Chai Choon Yong v Central Provident Fund Board and Others
[2005] SGCA 13

Case Number : CA 93/2004

Decision Date : 28 March 2005

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Lai Siu Chiu J; Yong Pung How CJ

Counsel Name(s) : Tan Chee Kiong (Seah Ong and Partners) for the appellant; Michael Khoo SC, Josephine Low and Andy Chiok (Michael Khoo and Partners) for the first respondent; Chia Ti Lik (Chia Ngee Thuang and Co) for the second respondent; Kamala Ponnampalam and Beverly Wee (Insolvency and Public Trustee's Office) for the third respondent

Parties : Chai Choon Yong — Central Provident Fund Board; Lai Weng Kwong; The Public Trustee

Provident Fund – Beneficiary – Nomination – Whether member required to sign form in presence of two witnesses – Whether witnesses required to see each other attesting to member's signing of form – Rule 4 Central Provident Fund (Nominations) Rules (Cap 36, R 1, 1998 Rev Ed)

Provident Fund – Beneficiary – Nomination – Whether procedure for attestation of nomination form under r 4 of CPF Rules mandatory or directory – Whether nomination invalidated by failure to observe formal requirements – Rule 4 Central Provident Fund (Nominations) Rules (Cap 36, R 1, 1998 Rev Ed)

Words and Phrases – "Written law" – Whether reference to "written law" in s 25(2) of CPF Act including Wills Act or referring to intestacy law – Whether to adopt literal or purposive approach to interpretation of s 25(2) of CPF Act – Section 25(2) Central Provident Fund Act (Cap 36, 2001 Rev Ed), Wills Act (Cap 352, 1996 Rev Ed)

28 March 2005

Lai Siu Chiu J (delivering the judgment of the court):

Introduction

1 This was an appeal against the decision of Belinda Ang Saw Ean J (see [2004] 2 SLR 416) dismissing the application of Chai Choon Yong ("the appellant") for her daughter's Central Provident Fund ("CPF") nomination to be declared null and void. Leave to appeal was granted on 20 September 2004 under s 34(2)(a) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed), as the sum involved was less than $250,000. We dismissed the appeal and now give our reasons.

Background facts

2 The appellant is the mother of Wang Lee Jun ("Wang") who passed away on 15 April 2001. Wang, a single lady, had lived with the second respondent, Lai Weng Kwong ("Lai"), for many years before her demise; they were not married. In her last will made on 2 December 1996, Wang appointed Lai as the executor of her will and also made him the sole beneficiary of her estate. On 2 August 1988, Wang nominated Lai to receive all the moneys in her CPF account ("Wang's CPF moneys"). In the column "Relationship to member" in the nomination form, Wang described Lai as a "friend". The nomination form showed that there were two witnesses, Wong Jee Koh ("Wong"), who was Wang's brother, and Yeo Chow Wah ("Yeo"), who was Wang's sister-in-law.

3 Upon receiving the nomination form, the Central Provident Fund Board ("the Board") sent

Wang a letter asking if she would like to include her next-of-kin as nominees. Wang replied to confirm that Lai was her choice of nominee. According to the Board, the officer handling Wang's file then contacted Wang to explain the implications of her nomination. The officer had the impression that Wang understood the effect of her decision.

4 After Wang's demise, a grant of probate to her estate was granted to Lai on 9 November 2001. The appellant then filed Originating Summons No 173 of 2003 ("the OS") on 13 February 2003 to challenge the validity of Wang's nomination, arguing that Wang's signature was not witnessed in the presence of two witnesses, as stipulated by s 25(1) of the Central Provident Fund Act (Cap 36, 2001 Rev Ed) ("the CPF Act") read with r 4 of the Central Provident Fund (Nominations) Rules (Cap 36, R 1, 1998 Rev Ed) ("the CPF Rules"), which provisions are substantially the same as those as at 2 August 1988. Yeo and Wong gave evidence, by way of two statutory declarations, to state that:

(a) Wang passed them a folded nomination form without showing them the contents of the form, including Wang's signature;

(b) Wang did not sign the form in their presence; and

(c) they each signed the form without the presence of the other witness.

The appellant reasoned that as there was no subsisting nomination, Wang's CPF moneys should therefore be paid to the Public Trustee for disposal according to the Intestate Succession Act (Cap 146, 1985 Rev Ed). Under s 7 of this Act, the appellant would be entitled to a share of Wang's CPF moneys.

5 In response, Lai (who was the second defendant in the OS) maintained that the nomination was valid. He further argued that even if the nomination was invalid, Wang's CPF moneys should be paid to him as the sole beneficiary under Wang's will. The Board, being the custodian of Wang's CPF moneys, was sued as the first defendant. Its position was that there was a subsisting and valid nomination and consequently, it was obliged to pay Wang's CPF moneys over to Lai. The third defendant was the Public Trustee, who was joined as a party to the proceedings here and below, to state its general position on these matters.

The decision below

6 Ang J dismissed the appellant's application after deciding on two main issues:

(a) Did Chai have the *locus standi* to challenge the CPF nomination?

(b) Was there a valid nomination?

Did Chai have the* locus standi *to challenge the CPF nomination?

7 Ang J first set out the relevant provisions of the CPF Act. Section 15(5) states:

After the death of a member of the Fund, a person nominated by that member in accordance with section 25 (1) shall be entitled to withdraw such portion of the sum standing to the credit of that member in the Fund as is set out in the memorandum executed in accordance with that section.

8 Next, s 25 elaborates on the issue of nomination:

(1) Any member of the Fund may by a memorandum executed in the prescribed manner nominate a person or persons to receive in his or their own right such portions of the amount payable on his death out of the Fund under section 20 (1) or of any shares designated under section 26 (1) as the memorandum shall indicate.

(2) If, at the time of the death of a member of the Fund, there is no person nominated under subsection (1), the total amount payable out of the Fund shall be paid to the Public Trustee for disposal in accordance with *any written law* for the time being in force.

[emphasis added]

9 Section 24(3A) further provides that:

All moneys paid out of the Fund on the death of any member of the Fund shall be deemed to be impressed with a trust in favour of —

(*a*) the person or persons nominated under section 25 (1) by the deceased member, if any; or

(*b*) the person or persons determined by the Public Trustee in accordance with section 25 (2) to be entitled thereto,

but shall, without prejudice to the operation of the Estate Duty Act (Cap. 96), be deemed not to form part of the deceased member's estate or to be subject to his debts.

10 According to *Saniah bte Ali v Abdullah bin Ali* [1990] SLR 584 ("*Saniah bte Ali*"), the instrument of nomination is an effective direction by a CPF member to the Board to pay his CPF moneys to the person nominated by him. L P Thean J (as he then was) held that the general scheme of the CPF Act was to treat the CPF moneys of a member as a species of property separate and distinct from his other property. It could not be disposed of by an instrument *inter vivos* or by a will. Upon the death of a CPF member, his CPF moneys did not form part of his estate nor was it subject to his debts. It was thus decided in this case that "written law" in the then equivalent of s 25(2) must refer to the CPF Act or an enactment governing succession to the estate of the deceased member.

11 Approving the above pronouncements, Ang J concluded that the payment of CPF moneys to a nominee on the death of a member operated by force of the provisions of the CPF Act and not as a testamentary disposition under the member's will. She based this holding on the following reasons:

(a) It was clear that the CPF Act restricted a testator's freedom of testamentary disposition of his CPF moneys. A construction of the statute that permitted a testator to dispose of his CPF moneys in a will would defeat the purpose of the CPF Act.

(b) A testator could only make a testamentary disposition of assets which were beneficially owned by him at the time of his death. CPF moneys were outside this equation. There was no separate statutory provision in the Wills Act (Cap 352, 1996 Rev Ed) that operated as a testamentary disposition of the deceased's estate. A will that was properly executed according to the Wills Act was hardly an "enactment governing succession to the estate of the deceased member" (see *Saniah bte Ali* at 590, [11]).

12 Accordingly, Ang J decided that unless the CPF moneys were disposed of by a member by nomination before his demise, it would be paid out to the Public Trustee for distribution under the

Intestate Succession Act (or according to Muslim law in the case of a Muslim deceased). Consequently, the appellant, as Wang's surviving parent, had an interest in the CPF moneys and had the *locus standi* to bring the present proceedings to challenge Wang's nomination.

Was there a valid nomination?

13 Ang J first considered whether a nomination subsisted at the time of Wang's death. According to s 25(1) of the CPF Act and r 4 of the CPF Rules, the nomination form has to be signed by the member in the presence of two witnesses who shall attest the signature of the member. Ang J was of the view that there was no clear and cogent evidence to rebut the presumption of due execution. Yeo and Wong's evidence had to be viewed with caution as they might benefit directly or indirectly from a failed nomination. Ang J also doubted the veracity of their evidence. She noticed that Yeo's signature had encroached into the place for Wang's signature. It was therefore difficult to see how the form could have been folded to cover Wang's signature. In addition, Ang J did not see the need for Wang to fold the nomination form. The two witnesses claimed that Wang wanted to cover up the name of the nominee. However, the name of the nominee was on the reverse side of the form.

14 Ang J further held that the outcome would not change even if she had reached the opposite view that the presumption of attestation had been rebutted. Drawing a distinction between a CPF nomination and a will, Ang J observed that the specific consequences of non-compliance with the CPF Rules were not stated. At most, non-compliance would attract a fine under s 61 of the CPF Act. Parliament therefore could not have intended that non-compliance with the formalities of the CPF Act would result in an invalid nomination.

15 Turning to the use of the word "shall" in r 4 of the CPF Rules, Ang J stated that one should not merely look at the language of the statute to decide whether r 4 was mandatory or directory. She relied on *Regina v Secretary of State for the Home Department, Ex parte Jeyeanthan* [2000] 1 WLR 354 ("*Jeyeanthan*"), where Lord Woolf MR said that the conventional approach of dividing requirements into either mandatory or directory did not address the more important question of what the legislator intended the consequence of non-compliance with the procedural rules to be. Lord Woolf decided that the court should determine whether there had been substantial compliance with the statutory requirement, whether non-compliance was capable of being waived, and if it was not, the consequence of non-compliance.

16 Applying these principles to this case, Ang J held that the CPF nomination was a unilateral instrument and only the intention of the deceased member mattered. In addition, r 4 was purely a procedural requirement that enabled the Board to verify the authenticity of the nomination. On the present facts, the Board had no doubt of Wang's intention and Wang had never sought to revoke her nomination. Ang J therefore concluded that this procedural requirement, imposed for the benefit of the Board alone, could be waived. Ang J added that the court should look to the substance rather than form. Here, there was substantial compliance with the requirements of r 4 of the CPF Rules. As such, there was a valid and subsisting nomination in favour of Lai and the appellant's application was dismissed.

The appeal

17 Three main issues arose out of this appeal:

(a) whether the words "written law" in s 25(2) of the CPF Act refer to the Intestate Succession Act and s 112 of the Administration of Muslim Law Act (Cap 3, 1999 Rev Ed);

(b) whether the presumption of due execution was rebutted; and

(c) whether the requirement of attestation under the CPF Rules is mandatory or directory.

Whether the words "written law" in s 25(2) of the CPF Act refer to intestacy law

18 Ang J considered this issue to decide the preliminary question of whether the appellant had an interest in the CPF moneys entitling her to challenge Wang's nomination. In this appeal, the appellant did not dispute Ang J's conclusion. However, Lai sought to reverse this finding (pursuant to O 57 r 9A(5) of the Rules of Court (Cap 322, R 5, 2004 Rev Ed)).

19 Lai argued that "written law" refers to the Wills Act for the following reasons:

(a) The Intestate Succession Act only applies if Wang had passed away without leaving a will, or where part of her property was not disposed of by will. There was a residual legacy in Wang's will, and therefore there was no partial intestacy.

(b) Wang's CPF moneys, being a share of government funds, were part of Wang's personal estate, which could be disposed of in her will according to ss 2 and 3 of the Wills Act. In this case, it was included under the residuary clause of her will.

(c) Contrary to the stated absolute position that no third party can claim a member's CPF moneys, there is an order of precedence in which each statute can be implemented. The Intestate Succession Act ranks last, after the Wills Act.

20 It is not clear what Lai meant by his argument in sub-para (c) in the preceding paragraph as no authorities were cited to substantiate his assertion on the ranking of the two statutes in question. However, there is some merit in his first two arguments. There is no doubt that "written law" could include the Wills Act, based on a strict construction of the CPF Act. Ang J had cited Thean J's statement in *Saniah bte Ali* (at 590, [11]) that "written law must mean [the CPF Act] or enactment governing succession to the estate of the deceased member". This is, in fact, in line with s 2 of the Interpretation Act (Cap 1, 2002 Rev Ed) which defines "written law" to include the Constitution, as well as all Acts, ordinances, enactments and subsidiary legislation. In Ang J's opinion, a will could not be deemed such an "enactment". However, while the will cannot possibly be construed to be a statute, the Wills Act can be such an "enactment" determining the distribution of Wang's estate. Section 3 of the Wills Act declares that a will, when properly executed, will dispose of a person's real and personal estate.

21 It is this principle that may constitute the Wills Act as "written law" for the purpose of distribution of Wang's CPF moneys, provided that the funds are deemed part of her estate. Such a broad interpretation has been adopted in England. Paragraph 3(1) of Schedule 9 to the UK Friendly Societies Act 1992 (c 40) and s 25(1) of the Industrial and Provident Societies Act 1965 (c 12) (UK) provide that a testator in the UK may dispose of sums of money under prescribed nominations. In the event that no nomination is made, both Acts stipulate that the relevant authorities will distribute the sums to persons whom they deem "entitled by law" to receive the same. Adopting a common-sense interpretation of this phrase, the courts in England have not refrained from pronouncing that the general principles governing testamentary dispositions apply in determining which party is entitled in law to the moneys: (see *Nelson v Royal London Friendly Society* (1896) Diprose & Gammon 544 at 550, cited in *Halsbury's Laws of England* vol 19(1) (Butterworths, 4th Ed Reissue, 1995) at para 266). In fact, the Industrial and Provident Societies Act 1965 provides that the relevant society will distribute the property if the member dies intestate. This is an implicit recognition that the will should

be the first point of reference for the authorities in the absence of a nomination.

22 It thus appears from a plain reading of the CPF Act, that the Public Trustee should refer to the will since the Wills Act governs the distribution of a deceased's assets. Only when there is no will should the Public Trustee then apply the rules under the Intestate Succession Act, or in the case of a Muslim deceased, under s 112 of the Administration of Muslim Law Act. It seems inexplicable that the Intestate Succession Act should apply although there is an existing will and therefore no intestacy. Nonetheless, Ang J's conclusion was primarily premised on her view of the overall scheme of the CPF Act, which we accept was correct and to which we now turn.

Purposive reading of s 25 of the CPF Act

23 Ang J had approved of Thean J's exposition in *Saniah bte Ali* on the nature of CPF moneys. In Thean J's view, the CPF Act treated CPF moneys as a species of property separate and distinct from the deceased's other property, such that it could not be disposed of by will and did not form part of the deceased's estate. This *obiter dicta* was made (at 590, [10]) in the context of interpreting s 23(3) of the then CPF Act (Cap 36, 1985 Rev Ed) (the present s 24(3A) of the CPF Act) in these terms:

> On the death of a member, sub-s (3) comes into operation and provides for two things: first it creates a trust on all moneys paid out of the Fund on the death of a member in favour of the person or persons nominated under s 24(1) by the deceased member, and if no person is so nominated, the person or persons determined by the Public Trustee in accordance with s 24(2); and, secondly, it continues the protection of the moneys of such deceased member by precluding them from becoming a part of the estate of the deceased (subject to the operation of the Estate Duty Act) or from being subject to his debts. Subsection (3) thus ensures that the moneys payable on the death of a member are paid, and ought to be paid, to the person or persons nominated under s 24(1), and if no such person has been nominated, to the person or persons determined by the Public Trustee in accordance with s 24(2).

24 At first blush, these words may not seem particularly apposite to the present case as the facts there differed markedly from the instant appeal. In *Saniah bte Ali*, the deceased had made a CPF nomination, but he had made no will disposing of his other property. The deceased's brother argued that Muslim law on intestacy should apply to the CPF moneys. It was in this context that Thean J decided (at 591) that CPF moneys could only be disposed of through a nomination. When a nomination was made, the CPF moneys were excluded from the deceased's estate and were therefore not subject to Muslim intestacy law. Thean J did not decide on what amounted to "written law" for the purpose of distribution of CPF moneys under s 25(2) of the CPF Act, where there was no nomination. He merely held that CPF moneys, once someone had been nominated to receive them upon the member's demise, would no longer form part of the member's estate and the law on testimonial dispositions could not then apply.

25 Although *Saniah bte Ali* is not a case in point, Ang J's application of its *obiter dicta* was still correct. Thean J had highlighted a very crucial characteristic of the CPF statutory regime which is conspicuously lacking in the UK's statutory nomination schemes, *viz*, the overriding concern in the CPF Act that CPF moneys should be protected from a member's creditors. As such, there has to be a clear demarcation between CPF moneys and the member's estate. Section 24(3A) underscores this need by explicitly stating that the CPF moneys are not part of the member's estate or debts. If the Public Trustee was to use the will as a basis to distribute the CPF moneys, it would be an indirect enforcement of the deceased's will. Such a result would undoubtedly dilute the declaration in s 24(3A) that CPF moneys are not part of a member's estate; a neat separation between CPF moneys and the

estate would no longer be possible. Hence, Ang J's reasoning at [15] of her judgment:

> The effect of the legislative restriction on freedom of testamentary disposition cannot be avoided by a promise to make certain dispositions of CPF money. A construction of the CPF Act that permits a testator to nullify its operation by agreeing in advance to dispose of his CPF money in a will or in a certain fashion outside the provision of the CPF Act would defeat the purpose of the legislation.

26 The unique nature of CPF moneys sets the CPF Act apart from the other similar statutory nomination regimes in the UK. Accordingly, it would be inappropriate to apply the will to distribute CPF moneys. Such an interpretation of "written law", apart from blurring the distinction between CPF moneys and the member's estate, would also create a disincentive to making a nomination. The intention that CPF moneys should be disposed of via nomination would not be achieved.

27 In addition, if the Public Trustee considered CPF moneys to be part of a member's estate, he would have to consider other laws besides the Wills Act. For instance, the Inheritance (Family Provision) Act (Cap 138, 1985 Rev Ed) may well apply if the testator has not made reasonable provision for his dependants, and this would inevitably have an impact on the distribution of the CPF moneys. Similarly, in the event that a CPF member is a Muslim, the rule in Muslim law that the testator may not dispose by will more than one-third of his property has to be considered (see *Mohamed Ismail bin Ibrahim v Mohammad Taha bin Ibrahim* [2004] 4 SLR 756 at [7]). Again, the Public Trustee would have to determine whether the CPF moneys are affected by this restriction. These instances illustrate how a literal interpretation of s 25(2) may open a Pandora's box, resulting in great uncertainty and perhaps a plethora of challenges to the Public Trustee's decisions in future cases of this nature. Such an outcome is not desirable. Adopting the purposive interpretation, the Wills Act cannot apply to the CPF Act.

28 This purposive approach has been expressly sanctioned by s 9A(1) of the Interpretation Act which states:

> In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.

This court in *Planmarine AG v Maritime and Port Authority of Singapore* [1999] 2 SLR 1 at [20]–[22] had held that a purposive approach could be taken even where a provision was not ambiguous. Since the Wills Act would not, for the reasons stated above, constitute "written law", the only remaining relevant law is intestacy law comprised in the Intestate Succession Act or s 112 of the Administration of Muslim Law Act.

29 Notwithstanding that a purposive reading of the CPF Act favours Ang J's decision, we must point out that we saw some difficulties in this approach. First, if CPF moneys were deemed to be separate from a deceased's estate, strictly speaking, there would be no "written law" to apply. The Wills Act may not be referred to since CPF moneys cannot be disposed of by will. On the other hand, to hold that the Intestate Succession Act is the applicable law would be tantamount to acknowledging that CPF moneys form part of the deceased's estate and there was no will made to dispose of this estate. The same reasoning applies to the applicability of Muslim law. The *raison d'être* of the decision in *Saniah bte Ali* was that Muslim intestacy law should not be brought into the equation in the disposition of CPF moneys. Yet, if a Muslim CPF member was to fail to make a nomination, Muslim intestacy law would apply. The end result contradicts Thean J's concern that

Muslim law should not apply at all because CPF moneys were a species of property separate from one's other assets.

30 Perhaps it is timely for Parliament to consider amending the section, by adding the words "governing intestacy" after the phrase "any written law for the time being in force" in s 25(2). The amendment would remove uncertainty as s 25(2) would then read as follows:

> If, at the time of the death of a member of the Fund, there is no person nominated under subsection (1), the total amount payable out of the Fund shall be paid to the Public Trustee for disposal in accordance with any written law for the time being in force governing intestacy.

It would be for Parliament to decide whether intestacy law would include s 112 of the Administration of Muslim Law Act.

Whether the presumption of due execution was rebutted

31 The appellant had alleged that Wang's nomination was invalid because it did not comply with the requirements in r 4 of the CPF Rules, which provides:

> Every nomination shall be made in Form A, 1A, 2A or 3A set out in the Schedule and shall be signed by the member in the presence of 2 witnesses who shall attest the signature of the member.

32 The appellant argued that there were two instances of non-compliance:

(a) Wong and Yeo did not witness Wang signing in their presence; and

(b) Wong and Yeo did not sign the form in each other's presence.

Counsel for the appellant referred to some English cases where there was defective compliance with the UK Wills Act 1837 (c 26).

The requirements of r 4 of the CPF Rules

33 To determine whether there was indeed non-compliance with the CPF Rules, it is necessary to construe r 4 in juxtaposition with s 6(2) of the Wills Act which reads:

> Every will shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, and the signature shall be made or acknowledged by the testator as the signature to his will or codicil in the presence of two or more witnesses present at the same time, and those witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

I should point out at this juncture that when Wang made her nomination on 2 August 1988, it was governed by r 3 of the Central Provident Fund (Nomination) Rules 1986 (GN No S 318/1986) ("the 1986 Rules") and not r 4 of the CPF Rules. However, there was no difference in the requirements of attestation under either rule. Rule 3 of the 1986 Rules states:

> Every nomination shall be made in Form A set out in the schedule and shall be signed by the member in the presence of two witnesses who shall attest the signature of the member.

To recapitulate, r 4 of the CPF Rules states:

Every nomination shall be in Form A, 1A, 2A or 3A set out in the Schedule and shall be signed by the member in the presence of 2 witnesses who shall attest the signature of the member.

34 The Board had pointed out to the court below that the requirement for two witnesses to be present at the same time is noticeably absent in the CPF Rules. It concluded that the change in the words of a statutory provision by the Legislature indicated that the Legislature intended to change the meaning (see *The Queen v Buttle* (1870) LR 1 CCR 248 and *Sims v Trollope & Sons* [1897] 1 QB 24) and that this requirement is thus not present in r 4. This argument, however, is flawed. The cases cited by the Board stand for the proposition that Parliament, when using different words for another version in the same Act, is likely to have intended to change the meaning. This principle does not apply when comparing different statutes.

35 Further, while the variation in wording seems to suggest that the Board intended to take a less stringent approach than in the case of wills, both statutes have substantially legislated the same formalities. In the Wills Act, the testator either signs or acknowledges his signature (in which case, there can be a previous signature which the testator shows to the witnesses). Both signing and acknowledgment must be done in the joint presence of the two witnesses. In respect of the CPF Rules, there is no option for the member to "acknowledge" his signature. Since the member must only sign in the presence of two witnesses and each witness must have seen the act of signing, it stands to reason that both witnesses must be present simultaneously in order for r 4 to be fulfilled. As such, the Board cannot maintain that both witnesses need not be present together. However, the appellant's other argument had no merit. There is no requirement, even in the case of wills, that both witnesses must see each other attesting (see *In the Goods of Jane Webb* (1855) 1(1) Jur NS 1096).

36 The upshot of the above analysis is that the appellant had to establish that:

(a) both Yeo and Wong had not seen Wang signing the nomination form; and

(b) Yeo and Wong had not attested to Wang's signature.

We were in agreement with Ang J that the appellant failed to discharge the burden of proof.

Were the requirements fulfilled on the present facts?

37 In respect of the requirement in sub-para (b) of the preceding paragraph, there is no dispute that both Yeo and Wang had signed the attestation clauses in the CPF nomination form. As regards the requirement in sub-para (a), both Yeo and Wong averred in their affidavits that they had not seen Wang's signature (since they claimed the form was folded to cover that portion) and they had signed on the form separately. *Prima facie*, this evidence suggests that r 4 has not been satisfied.

38 According to the law on wills, there is a strong presumption when the will is regular, that it has been duly executed. This presumption may be rebutted by positive and reliable evidence, which may take the form of direct evidence of the attesting witnesses (see *Glover v Smith* (1886) 57 LT 60, *Croft v Croft* (1865) 4 Sw & Tr 10; 164 ER 1418). We were of the view that Ang J was right in deciding that the evidence furnished by the appellant was not strong enough to rebut the presumption of due execution. There was no cross-examination of Yeo and Wong below, as this was an originating summons where evidence took the form of affidavits. Even so, their evidence was plainly unsustainable for the reasons which Ang J had meticulously listed. Firstly, it was not possible that Yeo did not see Wang's signature as she alleged, since her signature had overlapped with Wang's, which was directly above hers. Lai, the Board and the Public Trustee unanimously highlighted

this defect in Yeo's evidence. Secondly, the witnesses' account of how Wang had folded the form defied logic. They claimed that Wang hid the contents of the form including her signature, by folding the form into half. It is, however, difficult to understand why Wang would want to hide her signature.

39 The appellant attempted to circumvent this difficulty by arguing that Ang J was wrong to assume that the witnesses did not see Wang's signature. This was a strange argument as the witnesses in their statutory declarations had averred that the form was passed to them "without showing [them] the contents (including the member's signature column as the form was folded)". The appellant attempted to explain that what the witnesses meant was that the form was folded to hide the name of the nominee, which was on the reverse side of the form. This explanation revealed the common grievance of the appellant and the witnesses – that they were unaware of the name of the nominee. However, the lack of such awareness alone did not violate r 4 in any way. Yeo and Wong sought to prove that due witnessing of Wang's signature did not take place, but it was evident that their affidavits (which merely exhibited their statutory declarations made on 8 November 2002 with the same contents) were unsatisfactory.

40 The appellant disagreed with Ang J taking issue with the unusual order in which Yeo and Wong signed on the form. Admittedly, the fact that Yeo, the first witness to sign, actually appended her signature in the column for the second witness, was not a major inconsistency in the evidence. Nevertheless, it added to the overall absurdity of the appellant's evidence. The appellant had also contended that Ang J should not have rejected the witnesses' evidence when there was no cross-examination. This objection was not valid as there was no necessity for Ang J to observe the witnesses' demeanour in order to conclude that there was patent inconsistency in their evidence. The court is entitled to scrutinise the evidence of the attesting witness to rebut the presumption of execution. As was held in *Wright v Rogers and Goodman* (1869) 21 LT 156, where the court cannot rely on the evidence of a witness because of its unreliability, the presumption will not be rebutted. We agreed that Ang J was right in concluding that the evidence was too weak to prove that Wang had not signed the nomination form in the presence of Wong and Yeo.

Is the requirement of attestation under the CPF Rules mandatory or directory?

41 Ang J raised this last issue to show that the appellant would not have succeeded even if she had rebutted the presumption of due execution of the nomination form. In the judge's opinion, r 4 of the CPF Rules was a procedural requirement that could be waived by the Board. Despite the (assumed) breach of r 4, the form would still be valid because there was substantial compliance. Ang J's views, albeit *obiter dicta*, would have ramifications on similar cases, in future, concerning non-compliance with the CPF Rules. Hence, we should also address the issue.

42 Counsel for the appellant submitted that r 4 is a substantive requirement and thus cannot be waived by the Board. Although the specific consequences of non-compliance are not stated, it is clear from s 25 of the CPF Act that a failure to comply will, as a matter of common sense, result in an invalid nomination. Counsel had also argued that Ang J should not have followed the "substantial compliance" test in *Jeyeanthan* ([15] *supra*). He pointed out that the approach was not approved in a later case, *Ahmed v Kennedy* [2003] 2 All ER 440. Counsel added that this vague and complicated test would lead to much uncertainty, a higher risk of fraud and a heavier burden on the Board in deciding whether there has been substantial compliance. The three respondents, on the other hand, favoured Ang J's approach. Their common argument was that r 4 was promulgated merely to facilitate the Board's administration. Unlike a will, the Legislature had not specified the consequences of non-compliance with the formalities for a CPF nomination. The respondents therefore asserted that the CPF nomination form would not be void since there was no doubt concerning Wang's intention to nominate Lai as her beneficiary.

The proper approach in statutory interpretation

43 The main bone of contention of the appellant concerned whether Lord Woolf in *Jeyeanthan* laid down the correct approach for procedural irregularities. The conventional approach has been summarised by Bennion, *Statutory Interpretation: A Code* (Butterworths, 4th Ed, 2002). In a nutshell, Bennion states that when the intended consequence of a failure to comply with a provision is not stated in the legislation, the court must then determine whether the requirement was intended by Legislature to be mandatory or merely directory. Only where the requirement is held to be mandatory will the failure to comply with it invalidate the thing done under the enactment. Conversely, the failure to comply with a directory requirement will not invalidate the act done.

44 Lord Woolf's analysis in *Jeyeanthan* differs slightly from the above summary of the law. At 358, he disapproved of the common approach of categorising a requirement as mandatory or directory. His lordship then opined that such an approach distracted attention from the important question of what the legislator had intended the consequence of the non-compliance to be, a matter which should be assessed on a consideration of the language of the legislation against the factual circumstances of the non-compliance. He then proffered, at 362, three questions which would provide greater assistance than the mandatory/directory test:

(a) The substantial compliance question: Is the statutory requirement fulfilled if there has been substantial compliance with the requirement, and if so, has there been substantial compliance even though it is not strict compliance?

(b) The discretionary question: Is the non-compliance capable of being waived, and if so, can it be waived here?

(c) The consequences question: If it is not capable of being waived, what is the consequence of non-compliance?

45 It was not wrong of Ang J to draw guidance from the above test. There is no real conflict between Lord Woolf's approach and Bennion's. Lord Woolf disapproved of the mandatory/directory dichotomy only in so far as it focused merely on determining whether words like "shall" or "may" were used. His exhortation to also consider the Legislature's intention is sound, as it advocates a more holistic and flexible approach to statutory interpretation. The three questions he posed sprang from his overall focus on the intended consequences of any irregularity. They were not meant to be a rigid test, as Lord Woolf himself qualified that the questions to be considered will depend upon the facts of the case. His approach was approved recently in *Attorney General's Reference (No 3 of 1999*) [2001] 1 All ER 577. There, the House of Lords, whilst approving of Lord Woolf's approach (at 583), did not slavishly apply the three questions. Also, contrary to what the appellant claimed, *Ahmed v Kennedy* ([42] *supra*) did not disapprove of Lord Woolf's statement. In the case, Simon Brown LJ still concurred that it should be evaluated whether the legislation was meant to give the court a discretion to waive any non-compliance. He continued to assess the seriousness of the non-compliance in that instance, without adopting the three-question test.

The proper interpretation of r 4

46 On the present facts, neither the CPF Act nor the CPF Rules stipulate the consequences of a breach of r 4. We therefore had to determine the legislative intent of the Board in enacting r 4. The primary question was whether the failure of both witnesses to see Wang's signature was serious enough to warrant invalidation of the nomination. The Board highlighted the fact that the failure to provide for the consequences of breach in the CPF Rules, in contrast to the Wills Act, suggests that

the Board did not intend the nomination to be void for non-compliance. While this is a valid consideration, it is not conclusive. On the contrary, the Board, in its explanatory notes to the nomination form, indicated that it "is a legal document, and must be signed by the member in the presence of two witnesses. Otherwise, the form is invalid". The latter statement seems to reflect an intention that compliance is fundamental to the validity of the nomination. Hence, we had to assess the seriousness of the breach as Ang J did.

47 However, instead of adopting Ang J's approach of deciding whether r 4 was merely a procedural requirement (imposed primarily for the Board's benefit) and then determining whether it was mandatory or directory, we preferred to focus on the implications of non-compliance. It was common ground between the respondents that the main purpose underpinning r 4 was to prevent fraud. This is also the stated purpose behind the formalities for wills (*In re Colling, decd* [1972] 1 WLR 1440 and *Couser v Couser* [1996] 1 WLR 1301 at 1303–1305). To ensure that the signature is truly that of the CPF member's, the act of signing must be seen by others. The presence of two persons at the same time ensures confirmation of the authenticity of the signature.

48 Here, Ang J had held that the Board was "left in no doubt of Wang's intention and who she intended to be the nominee". The Board had written to Wang and its officer had spoken to Wang to confirm that she indeed intended to nominate Lai. Since the underlying mischief of preventing fraud had no relevance here, there was no reason to find that the non-compliance was fundamental enough to invalidate the CPF nomination.

49 We noted that UK courts have expressed similar unease over the strict rules of attestation for wills. Ungoed-Thomas J lamented in *In re Colling, decd* how unfortunate it was that the failure of one witness to see the testator complete his signature led to the nullity of the will. He came to this conclusion (at 1443) "despite its so patently defeating the intention of the testator and involving no advantage … in the avoidance of any fraud". These sentiments were echoed by the Law Reform Committee of England and Wales in 1980, where it was suggested that the court be conferred the discretion to admit a defectively executed will if it was satisfied that it was genuine. While this proposal was eventually not adopted in the UK, the State of Queensland in Australia implemented it by allowing the exercise of the court's discretion when there was substantial compliance with the prescribed formalities. These developments confirm that the consequences of non-compliance with r 4 are undoubtedly minor when no fraud had been perpetuated which the Board was aware of. They also coincide with Ang J's comment at [28] of her judgment that she was satisfied that there was substantial compliance.

50 We would stress that this holding applies only to the particular facts of this case, *viz*, where the Board had verified Wang's signature and her intention. It should not be taken to mean that every breach of r 4 is minor and will not lead to invalidity of the nomination. In other instances of breach of r 4, the consequences may well be more serious. For instance, there may have been only one witness who attested to the signing and the Board could have failed to contact the member making the nomination. Such instances are likely, it is hoped, to be rare, as the Board is unlikely to accept such a nomination form in any event, and it also appears to have the policy of contacting a member whenever the nominee is not a family member. As such, contrary to the fears expressed by counsel for the appellant, there would not be a floodgate of such cases as a result of Ang J's decision. Neither will it lead to a more onerous burden being imposed on the Board as the Board will be continuing its existing practice. In fact, as counsel for the Board rightly pointed out, holding that every non-compliance invalidates the nomination will result in the Board being inundated with challenges to nominations. The lack of compliance in this instance would not defeat the validity of the nomination form.

Conclusion

51 Although the appellant was understandably aggrieved over the way her daughter had nominated Lai and not family members to receive all Wang's CPF moneys, there was insufficient reliable evidence to show that there was lack of compliance with the formalities for a CPF nomination. Even if the appellant could establish this breach of procedure, we were not prepared to hold that this breach warranted a declaration that the nomination was void. The Board had discharged its responsibility in ascertaining and confirming the intentions of Wang, and no fraud had been perpetuated.

52 For the foregoing reasons, we dismissed the appeal with one set of costs to be paid in equal portions to the three respondents.