completed towards the end of 1995. On 24 December 1995, Mdm Goh, the defendant and Paul moved into the Property. As of December 1994, the value of the Property was \$9 million. The essence of the plaintiff's contention here was that the defendant and Paul should have paid Mdm Goh \$4.5 million instead of \$2.5 million for the half share of the Property. The plaintiff therefore alleged that the transfer of the half share was effected at a huge discount of \$2 million. The plaintiff also testified that she was informed by Mdm Goh of the discount.

40 As mentioned earlier, the plaintiff claimed that she only discovered the sale transaction in July 1995 or thereabouts. In the light of her views as expressed in the 25 June 1994 letter, it came as no surprise when the plaintiff testified that she was upset, shocked and could not sleep after discovering about the sale transaction.

41 According to the plaintiff, "the transfer had caused the relationships amongst the siblings to be strained". In particular, the plaintiff maintained that the strain was exacerbated by the fact that the plaintiff and Ping Swee were upset over the following incidents which allegedly took place subsequent to the transfer:

- (a) after the defendant and Paul had renovated the Property and moved into it, they relegated Mdm Goh to a smaller room;
- (b) the defendant and Paul treated Mdm Goh in a "shabby" manner;
- (c) the defendant deliberately prevented the plaintiff and Ping Swee from interacting with Mdm Goh.

The plaintiff claimed that Mdm Goh eventually became aware of the strained relationship caused by the transfer and consequently, agreed to settle her estate on the terms set out in the 1996 Will which ensured that each child would receive a "fair" proportion of the estate. I should point out that the defendant effectively rebutted the allegations in (a) to (c) in her testimony proving they were untrue.

Events leading to the 1996 Will

42 At the time of the execution of the 1996 Will, Mdm Goh was living in the Property with the defendant and Paul.

43 On 18 August 1996, three days before the execution of the 1996 Will, the plaintiff summoned MO and Dr Goh to her house. The plaintiff's position was that she had informed MO and Dr Goh that the purpose of the meeting was to discuss family matters and issues relating to Mdm Goh's care. The meeting was a quick one and as it turned out (so the plaintiff said), MO suggested that they should speak to Mdm Goh. The plaintiff, MO and Dr Goh therefore decided to pay Mdm Goh a visit.

44 Upon their arrival at the Property, the plaintiff, MO and Dr Goh started their chat with Mdm Goh on general topics such as Mdm Goh's health and family matters before veering towards a discussion on the distribution of Mdm Goh's assets ("the 18 August meeting"). Indeed, during the 18 August meeting, the following (according to the plaintiff's evidence) was what transpired:

[Dr Goh], [MO] and I spoke with Mother on general topics such as her health and our family. The conversation then steered towards Mother's assets and how we should deal with those. [MO] told Mother that if she wanted her family to be harmonious after she passes on, there should be a fair distribution. Mother discussed how half the Property had already been transferred to the Defendant and Paul, and perhaps it was best to give them the option to purchase the other half share.

45 After the 18 August meeting, the plaintiff faxed two documents to MO. These documents purported to be instructions given by Mdm Goh in relation to the preparation and drafting of the 1996 Will. (MO, whose father is Dr Chee's cousin, knew Mdm Goh and her children personally).

46 During cross-examination by counsel for the defendant, MO repeatedly said that she could not remember anything at all about the 18 August meeting. She could not recall the instructions given to her by the plaintiff pertaining to the 1996 Will or the power of attorney that was signed in her house in December 1996 nor the lunch that she had with the defendant after the 18 August meeting. Yet, MO could remember vividly, the signing of the 1996 Will.

47 Three days after the 18 August meeting viz in the evening of 21 August 1996, MO together with W and Dr Goh, were present at Greenleaf Place to witness Mdm Goh's execution of the 1996 Will.

48 According to MO (whose evidence is set out below), she explained the content and purport of the 1996 Will line by line to Mdm Goh prior to execution. Mdm Goh also read the 1996 Will by herself prior to its execution. Mdm Goh then executed the 1996 Will in the presence of MO, W and Dr Goh.

At this meeting, I explained the Will line by line to Mdm Goh who appeared to understand what I was saying and nodded as I read and explained the Will to her. Once I had finished reading and explaining the Will to Mdm Goh, she read the Will on her own. Thereafter, she signed the Will in the presence of Dr Goh King Hua, Miss Wee and myself, although only Miss Wee and I signed formally as witnesses on Mdm Goh's Will. Although she was in the house, the Plaintiff was not present with us throughout the time that I read and explained the Will to Mdm Goh; when Mdm Goh read the Will and when the Will was signed and witnessed.

During this meeting, Mdm Goh appeared to be a capable testator. Mdm Goh did not appear to me to have been coerced or unduly influenced into signing the Will.

Under cross-examination, MO testified that Mdm Goh appeared to be normal when she executed the Will. She testified that she did not know that prior to the execution of the 1996 Will, Mdm Goh was under heavy medication.

49 W similarly testified that Mdm Goh appeared to be a capable testatrix. She testified that she also believed that as Mdm Goh "was an educated woman and ... she was very experienced businesswoman", Mdm Goh "would have understood what she was reading as well". W further explained that "it has always been in [her] practice to ensure and satisfy [herself] that the client understands the contents of the will ... or of the document ... And ... if [she] had witnessed, [she] would have been satisfied that [Mdm Goh] understood".

50 The plaintiff's position was that at or around the time of the 1996 Will, Mdm Goh was mentally alert, could relate to her children and grandchildren, and was also able to make a trip to the USA. The plaintiff insisted that Mdm Goh was capable of understanding what was going on, and was able to and

did in fact make her own decisions on various matters. The plaintiff relied on the following three specific incidents to prove that Mdm Goh's mental capacity was not impaired:

- (a) On 16 August 1996 (5 days before Mdm Goh's execution of the 1996 Will), Mdm Goh attended the celebration of the first month of the birth of the defendant's son Luke;
- (b) On 14 January 1997, Mdm Goh executed a Revocation of the Power of Attorney she had given to the plaintiff on 8 December 1996;
- (c) On 22 January 1999, Mdm Goh executed a Power of Attorney in favour of the defendant, which was witnessed by Dr Lee Kng Swan (one of Mdm Goh's doctors).

The defendant's case

51 In support of her case that the 1996 Will was invalid and that the 1989 Will should prevail as the true and last Will of Mdm Goh, the defendant submitted that:

- (a) the 1996 Will was executed in circumstances which would arouse the vigilance and suspicion of the court that the document was not duly executed. Mdm Goh did not know of or approve the contents in the 1996 Will;
- (b) Mdm Goh was not of sound mind, memory and understanding when the 1996 Will was executed *viz* she lacked testamentary capacity; and
- (c) the execution of the 1996 Will was obtained by undue influence.

Was the 1996 Will prepared in accordance with Mdm Goh's instructions?

52 In essence, the defendant's main contention was that the plaintiff, who was not a beneficiary under the 1989 Will, was instrumental in the procurement and preparation of the 1996 Will under which she was entitled to a one-fifth share of Mdm Goh's estate but which left out the defendant entirely as a beneficiary.

53 The defendant's case was that the 1996 Will was not executed by Mdm Goh in accordance with her instructions. Further, the preparation and execution of the 1996 Will was surrounded by many incidents which could only be described as suspicious circumstances. Significant parts of the 1996 Will were factually incorrect or did not accurately reflect Mdm Goh's wishes. Instead, the 1996 Will appeared to reflect the plaintiff's views and wishes as expressed in the 25 June 1994 letter referred to earlier at [\[37\]](#). The plaintiff had written the 25 June 1994 letter to the First Intervener to enlist his assistance to dissuade the defendant and Mdm Goh from proceeding with the transfer of the Property. The plaintiff had there expressed her opinion that the defendant should pay for the remaining half share of the Property and that the sales proceeds should be divided among the other siblings including the plaintiff.

54 The defendant contended that she had always been the favourite child of Mdm Goh. That appeared to be the "default position" since the defendant's childhood. The defendant therefore argued that the 1996 Will appeared to be an anomaly and completely out of Mdm Goh's character and feelings for the defendant.

55 The defendant revealed that it was Mdm Goh who suggested that she (the defendant) should stay with her (Mdm Goh) at the Property instead of purchasing a new home. Since it had already been decided that the defendant would inherit the Property pursuant to the 1989 Will, Mdm Goh

further suggested that the Property could be transferred to both the defendant and Paul as a gift. The defendant was hesitant in accepting Mdm Goh's proposal. As it turned out, Mdm Goh agreed to a "compromise" put forth by the defendant. The defendant would purchase half of the Property at market value, which was determined by DBS Bank to be about \$4.5 to \$5 million.

56 The defendant soon discovered that the plaintiff had strong reservations about the above transaction and had no qualms in making known her disapproval on the same, even at the one month celebration of the birth of the defendant's son; the plaintiff was openly hostile to the defendant and rude to the defendant's mother-in-law. Because of the resulting tension and displeasure that surfaced arising from the plaintiff's objections, Mdm Goh decided to leave for the USA to visit her three oldest children.

57 The defendant asserted that Mdm Goh was well aware that the half share of the Property had not been sold at a discounted price. The price of \$2.5 million was agreed to by both Mdm Goh and the defendant early in 1994 after the valuation by DBS was done. This was corroborated by Maureen's evidence that Mdm Goh was aware of the Jones Lang Wootton valuation that was obtained later. Mdm Goh was cognisant that the delay in proceeding with the formalities and the transfer was due to the plaintiff's own persistent objections which frustrated the plan of transferring the half share of the Property to the defendant earlier.

58 In any event, even if I accept that Mdm Goh knew that the price of \$2.5 million had been discounted, it would not have mattered to her, since the evidence was that Mdm Goh made no secret of the fact that she intended to give the entire Property to the defendant. The conveyancing lawyer, Tan Pei Fong ("Tan") who prepared the transfer documentation testified that Mdm Goh had actually signed documents to hold her half share of the Property jointly with them, intending that the entire Property would revert automatically to the defendant and Paul upon her death. It was in fact the defendant who insisted on buying half of the Property and paying Mdm Goh for the share.

59 The plaintiff's position, on the other hand, was that Mdm Goh did execute the 1996 Will in the presence of solicitors MO and W. MO's evidence was that she had explained to Mdm Goh the terms of the 1996 Will and that Mdm Goh had confirmed her instructions contained therein and thereafter executed the 1996 Will.

60 The plaintiff insisted that, contrary to the defendant's allegations, the 1996 Will was also factually accurate for various reasons. First, the 1996 Will stated that the half share in the Property was transferred to the defendant and Paul at a discount. The defendant denied this and relied on a valuation report of Jones Lang Wootton dated 21 November 1994 which valued the Property at \$5 million as of 31 January 1994. The plaintiff, on the other hand, asserted that although the sale and purchase agreement for Mdm Goh's half share was allegedly signed on 31 January 1994, the scheduled completion for the transfer was December 1994 while the transfer was actually only completed in June 1995. The plaintiff therefore insisted that there was no reason why the half share should be valued as at January 1994 (where the Property was valued at \$5 million) and not December 1994 (where the Property was valued at \$9 million) or June 1995. By June 1995 when the sale was finally completed, the plaintiff alleged that the value of the Property had significantly appreciated. Therefore she argued, Mdm Goh was in reality selling the half share of the Property to the defendant and Paul at a discounted price.

61 The defendant had also levelled certain allegations against B on his suggestions to Mdm Goh on the manner in which she should dispose of her assets. In this regard, three incidents, as set out in the paragraphs below, were illustrative of the defendant's allegations. I note that the plaintiff chose not to call B as a witness to challenge the many damaging accusations levelled against him, and

which were consistent with the defendant's contention that the plaintiff was bent (at all costs) at B's instigation, to have Mdm Goh's estate divided equally and that the plaintiff should have her share.

(i) Around 1985 to 1986 (before the execution of the 1996 Will), Paul testified he was at the plaintiff's house when B remarked to him that Mdm Goh should distribute some of her assets to her children as and when needed (by her children), without having to wait for it.

(ii) In or around December 1996 (after the execution of the 1996 Will), a family meeting was held at Ping Swee's flat. The individuals who were present at this meeting were B, Ping Swee, Helen (Ping Swee's wife), Alexander, and the defendant. B took this opportunity to fish out details relating to the sale of the half share of the Property. He commented that Mdm Goh's affairs were of interest to her potential heirs and that they had a right to know.

(iii) Sometime around the summer of 1997 (after the execution of the 1996 Will), when Maureen and her family visited Singapore, B invited her and Maureen's husband for breakfast. B expressed his opinion that the sale of the half share of the Property was "unfair", and that the other siblings should attempt to convince Mdm Goh to divide the rest of her estate equally amongst the rest of her children.

Did Mdm Goh possess testamentary capacity when she executed the 1996 Will?

62 The defendant submitted that the medical evidence was overwhelmingly against the plaintiff, who depended on her sole expert witness, Dr Tan Chue Tin ("Dr Tan") to support her case. However, unlike the doctors called by the defendant all of whom all had seen or treated Mdm Goh (save for Dr Berne Yeh), Dr Tan had never seen Mdm Goh even once when she was alive (see further [\[63\]](#) below).

The medical evidence on Mdm Goh's mental condition

63 I now turn my attention to perhaps the most important part of the case, that of the medical evidence on Mdm Goh's mental condition. As noted in [\[62\]](#), the defendant's expert witnesses had the opportunity of examining Mdm Goh in person and conducting certain tests on her. The plaintiff's expert witness Dr Tan on the other hand, had to rely *entirely* on hospital and/or medical notes of the defendant's expert witnesses and on the results of various tests performed on Mdm Goh. Consequently, it is necessary to first understand the evidence given by the defendant's expert witnesses before one can comprehend the opinion of the plaintiff's expert witness. For this reason, I shall first set out the opinions given by each of the defendant's expert witnesses and then review the opinion of Dr Tan.

The defendant's expert witnesses

64 Mdm Goh's mental condition started deteriorating sometime between August and November 1995. The specialist doctors whom Mdm Goh visited/consulted (in chronological order) are set out below.

Professor Lee Kok Onn ("Prof Lee")

65 Prof Lee who is both a physician and an endocrinologist, was Mdm Goh's physician from 10 March 1989 to 27 April 1993. During this period, Prof Lee observed that although Mdm Goh faced some problems with her physical health (for example, mild hypertension and diabetes), "her mental health was perfectly sound". A specific example can be found in Prof Lee's medical notes dated

18 May 1990, where he remarked that she was driving her own car and was looking after her husband who was paralysed after a stroke. There was therefore no problem with Mdm Goh's mental health at that point in time.

66 Mdm Goh's condition, insofar as her mental health was concerned, took a turn for the worse by the time Prof Lee next observed her on two separate occasions, namely 14 November 1995 and 19 August 1996. It should be noted at this juncture, that between 28 April 1993 and 14 November 1995, Prof Lee did not examine or observe Mdm Goh at all. Instead, it was his colleague Dr Lee Kng Swan ("Dr Lee"), a specialist in geriatric medicine, who attended to Mdm Goh.

67 On 14 November 1995, Prof Lee observed that Mdm Goh's "mental condition had deteriorated considerably" and more specifically, noted that Mdm Goh displayed the following signs, namely, unblinking eyes and a shuffling gait. His diagnosis was that Mdm Goh was suffering from an early onset of both Parkinson's disease and dementia. In this regard, Prof Lee prescribed two different types of drugs, namely, "Selegiline" to slow down the progress of Parkinson's disease and "Tacrine" to curb the extent of dementia (the dosage of Tacrine prescribed by Prof Lee was increased from 10mg to 20mg after the second week). Prof Lee had commented that Selegiline and Tacrine will respectively slow down but "cannot reverse the extent of Parkinson's disease and dementia already present in the patient". [emphasis added]

68 On 19 August 1996, Prof Lee noted that Mdm Goh had in April 1996 undergone a brain CT scan ("the CT scan"), which showed the presence of "multiple lacunar infarcts" in her brain. "Lacunar infarcts" are dead portions of the brain in specific locations. Prof Lee also remarked that "once a part of the brain is dead, that part will be useless to the patient." In view of that, he transferred her to the care of Dr Benjamin Ong, a neurologist, whose evidence will be dealt with later at [\[89\]](#) to [\[93\]](#).

Professor Kua Ee Heok ("Prof Kua")

69 Prof Kua, a psychiatrist, first examined Mdm Goh on 23 February 1996. Mdm Goh had complained of not being able to concentrate well on reading and watching television, as well as not being able to remember the names of her grandchildren. Prof Kua administered a "cognitive assessment" on Mdm Goh, and found that although she was well-oriented in place and person, she was unsure of the year, day and date. Moreover, Mdm Goh's 5 minute recall was poor; she could say the number '4517' immediately after being told but could not repeat it after 5 minutes. Prof Kua's provisional diagnosis of Mdm Goh was "depression, to exclude dementia". He therefore prescribed the following drugs for her: "Haloperidol" (to reduce her symptoms of delusions), "Stilnox" (a sleeping pill), and "Sertraline" (an anti-depressant).

70 Mdm Goh's next two appointments to visit Prof Kua were in March 1996. On both those occasions, Prof Kua observed that Mdm Goh's memory was still not too good, and that she was forgetful of names and dates. On 14 March 1996, he noted that she appeared to be less delusional. Nevertheless, Prof Kua continued her medication on Haloperidol, Stilnox, and Sertraline.

71 The next visit was on 28 March 1996, during which Prof Kua noted that Mdm Goh still suffered from delusional ideas about her maid – she had previously accused her maid of sleeping with Dr Chee and Paul. Prof Kua also noted that Mdm Goh's depression had improved but her memory was worse. In his view, this was an indication of dementia, the reason being, if Mdm Goh's poor memory was caused by depression rather than dementia, her memory would improve when the depression did. I note here that Prof Kua had already started treating Mdm Goh with Sertraline since February 1996. I also note that Prof Kua's evidence was that Mdm Goh was already suffering from mild to moderate dementia when he saw her in March 1996. It was on this visit that Prof Kua administered the "Elderly Cognitive

Assessment Questionnaire" ("the ECAQ") on Mdm Goh.

72 The ECAQ is a screening tool for the elderly devised by Prof Kua and his medical team. According to Prof Kua, although the ECAQ "does not diagnose dementia", it tests for poor orientation, short-term memory loss and poor concentration, which are all signs of dementia as well as signs of cognitive impairment in general. The ECAQ consisted of the following ten simple questions posed to elderly patients:

- (i) What day is it today?
- (ii) What is today's date?
- (iii) What month is it?
- (iv) What year is it?
- (v) What is your name?
- (vi) Do you know where you are/what place you are at, right now?
- (vii) What is your date of birth?
- (viii) How old are you?
- (ix) Recite a 4-digit number back to the questioner.
- (x) Repeat the 4-digit number five minutes later.

73 Dr Tan had strongly criticised the effectiveness of the ECAQ. His main complaint was that the test was unfairly weighted with four time-based questions when many healthy elderly lose track of time. Here, I note that Mdm Goh was unable to recall the day, date, month, year when the ECAQ was performed on her. Dr Chan Kin Ming ("Dr Chan") disagreed with Dr Tan's criticism and pointed out that there were at least two other mini-scales (an example of which is the Gwent Orientation and Awareness Listing ("GOAL")) employed to assess the mental function of patients that also placed the same weight on these four criteria; these appeared to the experts in general to be matters of sufficient importance which ought to be considered when assessing whether an elderly patient is suffering from cognitive impairment. Further, Dr Chan testified that the importance of the time-based criteria (*ie.* the day, month, year, and day of the week) is evidenced in an article titled "Journal of Clinical Geropsychology". The defendant therefore submitted (and I agree), that the time-based criteria were indeed relevant and significant factors to take into account when determining whether Mdm Goh (or any other elderly patient for that matter) had cognitive impairment.

74 I return now to the results of Mdm Goh's ECAQ performed on 28 March 1996. It is to be noted therefrom that her ECAQ score was 5 out of 10 – she could not recall the day, date, month, year, and also failed the 5 minute recall test. This signified cognitive impairment. Prof Kua's diagnosis on 28 March 1996 was that she had progressively poor memory and Alzheimer's disease. He also continued his prescription of Haloperidol, Stilnox, and Sertraline. Further, in the light of her poor ECAQ score and continuing delusions, Prof Kua arranged for the CT scan (see [\[68\]](#) above) to be performed on Mdm Goh, in order to assess whether she was suffering from multi-infarct dementia (or vascular dementia, as it is now known). Under cross-examination, Prof Kua opined that Mdm Goh had both

features of mild to moderate dementia.

75 The CT scan report (which was prepared by one Dr Michael Teo who is a general radiologist), dated 2 April 1996, showed that Mdm Goh did indeed possess lacunar infarcts in some areas of her brain. It also showed that there were ischaemic changes in Mdm Goh's frontal lobes bilaterally.

76 I will refer now to the evidence of Dr Benjamin Ong ("Dr Ong") relating to the significance of the frontal lobes of the brain; he opined:

[T]he frontal lobes [of the brain] are responsible for higher mental function, including cognition, reasoning, emotions, working memory, judgment, fund of knowledge, task organization and set generation such as naming lists of things in a certain category.

77 Further, Dr Berne Yeh ("Dr Yeh"), who is a neuro-radiologist specialising in reading brain scans, noted that there was shrinkage or atrophy of the frontal lobes, and that this shrinkage was unlike normal old-age shrinkage. Indeed, Dr Yeh opined that the ischaemic changes in the frontal lobes and the frontal lobe atrophy were a *possible* contributing factor to cognitive impairment. Under cross-examination, Dr Yeh testified that looking at the CT scan, "there is a reasonable chance that clinically, she would manifest dementia". Dr Yeh doubted that Mdm Goh had executive function with the condition of her frontal lobe atrophy. When he was invited by counsel for the plaintiff to explain which aspect of the brain function would be affected by "dementia", Dr Yeh clarified as follows:

Q: ... Now, when you use the word "dementia", what are the factors you are relying on in the make-up of the dementia, because it's a very generic term; when you say "dementia", what aspect of the person's brain function you are saying that is affected such that she can't do A, B or C?

A: ... [Mdm Goh] would have problems in her IQ, problems making decisions ... as to, for example, over money matters or arithmetic calculations, for example. May have problems dealing with her ... items of daily life like, for example, feeding, washing herself or even going out and ... possibly even problems in working.

78 The finding that Mdm Goh suffered frontal lobe damage was further supported by Dr Ong's examination of her on 12 September 1996 (see below at [\[90\]](#)).

79 In the light of the CT scan report, Prof Kua's diagnosis of Mdm Goh during the visit of 18 April 1996 was that she was suffering from a combination of vascular dementia as well as Alzheimer's disease. Prof Kua prescribed Tacrine to Mdm Goh. He also made two more observations. First, the presence of lacunar infarcts and Mdm Goh's history of diabetes and hypertension were consistent with vascular dementia. Second, the progression of Mdm Goh's dementia over the years was consistent with Alzheimer's disease.

80 I should point out two significant and relevant events which occurred shortly before Mdm Goh's next visit to Prof Kua on 4 September 1996. First, on 10 August 1996 (11 days before the execution of the 1996 Will), Mdm Goh fell in the driveway of the Property; she injured her head and suffered a laceration. B was the one who brought Mdm Goh to National University Hospital (NUH) to see Dr John Isaac ("Dr Isaac"). Dr Isaac sutured Mdm Goh's head wound and warded her overnight for observation. Mdm Goh was discharged the next day. Secondly, on 4 September 1996, Mdm Goh suffered a second fall.

81 I pause here to note that Dr Isaac found Mdm Goh to be "alert and oriented", which was the reason why she was discharged on 11 August 1996 after one night of observation. She was to return on 19 August 1996 to have her stitches removed. According to Dr Isaac, the description "alert" in his report meant that Mdm Goh was not unconscious, could obey simple commands (for instance, "lift your hands", "squeeze my hand", and "tell me if you have any pain"), and was not drowsy, whilst the description "orientated" meant that she could more or less tell her identity, location and the day. Dr Isaac took pains to emphasise that "alert" and "orientated" did not relate at all to Mdm Goh's higher cognitive function, which included judgment, interpretation, the ability to assess unusual situations, memory and stability of emotions. Further, Dr Isaac confirmed that there was no assessment of the higher cognitive function of head trauma patients in both the emergency department and general surgery ward where Mdm Goh was taken.

82 On 19 August 1996, Mdm Goh saw Dr Isaac for her follow-up, for which he noted in his Surgical Outpatient Notes that Mdm Goh was "to see KO Lee for KIV CT for lacunar infarcts". In Dr Isaac's report dated 22 September 2004, he noted that Mdm Goh would be seeing a neurologist for "slower mentation and a CT scan was scheduled. As [Mdm Goh] was followed up by the neurologist for this, I have discharged her from the surgical follow-up".

83 Dr Isaac could not recall which time-based questions were asked of Mdm Goh and what her answers (if any) were when assessing the seriousness of her head injury suffered from her first fall. There was also no actual record of such questions and answers. What is certain is that Dr Isaac was sufficiently satisfied with the answers given by Mdm Goh to conclude that she did not suffer from a serious head injury. Hence, she was allowed to be discharged after one night of observation. In my view, Dr Isaac's observation of Mdm Goh as being "alert and oriented" must be seen in this light. He found her to be "alert and oriented" enough to be discharged the following day, but certainly did not form any view as to whether she was "alert and oriented" enough to possess testamentary capacity. Dr Isaac was obviously only looking after Mdm Goh's resultant head injury from her fall; he was *not* treating her dementia or assessing her testamentary capacity.

84 During the 4 September 1996 visit, Prof Kua noted that Mdm Goh's poor memory and delusional ideas still persisted. Prior to this visit, Mdm Goh was on the following medication ("cocktail of drugs"):

- (a) Sertraline
- (b) Stilnox
- (c) Haloperidol
- (d) Tacrine
- (e) Selegiline

It is pertinent at this juncture to point out that the defendant's case was that the effects of the various drugs prescribed and listed above, caused Mdm Goh to fall on 10 August 1996 at the Property, thereby suffering a head injury. Indeed, Prof Kua and Dr Ong both suspected that the cause of Mdm Goh's falls was the cocktail of drugs which she was taking at that time.

85 After the 4 September 1996 visit, Prof Kua promptly took Mdm Goh off Sertraline, Stilnox, Haloperidol and Tacrine. He then replaced those drugs with Loramet (a milder sedative). His reasons for doing so were: Mdm Goh was taken off Haloperidol (which has potential side effects of sedation,

postural hypotension, and Parkinson's disease-like symptoms) because she had fallen recently. Sertraline and Stilnox were also removed because of the side effects of sedation. Finally, Tacrine was no longer prescribed for Mdm Goh because of the potential liver toxicity.

86 It is noted that Mdm Goh did not suffer any more falls after her cocktail of drugs was replaced with Loramet. Indeed, it was the defendant's case that it was reasonable to conclude that the cocktail of drugs was the cause or a contributory cause of Mdm Goh's falls.

87 I further note that Prof Kua was of the view that the natural history of Alzheimer's and vascular dementia was consistent with a natural lifespan of 8 to 10 years, as evidenced in an article titled "Survival Study of Vascular Dementia in Rochester, Minnesota". In this regard the defendant submitted that the duration of 8 to 10 years was consistent with the fact that Prof Lee's diagnosis of an early onset of dementia was on 14 November 1995 and Mdm Goh died on 9 June 2004. In contrast, the duration of 8 to 10 years was not consistent with the plaintiff's expert's case, who maintained that Mdm Goh suffered from dementia only *after* her stroke in October 1998.

88 Prof Kua opined that Mdm Goh was unlikely to be able to comprehend the 1996 Will due to her suffering from dementia, depression, the effects of consuming a cocktail of drugs, and the head injury which she suffered as a result of the fall on 10 August 1996.

Dr Ong

89 Dr Ong, a neurologist, saw Mdm Goh on 12 September 1996 on the problem of recurrent falls, most recently about a week earlier, when she had injured and bruised her left cheek and the area around the left eye. He noted that she had no recollection of the exact details of the fall despite its seriousness and, she had been on treatment for depression and dementia.

90 Dr Ong examined Mdm Goh for signs of damage to her frontal lobes. As it turned out, the tests were positive for frontal lobe release, meaning that there were signs that Mdm Goh's frontal lobes lacked the control which they should under normal circumstances, have. Such signs included palmomental reflexes which were present on both sides and poor control of limb movement.

91 Further, Mdm Goh exhibited gait changes suggesting gait apraxia (apart from parkinsonism) meaning that her gait was abnormal in that there was a loss of arm swing and tentative direction change, although initiation of movement was good. Dr Ong noted that these findings were signs of disordered function of the frontal lobes which was consistent with dementia. Finally, Dr Ong noted that Mdm Goh was incontinent, which itself was another sign of loss of frontal control.

92 Under cross-examination, Dr Ong opined that Mdm Goh's dementia as at 12 September 1996 was probably at a stage which was worse than moderate. He also expressed the opinion that the ischaemic changes as evidenced in the CT scan were related to cognitive impairment. In particular, he relied on the findings of an article titled "The Cognitive Correlates of White Matter Abnormalities in Normal Aging: A Quantitative Review" which conclusion was that "white matter abnormalities" (ie. ischaemic changes) "are associated with attenuated performance on tasks of processing speed, immediate and delayed memory, executive function, and indices of global cognitive functioning" Dr Ong was also of the view that there was a correlation between ischaemic changes and cognitive impairment.

93 Dr Ong's opinion was that it was very unlikely that Mdm Goh had executive function at the time of the execution of the 1996 Will. He was further of the view that Mdm Goh, when she was read the 1996 Will line by line, could have *appeared* to be able to understand its contents (as MO testified),

notwithstanding her cognitive impairment condition.

Dr Lee Kng Swan ("Dr Lee")

94 Dr Lee's medical notes must be examined with a caveat. She passed away before the trial began and could not therefore be cross-examined on her diagnosis.

95 Dr Lee took care of Mdm Goh from 16 July 1993 to 9 June 1994 (after which Mdm Goh was in the USA for about a year), and again from 12 September 1996 to 15 December 1999. Dr Lee noted on 9 June 1994 that Mdm Goh's mood was low. On 12 September 1996, Dr Lee noted that Mdm Goh was suffering from memory loss, and poor short term recall. Mdm Goh's mood was still low. Dr Lee observed the bruising around Mdm Goh's left periorbital areas (around the eye) and on her left cheek. Mdm Goh's short term memory was assessed to be inconsistent.

96 As evidenced in her medical notes, Dr Lee was of the opinion that the CT scan was "normal". Dr Lee concluded that Mdm Goh did not suffer from dementia.

97 From end 1995 to 1996, Mdm Goh's mental health deteriorated. She suffered from memory loss, could not concentrate on reading and watching television and had paranoid delusions. These complaints were related to Prof Kua whose medical notes contained contemporaneous records of these statements. Mdm Goh's mental health appeared particularly poor around August to September 1996, when she had a series of falls.

98 On 10 August 1996, Mdm Goh had a serious fall and suffered a scalp laceration that bled profusely. She was hospitalised for a day and required stitches.

99 Mdm Goh was treated with Tacrine (a dementia drug) from November 1995. When the ECAQ was administered in March 1996, Mdm Goh was not able to answer 5 out of 10 simple questions. By April 1996, she was diagnosed with lacunar dementia and Alzheimer's disease. By September 1996, she had suffered sufficient damage to the brain frontal lobes (which govern a person's cognition, reasoning, working memory, judgment, fund of knowledge, naming lists of things in a certain category) for the signs to be spotted, meaning significant damage had already been present for some time.

100 The defendant's medical witnesses spoke with a common voice when they expressed the opinion that Mdm Goh was suffering from dementia, depression as well as from being over-medicated with drugs. Professors Lee, Kua and Dr Ong all stated that the said drugs, especially Haloperidol (an anti-delusion drug), had the side effect of making it difficult to concentrate or think clearly.

101 Dr Ong and Prof Kua also stated that, in their opinion, Mdm Goh was unlikely to have understood the contents of the 1996 Will or to have had the requisite testamentary capacity to execute the same.

Dr Chan Kin Ming

102 Dr Chan is a geriatrician who attended to Mdm Goh from November 1996 to February 1997. Dr Chan first saw Mdm Goh on 13 November 1996. It should be noted that between the visit on 13 November 1996 and the visit on 11 December 1996, Dr Lee added a memorandum to Dr Chan's notes indicating that "CT scan done. Normal". However, both Dr Chan and Dr Yeh did not consider the CT scan to be normal at all.

103 On 26 February 1997, Dr Chan administered an ECAQ on Mdm Goh, and this time, her score was

4 out of 10. Mdm Goh could not tell the day of the week, date, month, year, her age (she knew her birthday though), and she failed the 5-minute recall test. Dr Chan also carried out two clock tests on Mdm Goh. In this regard, she was able to draw in the clock face numbers accurately, but when asked to draw in the hands to show the time of "10 past 9", she drew the time as "10 to 9" in the 1st clock test, and 5.57 for the 2nd clock test. Dr Chan informed the plaintiff that Mdm Goh was suffering from cognitive impairment. I also note here that the plaintiff denied that the same time would have been asked, but Dr Chan maintained that this was indeed his practice. It should also be pointed out that Dr Chan opined that Mdm Goh's falls were a result of "polypharmacy" (*viz* overmedication). The plaintiff chose not to call Dr Chan as her witness.

The plaintiff's expert witness

104 The plaintiff's expert Dr Tan said he was able to "conclude with a degree of medical certainty that at the time [Mdm Goh] made her Will on 21 August 1996 she possessed Testamentary Capacity to do so". In arriving at that conclusion, it bears repeating that Dr Tan did not have the opportunity of examining Mdm Goh in person. Dr Tan relied entirely on the interviews he had conducted with a number of the factual witnesses as well as the defendant's medical experts' reports including that of Dr Lee.

105 Dr Tan suggested a different interpretation of the CT scan – he opined that Mdm Goh's frontal lobe release signs were a result of old age. Not surprisingly, Dr Ong disagreed with Dr Tan's interpretation of the CT scan. Indeed, Dr Ong testified that the frontal lobe release signs showed frontal lobe damage which is usually absent in normal aging process. Dr Tan also discounted the effectiveness of the ECAQ.

106 Dr Tan relied on a 1968 study titled "Observations on the Brains of Non-Demented Old People" which showed that ischaemic changes could be found in the brains of normal elderly persons (who did not suffer from dementia). I note, however, that the 1968 study had some material limitations as pointed out by Dr Ong during cross-examination. The defendant therefore submitted that the more recent article (*supra* at [\[92\]](#)) which Dr Ong relied on should be preferred over the 1968 study.

107 Dr Tan had introduced an article titled "Quantitative cerebral anatomy of the aging human brain: A cross-sectional study using magnetic resonance imaging". This article, however, was of limited use to the court as it was clearly based on a study using magnetic resonance imaging ("MRI") as the title itself suggested. A CT scan (which was what Mdm Goh underwent) is totally different from an MRI. As Dr Ong explained, an MRI uses an imaging method to display *qualitative* changes in the brain, whilst a CT scan shows *structural* changes. One cannot compare apples with oranges.

Effect of the cocktail of drugs prescribed to and taken by Mdm Goh

(1) Haloperidol (to treat delusions)

108 The defendant had submitted that the cocktail of drugs prescribed for Mdm Goh adversely affected her concentration levels, ability to think clearly, and her sedative effects.

109 According to Prof Lee and Dr Ong, Haloperidol (which was prescribed for Mdm Goh when she suffered from delusions) can adversely affect her ability to think clearly or concentrate. Both Prof Kua and Dr Ong had confirmed that Haloperidol has the effect of sedation. It is to be noted that the label on Mdm Goh's Haloperidol medication prescribed around 19 June 1996 stated that the drug was to be taken at night, and warned that it might cause drowsiness.

110 Prof Lee and Dr Ong testified that elderly persons are more sensitive to the effects of Haloperidol (even if the doses taken are low).

(2) *Stilnox (to treat insomnia)*

111 It is undisputed that Stilnox is a strong sedative. What was in dispute is the "half-life" of Stilnox. This was a hotly contested issue at the trial and hence must be addressed at this juncture. Half-life refers to the average time it takes half the quantity of a drug to be metabolised or eliminated from the body. One of the questions that was raised was whether one can multiply the half-life by 2 in order to calculate the duration for the entire quantity of the drug to be metabolised ("the Duration"). Indeed, Dr Tan during cross-examination appeared to suggest exactly just that when the questions were posed to him. The defendant however disagreed with the above method of calculation. In this regard, the defendant gave an example of Stilnox having a half life of three hours. This meant that every three hours, 50% of the remaining quantity of Stilnox is eliminated. After another three hours, 25% of the original quantity of Stilnox would still be lingering in the body.

112 I note that the Stilnox product information insert (which accompanied the drug) stated that Stilnox can remain in the body for five half-lives. The label on Mdm Goh's Stilnox medication warned that drowsiness "may persist next day". Since the drug was to be taken at night, the drowsiness may continue until the following morning.

113 Dr Ong had confirmed that the Duration for Stilnox to be totally eliminated from the body was about 6 to 8 hours, a figure which was supported by an online article on Stilnox. Prof Kua and Dr Ong had, however, maintained that the elderly are more sensitive to Stilnox. Consequently, Stilnox could remain in the system of an elderly (as opposed to an average) adult for a longer period of time. Indeed, the half-life could be prolonged "significantly longer" (based on the product insert) or up to 32% (based on the online article on Stilnox). It was on that basis that Prof Kua estimated that Stilnox could remain in Mdm Goh's body for 12 to 14 hours.

114 Prof Kua also made clear during cross-examination that halving the dosage of Stilnox will affect its potency but not its Duration. Further, Dr Ong clarified that halving the normal adult dosage for Mdm Goh was meant to achieve the same effect that full dosage had on an average adult. Both Prof Kua and Dr Ong also maintained that Stilnox may have a daytime hangover effect.

115 I note that the textbook "Stahl's Essential Psychopharmacology Neuroscientific Basis and Practical Applications" by Stephen M. Stahl, which the plaintiff relied on, addresses the average effects of Stilnox on normal adults only not someone like Mdm Goh.

(3) *Sertraline (to treat depression)*

116 Both Prof Kua and Dr Ong stated that Sertraline does have sedative effects. Further, Prof Kua, under cross-examination, testified that its duration was about 24 hours, and that he prescribed the drug to Mdm Goh to be taken at night. As Mdm Goh was on a cocktail of drugs including both Sertraline and Stilnox, there was a potentiation effect between both drugs. In this regard, Prof Kua relied on a medical textbook titled "Clinical Geriatric Psychopharmacology" which states that Sertraline could shorten the onset of action of Stilnox and/or increase its effect.

The Interveners' evidence

117 There was a substantial overlap between the defendant's evidence and that of the Interveners. This is not surprising given that both belonged to the same camp. Hence, I propose to

deal with the portions of the Interveners' evidence which have not been addressed earlier.

118 Maureen testified that the defendant was Mdm Goh's favourite child and that Mdm Goh had all along intended to give the Property to the defendant. Maureen also recalled Mdm Goh telling her that the purchase of the half share of the Property was a mere formality because she had willed the Property to the defendant. She further confirmed that Mdm Goh never mentioned that the purchase of the half share was done at a discounted price. Maureen deposed that in her "heart to heart" conversations with Mdm Goh in the years 1994-1995 (when Mdm Goh stayed with her in North Carolina) and onwards, there was never any time when Mdm Goh demonstrated any unhappiness or ill-feelings towards the defendant. Indeed, Mdm Goh used to boast to Maureen of the defendant's academic achievements and other accomplishments.

119 Alexander deposed that the 1996 Will was "very much out of character as far as [Mdm Goh] was concerned. It was Alexander's evidence that the defendant was Mdm Goh's favourite child and that it would be very unlikely that Mdm Goh would decide to leave the defendant out completely from her Will, which was exactly what the 1996 Will did. Indeed, Alexander was surprised when he found out that he was given a one-fifth share of Mdm Goh's estate. He maintained that as far as he was aware, Mdm Goh never had any intention to leave him any part of her estate and further confirmed during cross-examination that he did not detect any change in Mdm Goh's intention at any point in time.

120 It is apposite to note that Alexander steadfastly maintained that his impression of Mdm Goh was that she was an "unfair" person (in that she would leave out four of six of her children in her Will and favour the defendant which was exactly what the 1989 Will proposed to do). It is evident that the plaintiff herself formed the same impression of Mdm Goh when she wrote the 25 June 1994 letter. Indeed, the plaintiff agreed that Mdm Goh was an "unfair" person.

Events before the commencement of this action

121 The defendant had applied for a grant of probate for the 1989 Will on 13 July 2004. On 2 August 2004, the plaintiff lodged a caveat against the grant of probate of the 1989 Will. On 30 August 2004, the defendant served a Warning to Caveator dated 26 August 2004 which required the plaintiff to file a Notice of Appearance in court in default of which the court could proceed to issue a grant in Mdm Goh's estate notwithstanding the plaintiff's caveat. On 7 September 2004, the plaintiff duly filed an Appearance to Warning, and on 6 March 2007, the court ordered *inter alia* that the plaintiff was to commence this action. On 7 September 2007, the Interveners were given leave to intervene in this action.

The Issues

122 The issues that arose for determination in the present case are:

- (a) Did Mdm Goh possess the requisite testamentary capacity when she executed the 1996 Will?
- (b) Did Mdm Goh know and approve of the contents in the 1996 Will? and
- (c) Was the 1996 Will executed by Mdm Goh under the undue influence of the plaintiff?

The applicable principles

123 The capacity to make a Will is determined by the testator's state of mind. The testator must be mentally capable of making a Will. Further, the testator must know and approve of the contents of his Will. Finally, the testator must not make the Will as a result of the undue influence or fraud of another person. I shall now discuss each of the principles *seriatim*.

Testamentary Capacity

124 In the United Kingdom, the test for mental capacity (for the purpose of making a Will or performing any other act) has been statutorily codified into the Mental Capacity Act 2005 ("Mental Capacity Act"), sections 1 to 4 of which were brought into force relatively recently (on 1 April 2007). The Mental Capacity Act and the accompanying Code of Practice provide a statutory definition of "mental capacity" which judges in the United Kingdom can resort to and rely upon when developing the existing common law rules in specific cases. As observed in the case of *Scammell v Farmer* [2008] WTLR 1261 at [26], there is some doubt as to whether the Mental Capacity Act has any relevance to wills made outside the statutory jurisdiction. In any event, in Singapore, there is no statute that equates the Mental Capacity Act. I must therefore turn to the common law to determine whether the testatrix in the present case possessed the requisite testamentary capacity.

125 It is axiomatic that the testatrix must be shown to be of sound disposing mind *at the time when her Will was made* (see generally *Arthur v Bokenham* (1708) 11 Od Rep 148). The criterion for testamentary capacity has been stated by Cockburn CJ in the leading case of *Banks v Goodfellow* LR 5 QB 549 at 565 ("*Banks*") in the following terms:

It is essential to the exercise of such a power that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties—that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made.

126 It can therefore be seen that at common law, four elements must be present for sound testamentary capacity to exist (see R F D Barlow, *Williams on Wills* (9th Ed, LexisNexis Butterworths) at p 43 and at p 15 para 4.11 of the 1st supplement to the 9th Ed). First, the testatrix must understand the effect of her wishes being carried out at her death. In other words, she must understand that she is giving her property to one or more beneficiaries. It is not necessary, however, that the testatrix should view her Will with the eye of a lawyer and comprehend its provisions in their legal form (see *Banks* at 567). Secondly, she must understand and recollect the extent of her property. Thirdly, she must understand the nature and extent of the claims made upon her (both those she is including in her Will and those she is excluding therefrom). In particular, the testatrix must have "a memory to recall the several persons who may be fitting objects of the testatrix's bounty, and an understanding to comprehend their relationship to [her]self and their claims upon [her]" (see in particular *Boughton v Knight* (1873) 3 P. & D. 64 at 65-66) so that she can decide whether or not to give each of them any part of her property by her Will (see *Harwood v Baker* (1840) 3 Moo.P.C. 282 - 290). Finally, the testatrix must not be labouring under any insane delusion which influences her Will in disposing of her property in a manner which, if the mind had been sound, would not have been made.

127 In applying the test in *Banks* at [125], the court must look at the totality of the evidence as a whole, comprising of both factual (including evidence of friends and relatives who had the opportunity

of observing the testatrix) and medical components. In my view, the court should generally accord equal importance and weight to both types of evidence, so long as both the factual and medical witnesses had the opportunity to observe the testatrix at the material time. Indeed, it has been held that the evidence of experts ought “not to outweigh that of eyewitnesses who had opportunities for observation and knowledge of the testatrix” (see *Williams on Wills* at para 4.20 which referred to *O’Neil v Royal Trust Co and McClure* [1946] 4 DLR 545). Having said that, the amount of weight and importance, which should be accorded to the particular form of evidence, will depend very much on the precise factual matrix of the individual case.

128 When dealing with conflicting medical evidence which is the case here (where the plaintiff’s expert witness insisted that Mdm Goh possessed the requisite testamentary capacity when she executed the 1996 Will whilst the defendant’s expert witnesses contended otherwise), the function of the court to carefully weigh the conflicting evidence is of paramount importance. This is not an easy task. In a recent decision by CJ Chan Sek Keong in *George Abraham Vadakathu v Jacob George* [2009] 3 SLR 631 (“*George Abraham Vadakathu*”) at [64] he said:

In a case of this nature, the function of the court is to decide whether the testator has testamentary capacity *at the relevant time*. This involves making a finding of fact by applying the law to the evidence. In matters involving specialised knowledge, such as schizophrenia, the court has to rely on the opinion of medical experts, but it does not have to accept any medical opinion if it is not supported by the objective evidence. An expert opinion should have at the least a substratum of facts.

[emphasis added]

129 I turn now to the burden of proof in relation to testamentary capacity. It is settled law that the *legal* burden of propounding a Will lies in every case upon the party propounding the Will. The propounder of the Will has to prove that the deceased knew and approved the contents of the Will, and the fact of execution. Indeed, the Singapore Court of Appeal in *R Mahendran v R Arumuganathan* [1999] 2 SLR 579 had in some detail, set out the relevant legal principles pertaining to testamentary capacity. I can do no better therefore than to set out the relevant portion of the judgment delivered by Karthigesu JA at [15]:

It is a well settled principle of law stated as far back as 1838 by Baron Parke in *Barry v Butlin* (1838) 2 Moo 480 at 482 and 484; 12 ER 1089 that the legal burden of propounding a will, the onus probandi lies in every case upon the party propounding the will, “and he must satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable Testator. ... it is in general discharged by proof of capacity, and the fact of execution, from which the knowledge of and assent to the contents of the instrument are assumed.

The proposition has been formulated in the following manner by *Theobald on Wills* (Sweet & Maxwell, 16th Ed, 2001)) at [3-05]:

Burden of proof. The legal (or persuasive) burden of proof always lies upon the person propounding a will to prove that the testator had testamentary capacity at the relevant time.

It should, however, be noted that the *evidential* burden of proof may shift from one party to another in the course of a case (see in particular *Waring v Waring* (1848) 6 Moo.P.C. 341 at 355-356, which

was referred to in a recent Malaysian Court of Appeal decision of *Eu Boon Yeap & Ors v Ewe Kean Hoe* [2008] 2 MLJ 868).

130 The starting point in my view is, that if a duly executed Will is rational on the face of it, a rebuttable presumption arises that the testatrix had testamentary capacity. The opposer may rebut this presumption by evidence to the contrary (see in general *Symes v Green* 164 ER 785). There are many ways the opposer may rebut this presumption chief amongst which, is to adduce sufficient evidence that the testatrix was suffering from a mental illness, which was serious enough for the court to decide that the testatrix lacked testamentary capacity.

131 Indeed, when it is alleged that the testator was labouring under a mental illness (as in the present case), a different presumption applies: "[i]f during a period prior to the execution of his will the testator suffered from serious mental illness a presumption arises that it continued and the testator lacked testamentary capacity" (see *Theobald on Wills* (*supra* [130]) at para 3-07 which in turn refers to *Banks* at 570; see also the discussion of this presumption in *George Abraham Vadakathu* at [39]). Further, it is also useful to refer to a passage in *Tristram & Coote's Probate Practice* (LexisNexis Butterworths, 13th Ed, 2006) at para 34.27 which sets out the burden of proof in the following manner:

Where unsoundness of mind is alleged, the burden of proof rests upon those who set up the will, and, a fortiori, when it has already appeared that there was, in some particular, undoubtedly unsoundness of mind, that burden is considerably increased.

132 Proof of testamentary capacity and due execution will, in ordinary circumstances, be sufficient to create a rebuttable presumption that the testator knew and approved of the contents of a Will at the time the Will was executed. However, in the event that the Will was executed under suspicious circumstances, such that there is a reasonable likelihood that the Will did not express or reflect the intention of the testator, the burden of proof is then shifted to the propounder of the Will. The propounder, in this regard, would have to adduce affirmative evidence of knowledge and approval of the contents of the Will (see *Tan Teck Khong v Tan Pian Meng* [2002] 4 SLR 616 at [162], citing *R Mahendran v R Arumuganathan* (*supra* [129])).

Knowledge and approval where suspicious circumstances surround the execution of the Will

133 It is trite law that the court must be satisfied that the testatrix knew and approved of the contents of the Will at the time she signed it (see generally *Re Morris, Lloyds Bank Ltd v Peake* [1970] 1 All ER 1057). As stated earlier, the legal burden of proof lies upon the person propounding a Will to prove that the testator knew and approved of its contents at the relevant time.

134 A rebuttable presumption that the testatrix knew and approved of the contents of her Will at the time of execution will arise in ordinary circumstances where the propounder of the Will has proven that the testatrix was of sound testamentary capacity and that due execution of the Will had taken place. Under ordinary circumstances, since the presumption is rebuttable, the evidential burden would naturally shift to the person opposing the Will ("the opposer").

135 However, if the opposer is able to rebut the presumption, the evidential burden shifts back to the propounder. This usually happens when the circumstances surrounding a Will are suspicious. The propounder must then produce affirmative proof of the testator's knowledge and approval so as to satisfy the legal burden of proof (see in particular the Chancery Division decision of *In re Stott, Decd* [1980] 1 WLR 246 at 249F).

136 It is important to note at the outset that there is no magical formula (comprising a certain fixed number of factors or criteria) that would enable a court to ascertain whether the circumstances surrounding a Will are suspicious. The degree of suspicion will certainly vary with the circumstances of the case. In the final analysis, the actual determination as to whether or not the circumstances are suspicious enough so as to shift the burden of adducing affirmative evidence of knowledge and approval of the contents of the Will to the propounder is largely dependent on the precise factual matrix of the case itself. Having said that, it may be helpful to refer to the two classic instances of suspicious circumstances proposed by the learned authors of *Theobald on Wills* (supra [\[130\]](#) at p 35):

A classic instance of suspicious circumstances is where the will was prepared by a person who takes a substantial benefit under it. Another instance is where a person was active in procuring the execution of a will under which he takes a substantial benefit, by for instance, suggesting the terms of the will to the testator and instructing a solicitor chosen by that person.

In a similar vein, Baron Parke in *Barry v Butlin* (1838) 2 Moo PCC 480 at 482, 483 explained that:

[I]f a party writes or prepares a will under which he takes a benefit, that is a circumstance which ought generally to excite the suspicion of the Court, and calls upon it to be vigilant and jealous in examining the evidence in support of the instrument, in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased.

137 It bears emphasising that only suspicious circumstances pertaining to the *preparation and execution* of the Will would be examined by the court in determining whether the testator knew and approved of the contents of the Will. Insofar as the issue of knowledge and approval of the contents of the Will is concerned, other suspicious circumstances, which have nothing to do with the preparation and execution of the Will, are to be disregarded (see the Singapore Court of Appeal decision of *R Mahendran v R Arumuganathan* (supra [\[129\]](#) at [\[33\]](#)). However, in my view, all forms of suspicious circumstances ought to be considered when evaluating the credibility of the propounder, and the opposer of the Will. I shall elaborate on this point at a later stage at [\[154\]](#).

138 The next issue, which naturally needs to be addressed, is how the propounder can discharge her burden of proof. On this note, the learned authors of *Theobald on Wills* (at p 36) suggested two forms of affirmative proof:

One form of affirmative proof is to establish that the will was read over by, or to, the testator when he executed it. If a testator merely casts his eye over the will, this may not be sufficient. (*Re Morris* [1971] P. 62) If it is read over to the testator, this must be done in a proper way so that the testator hears and understands what is read. (*Fulton v Andrew* (1875) 7 H.L. 448 at 463) Another form of affirmative proof is to establish that the testator gave instructions for his will and that the will was drafted in accordance with those instructions.

The decision

Testamentary Capacity

139 In accordance with the legal principles set out earlier at [125-[\[133\]](#), the burden is on the plaintiff (who is the propounder in the present case) to prove that Mdm Goh understood the nature

and effect of her signing the 1996 Will (*viz* that she was essentially giving instructions as to how her assets should be dealt with upon her death); understood the extent of the property she was disposing (for example, that the residuary clause included the half-share of the property or its proceeds); was able to comprehend and appreciate the claims to which she ought to give effect (ie, knew who all her potential beneficiaries were and was able to make a decision on why they should or should not get something under her Will); and finally, that in making the latter decisions, that her mind was not suffering from any disorder that prevented her from exercising her normal thought processes, judgment and decision-making skills.

140 In essence, the defendant's expert witnesses' clinical findings were consistent with the results of the CT scan, the ECAQs performed on 28 March 1996 and 27 February 1997, and Dr Chan's clock tests. It is pertinent to note that Professors Lee, Kua, Drs Ong and Chan all saw and treated Mdm Goh in person. Indeed, Prof Kua commented that the one advantage that he had over Dr Tan was that he had seen Mdm Goh over 20 times, and in the process, observed the deterioration of her mental condition. Dr Tan, on the other hand, had never examined Mdm Goh in person. To recapitulate, Dr Tan's opinion was that he was able to "conclude with a degree of medical certainty that at the time [Mdm Goh] made her Will on 21 August 1996 she possessed Testamentary Capacity to do so". His opinion, however, was primarily based upon the documents produced in court. The dangers of such reliance by Dr Tan can be seen in two instances:

- (a) his acceptance of Dr Lee's opinion that Mdm Goh's CT scan results were normal when they were not (see [\[142\]](#) below);
- (b) his opinion that on 5 October 1998 (see 1AB872), Mdm Goh was able to write in her own handwriting to the tenants of her Lorong Liput shophouse not knowing (until she testified) that it was the defendant who had dictated the letter to Mdm Goh who had difficulty spelling the word "Orchard".

141 At the outset, I must make it clear that I take no issue with Dr Tan's competence. There is no doubt he is an experienced and dedicated psychiatrist with impressive credentials who carried out his tasks as an expert with exceptional diligence and thoroughness. However, based on the totality of the medical evidence presented, I prefer the defendant's experts' opinions over those of Dr Tan.

142 I cannot accept Dr Lee's medical opinion (upon which Dr Tan relied) that the CT scan was "normal" and that Mdm Goh was not suffering from dementia. As I noted above at [\[71\]](#), during Mdm Goh's visit to Prof Kua on 28 March 1996, Prof Kua observed that Mdm Goh's depression had improved (she was taking Sertraline at that time) although her memory had become worse. This was further evidence that the main cause of Mdm Goh's poor memory was dementia rather than depression.

143 I note however that Dr Lee observed Mdm Goh on 30 January 1997 when her medical notes stated the following observations about Mdm Goh: "mood appears to improve. Memory patchy and has improved." This appeared to suggest that Mdm Goh's poor memory was caused by her depression and that once her depression improved/was treated, her memory would correspondingly also improve. Dr Lee's observation was however inconsistent with the results of the ECAQ conducted by Dr Chan on 27 February 1997, where it should be remembered that Mdm Goh's score was 4 out of 10. In comparison, Prof Kua's observation during Mdm Goh's visit on 30 January 1997 was that Mdm Goh was "less depressed" and that her memory "is status quo" (Mdm Goh's memory was observed to have worsened in her prior visit to Prof Kua on 16 October 1996). In my view, Prof Kua's observations were consistent with the results of the ECAQ test conducted by Dr Chan about four weeks later on 27 February 1997. I therefore accept Prof Kua's observations over those of Dr Lee's. I find that the

main cause of Mdm Goh's memory loss was dementia rather than depression. Having said that, I also note that both Prof Kua and Dr Chan were of the view that depression itself can affect a person's concentration.

144 Any doubts I may have had that Dr Lee's diagnosis (that Mdm Goh's CT scan on 2 April 1996 was normal) was incorrect were removed by Dr Yeh's testimony set out in [\[77\]](#) above. Dr Yeh had opined that Mdm Goh could have had dementia back in 1996.

145 It also cannot be ignored that Mdm Goh suffered a head injury when she fell. In this regard, Prof Kua understandably was concerned that the pain from the head injury could have made it difficult for Mdm Goh to concentrate. In all fairness, the defendant has conceded that this is "not a major factor" In any event, this is one of the many factors, which I took into consideration when assessing Mdm Goh's testamentary capacity.

146 The evidence of the factual witnesses supports my finding that Mdm Goh indeed suffered from dementia or cognitive impairment at the time she executed the 1996 Will. Indeed, it appeared that Mdm Goh's mental condition started deteriorating some time before 21 August 1996 (the date the 1996 Will was executed). The evidence of Maureen and Alexander was that Mdm Goh experienced incidents of failing memory and confusion whilst in USA as early as 1994/1995. In this connection, Alexander deposed that Mdm Goh, whilst staying with him at Seattle, became confused and disoriented on one occasion when she insisted on going to Batam. Further, San San (Mdm Goh's Myanmar maid) had deposed that Mdm Goh had accused her of sleeping with Dr Chee (who had passed away in 1990 before San San came to Singapore in June 1995 to work). There was one occasion when Mdm Goh laid in bed for three consecutive days (following a confrontation by Ping Swee), after which, the defendant brought her to visit Prof Lee on 14 November 1995. Mdm Goh caused a fire in the kitchen of Maureen's house in mid-1995 which resulted in Maureen having to move into a hotel temporarily. (Mdm Goh had switched on an electrical appliance for cooking and forgot to turn it off).

147 After moving into the Property, both San San and the defendant noticed that Mdm Goh continued to suffer from delusions and poor memory (for instance, speaking to imaginary men besides accusing San San of sleeping with Dr Chee and Paul). The defendant therefore brought Mdm Goh to visit Prof Kua (see above at [\[69\]](#)-[\[70\]](#)).

148 The defendant submitted that Mdm Goh was unable to handle her own money and financial affairs from about the first quarter of 1996. The plaintiff had (under cross examination) admitted that she knew that Mdm Goh was visiting a psychiatrist after her fall on 10 August 1996. In the light of this knowledge, it is surprising that a proper medical examination was not arranged to ensure that Mdm Goh had the requisite testamentary capacity before she executed the 1996 Will.

149 Dr Chuah Chin Tek ("Dr Chuah") had observed in April 1998 that Mdm Goh behaved in a strange and abnormal manner. Dr Chuah at the material time was a trainee specialist in the Eye Department of the NUH and worked under the defendant. Dr Chuah applied to the defendant for leave in April 1998 in order to visit his then fiancée who was studying in Canada. Mdm Goh was then scheduled to fly to Seattle to visit Alexander. At the defendant's request, Dr Chuah agreed to take the same flight as Mdm Goh so as to keep an eye on her as Mdm Goh needed help when she went to the toilet. During the flight, Dr Chuah noticed that Mdm Goh was disoriented and did not seem aware she was on an aeroplane going to Seattle. After she had eaten what the flight attendants served her, Mdm Goh put the utensils and even the serving tray into her bag.

150 The private nurse Sarah Jessica Leong ("Jessica") (who had accompanied Mdm Goh to Seattle,

USA in mid-1999) also testified to instances of Mdm Goh's strange behaviour when she worked for her first as a (day) nurse at end-1998 and later while taking care of her in the USA in 1999. The incidents in 1998 did not sit well with the plaintiff's case that Mdm Goh's dementia started only after her stroke in October 1998.

151 The plaintiff sought to rebut Dr Chuah's testimony by calling Ping Swee's daughter Anthea Chee ("Anthea") to testify. In her AEIC Anthea deposed that since 1983 (when she was 7 years old) until December 1996 (when she went to study in the USA) she had taken flights with Mdm Goh and the latter had the "unusual" habit of taking airlines' utensils, even blankets and unconsumed food, which Mdm Goh would stuff into her own bag or Anthea's bag.

152 It bears remembering that Dr Goh's attention during the execution and signing of the 1996 Will was not focused on Mdm Goh. Dr Goh's evidence was that he only realised that he was one of the executors *when the 1996 Will was handed to him after it was signed*. Had Dr Goh really been paying attention, he would have realised that he was named as one of the executors *when the 1996 Will was being read line by line* by MO. Further, Dr Goh's observation that Mdm Goh had signed all the pages is erroneous. It is an undisputed fact that Mdm Goh only signed the last page of the 1996 Will. In my view, Dr Goh was not in a position to properly ascertain whether Mdm Goh had really understood the contents of the 1996 Will when it was read to her by MO.

153 The plaintiff's position was that Mdm Goh was capable of carrying out various transactions around and after the time of the execution of the 1996 Will. The defendant, however, maintained that Mdm Goh's mental condition had deteriorated to the extent that "she would sign anything that was put in front of her."

Suspicious Circumstances

154 In my view, the actions and motives of the propounder (the plaintiff in the present case) must be examined carefully before I can make a finding as to whether the 1996 Will is valid or invalid as the case may be. In addition, the actions and motives of the propounder may also have an impact on her credibility (see generally *Tan Teck Khong v Tan Pian Meng* at [\[132\]](#) supra), and therefore, an indirect bearing on the validity of the 1996 Will (see the Hong Kong High Court decision of *Chow Siu Po v Wong Ming Fong* 2003 HKCU Lexis 117 at [\[73\]](#)–[\[75\]](#)).

155 As mentioned above at [\[136\]](#), there are two classic examples of suspicious circumstances. The first instance is where the Will was prepared by a person who takes a substantial benefit under it. The second instance is where a person was active in procuring the execution of a Will under which she takes a substantial benefit, for instance, suggesting the terms of the Will to the testatrix and instructing a solicitor chosen by that person. In my view, the plaintiff falls squarely within the second instance, and this is amply borne out by the evidence.

156 The plaintiff was the person who actively procured the drafting and execution of the 1996 Will. I further note that it was the plaintiff's own case that she gave instructions to MO on Mdm Goh's behalf. Notably, the terms of the 1996 Will reflected the plaintiff's wishes (and which mirrored the 25 June 1994 letter at [\[37\]](#)) that the defendant and Paul should pay for the entire Property, and the proceeds of the sale and purchase consequently be distributed amongst the siblings other than the defendant. Further, from having absolutely no interest in Mdm Goh's estate under the 1989 Will, the plaintiff became one of the beneficiaries under the 1996 Will (under which the plaintiff enjoyed an equal share with her four other siblings but not the defendant). As a result, my suspicions were aroused. I am of the view that the burden shifted to the plaintiff to satisfy this court that Mdm Goh knew and approved the contents of the 1996 Will.

157 The plaintiff claimed that she obtained the instructions for the drafting of the 1996 Will from Mdm Goh, following which she related them to MO. In this regard, it is telling that MO readily admitted in court that all the instructions for the preparation of the 1996 Will originated from the plaintiff. Indeed, the documentary proof (in the form of two faxes from the plaintiff to MO instructing the latter) corroborated MO's testimony. As will be seen later, the circumstances surrounding the execution of the Will are highly suspicious to say the least.

158 The summoning of MO and Dr Goh, by the plaintiff, to Mdm Goh's house on 18 August 1996, (at a time when the plaintiff well knew the defendant was in confinement and not in the house) was followed by the two faxes from the plaintiff to MO on 18 August and 21 August 1996. The 1996 Will was then executed in a hurry, a mere three days after the meeting on 18 August 1996. I would observe here that it was strange to say the least that the plaintiff should call both MO and Dr Goh for a meeting to discuss issues pertaining to family matters and Mdm Goh's care. MO and Dr Goh had never been involved in the personal affairs (including health and care matters) of Mdm Goh. It seems to me that the plaintiff had a hidden agenda to call the meeting.

159 This hidden agenda was revealed when the plaintiff herself admitted that there was indeed a discussion on the distribution of Mdm Goh's assets at the 18 August meeting. These are the salient extracts of what allegedly transpired during this meeting: first, MO advised Mdm Goh that a fair distribution of the assets should be effected so as to ensure that the family remained harmonious after her (Mdm Goh's) death. Secondly, Mdm Goh mentioned that in the light of the fact that a half share of the Property had been transferred to the defendant and Paul, it would be best to give them the option of purchasing the remaining half share of the Property. Thirdly, after the discussion was over, Mdm Goh instructed MO to help her draft her Will. In this regard, Mdm Goh indicated that the plaintiff would liaise with MO on her behalf.

160 I entertain grave doubts that such a conversation with Mdm Goh took place during the 18 August meeting. Indeed, the evidence of both MO and Dr Goh did not support a finding that the discussion pertaining to the distribution of Mdm Goh's assets took place at all at that 18 August meeting. I shall now turn to address the evidence of Dr Goh and MO.

161 Dr Goh's evidence was that he was called for the 18 August meeting just to talk to Mdm Goh and enquire about her health. Dr Goh's evidence (under cross-examination) on the 18 August meeting was illuminating, and it would be useful to set out a salient extract (from N/E 100 on 30 June 2008) pertaining to the alleged discussion about Mdm Goh's Will:

Q: Don't worry, I mean, it's not a trap question. And someone mentioned doing a will. Can you recall what was said about the will – I mean, how was it supposed to be done and how would the assets be distributed or dealt with?

A: No, no, nothing – the details of the will were not discussed in front of me. I know nothing about what's going to be in the will and neither was it discussed in my presence. When we mentioned the will, it's just a very general term in use but no details of the will was (*sic*) made.

Q: And did you hear anyone or [Mdm Goh] or someone saying, "[The plaintiff] would deal with me or on the will on her behalf"?

A: Can you repeat that again?

Q: Did you hear the deceased, Mdm Goh, say that, "Well, [the plaintiff] would deal with me or on my behalf' on the will"?

A: You mean whether [Mdm Goh] asked them to make the will?

Q: And that [the plaintiff] was supposed to deal with it; did you hear that?

A: I don't remember hearing that but maybe –

Q: Okay

A: – someone may have mentioned about the will and it's possible that it can be made, something like that.

In summary, during the 18 August meeting, very general matters were discussed, someone may have mentioned about the 1996 Will, but there was no discussion about the contents of the 1996 Will itself.

162 MO on the other hand, testified that she could not recall that the 18 August meeting had taken place. MO did not take any attendance notes of the 18 August meeting. Her evidence in this regard must be contrasted with the evidence of the plaintiff. It was the plaintiff's clear evidence that (i) Mdm Goh had discussed about the sale of the half share of the Property, and had expressed her view that the defendant and Paul should be given the option to purchase the remaining half share of the Property; (ii) MO proffered advice to Mdm Goh to the effect that the manner of distributing the assets should be "fair" and (iii) MO was in fact asked to draft the 1996 Will for Mdm Goh.

163 In the light of the plaintiff's own evidence, I find it strange that MO was unable to recall anything about the 18 August meeting and yet, three days later, she could remember the execution of the 1996 Will and that she had read the same line by line to Mdm Goh.

164 MO also testified that she could not recall two more significant events:

(a) The signing of a Power of Attorney prepared by W and signed in MO's home on 8 December 1996;

(b) The lunch at the OCBC Executive Club with the defendant and Mdm Goh sometime in 1997 during which MO was alleged by the defendant to have said Mdm Goh was unfair to have sold the Property to the defendant and Paul and that she had no personal knowledge of what the plaintiff was doing with the Power of Attorney.

If she could not recall the events in (a) and (b) both of which took place after the making of the 1996 Will, how can the court be certain that MO's recollection of events on 21 August 1996 is accurate? It would be unsafe to accept her testimony that she explained the 1996 Will line by line to Mdm Goh.

165 As MO's evidence is unreliable while Dr Goh's evidence on what transpired at the 18 August meeting is vague and indeterminate, I find that the plaintiff has failed to prove the very cornerstone of her entire case that Mdm Goh had personally instructed MO to draft the 1996 Will.

166 That said, I am also not satisfied with the plaintiff's version of the 18 August meeting. According to the plaintiff, she had never intended to visit Mdm Goh when she invited Dr Goh and MO to her house. In other words, the visit was unplanned. Dr Goh's evidence however, was quite different. According to him, the plaintiff herself invited him over to her house on 18 August 1996 with a view to visiting Mdm Goh who according to the plaintiff was not feeling very well.

167 Another crucial part of the plaintiff's case pertaining to the source of the instructions for the 1996 Will was equally unsatisfactory. According to the plaintiff, the instructions for the 1996 Will (in particular the terms regarding the option to purchase the half share) were given by Mdm Goh to MO at the 18 August meeting itself. The plaintiff's evidence, in this regard however contradicted the evidence of her two witnesses – Dr Goh and MO. Dr Goh insisted that no details of the 1996 Will were discussed in his presence whilst MO confirmed that the instructions came from the plaintiff herself. I note again that no attendance notes were recorded by MO on or soon after 18 August 1996, which would be the prudent practice if a solicitor was instructed to draw up a Will. Consequently, there were serious discrepancies in the plaintiff's case when one examines the evidence pertaining to the source of the instructions for the 1996 Will.

168 The distinct impression that I gained from the evidence of MO (who is a cousin of the plaintiff) was that she had ventured beyond her duties as a solicitor to Mdm Goh by expressing her personal views on the manner of distribution of Mdm Goh's assets.

169 After the 18 August meeting, the plaintiff conversed with Mdm Goh on two separate occasions. The first conversation took place on 19 August 1996, during which Mdm Goh discussed about a sum of money which she wished to give to Ping Swee, and the identity of the executors for the 1996 Will. On the same day, the plaintiff sent a fax, which contained the names and other details of all the six siblings to MO. The fax also listed the executors as the plaintiff and Dr Goh.

170 The second conversation took place on 20 August 1996 during which Mdm Goh suggested Dr Goh and either MO or W to be the executor and executrix respectively for 1996 Will. A fax was then sent by the plaintiff to MO on 21 August 1996 ("21 August fax") containing Mdm Goh's further instructions pertaining to the 1996 Will. I shall now set out the main body of the 21 August fax in full:

Fax: 224 4637

To: [MO], c/o

From: [The plaintiff], Home Fax No. 466 9563

Date: 21 August 1996

CONFIDENTIAL

Reference our conversation. Please consider the following ideas and call me if you need further clarification:

1) Preamble

Whereas one-half of the [Property] was transferred to [the defendant] and [Paul] at a discounted price of \$2.5 million in 1995, the remainder of the estate shall be divided among the other five children.

2) Option to Purchase 470 Holland Road [the Property]

Within six months of [Mdm Goh's] death, Caroline and Paul shall have an option to purchase from the other children the remaining one-half share of the land at [the Property] at the prevailing market price of the land as determined by independent valuers.

If this option is exercised, the other five children shall each receive an equal share of the price paid by [the defendant] and Paul.

3) Ping Swee

Give lump sum of \$ _____ to Ping Swee, with remainder to be shared among the five children. (consult [Mdm Goh] on amount)

4) Executors

Executors should be [Dr Goh] and either (MO or [W]).

171 Two amendments to the 21 August fax were *made by MO herself in her own handwriting*. First, under the second clause with the heading of "Option to Purchase 470 Holland Road [the Property]", the words "six months" were deleted and replaced with "one year". Second, under the fourth clause with the heading "Executors", the words "either MO or [W]" were placed within brackets and a suggestion was made to replace those words with "[Dr Goh's] wife". With respect to the second amendment, I find it rather unusual that it was MO (in her capacity as a solicitor who was supposed to take instructions from Mdm Goh) suggesting or advising Mdm Goh who to appoint as executors of the 1996 Will. Indeed, the evidence was that MO was receiving instructions, not from Mdm Goh, but from the plaintiff herself. The irresistible inference is that both the plaintiff and MO were making the decisions for Mdm Goh.

172 Further, it is notable that some important matters, which were present in the 1996 Will, were actually missing in the 21 August fax, and in fact, were *not found in any other documents*. These matters include the following:

- (a) Two independent valuers were required to value the Property.
- (b) The mortgage was executed jointly with the defendant and Paul in favour of NUS (where both the defendant and Paul worked).
- (c) Paul was expected to pay off the loan from his own funds so as to discharge the mortgage of NUS.
- (d) The Property was to be sold in the market if the option to purchase the remaining half share of the Property was not exercised by the defendant and Paul.

173 On 21 August 1996 (the day of the execution of the 1996 Will), the plaintiff brought Mdm Goh

to the plaintiff's house. Arrangements for MO, W, and Dr Goh to be present at the plaintiff's house were also made by the plaintiff herself. Dr Goh had confirmed that he was not present in the capacity of a medical doctor; rather he was under the impression that he was attending as a witness to the execution. Dr Goh was not even aware that he would be one of the executors of the 1996 Will until he was handed the document to look through after it was signed. I find this rather strange. Why was Dr Goh not told beforehand of his role? It was not surprising that Dr Goh immediately expressed his reluctance to the plaintiff in being named a co-executor of the 1996 Will. Further, why would the plaintiff assure Dr Goh he would be replaced if indeed it was Mdm Goh's wish that he would be an executor of her estate? There is also no evidence that Mdm Goh was ever informed of Dr Goh's intention to withdraw as the executor of the 1996 Will.

174 In my view, there was an unseemly haste to procure the signing of the 1996 Will within the shortest time frame possible and without the defendant's knowledge, just three days after the 18 August meeting. Further, Dr Goh's approval to act as co-executor was not expressly sought beforehand. It is not an insignificant fact that the defendant had returned home to the Property in the evening of 18 August 1996, after spending her confinement at her parents-in-law's home at Siglap. The making of the 1996 Will was done surreptitiously. Amongst the siblings, only the plaintiff knew of its existence. Alexander came to know about it eight years later when it was read.

175 Indeed, events subsequent to the execution of the 1996 Will raised even greater doubt on Mdm Goh's knowledge and approval of the same. On 8 December 1996, at MO's home, Mdm Goh executed a Power of Attorney in favour of the plaintiff (the "Dec 1996 POA") which had been drafted by W. The plaintiff used the Dec 1996 POA in an attempt to obtain from the defendant's/Paul's solicitors, information on the sale of the half share of the Property using the pretext of estate duty planning. When Mdm Goh found out about the plaintiff's actions, not surprisingly, she was furious. Shortly thereafter, Mdm Goh (who was then in the USA) personally telephoned and instructed her regular solicitor HHS to prepare a Revocation of the Dec 1996 POA which Mdm Goh signed at his office on 14 January 1997. The defendant submitted (and which I accepted) that HHS' note of his meeting with Mdm Goh was "illuminating". HHS' note contained a particular portion titled "Statement of Goh Hun Keong". As the title suggested, a statement of Mdm Goh was recorded by HHS and I now reproduce it in its entirety:

1. I remembered I was at [MO's] house one night. We were talking about something but I cannot remember the exact date of the visit and the subject matter we were discussing about.
2. MO gave me a document to read and I subsequently signed it. I am not quite clear what powers I have given to Muriel.
3. Last month I went with my second son to the States, staying in my eldest son's house. One day my daughter, Caroline sent some lawyer's letters to me. The lawyer was instructed by Muriel touching on my estate planning and half share of my house at 470 Holland Road given to Caroline. I was quite upset about this. I have not seen this lawyer about my estate planning. I do not want any one to interfere with my wish as what should be given to whom.
4. Muriel's husband is an Englishman who is very greedy. He (sic) instigated my daughter to try to get as much money from me as possible.
5. I was willing to give half of 470 Holland Road to Caroline at my own wish. Muriel has a semi-detached and an apartment and I assisted her to purchase the semi-detached sometime ago.
6. I am staying with Caroline and her husband. They take good care of me.

Dated this 14th day of January, 1997.

GOH HUN KEONG

In the light of the evidence given by HHS, I reject the plaintiff's argument that the above statement being unsigned, cannot be taken to be that of Mdm Goh. There was no reason for HHS as an officer of the court, not to have spoken the truth nor for the court not to accept that the above statement was an accurate record by HHS of what Mdm Goh said to him.

176 There are a number of points in the above note which need to be highlighted. First, Mdm Goh expressly stated that she had no idea what she had signed in MO's house nor what powers she had given to the plaintiff. Second, Mdm Goh made highly unflattering comments about the plaintiff and her husband (who is not English but American). In the light of such adverse comments, it would be totally out of character for Mdm Goh to appoint the plaintiff as an executor and to name her as a beneficiary in her Will five months earlier. Third, Mdm Goh insisted that she did not want any interference in the way she distributed her assets. Fourth, Mdm Goh expressed her willingness to "give" half of the Property to the defendant "at her own wish". Fifth, Mdm Goh acknowledged that the defendant and her husband (Paul) took good care of her.

177 As stated earlier at [\[37\]](#), the material contents of the 25 June 1994 letter, pertaining to the plaintiff's own opinion as to how Mdm Goh's assets ought to be distributed, were reproduced in the 1996 Will. Such striking similarity cannot be ignored.

178 In my view, the fact that the terms of the 1996 Will were reflective of the plaintiff's own views and proposals as set out in the 25 June 1994 letter (which she did not/could not deny), is something that I must take into account in my determination as to whether the 1996 Will in fact reflected Mdm Goh's intentions and instructions.

179 The evidence showed that the defendant had always been the favourite child of Mdm Goh. HHS

was unequivocal in his view that the contents of the 1996 Will were "totally inconsistent with what Mdm Goh had confided in [him]". In fact, HHS was adamant that "Mdm Goh had told [him] on many occasions that she trusted [the defendant] and that [the defendant] took good care of her. Mdm Goh was full of praise for [the defendant]. She even told [him] that she wanted to give her existing half share of the Holland Road bungalow to [the defendant]."

180 The defendant's mother-in-law, Ho Kam Thong Jenny ("Jenny"), was Mdm Goh's good friend. They had known each other since 1984, got along well and travelled overseas together on numerous occasions. Jenny gave evidence to the effect that Mdm Goh "had on many occasions mentioned that [the defendant] was her favourite child and that she loved her a lot." Jenny confirmed that this had not changed even up to the time of Mdm Goh's demise. The same, however, could not be said of the relationship that Mdm Goh had with the plaintiff and B. According to Jenny, Mdm Goh was not happy living with the plaintiff and B and had related to her an incident, which took place during that time:

Her son-in-law [B] was eating oranges one evening, and she asked him if she could have some. He replied that the oranges were in the refrigerator and she should get it for herself. She was upset and hurt that he had not even offered her a piece or volunteered to get one for her from the refrigerator.

True, the above testimony was hearsay but it would certainly explain Mdm Goh's dislike of B. There is little doubt that Mdm Goh was an old-fashioned and traditional lady who held on to values such as the young having to respect and care for the elderly. The above incident (if true) reinforced her view. That was another reason why Mdm Goh preferred to live with the defendant rather than with the plaintiff. I should add that Mdm Goh's dislike of B was shared by the plaintiff's siblings who did not want his presence when Mdm Goh's ashes were scattered at sea (according to the plaintiff's own evidence).

181 Indeed, one of the reasons why Mdm Goh favoured the defendant was that, unlike the plaintiff and Maureen, the defendant did not marry a Caucasian. This can be seen from the evidence given by Mdm Goh's friend Chee Suat Cheng ("Suat Cheng"):

Mdm Goh had complained to me on quite a few occasions that her other 2 daughters [ie. the plaintiff and Maureen] had married "angmohs". She did not like that, because she felt that the "angmohs" had a different way of thinking from the Chinese. She lamented that first, her eldest daughter Maureen had gone abroad to study, met her Caucasian husband, and married him. Then, just when she thought her 2nd daughter [the plaintiff] was "safe" because she was studying at NUS, she eventually married her lecturer who is a Caucasian. When [the defendant] got married, Mdm Goh was most happy because her husband was Chinese, a doctor, and came from a good family.

Undue Influence

182 In view of my decision on the issues of testamentary capacity and knowledge and approval of the contents of the 1996 Will, it is unnecessary to decide on whether the elements of undue influence were present in this case.

Events subsequent to the signing of the 1996 Will

183 It would be necessary before I conclude this judgment, to refer to certain events that took place after the making of the 1996 Will. The events are not relevant as determinants of the

testamentary capacity of Mdm Goh on 21 August 1996 but they reinforced my finding that the evidence of the plaintiff that the 1996 Will was the last will and testament of Mdm Goh cannot be accepted.

(i) *The Originating Summons*

184 I need first to refer to Originating Summons No 1616 of 2000 ("the OS"), which was the plaintiff's application to appoint herself and Ping Swee as the Committee of Mdm Goh's estate. Coincidentally the OS was heard by this court. If indeed the plaintiff was concerned about Mdm Goh's health (as she continuously professed) not to mention that she had repeatedly accused the defendant of failing to update her on Mdm Goh's status, one would have thought that she would have applied to court to be appointed the Committee of Mdm Goh's person as well as her estate. Her telling omission would appear to support the contention of the Interveners that the plaintiff's intentions were not altruistic – she was bent at all costs on getting hold of Mdm Goh's assets and her share thereby.

185 The plaintiff was cast in an even worse light when I adjourned the OS on 27 October 2000 at the first hearing and directed that all her siblings should be served with the papers (which she had not done). At the subsequent hearing, this court was informed that the other siblings objected to the OS. I adjourned the OS *sine die* with liberty to restore but it was never restored as despite an amendment to the OS to include all six siblings in the Committee, the defendant would not consent. Instead, in December 2002 the plaintiff's solicitors wrote to the solicitors of the defendant and the Interveners to say that the plaintiff wanted to discontinue the OS without prejudice to the right to commence fresh proceedings if necessary. The defendant's solicitors replied to say she would agree to a discontinuance of the OS on terms of costs. The plaintiff eventually withdrew the OS (on 30 August 2004) after Mdm Goh's demise with costs to the defendant.

(ii) *The reading of the 1996 and 1989 Wills*

186 The plaintiff's behaviour in regard to the reading of both Wills was even more disquieting. On the defendant's behalf, HHS had notified all the siblings (save for Ping Kong) on 24 June 2004 that the 1989 Will would be read on 28 June 2004. The plaintiff was absent at the reading at the office of Hin Rai & Tan and was uncontactable despite several calls being made to her handphone by the Interveners. During cross-examination, the plaintiff revealed to counsel for the defendant that she was certain Mdm Goh had executed another Will after Mdm Goh had revoked the Dec 1996 POA. That appeared to be the real reason (contrary to the plaintiff's assertions that she was busy etc) why the plaintiff did not attend the reading of the 1989 Will.

187 On 29 June 2004, MO's firm forwarded the (original) 1996 Will to the plaintiff and Dr Goh. On the same day, the plaintiff contacted Alexander to say there would be a meeting at her house on the following evening (to which neither the defendant nor the Maureen was invited). Dr Goh who was invited declined to attend. On 30 June 2004, the plaintiff's lawyer Quek Peck Hong (Ms Quek) read the 1996 Will at Greenleaf Place, in the presence of the plaintiff, Alexander and Ping Swee. It was Alexander's evidence (at paras 48–64 of his AEIC) which was captured in his subsequent emails dated 6 July and 9 July 2004 to the defendant [exhibit IW1]) that the plaintiff was 'testing the waters' as, when he asked why she had not invited the defendant and Maureen to the reading, the plaintiff replied that it was only a preliminary meeting to see how Ping Swee and Alexander felt (they were both surprised by the contents) about the 1996 Will; she was irritated that they did not appreciate what she was doing for them. The plaintiff indicated she would "withdraw" the document if they were unhappy about it.

188 Taken aback, Alexander inquired of Ms Quek if it was possible to withdraw a Will; Ms Quek said

it could not be ignored once a Will had surfaced. Despite the plaintiff's reluctance, Alexander insisted on taking a copy of the 1996 Will with him when he left even though the plaintiff told him not to show it to the defendant and Maureen. Alexander told the plaintiff that there should be a formal reading of the 1996 Will in the presence of the defendant and Maureen. Although a meeting for that purpose was fixed the following morning at Ms Quek's office, the meeting never materialised as the defendant wanted an official notification of the same, while Alexander returned to the USA two days later. Ms Quek subsequently posted a copy of the 1996 Will to the defendant and Paul on 7 July 2004.

189 In their submissions, the defendant and the Interveners both argued that an adverse inference should be drawn against the plaintiff for her failure to call Ms Quek as a witness. The plaintiff conversely argued that it was not necessary to call Ms Quek to testify for the reason that the event was irrelevant. With respect, I disagree – the reading of the 1996 Will and the plaintiff's conduct thereat was highly relevant to my finding on the credibility of the plaintiff's evidence. I reject the plaintiff's submission for another reason. I had on 10 July 2008 in my exchange with counsel for the plaintiff, observed that she (counsel) filed objections to paras 48–64 in Alexander's AEIC relating to the reading of the 1996 Will not on the grounds they were not pleaded (because the Interveners did not file pleadings in the first place) but on the basis that the paragraphs were "irrelevant". I had also indicated to counsel the possibility of Ms Quek being called to testify. Ms Quek did not testify. In her closing submissions (para 217), the plaintiff sought to say that the Interveners should be the ones to call Ms Quek to testify and an adverse inference should be drawn against them for their failure to do so. This argument is misconceived. As the Interveners' submission rightly pointed out, they had put forth to the court Alexander's version of what transpired on 29 June 2004. It was for the plaintiff if she intended to rebut his version, to call Ms Quek to testify. Not only did the plaintiff fail to call Ms Quek as a witness, it is also telling that she did not refer to the incident at all in her AEIC and her counsel did not re-examine her on the issue either. The court had also pointed out to plaintiff's counsel that there was no proprietary right to a witness. For that reason, the defendant called Dr Chan to testify when the plaintiff failed to call him when rightfully, he should have been her witness.

190 Even if this court does not draw an adverse inference against the plaintiff for failing to call Ms Quek to rebut Alexander's testimony, the principle in *Browne v Dunn* (1893) 6 R 67 would apply; his evidence would stand unchallenged and therefore accepted.

Credibility of the witnesses

191 Before I make some observations on the other factual witnesses, something needs to be said about Mdm Goh. By all accounts, she must have been a strong-willed and forceful personality who, when she was in full possession of her faculties, was not someone who would broach any objections/opposition from any of her children to her wishes/plans. She was the ultimate matriarch. When she was alive and well, Mdm Goh would and did (according to a bitter experience Alexander had with her regarding monies she entrusted to him to invest) ride rough-shod over her children without any regard for their feelings or sensitivities. Indeed, she treated Alexander rather roughly as a child and she was not very kind to him even in his adult life. Without a doubt Mdm Goh was an unfair person, as the plaintiff and Alexander testified. It mattered little to Mdm Goh that her obvious preference for her youngest child may have caused envy or resentment in her other children (as in the plaintiff's case) culminating in these proceedings.

192 When she was alive and well, Mdm Goh's strong personality must have made her a difficult person to live with. Hence, the friction between her and Ping Swee when the latter and his family lived at the Property and with B when Mdm Goh lived at Greenleaf Place. Presumably, the defendant (and Paul) had a higher threshold of tolerance for the strong-willed Mdm Goh when they lived at the

Property, as no evidence was adduced (apart from the unfounded allegations of the plaintiff/Ping Swee in [41]) that Mdm Goh had ever complained about having problems with the defendant and/or Paul.

193 As for the plaintiff, her mild and/or meek appearance belied a steely resolve and tenacity. Even if Mdm Goh had treated her unfairly during Mdm Goh's lifetime, the plaintiff was determined that in death, Mdm Goh should do right by her and other less favoured siblings. The lengths to which the plaintiff went to achieve this end apart from filing this suit included:

- (a) obtaining the Dec 1996 POA in order to ascertain the nature and extent of Mdm Goh's assets;
- (b) when the Dec 1996 POA was revoked by Mdm Goh in January 1997 (at [175]), she procured another power of attorney dated 2 March 1999 ("the Second POA") from Mdm Goh, barely six weeks after Mdm Goh had given a power of attorney to the defendant, drafted by one Constance Tay (who did not testify); this Second POA only surfaced in the course of discovery in these proceedings;
- (c) her attempts to appoint a Committee to Mdm Goh's estate in the OS;
- (d) collecting rent from the Victoria Street property against the express wishes of Mdm Goh;
- (e) having the bank statements for OCBC Account No 4 sent to Greenleaf Place to ensure that the defendant (and/or the siblings in the USA) did not know of the existence of the account.

Consequently, I disbelieve the plaintiff's pious expressions of concern for Mdm Goh and her claim that she did what she did for her mother's good. Everything that the plaintiff did was designed to ensure that she obtained what she deemed was her fair share of Mdm Goh's assets.

194 I should also point out here that in the Interveners' closing submissions (para 6), they had explained that their suspicions about the 1996 Will were fuelled not only by the terms but by

[the plaintiff's] almost obsessive unhappiness at the prospect of [the defendant] getting a perceived unfair share of Mdm Goh's estate, (c)[by the plaintiff's] hand in the preparation of the 1996 Will....; (e) the apparent gift by Mdm Goh of substantial sums of money to [the plaintiff] and Ping Swee after [her] mental health started to deteriorate; (f) the surprise application by [the plaintiff] and Ping Swee to be appointed the Committee of Mdm Goh's estate (and not of her person) and (g) the curious circumstances surrounding the production by [the plaintiff] of the 1996 Will.

The Interveners added that the plaintiff was not 'the selfless saint and wronged victim of ungrateful and spiteful siblings she is trying to make herself out to be' (para 12 of their submissions). The above criticism would not appear to be unjustified in the light of my findings.

195 When it was apparent to them that Mdm Goh was no longer in full possession of her faculties, the plaintiff and Ping Swee took advantage of her. Otherwise, they would not have dared to deplete her monies in OCBC Account No 4. Nor would Ping Swee have had the courage to confront Mdm Goh in the early hours of one morning in 1995 at the Merah Saga flat (according to the maid San San at [146]) and berated her for transferring a half-share of the Property to the defendant and Paul. In this regard, I reject Ping Swee's denial of San San's evidence of the incident. However, in June 1994, Mdm Goh was still in full possession of her faculties; that was why the plaintiff requested Alexander

not to disclose to Mdm Goh the contents of the 25 June 1994 letter (at [\[37\]](#)) for fear of incurring the latter's wrath.

196 Like the plaintiff's testimony, Ping Swee's evidence was far from convincing and was at times inconsistent. I refer in particular to his evidence (and the plaintiff's) regarding the purpose of opening OCBC Account No 4. According to the plaintiff's pleadings (para 4(p)(ii) and (iii) of her reply and defence to the counterclaim), the purpose of opening Account No 4 was "to ensure that the family had access to these funds" and subsequently, Mdm Goh had "given part of the sum of \$650,000 to Ping Swee and informed Ping Swee that the gift was to be used to finance the education of Ping Swee's children and [Mdm Goh] had given the balance amount to the plaintiff and informed the plaintiff that the gift was to be used to finance the education of the plaintiff's children".

197 In their submissions, the Interveners pointed out (paras 148-149) that the plaintiff's evidence on the purpose of the \$650,000 had been revised several times. In her AEIC (para 120), the plaintiff deposed it was meant for Anthea's education. That differed from her pleaded case in [\[196\]](#). In the course of her cross-examination by Interveners' counsel (at N/E 101 on 9 July 2008), the plaintiff gave three reasons for the opening of the account – it was for "family needs", for "education", "mother's (Mdm Goh's) needs". There was no reason for the plaintiff or Ping Swee not to inform Alexander when they closed Account No 4 and moved the monies to SCB. The plaintiff's explanation first, that Mdm Goh did not want him to know, second, that Mdm Goh did not specifically say Alexander should be informed and finally, there was no need to tell him is simply incredible. In truth, the plaintiff and Ping Swee cleaned out Account No 4 without Mdm Goh's and Alexander's knowledge for their own benefit.

198 I view the testimony given by Ping Swee's wife Helen (Chan Mun Ooi) with some scepticism, not least because she was aligned with the plaintiff. One aspect of her testimony that defied logic related to Mdm Goh's savings account No 508-X-XXXXXX with OCBC ("the savings account") that was opened jointly with the plaintiff and Ping Swee. Helen claimed that she did not know the branch where the savings account was opened. Yet she took the passbook with her to the USA (when Ping Swee was posted to Kansas by the Singapore Air Force between 1998-2000) although she was unable to explain the reason therefor. I am certain she kept the passbook to prevent withdrawals from being made therefrom. I was even less impressed with Helen as a witness when the court was told on 6 November 2008 by Mdm Goh's friend Suat Cheng [see [\[181\]](#) above] that Helen had telephoned Suat Cheng on 13 October 2008, to inquire why Suat Cheng was going to give evidence for the defendant and whether Suat Cheng realized that the plaintiff would have to pay a lot of money if the plaintiff lost this case.

199 The savings account had been opened in August 1997 for the purpose of crediting the rent from the Lorong Liput shophouse, which property (according to Helen) Mdm Goh supposedly intended to give to Anthea as a 21st birthday present provided Anthea returned to Singapore after her studies in the USA. Cross-examined on whether the rent collected (\$30,000-\$40,000) was meant for Anthea as well, Helen prevaricated and finally said yes. When the defendant found out about the savings account, she froze it on 1 October 1998.

200 I should add that although Ping Swee (like the plaintiff) also claimed that he did not know where the savings account was located and he never touched the monies therein, the evidence adduced in court showed he had withdrawn at least \$19,800 therefrom. Again, this evidence did nothing to improve his credibility before the court.

201 As for Anthea's testimony at [\[151\]](#), I can safely dismiss it as biased in the plaintiff's favour. Counsel for the defendant had repeatedly reminded Anthea during cross-examination that she was

only 7 years old in 1983. I cannot believe that a child of that age was capable of making the observations Anthea did of her grandmother's behaviour.

202 As for the Interveners, there was a veiled suggestion by the plaintiff during cross-examination that they would stand to benefit by aligning themselves with the defendant's case. Pressed by counsel for the Interveners, the plaintiff explained the Interveners would each receive about \$2 million if the 1996 Will prevailed and they would remain on good terms with the defendant. If the 1989 Will prevailed, they would continue to enjoy whatever "benefits" the defendant extended to them including staying with her when they visited Singapore and going on trips with the defendant. This suspicion was effectively rebutted by Maureen's cross-examination where she made it clear she could not be bought by the defendant as there was nothing she needed or wanted from the defendant, her life and family being in North Carolina where she had her own property, retirement funds etc. It bears repeating [5] that the Interveners testified against their own interests in this case. I have no hesitation in accepting their testimony as being the truth.

203 In the light of their non-involvement and lack of interest in this case, I similarly accept the evidence of San San, Jessica and Dr Chuah.

204 Finally, in contrast to the plaintiff and Ping Swee, the defendant was a far more credible witness. She had no inconsistencies between her oral testimony and her AEIC or her pleadings. More often than not, the defendant was able to effectively rebut the plaintiff's allegations (and Ping Swee's) with documentary proof. I would add that I fully endorse the defendant's statement (in para 360) of her AEIC where she deposed:

It may be understandable for one to be disappointed about Mother favouring someone, but it is wrong to manipulate a dementia-suffering Mother to sign a Will to change an earlier Will completely.

It was not only wrong but totally reprehensible on the part of the plaintiff to have done so in this case.

205 I had earlier pointed out the shortcomings in Dr Tan's evidence [141] and why I preferred the testimony of the defendant's many medical experts to his. I must emphasise that the fact that the defendant had far more experts on her side (as compared to the plaintiff) was a factor that I took into consideration although it was not conclusive. A far more important factor in my view was the quality of the medical evidence (taken as a whole) provided by the defendant's expert witnesses, and which tilted the scales in favour of the defendant, on a balance of probabilities. There is no necessity for me to repeat the reasons here.

Conclusion

206 Consequently, I dismiss the plaintiff's action with costs and allow the defendant's counterclaim (with costs). I declare that the 1989 Will is the valid last Will of Mdm Goh. The defendant is at liberty to proceed to extract the grant of probate that she petitioned in Probate No 141 of 2004.

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