Low Ah Cheow and Others v Ng Hock Guan (personally and as executor/trustee of the estate of Ng Teow Yhee, deceased)
[2007] SGHC 200

Case Number : Suit 83/2006

Decision Date : 22 November 2007

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Andre Arul (Arul Chew & Partners) and Chung Ping Shen (H A & Chung Partnership) for the plaintiffs; Ling Tien Wah and Koh Jiaying (Rodyk & Davidson) for the defendant

Parties : Low Ah Cheow; Ng Puay Guan; Ng Bee Eng; Ng Jian Wen, an infant suing by Ng Cheng Chuan and Chou Li Lan, his father and mother and next friends.; Nicholas Ng Puay Guan, an infant suing by Ng Cheng Chuan and Chou Li Lan, an infant suing by Ng Puay Guan, his father and next friend. — Ng Hock Guan (personally and as executor/trustee of the estate of Ng Teow Yhee, deceased)

Trusts – Secret trusts – Testator willed entire estate to defendant – Whether claimants discharged burden of proving existence of secret trust

22 November 2007 Judgment reserved.

Woo Bih Li J

Introduction

This action is a claim by certain members of the family of the late Ng Teow Yhee ("Mr Ng") against one of his sons Ng Hock Guan also known as Sebastian ("Sebastian") who is sued in his capacity as executor and trustee of the estate of Mr Ng and in Sebastian's personal capacity. The reliefs sought are in respect of specific gifts which Mr Ng is alleged to have made and which I shall elaborate on later.

Background

2 Mr Ng was the patriarch of the Ng family. He built up his fortune in the shipping and stevedoring business and founded two family companies in Singapore. They are Ng Teow Yhee & Sons Holding Pte Ltd ("the holding company") and Ng Teow Yhee & Sons (Singapore) Pte Ltd ("the subsidiary). The subsidiary is the operating arm of the family business.

3 I set out below some particulars of Mr Ng's immediate family members:

	Name	**Date of Birth**	**Relationship**
(a)	Low Ah Cheow ("Mdm Low")	In or about 1924	Wife
(b)	Ng Khim Guan ("Ricky")	11 Sept 1948	Son

(c)	Ng Cheng Chuan ("Sunny")	03 Dec 1951	Son
(d)	Ng Peck Eng ("Calista")	04 Aug 1954	Daughter
(e)	Ng Bee Eng ("Angeline")	22 Mar 1956	Daughter
(f)	Sebastian	01 Apr 1957	Son
(g)	Ng Gui Eng ("Jenny")	09 Jul 1959	Daughter
(h)	Ng Ah Luan ("Edwina")	07 Jul 1962	Daughter
(i)	Ng Puay Guan ("Raymond")	05 Dec 1966	Son

4 Mr Ng executed a Will on 27 November 2000. He passed away on 12 April 2001 at the age of 80. This action was filed almost five years later on 20 February 2006. Sebastian was appointed under the Will as the sole executor and trustee of the Will. The alternate executor and trustee appointed was his wife, Ho Soh Peng also known as Irene. I set out below clause 2 of the Will:

> I GIVE DEVISE AND BEQUEATH all my property of whatsoever nature and wheresoever situate (including any property over which I may have a power of appointment or disposition by will) to my Trustee:-
>
> (i) to sell call in and convert into money all such parts of the same as shall not consist of money but so that my Trustee shall have full power to postpone the sale calling in and conversion for so long as he or she shall in his or her absolute discretion think fit without being liable for loss occasioned thereby;
>
> (ii) out of the net moneys arising from such calling in and conversion and any ready money belonging to me at my death to make payment of my debts funeral and testamentary expenses including all estate duty and other taxes or duties payable on or by reason of my death in respect of my estate; and
>
> (iii) to hold the net proceeds of such sale calling in and conversion and any ready money belonging to me at my death and any property comprised in my estate for the time being remaining unconverted and after any payment thereout mentioned in Clause 2(ii) above (hereinafter called my "Residuary Estate") ON TRUST to be distributed to NG HOCK GUAN (Singapore NRIC No. S1260305/C).

5 The plaintiffs based their claims on the doctrine of secret trusts. Their specific claims are as follows:

(a) Mdm Low is the first plaintiff claiming the property known as 1A Wiltshire Road ("1A Wiltshire") and 186,740 shares of Mr Ng in the holding company.

(b) Raymond is the second plaintiff claiming $200,000 for himself.

(c) Raymond is also claiming for his two sons, Ng Zhi Kai and Ng Zhi Hao $100,000 each. Ng Zhi Kai's name appears in the heading of some of the cause papers as the fifth plaintiff whereas Ng Zhi Hao's name does not appear in the heading as a plaintiff. This is probably due to inadvertence by the plaintiffs' solicitors when they amended the Writ of Summons to include more plaintiffs. The substance of the Statement of Claim (Amendment No 4) ('the statement of claim") discloses the claim for Ng Zhi Hao as well and it is not disputed that in substance, he is also a plaintiff.

(d) Angeline is the third plaintiff claiming $90,000 and 33,320 of Mr Ng's shares in the holding company. She claimed that part of the $90,000 was a sum of $40,000 being a refund of money she had given Mr Ng over the years.

(e) Sunny's son, Ng Jian Wen, is the fourth plaintiff claiming $300,000 through his parents, Sunny and Mdm Chou Li Lan.

6 The requirements for the existence of a secret or half-secret trust are stated in *Kamla Lal Hiranand v Harilela Padma Hari* [2000] 3 SLR 709 at [31] as follows:

> 31 The essentials of the existence of a secret or half-secret trust created by the operation of equitable principles are these:
>
> (a) an intention of the deceased to benefit a secret beneficiary;
>
> (b) communication of the trust to the beneficiary/trustees;
>
> (c) express or tacit acceptance of the trust by the beneficiary/trustee, thereby inducing the testator not to execute a will or leave a will already executed unrevoked or not to draw up a will.
>
> See *Snell's Equity* (29th Ed, 1990) at p 109; *Pettit, Equity and the Law of Trusts* (7th Ed, 1993) at p 125, *Blackwell v Blackwell* [1929] AC 318 at pp 334 and 341, *Ottaway v Norman* [1972] Ch 698 at 711A-C …

7 There was disagreement between the parties as to whether the inducement of the testator is a separate and fourth requirement or will be implied once his intention is communicated to and accepted by the beneficiary/trustee. That argument was immaterial for present purposes and I need say no more about it.

8 I would add that for the plaintiffs to succeed, the evidence must also show that Mr Ng intended to impose a binding and not merely a moral obligation on Sebastian, see *The Encyclopaedia of Forms and Precedents* Fifth Edition 2003 Reissue Volume 42(1) at [25], a point which was illustrated in *Re Snowden (deceased)* [1979] 2 All ER 172. On the facts in that case, the court found that the testatrix did not intend the sanction to be the authority of a court of justice but the conscience of her brother who was the sole beneficiary.

9 I should also say something about the distinction between fully secret trusts and half-secret trusts as there was a claim based on the doctrine of half-secret trusts as well. *Halsbury's Laws of Singapore* Volume 9(2) Equity and Trusts 2003 Edition states at [110.565]:

> … A fully secret trust arises where a testator gives property to a person apparently beneficially, but has communicated to that person during his lifetime certain trusts on which the property is to be held. A half secret trust which will be enforced by the court arises where the fact that the property is given to the legatee upon trust is mentioned in the will but the trusts are not defined

by the will.

10 As can be seen, clause 2(iii) of the Will stated that the residuary estate was to be held on trust to be distributed to Sebastian. That provision did not say explicitly that the residuary estate was to be distributed to Sebastian "beneficially" but it is clear to me that that is the correct interpretation. Furthermore, while paragraphs 6 and 8 of the statement of claim relied on half-secret trusts, paragraphs 6 and 118 of the plaintiffs' closing submissions ("PCS") stated that the plaintiffs were relying on secret trusts and not half-secret trusts. Even then, paragraph 278 of PCS appeared to retain the spectre of half-secret trusts by stating:

> 278. The Plaintiffs submit as follows:-
>
> a) The Will specifically refers to the Defendant as a "*Trustee*";
>
> b) The Will specifically refers to the Estate being given to the Defendant "*ON TRUST*";
>
> c) The Will does not refer to the Defendant as being a beneficiary of the Estate or being beneficially entitled
>
> to any part of the Estate.

11 It seems to me that the author of PCS had forgotten that he had abandoned the half-secret trusts argument. In any event, I reiterate that I find that Sebastian was given the entire residuary estate beneficially under the Will.

12 I should also mention that Sebastian did not seek to preclude the admission of evidence about secret trusts under s 94 of the Evidence Act (Cap 97). Presumably, this was because of s 102 of the Evidence Act which states that, "Nothing in sections 93 to 101 shall affect the construction of wills".

13 Paragraph 7 of the statement of claim contained the primary allegation about the trusts. The opening paragraph stated:

> The Plaintiffs contend that the Deceased communicated his intention to create the trusts and the terms of the trusts with the Defendant *prior* to the execution of the Will on 27 November 2000. The Plaintiffs further contend that the Defendant had either expressly and/or impliedly by his words and/or conduct accepted and/or assented to act as the trustee and/or agreed to carry out the Deceased's aforementioned intentions upon his death.
>
> [emphasis added]

14 As can be seen, this allegation clearly stated that Mr Ng had communicated his intention to create the trusts prior to the execution of the Will on 27 November 2000. Therefore, although in law, the communication of secret trusts to the trustee can be before or after a testator has executed his Will, the plaintiffs are bound by their pleadings. It is not open to them to assert in submissions, as they tried to do, that they can also establish that Mr Ng's communication to Sebastian was done after the execution of the Will.

15 As can also be seen, the opening paragraph of the said paragraph 7 did not clearly assert when Sebastian had accepted or asserted or agreed to carry out the trusts. Such was the state of the pleadings. Read in context, in the absence of words to the contrary, I am of the view that the correct interpretation of the allegation is that Sebastian's acceptance, assent or agreement was also

prior to the execution of the Will and not after. The c*ontra proferentem* rule would reinforce this view. Even if it was open to the plaintiffs to assert that Sebastian's acceptance, assent or agreement was signified after the execution of the Will, this will not assist the plaintiffs much as I will elaborate below when I deal with the evidence.

16 The said paragraph 7 also contained numerous particulars in 33 sub-paragraphs of the primary allegation. Many of the particulars constituted background information or evidence or were irrelevant. I need not set all of them out here as I will deal with the material allegations later when I come to the evidence.

17 At the trial, the plaintiffs called the following witnesses:

PW1	Lee Kok Leong (general manager of the subsidiary)
PW2	Chou Li Lan (Sunny's wife)
PW3	Angeline
PW4	Edwina
PW5	Wong Man Kuen (Mdm Low's grandson from an earlier marriage before she married Mr Ng)
PW6	Sunny
PW7	Raymond
PW8	Mdm Low
PW9	Low Ah Huat (Mdm Low's brother)

The witnesses for Sebastian were:

DW1	Sebastian
DW2	Huang Fu Chuan (Mr Ng's cousin's son)
DW3	Tai Yun Shan (Mr Ng's friend)
DW4	Alan Lee Soo Yuen (a solicitor)
DW5	Ng Koon Ting (Mr Ng's friend)

18 I should mention that as regards Mdm Low's evidence, Sebastian and the plaintiffs reached an agreement that her affidavits of evidence-in-chief would be admitted but she would not be cross-examined. However, her evidence was still subject to challenge by Sebastian by other means and no

adverse inference would be drawn against Sebastian for the omission to cross-examine Mdm Low.

19 Mdm Low was about 83 years of age at the time she took the witness stand. I did wonder about the state of Mdm Low's mind from her frail condition and her oral evidence-in-chief, limited though it was. Her condition and oral evidence-in-chief caused me to consider whether she should have been included as a witness by the plaintiffs in the first place. However, in the light of the agreement between the parties, I did not pursue the matter.

20 Any reference below to the notes of evidence will begin with "NE" followed by the relevant date and page number. "AEIC" will mean affidavit of evidence-in-chief. I will also refer to Mdm Low, Sunny, Raymond, Angeline and Edwina as the plaintiffs' main witnesses.

The relationship between Mr Ng and family members

21 It is unusual for a man to give his entire estate beneficially to only one child out of many children. It was Sebastian's position that Mr Ng did so because he was fed-up with the rest of his children as well as with his wife. However, the burden of proof is not on Sebastian to justify why Mr Ng gave him everything under the Will. Instead, the burden of proof is on the plaintiffs to establish that although on paper everything was given to Sebastian, that gift was in turn subject to specific oral gifts in favour of the plaintiffs meant to be legally enforced against Sebastian if need be.

22 In order to discharge their burden, the plaintiffs sought to show that Mr Ng had a close relationship with other immediate family members up to the time of his demise, so that it would be more likely than not that he would have made specific gifts to them. Put in another way, they sought to show that it was unlikely that Mr Ng would leave them with nothing. However, I should say that Mr Ng might not have thought that he was leaving them with nothing if he trusted Sebastian to take care of the others. Therefore, even if the other family members enjoyed a close relationship with Mr Ng up to the time of his demise, that in itself would not negate the possibility that, as the favourite, Sebastian was trusted to take care of the rest. However, if Mr Ng was not close to the others, that would lend weight to the argument that there were no specific gifts to them. In that situation, it would be more likely that he had given everything to Sebastian and left it to him to decide what to do for each of the other family members. I come now to the evidence on Mr Ng's relationship with immediate members of his family.

23 At the time of the execution of the Will and Mr Ng's demise, Sebastian had become Mr Ng's favourite child. This is obvious from the terms of the Will appointing Sebastian as sole executor and nominating him as sole beneficiary. Sunny and Raymond also accepted, although with some reluctance, that Sebastian was in fact the favourite child when they were cross-examined (NE 4/4/07 pg 16 to 18 and 5/4/07 pg 41). Sebastian explained that he had initially been employed by the Ministry of Home Affairs. Ricky and Sunny were the first two children directly involved in the family business. Sebastian joined the family business in or about 1981 at the request of Mr Ng. Sebastian asserted that Ricky and Sunny had gambled in horse racing and lost money heavily and had also squandered money. Raymond also squandered money and had to look to Mr Ng for financial assistance to help raise his two children. The mother, Mdm Low, was spoiling her children and was often asking Mr Ng to bail them out. Consequently, there was a strain in the relationship between Mr Ng and his wife and other children up to the time of his demise.

24 There was evidence which supported Sebastian's allegations to some extent.

25 Firstly, the fact that he was the sole executor and sole beneficiary lent some weight to his allegations.

26 Secondly, the plaintiffs themselves tendered extracts from a book entitled *Stepping Out The Making of Chinese Entrepreneurs* by Chan Kwok Bun and Claire Chiang See Ngoh. They did so to establish that Mr Ng gave priority to education which in turn was meant to help them establish the claims for various specific sums of money for Raymond's two sons and Sunny's son. Chapter three was about Mr Ng. There was a reference in footnote 1 at pg 47 to an oral history interview transcript in 1981 for a quotation attributed to Mr Ng. The interviewers were not called to give evidence nor was the tape or actual transcript produced. Nevertheless, the plaintiffs and Sebastian accepted that the chapter accurately quoted what Mr Ng had said where it purported to quote him. It was not clear to me whether the date of 1981 in footnote 1 of pg 47 applied to all the quotations attributed to Mr Ng in the chapter but, again, the plaintiffs and Sebastian proceeded on the basis that all the quotations came from an interview in 1981. While it is true that part of the chapter suggested Mr Ng's priority for education, another part suggested a strained relationship at least with one or some, if not all, his children. These two aspects are found in pg 62 and 63 of the book. I quote:

> **From Sojourner to Settler**
>
> The years after the Japanese Occupation saw Ng busy settling into married life and raising a family while organizing his business with the help of his sons … In order to meet the new business challenges after the war, Ng chose to educate his children in English. Of his eight children – four sons and four daughters – only one attended a Chinese school. The rest went to English schools to learn a language their father was handicapped in and considered important for business development. Yet, he was consciously aware of what that choice could entail – an erosion of traditional values, in particular, the loss of filial piety towards parents.
>
> As for his business today, Ng appears a little bewildered by the fast pace of business and is concerned about the future. He realizes that continuity is a major problem and is worried about the lack of patience, integrity and resoluteness of the next generation:
>
> In my view, businessmen in the old days planned for their business to last twenty, fifty or one hundred years. Nowadays, businessmen only look at the immediate gains…
>
> *With my children,* there are conflicts. Young people are more ambitious and greedy. They are impetuous, we cannot do business this way…
>
> [emphasis added]

27 Although the last sentence quoted above did not say that Mr Ng considered his children to be squanderers, it suggested that he was already unhappy at least with some of his children. The plaintiffs sought to suggest that the last sentence was applicable to Sebastian but I do not agree. Sebastian had joined the family companies in or about 1981 only (when he was 24) although he did drop by at the office from time to time before that. It seems to more likely than not that the last sentence above referred to Ricky and/or Sunny. Even without this text, I will come to other evidence which illustrates the point Sebastian was making about squanderers in the family.

28 The third piece of evidence actually came from plaintiffs' counsel himself when he posed a question to Sebastian at NE 9/5/07 at pg 108 as follows:

Q: My instructions are that yes, Mdm Low Ah Cheow often did ask your father for monies for Ricky and for Sunny, that there were some quarrels with your father, but your father often gave in and paid monies.

A: But if they keep on like that, Mr Arul, would it be happy for him?

29 This question suggested that the plaintiffs were accepting that Mdm Low often had to prevail on Mr Ng to render financial assistance to Ricky and Sunny and he often gave in but not without quarrels because he had perceived them to be squandering money.

30 The fourth piece of evidence came from Alan Lee. He was the solicitor who had received instructions from Mr Ng to draft his Will. Alan had known Mr Ng since 1990. He had seen Mr Ng for a Chinese New Year lunch each year and had visited Mr Ng at his office from time to time. Alan said that Mr Ng had mentioned that his wife was closer to one side of the siblings and that a couple of the children were spendthrifts and gamblers. Although no names were mentioned, it was clear to Alan that Mr Ng did not mean Sebastian as Mr Ng trusted Sebastian to run the family business and Alan had met Sebastian with Mr Ng but had not met any of the other children (NE 21/5/07 pg 53 to 67).

31 The fifth piece of evidence came from the fact that Mdm Low had been pawning her jewellery although she was receiving a total of $10,000 per month from the family companies. There was a suggestion that she did so in the past to help Mr Ng in the earlier years. However, in or about as late as 1997 or 1998, she was still pawning jewellery when the family business was not in financial need then. That jewellery was redeemed by Mdm Low's friend, Mdm Lim Ya Ho. When Mr Ng learned about the pawning and the redemption, he in turn redeemed the jewellery from Mdm Lim Ya Ho. Mdm Low complained that the jewellery was then handed to Sebastian who said that he was going to clean the same but Sebastian did not hand the jewellery back to her. Sebastian said that he was instructed by Mr Ng to keep the jewellery and not hand it back to Mdm Low who would pawn it again. The jewellery is not the subject of any claim in this action but to me, the incident showed that Mdm Low was pawning jewellery without Mr Ng's knowledge in or about 1997 or 1998 at a time when she herself should not have been in need of money. She was known to be frugal with herself and had been receiving income of $10,000 a month. The inference I draw is that she pawned her jewellery because one or some of the other children had been squandering money and were in need of financial assistance. I will now come to Sebastian's evidence about Mr Ng's relationship with specific individuals in the family.

32 As regards Mdm Low, Sebastian appeared to accept that Mr Ng still loved her notwithstanding their quarrels over her repeated requests for financial assistance for various children but Sebastian said Mr Ng was disappointed with her.

33 As regards Ricky, Sebastian said that Mr Ng and Ricky had become sarcastic with each other and Mr Ng had given up on Ricky.

34 As regards Sunny, Sebastian elaborated that he had heard from other people initially that Sunny had been the favourite son before. One reason why Mr Ng had become unhappy with Sunny was that Mr Ng had found out that Sunny had sold two houses at Geylang without Mr Ng's knowledge. Mr Ng had bought them for Sunny. Furthermore, Sunny had stopped talking to Mr Ng in the later years and did not visit Mr Ng when Mr Ng was first admitted to hospital in October 2000. Mr Ng had given up hope on Sunny.

35 As regards Raymond, the youngest child, Sebastian said that Raymond was often asking Mr Ng directly or through Mdm Low for financial assistance. This was corroborated to some extent by plaintiff's counsel who said (at NE 14/5/07 pg 13) that his instructions were that Raymond had some cash flow problems in the late 1990s as a result of a financial crisis. Sebastian also said that Raymond was also hardly involved in the family business and on one or two occasions, Mr Ng suspected that Raymond had stolen some money from him. Raymond was divorced and was perceived by Mr Ng as not

being able to take financial care of his two children.

36 As regards Calista, Sebastian said that she was close to Mdm Low but not to Mr Ng. She hardly spoke to Mr Ng and was afraid of him. Mr Ng was fed up with her for not having a mind of her own as she would simply do what Mdm Low told her to do including lending money to Sunny and Raymond on several occasions.

37 As for Angeline, Sebastian said that Mr Ng considered her to be disrespectful towards him and his friends and that she too had squandered away her money. Sebastian also said that Mr Ng had heard that Angeline was lending money illegally and had also cheated someone in his hometown of Quanzhou.

38 As for Jenny, she was mentally challenged and had had a record of shoplifting.

39 As regards Edwina, she had gone overseas to study in Canada and/or in the United States of America. She obtained a Masters in Business Administration. Mr Ng was initially proud of her as she was the first person in the family to obtain such a degree. However, according to Sebastian, Mr Ng eventually did not trust Edwina as she was often covering up for Ricky's use of the facilities of the family business for his own company Handling Systems Pte Ltd.

40 In any event, Mr Ng had provided for family members from time to time by providing homes and/or vehicles. They were also drawing salaries, mainly from the subsidiary, at the time of his demise as follows:

(a) Ricky, Sunny and Sebastian who were executive directors were each paid a basic salary of $10,000 per month;

(b) Mdm Low was also paid a total of $10,000 per month as the total of her basic salaries from both companies;

(c) Raymond was paid a basic salary of $3,000 per month. He was appointed a non-executive director of the subsidiary in 1989;

(d) Calista and Angeline were each paid a basic salary of $2,650 per month. They had been appointed secretaries of the subsidiary;

(e) Jenny had been appointed a clerk and was paid $1,500 per month;

(f) Edwina had been appointed to administer a branch office at Jurong Container Warehouse. She was paid $4,000 per month.

41 The plaintiffs disagreed with Sebastian's portrayal of their relationship with Mr Ng. The plaintiffs also sought to portray Sebastian as a gambler and someone who was hiding important matters from them.

42 I will deal first with the plaintiffs' assertion that Sebastian was quite heavily involved in gambling on horse races. Sebastian denied this saying he placed only small bets. Although the plaintiffs spent some time during the trial on this issue, the plaintiffs did not show how it was material even if what they asserted was true. What if Sebastian had been betting quite heavily in horse races? Did that mean that he too was a squanderer or did he gamble within his own manageable limits? The plaintiffs did not assert the former explicitly. If the former was the implication, that

implication did not gel with the undisputed fact that Sebastian was Mr Ng's favourite child. It seems to me that if Sebastian was a squanderer, Sebastian would not have been Mr Ng's favourite even though Sebastian was apparently a capable person.

43 The suggestion that Sebastian was hiding important matters from other family members was in respect of the time when Mr Ng was ill on two occasions, *ie*, when he was ill in China in 1999 and when he was ill and hospitalised in Singapore on various occasions between 18 October 2000 and 11 April 2001, his demise being on 12 April 2001. Before I go further, I note that the AEICs of the main witnesses for the plaintiffs alluded only to the period when Mr Ng had to be hospitalised in Singapore. It was only during the trial that they elaborated as to how Sebastian had allegedly kept the rest of the family in the dark when Mr Ng was ill in China in 1999. Sebastian denied this saying he had kept the rest of the family informed through Mdm Low. Given the late elaboration by the plaintiffs' main witnesses and that the burden of proof was on them to establish their assertion, I conclude that they have not established this allegation in connection with Mr Ng's illness while he was in China. I am reinforced in this conclusion also by my assessment of the plaintiffs' evidence about how Sebastian also kept the rest of the family in the dark when Mr Ng was ill in Singapore. As I have said, he was in hospital on various occasions then. The undisputed periods when he was warded in Mount Elizabeth Hospital were as follows:

No.	Date of admission	Date of discharge
1	18 October 2000	09 November2000
2	27 November 2000	08 December 2000
3	26 January 2001	27 January 2001
4	31 January 2001	15 February 2001
5	24 February 2001	06 March 2001
6	19 March 2001	11 April 2001

44 The plaintiffs said that Sebastian had taken charge of the health care for Mr Ng and had liaised with the doctors. He did not dispute this. It was common ground that Mr Ng was diagnosed with malignant lymphoma in or about October 2000 but Sebastian disputed that he had kept the rest of the family in the dark about it. He said he had briefed his mother on various occasions during which time some other family members were present. He said that medical bills were sent to one of the family companies for payment and Sunny would have counter-signed the cheques. Sunny would also have seen that some of the bills were from an oncologist. Secondly, Mr Ng had visitors from time to time who would have been aware of his illness too. Thirdly, any of the other family members could have asked the doctors or nurses about Mr Ng's illness.

45 Except for Angeline, the plaintiffs' main witnesses gave the same reasons for not inquiring about Mr Ng's health. First, they had trusted Sebastian who was their son or brother, respectively, after all. Sebastian had allegedly misled them by saying that the illness was nothing serious or that it was a lung infection. Secondly, they had not dared to ask Mr Ng himself because he was traditional in his thinking and did not like to talk about his health as he felt it was bad luck to do so. He also did not like others to know that he was in ill health. The plaintiffs' main witnesses respected Mr Ng's privacy

and did not want to make his condition any worse by talking about such things.

46 It is clear to me that the relationship between Sebastian and Mdm Low and the plaintiffs' main witnesses, excluding Angeline, had been strained for some time even before Mr Ng was first admitted to hospital in October 2000. Even Raymond let slip that in the past someone had already warned him about Sebastian (NE 9/4/07 at pg 34). So much for his allegation that he had trusted Sebastian even in 2000 and 2001. As for Angeline, she was apparently quite close to Sebastian until recently before the action was filed.

47 The plaintiffs asserted that Mr Ng continued to love Mdm Low the most although they did not share the same bedroom and their bedrooms were at different levels at 1A Wiltshire. They submitted that he was also close to Raymond and Edwina who had been with him everyday while he was in hospital. Raymond was also staying at the family home at 1A Wiltshire and was helping to take care of Mr Ng as well as ferrying him to and fro when he had to consult doctors from time to time. Edwina came to stay at 1A Wiltshire frequently to help care for Mr Ng when he was ill. In my view, if Mr Ng still loved Mdm Low the most, he would have discussed his illness with her in their quiet moments together, that is, if they still had such moments. It appears to me that although Mr Ng still loved Mdm Low, he no longer loved her the most and they were no longer close for some time before his demise. Although Raymond said that Mr Ng did not know what illness he was suffering from (NE 9/4/07, pg 5), the plaintiffs appear to have accepted in submission that Mr Ng in fact knew (see, for example, PCS at pg 139 at (i)). Sebastian's evidence was that Mr Ng knew (NE 15/5/07, pg 71). Indeed, it was not the evidence of the plaintiffs' main witnesses (excluding Angeline) that they did not inquire of Mr Ng about his illness because he himself did not know. I find that Mr Ng knew the nature of his illness. As for Raymond and Edwina, if they were as close to Mr Ng as the plaintiffs wanted me to believe, Mr Ng would have discussed his illness with them during the time they had spent with him. Raymond was in fact helping Mr Ng with his medication till apparently he made a mistake with the medication and was relieved of this responsibility.

48 Furthermore, it would have been a simple matter for any family member who was still unaware of the nature of Mr Ng's illness to ask the doctors or nurses who attended to him. Indeed, Mdm Low claimed she learned about it from a doctor who was surprised that Sebastian did not tell her. On the other hand, witnesses like Edwina, for example, said she did not ask the doctors or nurses. Yet, there was no suggestion that Sebastian had forbade all of them to speak to doctors or nurses. He must have been aware that any of them could have done so and it would have been foolish of him to deliberately hide Mr Ng's illness from all of them.

49 There was also no logical answer to Sebastian's point that Sunny would have known about Mr Ng's illness from some of the medical bills.

50 As for Angeline, she said she was told of Mr Ng's illness by Sebastian because she was then close to Sebastian but he told her not to tell the rest of the family. Yet, there was no evidence of protest from her. She did not tell Sebastian that Mdm Low and the rest had a right to know. When she was asked whether other family members had discussed Mr Ng's health with her, she said there were too many visitors at the hospital and she had been busy partly with the Chinese New Year in 2001. I find such explanations flimsy at best and do not accept that Sebastian had told her not to tell the others.

51 However, Mr Lee Kok Leong, a general manager with the family business, also said that Sebastian had told him about Mr Ng's illness but had told him not to tell the rest of the family about it. I find Mr Lee, generally, to be an honest witness but, on this point, I am of the view that he may have misunderstood whatever Sebastian had told him. While it is true that Sebastian, even on his own

evidence, did not take the trouble to speak to every other family member about Mr Ng's illness and developments regarding his treatment, it is another matter to say that he deliberately kept them all in the dark.

52 Indeed, even Sunny's wife, Mdm Chou Li Lan said that Sebastian had informed her about the nature of Mr Ng's illness although she said she was told in or about February 2001 only. Her point was that she was unaware until then but if it was Sebastian's intention to deliberately keep them all in the dark, he would not have disclosed the illness to her even by that time. Moreover, if that was the first time she learned of the nature of the illness and Sunny was still unaware of the same, she would have immediately informed Sunny. Yet, she was initially uncertain whether she had done so and was unable to say what Sunny's response was when she informed him.

53 It is not necessary for me to deal with other allegations such as the time when Mdm Low said she learned about the nature of Mr Ng's illness. The evidence from the plaintiffs on the point about how Sebastian had kept them in the dark was generally unreliable. I find that the plaintiffs' main witnesses knew about the nature of Mr Ng's illness but they did not discuss it with Mr Ng because they were not close to him. Neither did they discuss it with Sebastian as they were also not close to him.

54 In any event, the plaintiffs again failed to show any direct connection between their allegations and the issues before me. What if Sebastian had kept the rest of the family in the dark about the nature of Mr Ng's illness when Mr Ng was in Singapore or even while he was in China? What did that show? At most, it was an issue of Sebastian's general credibility. On the other hand, the plaintiffs' allegation unwittingly revealed that their relationship with Mr Ng was not as close as they were suggesting.

55 However, the plaintiffs relied on other evidence to establish that Mr Ng was close to some of the other immediate family members.

56 For example, Sunny was one of two authorised signatories in Group A regarding a mandate from the subsidiary to operate an account with Overseas Union Bank Limited. Ricky and Edwina were two out of four authorised signatories in Group B, the other two being Mr Ng and Sebastian. The mandate allowed any one from Group A and any two from Group B to operate that account (see Plaintiffs' Bundle of Documents ("PBD") 210).

57 Secondly, Sunny was appointed a managing director of the subsidiary on 21 January 1988. However, Sebastian said that Sunny was actually appointed as a joint managing director together with Sebastian on the same date (see PBD 142 and 143) because Sunny had been unhappy with the intended appointment of Sebastian only, as managing director. This seems to me to be a logical explanation for Sunny's appointment together with Sebastian and I accept it.

58 Thirdly, Mr Ng had nominated Angeline, not Sebastian, as the beneficiary to receive money and assets in Mr Ng's Central Provident Fund ("CPF") account. The money amounted to $24,359.73 and $342.13 and there were also 1,540 Singtel shares. The nomination was made on 13 March 1997 (see Agreed Bundle 191). According to Sebastian, Mr Ng did so because Angeline had given Mr Ng some cash stating that it was for him to use first and he could in return give her his CPF money. Angeline's evidence in her AEIC was that she had given Mr Ng spending money each time he had gone to China. The amount eventually totalled about $40,000. She also said that in or about July 2000, Mr Ng gave her $10,000. He was quite sick by then. Mr Ng had also told her he would return the money she had given him in addition to a cash gift of $50,000 which was her inheritance. The total of these two sums makes up the $90,000 which Angeline was claiming. Angeline disputed that she was nominated

as the beneficiary of Mr Ng's CPF account because she had told Mr Ng that he could nominate her in exchange for the cash she had given to him. According to a letter from CPF dated 9 October 2006, the cash sums in Mr Ng's CPF account were paid to Angeline on 5 May 2001 and 7 September 2001. Therefore, she must have been aware that she was the nominated beneficiary even before she executed her AEIC in 2006. Yet, she herself did not suggest in her AEIC that the nomination disclosed a particularly close relationship between Mr Ng and her, as plaintiffs' counsel was suggesting when he cross-examined Sebastian. While I am not persuaded that Angeline had specifically asked Mr Ng to give her the money in his CPF account in exchange for the cash she had given him from time to time, I am of the view that it is likely that he nominated her because of the cash she had given him and not because she was particularly close to him. As mentioned, Sebastian was the favourite and Angeline was not appointed as an executor or named as a beneficiary. I will elaborate later on Angeline's allegation about the oral cash gift of $90,000 to her, of which $40,000 was supposed to be a refund of money she had given Mr Ng.

59 Fourthly, the plaintiffs' witness, Wong Man Kuen, a grandson of Mdm Low who was residing in China, gave evidence in his AEIC that based on what he knew, Mr Ng's relationship with Mdm Low was good and Mr Ng would often praise his children, particularly Ricky and Sunny for being successful in their business. Mr Ng would also say good things about Sebastian whom he was also fond of. It seems to me that Mr Wong did not know as much about the relationship between Mr Ng and the various family members as he wanted me to believe. The thrust of his evidence suggested that Mr Ng was just as close to Ricky and Sunny as he was to Sebastian, if not even closer. Yet, the plaintiffs accepted that Sebastian was Mr Ng's favourite.

60 Fifthly, the plaintiffs relied on photographs of weddings or birthday celebrations which Mr Ng attended with various family members. I am of the view that such evidence does not advance their contention much.

61 All things considered, I am of the view that Mr Ng's relationship with Mdm Low and the other three sons was strained because he considered these three sons as squanderers and Mdm Low was spoiling them.

62 As for Calista, I accept Sebastian's evidence that Calista was not close to Mr Ng for the reasons he stated.

63 As for Angeline, it seems to me, after having heard her evidence and observed her demeanour, that she was the most independent-minded of the daughters. She may have been too independent-minded for Mr Ng's liking but I am not able to conclude from the limited evidence that Angeline had cheated someone from Mr Ng's hometown. It may be that she was not appointed as an executor simply because Mr Ng wanted Sebastian to be solely and completely in charge of his estate.

64 As for Jenny, I accept that Mr Ng was frustrated with her because of her record of shoplifting. I also accept that as regards Edwina, Mr Ng was not pleased with her as she had been making excuses for Ricky.

65 Notwithstanding Mr Ng's frustrations with Mdm Low, I accept that he felt responsible to care for her. As for the other sons, he was, in my view, certainly not close to them. While he was not as frustrated with the daughters to the same extent as he was with the other sons, I find that he was also not close or no longer close to the daughters as well.

66 Also, Mdm Low, the other sons and the daughters were in turn not close to Mr Ng even though some of them remained dutiful in varying degrees to him. While I accept that Mr Ng felt a sense of

responsibility for the welfare of various immediate family members, and grandchildren as well, such a finding is not sufficient for the plaintiffs' case as Mr Ng could well have left his estate to Sebastian without any specific directives. If Mr Ng had simply expected Sebastian to do what was right by the other family members, this would not assist the plaintiffs.

67 I will deal now with the specific gifts claimed by the plaintiffs and divide them into three categories: Mr Ng's shares in the holding company, 1A Wiltshire and the cash gifts.

Mr Ng's shares

68 At all material times, the shareholding in the holding company was as follows:

Mr Ng	-	253,380 shares	(36.20%)
Ricky	-	253,340 shares	(36.1%)
Sunny	-	93,320 shares	(13.33%)
Sebastian	-	66,640 shares	(9.52%)
Mdm Low	-	33,320 shares	(4.76%)
		700,000 shares	(100.00%)

Mdm Low's shares were transferred to Raymond by the time of the trial.

69 The plaintiffs' pleaded case for the shares is found in paragraph 7.32 of the statement of claim which asserted that on several occasions in August 2001, Sebastian had told Angeline that he wanted to distribute Mr Ng's estate to other family members in accordance with Mr Ng's wishes and that Mr Ng wanted his shares to be held on trust by Sebastian to be distributed as follows:

(a) Calista was to receive 33,320 shares.

(b) Angeline was to receive 33,320 shares.

(c) Mdm Low was to receive the balance comprising 186,740 shares for her to deal with as she deemed fit.

70 Calista is not a plaintiff and hence in [5] above, I set out only the claims by Angeline and Mdm Low in respect of Mr Ng's shares in the holding company. I would add that the holding company or the subsidiary holds real property in Neil Road although I was not informed of the details of such property. Even so, Mr Ng's shares were apparently the jewel in the crown of his estate.

71 As can be seen, there was no assertion that Mr Ng himself had told Angeline or Mdm Low about the gift of shares. The only assertion in the statement of claim was that Sebastian had told Angeline of Mr Ng's wishes in respect of the shares.

72 In cross-examination, Angeline said that Sebastian had also wanted to return to her the number of shares which, apparently, she had transferred to Sebastian in the past.

73 I do not accept Angeline's allegation or evidence about the conversation between Sebastian and her for various reasons.

74 First, I find it generally unsafe to accept Angeline's evidence on disputed points. I have already mentioned how she claimed to have been told by Sebastian not to tell other family members about the nature of Mr Ng's malignant lymphoma and yet she was evasive when asked whether other family members had discussed Mr Ng's health with her. There were other instances when she did not tell the truth which I will come to later.

75 Secondly, it did not make sense for Mr Ng to give the bulk of his shares to Mdm Low. She was not involved in the operations or decisions of the family business. Sunny and Raymond accepted that she did not know anything about the family companies (NE 9/4/07 pg 48 and 49). Even the shares which she held in the holding company were held for Raymond. Mr Ng must have known that if the bulk of his shares were given to her, she would be likely to give them eventually to Ricky, Sunny and/or Raymond as she had often prevailed on him to provide financial assistance to these three persons.

76 Thirdly and significantly, this claim was inconsistent with yet another allegation of the plaintiffs which I now come to.

77 The plaintiffs had alleged that in or about December 2000 or January 2001, Mr Ng was in his room on the third level of 1A Wiltshire having a discussion with Sebastian and a friend Teo Boon Tieng ("Mr Teo"), an accountant with Goh Ngiap Suan & Co. Mdm Low, whose room was at a different level, was asked to join the group. There, Sebastian had informed her that Mr Ng wanted her to transfer the 33,320 shares which was then still held in her name to Mr Ng. Thereafter, Mdm Low left Mr Ng's room for her room. On the way down to her room, Sebastian told her that a lawyer would be coming the next morning to arrange for the transfer. Sebastian came down and told various persons, namely, Mdm Low, Raymond, Calista and Edwina that Mr Ng had informed him about the specific cash gifts which are the subject of the present claim.

78 According to Mdm Low's AEIC, she had been troubled when she heard that she was supposed to transfer the shares she held to Sebastian as the original intention when the shares were first placed in her name, was to hold them for Raymond. At night, when Raymond wanted to get a drink, he saw Mdm Low awake in her room looking dazed and troubled and spoke to her. She told him about the intended transfer. He said he told Mdm Low that the shares were his. He also explained to her that with those shares, Sebastian would (together with Mr Ng's shares) effectively control the majority of the shares in the holding company. When Sebastian came to 1A Wiltshire the next morning, Mdm Low said she told him that she would not carry out the transfer whereupon Sebastian went to Mr Ng's room and complained to him. Raymond said he went up too and overheard Mr Ng telling Sebastian to leave the matter as it was. Sebastian subsequently came down from Mr Ng's room and said that the cash gifts he had mentioned the day before were cancelled. In Raymond's oral evidence, he added that he later spoke to Mr Ng about what Sebastian was saying about the cancellation and Mr Ng said there was no such thing, meaning no cancellation, and he was not to listen to Sebastian's nonsense.

79 Sebastian's version was that when Mdm Low went to Mr Ng's room, Mr Ng had told her about another family company in the lighterage business which had failed because the founder's wife had spoilt her son. Mr Ng had asked Mdm Low not to allow history to repeat itself and asked her to give Sebastian her full support to continue their family business. Mr Ng was crying then and so was Mdm Low who then asked Mr Ng for $100,000 to pay her brother in relation to a transaction concerning a flat. It was Mr Ng who then informed Mdm Low that if she wanted the $100,000, she

has to transfer the shares she was holding to Sebastian. Sebastian did not agree that he had gone down and mentioned the cash gifts to various persons. Sebastian said he subsequently learned from Mr Ng that Mdm Low had changed her mind about the transfer and Mr Ng was very unhappy about the whole incident.

80 I am of the view that Mdm Low's version as to how she came to be asked to transfer her shares is to be preferred. First, Sebastian did not call Mr Teo who was in Mr Ng's room at the relevant time, to give evidence. No reason was given by Sebastian for not calling Mr Teo even though Mr Teo was his accountant in another company at the time of the trial (NE 18/5/07 at pg 15). I draw an adverse inference against him for this. Secondly, it was not Mdm Low who had asked to see Mr Ng. She was asked to see him.

81 I am of the view that Mr Ng and Sebastian had been discussing about the future of the family business (with Mr Teo) and both had agreed that she should be asked to transfer her shares to Mr Ng. It was not disputed that with her 33,320 and Mr Ng's 253,380 shares, Sebastian, who had 66,640 shares, would control 353,340 out of 700,000 shares, *ie*, 50.48%.

82 Although it was common ground that Mdm Low was asked to transfer her shares, whatever the background reason was, this incident militated against the plaintiffs' claim that Mr Ng had told Sebastian that his shares were to be distributed three ways among Calista, Angeline and Mdm Low, with the bulk going to Mdm Low. The fact that Mdm Low was asked to transfer her shares demonstrated that Mr Ng had intended that all his own shares be given beneficially to Sebastian, otherwise Sebastian would still not have majority control even with the shares held by Mdm Low. The plaintiffs did not seem to realise that the incident militated against the claims in respect of Mr Ng's shares.

83 The plaintiffs also relied on another occasion when Sebastian allegedly sought to gain the shares held by Mdm Low. On or about 1 May 2001, Sebastian and other family members had gone to Chua Chu Kang cemetery where Mr Ng had been buried to offer their prayers and to discuss the construction of Mr Ng's tomb. Thereafter, some of them, including Sebastian, went for lunch together. It was alleged that during the lunch, Mdm Low had asked Sebastian about Mr Ng's Will whereupon he said words to the effect that it was not ready yet. He then became angry and gave Mdm Low three months to "consider and to respond" or words to that effect (presumably in Hokkien). The plaintiffs believed that this was a reference to Mdm Low's refusal to agree to transfer her shares and that Sebastian was still trying to gain majority control. Sebastian disputed their allegations about the incident. I do not think that Sebastian would have tried to get the shares held by Mdm Low at this stage when he knew that she had already refused to part with them even though Mr Ng had asked her to do so.

84 At this stage, I digress slightly to revert to the point about Mr Ng's relationship with his children, other than Sebastian. It was submitted for the plaintiffs that if Mr Ng was as displeased with the other sons as Sebastian was suggesting, he would have kicked them out of the family companies. I do not think the situation was so simple. As mentioned, he could not even get Mdm Low to transfer the shares she held to Sebastian.

85 Coming back to the plaintiffs' allegations about the lunch incident on or about 1 May 2001, I am of the view that even if the allegations are true, it does not help them with the claims for Mr Ng's shares. Again, it may reflect on Sebastian's general credibility if I do not accept his evidence on this point but how would it show that Mr Ng had intended to give his shares to the three persons alleged?

86 In addition, there was no evidence that either Mdm Low, Calista or Angeline had asked

Sebastian, prior to the filing of the action, to transfer her entitlement to her. Such an omission also militated against the claims in respect of Mr Ng's shares. I find that the plaintiffs have not discharged their burden of proof in respect of the gifts of Mr Ng's shares to Angeline and to Mdm Low. I will elaborate later on my finding as to whether Sebastian mentioned the cash gifts to some family members and then said they were cancelled and whether Raymond spoke to Mr Ng about Sebastian's conduct in respect of the incident in or about December 2000 or January 2001.

87 I would also say that in cross-examination, Raymond mentioned that Mr Ng had told Mdm Low, in his presence and in Sebastian's presence, on various occasions at the hospital and the previous family home at 36 Poole Road that he was giving 1A Wiltshire and his shares to Mdm Low (NE 9/4/07 pg 14 and 16). Yet, this was not pleaded in the statement of claim. Neither was this mentioned in Raymond's AEIC or Mdm Low's. In the circumstances, such evidence is not admissible in view of the pleadings and even if it was admissible, I place no weight on it as I did not believe Raymond who was coming up with such allegations belatedly.

1A Wiltshire

88 Mr Ng had lived at 36 Poole Road before he moved to 1A Wiltshire. In early 2000, 36 Poole Road was sold and 1A Wiltshire was acquired in Mr Ng's sole name. As in the claim in respect of Mr Ng's shares, the particulars in respect of the claim for 1A Wiltshire were found in only one part of the statement of claim. Paragraph 7.12(ii) thereof asserted that some time in December 2000, Mr Ng told Angeline at Mount Elizabeth Hospital:

(a) that Mr Ng had entrusted his estate to Sebastian because, firstly, Mdm Low was too old to manage his estate and secondly, so that Sebastian would be able to pay his medical and funeral expenses. Apparently, Sebastian had said to Mr Ng that he was unsure how much the medical and funeral expenses would come to;

(b) that 1A Wiltshire was to be left to Mdm Low who could deal with it as she deemed fit;

(c) about the various cash gifts.

89 This also fell short of an explicit assertion by the plaintiffs that Mr Ng had told Sebastian to let Mdm Low have 1A Wiltshire and that Sebastian had agreed to carry out such a wish. Instead, the plaintiffs were relying on the implication that if Mr Ng had told Angeline what was alleged it would follow that he must have also told Sebastian the same and Sebastian would have agreed to the same, otherwise Mr Ng would not have left everything to Sebastian under the Will.

90 In my view, Mr Ng would not have considered appointing Mdm Low to be his executor even if she was not too old. His view of her was that she had been spoiling three sons. The last thing he would have done was to consider appointing her as his executor.

91 I am also of the view that Mr Ng would not have been concerned about payment of his medical and funeral expenses. He would have assumed that the family business would have taken care of such expenses as the family business was not in a dire financial situation and the subsidiary was already paying for his medical expenses before his demise. Although his Will stated that his estate was to pay for his funeral expenses, I am of the view that he did not spend much thought on it. Indeed, apparently, there was no specific discussion between him and Alan Lee about his funeral expenses and the provision on funeral expenses may have been inserted as a standard provision by his solicitors.

92 The pleaded position suggested that Mr Ng had told Angeline once in December 2000 about his wish to let Mdm Low have 1A Wiltshire, as well as his other gifts. However, in paragraph 21 of her AEIC, Angeline said this was told to her on "several" occasions when she visited Mr Ng at the hospital in or around December 2000. In cross-examination, she said it was on one or two occasions and then said it was on the first occasion that 1A Wiltshire was mentioned (NE 3/11/06 pg 58). Her evidence on this was vacillating.

93 More importantly, Angeline said that there was an occasion after Mr Ng's demise when Sebastian mentioned to her that 1A Wiltshire would be divided into nine shares. She mentioned that there should be eight shares instead as there were eight children but he said the ninth share was for Mdm Low. I find it significant that Angeline's evidence was that she mentioned eight shares, thus excluding the mother, when, on the other hand, she was claiming that Mr Ng had told her that 1A Wiltshire was to be left to Mdm Low. She also confirmed that she did not mention to Sebastian that Mr Ng had told her that 1A Wiltshire was to be given to Mdm Low (NE 14/11/06 pg 41 to 42). Neither did she seek any clarification from Sebastian in the light of what Mr Ng had purportedly told her.

94 Angeline also said that she could not remember whether she had told Mdm Low what Mr Ng had told her about leaving 1A Wiltshire to Mdm Low (NE 14/11/06 pg 51). I do not accept such evidence. It was not disputed that Sebastian had arranged for solicitors to show and read Mr Ng's Will to various family members. This was done at the office of Helen Yeo & Partners on 8 June 2001. Mdm Low and Angeline were among the family members present. After the Will was read, Mdm Low remarked that she would get nothing and this was confirmed by the solicitors. If Mr Ng had really told Angeline that 1A Wiltshire was to be left to Mdm Low, Angeline would have remembered what Mr Ng had allegedly told her. Thereafter, she would have disclosed this conversation to Mdm Low or sought clarification from Sebastian. She did neither.

95 I find Angeline's evidence about Mr Ng's wishes for 1A Wiltshire to be unreliable for the above reasons as well as the fact that I find much of her evidence on other disputed points unreliable. I should add that in cross-examination, Sebastian accepted that Mr Ng did tell him to let Mdm Low stay at 1A Wiltshire. While this may suggest that not all Mr Ng's wishes are found in his Will, it is still not sufficient for the plaintiffs on whom the burden is to prove each claim. I find that in respect of 1A Wiltshire, Mdm Low has not proved her claim.

96 I would also add that although the allegation about the gift of 1A Wiltshire to Mdm Low was confined in paragraph 7.12 (ii) of the statement of claim to a discussion between Mr Ng and Angeline, paragraph 252 of PCS submitted that on several occasions while Mr Ng was warded in hospital, he had told Mdm Low in the presence of Raymond and Sebastian that 1A Wiltshire was to be given to Mdm Low (as well as his shares in the holding company). This submission was based on Raymond's oral evidence which I have already mentioned in [87] above. In view of the state of the pleadings, it is not open to the plaintiffs to make this submission. In any event, I do not accept Raymond's evidence thereon.

The cash gifts

97 The statement of claim gave particulars of various instances when the cash gifts were mentioned by Mr Ng or Sebastian or admitted to by Sebastian:

(a) Paragraph 7.3 of the statement of claim asserted that in late 2000 before the execution of the Will, Mr Ng had told Edwina, who was caring for him at 1A Wiltshire, that he had made provision for family members after he passed away and that he had instructed Sebastian accordingly. In particular, Mr Ng had told Edwina about various cash gifts to Angeline and Edwina

herself, as claimed, as well as cash gifts to Calista and Jenny which are not the subject of the present claims. The original reference to a cash gift to Mdm Low was deleted by an amendment.

(b) Paragraph 7.6 of the statement of claim asserted that Sunny's wife, Mdm Chou Li Lan had visited Mr Ng regularly at Mount Elizabeth Hospital around mid 2000 to early 2001. It also asserted that during the visits, Mr Ng informed Mdm Chou that he was aware that her son's future educational expenses were estimated to be around $300,000. Mr Ng had assured Mdm Chou that he had provided for her and her son's educational expenses.

(c) Paragraph 7.9 of the statement of claim asserted that on several occasions in December 2000, Mr Ng had told Mdm Low, in the presence of Raymond and Angeline, both at home and at the hospital about the various cash gifts, *ie*, the cash gifts which are the subject of the claims, as well as cash gifts to Calista and Jenny which are not the subject of the claims.

(d) Paragraph 7.12 of the statement of claim asserted that sometime in December 2000, Mr Ng told Angeline at the hospital of the same cash gifts mentioned in (c) above. As mentioned in [88] above, paragraph 7.12 of the statement of claim also dealt with the same conversation in the context of Mr Ng telling Angeline that 1A Wiltshire was to be left to Mdm Low.

(e) Paragraphs 7.13 to 7.15 of the statement of claim mentioned the time when Mdm Low was asked to transfer the shares she held and when Sebastian mentioned the cash gifts in Mdm Low's room. These paragraphs also alleged that Mdm Low declined to transfer the shares and the announcement by Sebastian that the distribution of the cash gifts mentioned the day before was cancelled. Significantly, they do not allege that Raymond then went up to inform Mr Ng about the cancellation and Mr Ng responded that there was no such cancellation and not to listen to Sebastian's nonsense. This conversation between Raymond and Mr Ng was also not mentioned in Raymond's AEIC. It was mentioned by Raymond only when he was being cross-examined (see NE 9/4/07, pg 38, 40 to 42).

(f) Paragraph 7.16 of the statement of claim asserted that on or about 31 January 2001, Mr Ng had mentioned to Mdm Chou at the hospital that he had provided for her family.

(g) Paragraph 7.17 of the statement of claim asserted that in or about February 2001, Mr Ng had told Mdm Chou at 1A Wiltshire, in the presence of her son, that he had provided for their family.

(h) Paragraph 7.19 of the statement of claim asserted that in the months that followed, Sebastian told Angeline on several occasions that Mr Ng had willed all his assets to Sebastian as a trustee to be held on trust for the other family members. Sebastian asked Angeline whether he should distribute to the other family members "their respective entitlements" or hold onto the same. Angeline told him to distribute in accordance with Mr Ng's wishes and instructions but Sebastian kept quiet, then outrightly refused.

(i) Paragraph 7.22 of the statement of claim asserted that on or about the night of 29 May 2001 at around 11pm, Sebastian had brought Angeline to his home at Eden Spring. He insisted on showing her some documents which he claimed were Mr Ng's bank accounts and told her "*not so much money, how to distribute*" or words to that effect.

(j) Paragraph 7.27 asserted that on several occasions before and even after 8 June 2001 (the date when the Will was shown to other family members at the office of Helen Yeo & Partners), Sebastian was asked when he was going to distribute to the other family members "their

respective entitlements" but he kept on putting them off by saying that he would do so after grant of probate had been issued. It was also asserted in paragraph 7.28 of the statement of claim that unknown to the other family members, Sebastian had filed a petition for grant of probate on or about 11 June 2001.

98 As can be seen, most of these particulars also did not explicitly assert the fact of, the date when and the place where Mr Ng had told Sebastian about the cash gifts. Most also did not explicitly assert the fact of, the date when and the place where Sebastian had agreed to Mr Ng's wishes. These were once again left to implication and the implication was also not pleaded.

99 The allegation in paragraph 7.3 of the statement of claim was based on what Mr Ng told Edwina. Furthermore, paragraph 17 of Edwina's AEIC introduced a new and not insignificant allegation, *ie*, that Mr Ng had also confided to Edwina that he had drawn up a list of beneficiaries and their respective entitlements. However, he was concerned that the beneficiaries would squander all of what was given to them and so he decided to hold onto the list at the time.

100 In cross-examination, Edwina said that there was one occasion when Mr Ng mentioned specific cash gifts to her and another separate occasion when the question of holding back the gifts was mentioned. Significantly, for the separate occasion, her oral evidence was different from paragraph 17 of her AEIC. In cross-examination, she mentioned that Sebastian was also present on the separate occasion at 1A Wiltshire and it was Sebastian, not Mr Ng, who suggested to Mr Ng that he should not distribute his money otherwise the beneficiaries would squander the money (see NE 6/11/06, pg 44 to 54 and pg 59 and 60). When asked whether she had told her father that Sebastian's allegation of squandering was untrue, Edwina said Mr Ng trusted Sebastian and hinted that she feared Sebastian who was the dominant sibling in the family. Then, she suggested that even Mr Ng was a bit afraid of Sebastian and had been influenced by Sebastian. However, she added that she believed that her father would know what he was doing (NE 6/11/06, pg 56 to 62).

101 Edwina also could not make up her mind whether she eventually told Mr Ng that the squandering allegation was untrue. At one point, she said she did, then she did not and then she said she did (compare NE 16/11/06 pg 57 line 24 to pg 58 line 7; pg 61 line 11; pg 62 line 12 to 14). I find that she did not. I would mention that paragraph 17 of Angeline's AEIC also alleged that on a number of occasions, Sebastian had been telling Mr Ng about how the other sons were "useless, spendthrift, cheated by wife and/or children". Yet, Angeline admitted that she did not correct Sebastian in the presence of Mr Ng (NE 3/11/06 pg 32 and 33). There was also no elaboration by Edwina during cross-examination about the list of beneficiaries which Mr Ng was said to have mentioned to Edwina.

102 Sebastian did not admit that he had complained to Mr Ng about the squandering habits of his male siblings. It seems to me more likely than not that he did do so. However, it also seems to me that he did so because there was a basis for his complaints. It would have been foolish of him to complain about their squandering if in fact they were not squanderers. That is why even Angeline had not attempted to correct him when he was complaining about them. Edwina's allegation that Mr Ng was a little bit afraid of Sebastian came as a surprise to me especially since the Will was not challenged on the ground of undue pressure or undue influence or on any other ground. It was a distraction since she accepted that Mr Ng would know what he was doing.

103 As for Edwina's reference (in her AEIC) to a list of beneficiaries, I find this to be a bare allegation. Furthermore, the allegation that Mr Ng told Edwina about specific cash gifts was in contrast to Edwina's suggestion that notwithstanding the time she spent with Mr Ng when he was ill, he did not mention the nature of his illness to her. I find Edwina's evidence that Mr Ng told her about the cash gifts to be unreliable.

104 I come now to the allegation in paragraph 7.6 of the statement of claim as to Mr Ng having told Mdm Chou that he was aware that her son's future educational expenses were estimated to be around $300,000 and that he had provided for her family and the son's educational expenses. This was supposed to have occurred around mid 2000 to early 2001.

105 In paragraph 10 of Mdm Chou's AEIC, she said that Mr Ng had told her on a number of occasions that he knew that her son would be going to university soon and his university fees would be about $200,000 to $300,000. Mr Ng also said he had provided for her family.

106 Paragraph 11 of her AEIC said that on or about 31 January 2001, Mr Ng had told her at the hospital to tell her husband, Sunny to manage the family business well with the other siblings. He also told her that everything ought to be alright as he had provided for them.

107 Paragraph 12 of her AEIC said that after Mr Ng had returned home from hospital, in or about February 2001, he had told Mdm Chou, who was visiting him, not to worry as he had provided for them. This was said apparently in the presence of her son.

108 Then, in her oral evidence-in-chief, Mdm Chou said that on one occasion in hospital when Mr Ng was telling her to inform Sunny to work together with the others and how he had made provision for her son's education and her family needs, Sebastian was present sitting near a window and heard the conversation (NE 31/10/06 pg 103). In cross-examination, Mdm Chou confirmed thrice that Mr Ng had told her in one of their conversations that he had given instruction to Sebastian about providing $200,000 to $300,000 for her son's educational expenses.

109 The allegation that Mr Ng had told Mdm Chou on a number of occasions that her family would be provided for was too vague to sustain a claim for a specific gift of $300,000 for her son's education. In any event, I also do not accept that Mr Ng gave her such an assurance or any assurance about the specific cash gift. I have found that Mr Ng considered Sunny to be a squanderer. Given my finding of Mr Ng's opinion of Sunny, he would not have assured Mdm Chou of any financial provision. He must have known that if he were to do so, she would in turn have informed Sunny. That would only have sent the wrong signal to Sunny that he need not be more thrifty.

110 Secondly, it was only during her oral evidence that Mdm Chou mentioned that Sebastian was present on one occasion when Mr Ng was telling her about the provision for her son's educational expenses. It was also only during her oral evidence that Mdm Chou confirmed that Mr Ng had told her that he had given instructions to Sebastian about this provision. Giving the requirements to establish a secret trust, these two allegations were significant. Yet, neither was mentioned earlier in the pleadings or Mdm Chou's AEIC. Her late attempt to add such allegations reflected poorly on her credibility.

111 Thirdly, Mdm Chou also said that towards the end of 2001 or early 2002, when Sebastian was not responding to Mdm Low's request for the distribution of Mr Ng's assets among family members, she had called Sebastian to ask him why her family was not given anything under the Will. She reminded him that he was present during a conversation she had with Mr Ng but this was a conversation when the specific sum for her son's educational expenses was not mentioned by Mr Ng. It was the general conversation about Mr Ng having said he had provided for her son's education and her family needs. Moreover, she did not ask Sebastian in the telephone conversation whether Mr Ng had given instructions to him about a $300,000 provision for her son's education. If Mr Ng had told her about that specific sum, I am of the view that she would have asked Sebastian about it.

112 I also reiterate Mdm Chou's unsatisfactory testimony regarding how she had first learned about

the nature of Mr Ng's illness from Sebastian but was uncertain whether she then told Sunny about the revelation and his reaction.

113 I find Mdm Chou's allegation in paragraph 7.6 of the statement of claim to be unreliable.

114 I come now to paragraph 7.9 of the statement of claim where it was alleged that in December 2000, Mr Ng told Mdm Low, Raymond and Angeline on several occasions about the various gifts. Angeline's presence was not mentioned originally but was included by amendment in or about October 2001. Although paragraph 7.9 gave the impression that the various occasions all occurred in December 2000, Raymond said in cross-examination that two of five occasions occurred over three months between October to December 2000. He could not remember when the other occasions had occurred. Furthermore, different gifts were mentioned on each of the five occasions. In cross-examination, he elaborated as follows:

(a) The first occasion was in October 2000 at the hospital. Mr Ng said he would give Raymond $200,000 and also $100,000 for each of his two children. Sebastian was also present (NE 9/4/07, pg 1 to 2, pg 6).

(b) The second occasion was between October and December 2000 at the hospital. Mr Ng said that Angeline was entitled to $90,000, Edwina to $50,000 and Calista to $50,000. Sebastian was present. Mr Ng also said that he had given the appropriate instructions to Sebastian (NE 9/4/07, pg 10, 13 and 16).

(c) The third occasion was also at the hospital but Raymond could not remember the month when it occurred. Mr Ng said that he would give $90,000 to Angeline, $50,000 to Calista, $50,000 to Edwina and $200,000 to Jenny and $300,000 to Sunny's son. Sebastian was present. Mr Ng also said that he had given the appropriate instructions to Sebastian (NE 9/4/07 pg 11 to 13).

(d) The fourth occasion was at the hospital on a date which Raymond could not remember. On this occasion, Mr Ng mentioned not only cash gifts but that he would give Mdm Low 1A Wiltshire and his 36% shares in the holding company and Mdm Low was to return to Calista and Angeline whatever shares in the holding company which they had given up in the past. Sebastian was present. Mr Ng also said he had given the appropriate instructions to Sebastian (NE 9/4/07 pg 10, 13 to 16).

(e) The fifth occasion was the earliest occasion based on Raymond's evidence. This was in 1999 and Mr Ng told Mdm Low at their previous residence at 36 Poole Road that he would give her his 36% shares in the holding company and she was to return to Calista and Angeline the shares which they had previously given up to Mr Ng (NE 9/4/07 pg 16, 21 to 22). Mdm Low was to keep the remainder because if she were to distribute them, she might cause a fight.

115 As already discussed in [87] and [96] above, there was no reference in the pleadings or in the AEIC of Raymond about the fourth and fifth occasions when Mr Ng purportedly mentioned to Mdm Low the gift of 1A Wiltshire and Mr Ng's shares to her. The pleadings as regards these two categories of gifts were limited as set out above. It is clear to me that Raymond's belated allegations on these two categories of gifts were an attempt to bolster Mdm Low's claim for them. I find these belated allegations to be untrue and they in turn reflected poorly on Raymond's credibility.

116 There was also no mention in the pleadings or in Raymond's AEIC about Sebastian's presence or that Mr Ng had said he had given the appropriate instructions to Sebastian on some of these five occasions which evidence came out only during cross-examination of Raymond. If these allegations

were true and Raymond could remember them, they would have been stated in the pleadings and his AEIC. Also, Angeline's evidence did not mention that Sebastian was present during some of these occasions. Given the importance of such an allegation in the context of secret trusts, this omission was significant. Furthermore, I find it remarkable that after so many years, Raymond was able to remember, without the aid of any documentary evidence or other pointers, what had purportedly transpired on each of these five occasions down to the details as to which cash gifts were mentioned on each occasion. Raymond's oral evidence was also different from the AEICs of Mdm Low, Angeline and Raymond himself which suggested that all the cash gifts were mentioned on each of the several occasions. In my view, Raymond was making up his oral evidence as he went along.

117 Again, Mdm Low herself suggested that Mr Ng did not discuss the nature of his illness with her at all. Yet, the plaintiffs were alleging that Mr Ng had mentioned to her from time to time various specific gifts and this was done in the presence of Raymond with whom Mr Ng also did not discuss the nature of his illness.

118 Raymond also said that he did not check with Sebastian, after Mr Ng's demise, about the cash gifts for various family members including himself and his children. Neither did Angeline check with Sebastian about the various cash gifts. There is also no evidence that Mdm Low had asked Sebastian specifically about the cash gifts she had been told about. Although there was evidence that Sebastian was asked to distribute Mr Ng's assets, this is different from Sebastian being asked about the specific cash gifts. In my view, if Mr Ng had mentioned such cash gifts, Mdm Low or Raymond or Angeline would have asked Sebastian about the same especially after the Will was read and every other family member would have learned that Sebastian was the sole beneficiary. That neither of these three persons questioned Sebastian about the cash gifts suggested that the allegations about the cash gifts were untrue.

119 I find the evidence of Mdm Low, Raymond and Angeline on the cash gifts to be unreliable.

120 I come now to paragraph 7.12 of the statement of claim which alleged that Mr Ng told Angeline at the hospital sometime in December 2000 about the cash gifts as well as the gift of 1A Wiltshire to Mdm Low. I have already dealt with the alleged gift of 1A Wiltshire and said I found Angeline's evidence thereon unreliable. As for Angeline's evidence about Mr Ng telling her about the cash gifts, I do not find Angeline's evidence any more reliable than her evidence on 1A Wiltshire or on the alleged conversations thereon between Mr Ng and Mdm Low in her presence.

121 I come now to paragraph 7.13 to 7.15 of the statement of claim. Paragraph 7.13 alleged that in or about January 2001, Mdm Low was asked to transfer her shares to Sebastian. Paragraph 7.14 alleged that Sebastian told Mdm Low, Raymond, Calista and Edwina about the cash gifts in Mdm Low's room. Paragraph 7.15 alleged that after Mdm Low told Sebastian he was not transferring her shares to Sebastian, Sebastian then announced that the cash gifts were cancelled or words to that effect. As these paragraphs stood, Sebastian mentioned the cash gifts and he also mentioned subsequently that they were cancelled. If he was representing Mr Ng's wishes when he purportedly announced the cash gifts, he might also have been representing Mr Ng's wishes when he purportedly announced the cancellation of the cash gifts. The plaintiffs did not seem to realise this when these paragraphs were pleaded. As I have mentioned in [78] above, it was only in the course of Raymond's oral evidence that he alleged that after Sebastian announced the cancellation, he (Raymond) had spoken to Mr Ng and Mr Ng said what Sebastian had said about the cancellation was nonsense and not to listen to Sebastian.

122 Aside from the fact that Raymond's allegation was not pleaded, I do not believe that he spoke to Mr Ng or Mr Ng spoke to him as alleged. This was a person who claimed he did not know about the

nature of Mr Ng's illness even though he was in attendance every day when Mr Ng was in hospital and he cared daily for Mr Ng at 1A Wiltshire after Mr Ng was discharged from hospital. As mentioned, Raymond was staying at 1A Wiltshire. Raymond was also assisting to fetch Mr Ng from time to time to clinics. It is clear to me that his task was to run errands for Mr Ng and help care for Mr Ng while Mr Ng was at home or in the hospital. He was not involved in the decisions of the family business although he was a non-executive director of the subsidiary. He would not have discussed financial matters such as the cash gifts with Mr Ng or Mr Ng with him. Furthermore, if Mr Ng had learned and said what Raymond was alleging, Mr Ng would have realised that Sebastian was not to be trusted and would have amended his Will to specifically set out the cash gifts. He did not do so.

123 In addition, I do not accept the plaintiffs' evidence, which Sebastian disputed, that Sebastian had announced the cash gifts and the cancellation thereof. I have found Mdm Low and Raymond's evidence on other allegations about the cash gifts to be unreliable. I see no reason to conclude differently for their evidence on their allegations about the cash gifts as stated in paragraphs 7.14 to 7.15. Calista did not give evidence about the allegations in these paragraphs. As for Edwina, her evidence on disputed matters was also generally unreliable.

124 Paragraph 7.16 of the statement of claim alleged that in or about 31 January 2001, Mr Ng told Mdm Chou at the hospital that he had provided for her family. Paragraph 7.17 alleged that in or about February 2001, Mr Ng told Mdm Chou, in the presence of her son, that he had provided for their family. These allegations are vague and I need say no more about them.

125 Paragraph 7.19 of the statement of claim alleged that in the months that followed Mr Ng's demise, Sebastian told Angeline that Mr Ng had willed his assets to Sebastian as a trustee to be held on trust for other family members. Sebastian asked Angeline whether he should distribute to the others "their respective entitlements" or hold onto the same. Angeline replied he should distribute in accordance with Mr Ng's wishes but Sebastian first kept quiet, then refused outright. Sebastian disputed this allegation.

126 The pleading itself was vague. What was meant by "their respective entitlements"? Did this refer to the cash gifts only or all the gifts which are the subject of the claims or entitlements in accordance with the number of children or entitlements as though Mr Ng died intestate or entitlements as determined by Sebastian?

127 In any event, I do not accept Angeline's evidence about this allegation. First, she is not a reliable witness. Secondly, if, as the plaintiffs were suggesting, Sebastian had been deliberately delaying any distribution by falsely telling them that probate had not yet been extracted, there was no reason for him to seek Angeline's views. He would have already made up his mind to keep the assets for himself. Thirdly, Sebastian struck me as a confident and self-assured person. If Mr Ng had given him instructions about specific gifts, he would either have complied or disobeyed. He would not have consulted Angeline only to disobey when he did not like her advice.

128 Paragraph 7.22 of the statement of claim alleged that on or about the night of 29 May 2001, Sebastian had brought Angeline to his home, showed her some documents which he claimed were Mr Ng's bank accounts and said "not so much, how to distribute" or words to that effect. Sebastian denied he said this. Angeline's allegation suggested that other family members or she herself had told Sebastian about the cash gifts before 29 May 2001 and Sebastian was responding to say that Mr Ng did not have enough assets to effect the cash gifts. However, there was no evidence that anyone had spoken to Sebastian about the cash gifts before 29 May 2001. Indeed, it was his point that before the commencement of the action, no one had made any claim of him for any of the alleged gifts, whether cash or otherwise.

129 I do not accept Angeline's evidence on the allegation in paragraph 7.22 of the statement of claim.

130 Paragraph 7.27 alleged that on several occasions before and even after the reading of the Will at the office of Helen Yeo & Partners, Mdm Low and other family members had asked Sebastian when he was going to distribute to them "their respective entitlements" and he kept putting them off by saying that probate proceedings had not been concluded and once they were concluded, he would distribute accordingly. Paragraph 7.28 alleged that, unknown to the plaintiffs, Sebastian had filed a petition for grant of probate on or about 11 June 2001 and probate was granted on 15 June 2001. The allegation in paragraph 7.28 about "their respective entitlements" was vague as I have already mentioned in [126] above.

131 As for the allegation that the plaintiffs were unaware that Sebastian had petitioned for grant of probate, paragraph 62 of Mdm Low's AEIC and paragraph 43 of Edwina's AEIC suggested that had other family members been aware of the same, they would have contested the probate proceedings. I should therefore elaborate on some correspondence between the parties about Mr Ng's Will and probate and the evidence of the plaintiffs thereon.

132 Seven family members had signed a letter dated 16 May 2001 to Sebastian. The seven were Mdm Low, Sunny, Ricky, Raymond, Calista, Jenny and Edwina.

The letter stated:

> **OPENING OF OUR LATE FATHER'S WILL AND OTHER MATTERS**
>
> Further to the several discussions between ourselves, you informed us that you are one of the Executors of our Late Father's Will.
>
> We would be grateful if you would kindly:-
>
> (1) provide us with the name of the solicitors (with proper reference to the solicitor) that prepared the Will and
>
> (2) advise us on a suitable date whereby we can attend at the solicitors' office or such other place that may be convenient to witness the opening of the Will.
>
> We would be very grateful if you would kindly revert in writing to us on the above matters by **4.00 p.m. Monday, the 22nd May 2001.**
>
> We thank you for your kind assistance and we look forward to hearing from you soon.

133 The evidence for the plaintiffs was that the other family members only knew about the existence of a formal Will at the time when the Will was read to various family members and the reference to the Will in the letter dated 16 May 2001 was merely a reference to Mr Ng's wishes. It transpired that the letter was drafted by a friend of Sunny. Nevertheless, in my view, that friend would only draft what he had been instructed and the contents of the letter made it clear that Sebastian had already informed the signatories thereof about the existence of a formal Will.

134 I find the evidence for the plaintiffs that the letter was referring only to Mr Ng's wishes and not his formal Will to be unbelievable.

135 Furthermore, the plaintiffs alleged that the letter was to ask Sebastian "to clarify the status of the Deceased's Estate and when would the family members be getting their respective entitlements under the trusts the Deceased provided for", see, for example, paragraph 55 of Mdm Low's AEIC, paragraph 53 of Raymond's AEIC, paragraph 17 of Sunny's AEIC and paragraph 36 of Edwina's AEIC. These allegations were absurd. The letter was not asking for clarification of the status of Mr Ng's estate or when other family members would be getting their respective entitlements. It was simply asking for the names of the solicitors who prepared the Will and for a date when the Will would be read.

136 I come now to Sebastian's response to the letter dated 16 May 2001. He replied by letter dated 21 May 2001 to each of the signatories of the letter dated 16 May 2001. Although his letter was sent to the address of the subsidiary at 136 Neil Road, it was not disputed that those family members had received his reply before the Will was read. His reply stated:

> I refer to your letter dated 16 May 2001 which I only received on 19 May 2001.
>
> As I have told you all previously, our late father appointed me as the sole executor and beneficiary of his estate. As such, I have since instructed my solicitors, M/s Helen Yeo & Partners, to prepare and thereafter file into court the Petition for Probate on my behalf.

137 It is clear from his reply that he had said that he had given instructions to Helen Yeo & Partners to apply for grant of probate. Yet, the plaintiffs' statement of claim and certain AEICs, as set out above, were suggesting that the other family members were unaware that he was applying for grant of probate until after the event. This reflected another absurd position of the plaintiffs and demonstrated once again how they were prepared to adopt positions which were contrary to documentary evidence. Such instances reflected poorly on their overall credibility.

A note made on 28 June 2001

138 Paragraph 7.30 of the statement of claim referred to a memorandum written by Sunny on 28 June 2001. As this was one of the particulars provided under paragraph 7 of the statement of claim, the purpose of referring to this note was apparently to suggest that Sebastian was acknowledging his duty not to keep everything for himself and to distribute Mr Ng's assets among other family members. The note stated:

(1) House (9) share

(2) For china girl $700 per month up to Primary six.

(3) Mother $160,000

(For Ah Huat $100,000

Gold $60,000)

(4) China 1,000 – 2,000 per month

(5) Balance of money up to famil dsce.

139 Part of the handwriting for item 5 was illegible. Paragraph 33 of Sunny's AEIC said item 5 was to mean that the balance of Mr Ng's money was up to the mother to decide. However, at trial, Sunny

interpreted it to read as the balance of Mr Ng's money being for the family to decide.

140 There was a notation written by Lee Kok Leong at the bottom of the note stating, "I confirm the above with Sunny and Sebastian on 28/6/01".

141 Paragraph 166 of Sebastian's supplementary AEIC said he did not recall seeing the memorandum. He surmised that the memorandum was actually a proposal from Sunny as Sunny and his other siblings had made many proposals to him at that time. Sebastian also said there was no need for him to involve Lee Kok Leong in a family matter. In his oral evidence, Sebastian refuted having made the proposal in the memorandum. On this point, I am not inclined to believe Sebastian. If he was right, it would mean that Lee Kok Leong had fabricated his notation and I do not think Lee Kok Leong, who has no direct interest in the matter, would have done so.

142 Nevertheless, even though I find against Sebastian on this point, the memorandum itself was not consistent with the plaintiffs' claims. That is why they relied on it only to suggest that Sebastian was admitting to some sort of liability. To me, that is too vague especially since it was not clear what the reference to the balance of Mr Ng's money meant. Indeed, it was Sebastian's position, which I shall elaborate on later, that in any event, Mr Ng did not have enough to make the alleged cash gifts. Given that Sebastian was being pressed to make some sort of distribution, I find the memorandum to be of little probative value. He could have made the proposal in an attempt to deflect the pressure being mounted on him. In any event, the proposal was not accepted.

143 I would also add that I note that paragraph 17 of Lee Kok Leong's AEIC asserted that Sebastian reneged on the agreement contained in this memorandum. This suggested that there was a concluded agreement between the parties. It seems to me that Lee Kok Leong was mistaken. Even Sunny's AEIC did not allege that the memorandum constituted or evidenced an agreement between the parties. Neither was the plaintiffs' pleaded claim or submission on the basis that the memorandum constituted or evidenced an agreement between the parties.

The size of Mr Ng's estate

144 One of Sebastian's arguments was that Mr Ng could not have made the cash gifts because he did not have enough assets to do so. If his shares and 1A Wiltshire were to be given to Mdm Low, as claimed, the balance of his estate was insufficient to make the cash gifts and this was all the more so considering that he was a debtor of the subsidiary. As Mr Ng would be aware of his assets and liabilities, he would not have made the cash gifts.

145 This argument was on the premise that Mr Ng's assets were limited to those disclosed by Sebastian for estate duty purposes. The plaintiffs disputed that Mr Ng's assets were so limited.

146 There was one asset disclosed as US$45,097.35 being cash in the house when in fact, the money was in a bank account. This suggested that there might have been both cash in the house as well as money in that bank account. Sebastian's attempt to explain why that sum was disclosed as cash in the house was convoluted. I need not go into that explanation except to say that it was not persuasive.

147 It was also disputed whether the net sale proceeds of the previous family home at 36 Poole Road belonged in part to Mr Ng and in part to Sebastian or was entirely Mr Ng's or entirely Sebastian's. As Sebastian claimed that at least half was his (since he was a co-owner of the property at 36 Poole Road), that half was not included as part of Mr Ng's assets. The other half of the sale proceeds had, according to Sebastian, been used to help pay for 1A Wiltshire or some other purpose.

148 The evidence suggested to me that Mr Ng had treated monies held in a joint account with Sebastian, which included the unutilised balance of the sale proceeds from 36 Poole Road, as available for his (Mr Ng's) use. Likewise, as regards the money of the subsidiary. If Mr Ng had wanted to make the cash gifts in question, he would have told Sebastian so and assumed that Sebastian would see to it that his wishes were carried out.

149 In any event, as I have found that the plaintiffs have not made out any of their claims for the cash or other gifts, it is not necessary for me to make any finding on the size of Mr Ng's estate after taking into account his liabilities. Whatever is left belongs to Sebastian.

The preparation and execution of the Will

150 The validity of Mr Ng's Will was not challenged in the pleadings. Nevertheless, as the plaintiffs' submissions made serious allegations in respect of the preparation and execution of the Will, I will deal with the more serious allegations of the plaintiffs.

151 It was Alan Lee's evidence that in early November 2000, Mr Ng had called him to say that he wanted a will drawn up leaving everything to Sebastian. They spoke in Hokkien. Mr Ng had asked whether it was necessary to list out all his assets but Alan Lee advised him this was not necessary. Mr Ng had instructed that Sebastian was to be the sole executor. When Alan Lee advised him that it was better to have another executor in case anything should happen to Sebastian, Mr Ng nominated Sebastian's wife to be the alternate executor. Alan Lee then instructed a junior solicitor to prepare the Will. Mr Ng subsequently contacted Alan Lee to find out if the Will was ready and he said it was. Mr Ng mentioned that he was going to hospital on 27 November 2000 and wanted to execute the Will then. As he was going to the hospital, Alan Lee suggested that Mr Ng should have a doctor present when he executed the Will. As Mr Ng mentioned that his hand was a little bit unsteady, Alan Lee said he could execute the Will by using his right thumb print. Subsequently, Alan Lee attended to Mr Ng in his hospital room in the afternoon of 27 November 2000. He interpreted the Will to Mr Ng although he did not go through it line by line with Mr Ng. The other witness there also confirmed with Mr Ng that he was giving everything to Sebastian. Sebastian was in the room until the time of execution when he left the room. Mr Ng executed two Wills. Alan Lee gave one to Sebastian and kept the other. Alan Lee received a certificate dated 27 November 2000 signed by two doctors certifying that Mr Ng was of sound mind when he signed the Will. The doctors had been present when Alan Lee was discussing the Will with Mr Ng in his hospital room.

152 The evidence for the plaintiffs suggested that something was amiss because Mr Ng had executed the Will using his thumbprint. For example, paragraph 24 of Sunny's AEIC alleged that Mr Ng never executed any document using his thumbprint. Paragraph 25 of his AEIC also alleged that after the date the Will was signed, Mr Ng continued to execute documents by signing his full name in Chinese. Paragraph 43 of Angeline's AEIC was similar to paragraph 24 of Sunny's AEIC. However, Angeline went further. Paragraph 44 of her AEIC alleged that Mr Ng once told her before he passed away that he had executed a Will using just his thumbprint and not the usual signature of his name using Chinese characters. The reason was so that the Will could be challenged in case Sebastian did not keep his word to distribute to the other family members. Paragraph 44 of her AEIC was vague. What did Sebastian agree to distribute and in what amounts or proportions? More importantly, Angeline's paragraph 44 was a serious allegation about the execution of the Will. Yet, the Will was not being challenged and Angeline confirmed that she was aware of the non-challenge in the claim (NE 13/11/2006 at pg 84). Neither was this material conversation with Mr Ng alluded to in the pleaded particulars of the secret trusts. Thirdly, if Angeline's evidence was true, it would mean that Mr Ng had reservations about Sebastian's integrity. On the other hand, the plaintiffs were also asserting that he enjoyed Mr Ng's absolute trust. I find the allegations about Mr Ng's use of his thumb to execute the

Will and the conversation he was supposed to have had with Angeline to be illustrative again of the inconsistency and desperation of the plaintiffs.

153 To make matters worse for the plaintiffs, their closing submission suggested that since Alan Lee had mentioned that Mr Ng signed two Wills and only one Will had been disclosed, the other Will might have contained terms or an annexure containing terms different from that found in the Will disclosed. I found this suggestion startling. It was clear to me that when Alan Lee was talking about two Wills, he meant two Wills containing the same terms. There was nothing to give rise to this belated and audacious suggestion. This suggestion was not explored with Alan Lee while he was being cross-examined. Furthermore, if the suggestion had any semblance of truth, it would mean that Alan Lee had deceived Mr Ng into signing Wills with different contents. Yet, no such accusation was levelled at Alan Lee while he was cross-examined.

154 The plaintiffs also sought to suggest in their submission that because Alan Lee had mentioned the existence of a draft of the Will which initially required Mr Ng to execute by signature and no such draft had been disclosed, Sebastian had suppressed crucial evidence. It was submitted that there could have been a draft or drafts showing the true intention of Mr Ng to benefit other members of the family. This submission was linked with another point, that is, the list of beneficiaries which Edwina had mentioned in her AEIC. It was submitted that the list could have been the undisclosed draft or a component of the same. It seems to me that Sebastian might not have known about the existence of the initial draft. In any event, he would have been guided by Helen Yeo & Partners on disclosure of documents in the files of Helen Yeo & Partners (now Rodyk & Davidson). Not all solicitors keep every draft. Furthermore, it was again not suggested to Alan Lee during cross-examination that the initial draft was in any way materially different from the engrossed Will. The only point which came out from his evidence about the initial draft was that it was to be executed by signature and not thumbprint and the initial draft was amended to one to be executed by thumbprint.

155 The plaintiffs also submitted that Alan Lee was clearly biased in favour of Sebastian because he had concealed in his AEICs the fact that he had acted for Sebastian and his wife for many years. It was said that this information had to be prised out of Alan Lee during cross-examination (see paragraphs 95 and 96 of PCS).

156 I am of the view that the submission that the information had to be prised out of Alan Lee is an exaggeration. He had no hesitation disclosing such information when asked. It is understandable that he did not disclose that information in his AEIC because he was giving his AEIC as the solicitor for Mr Ng in the preparation and execution of Mr Ng's Will and not as solicitor for Sebastian.

157 True, Alan Lee cannot be said to be a completely independent witness in the trial but the Will remained unchallenged. I would add that it was also not suggested to him at trial that he was biased.

158 The plaintiffs also submitted that Mr Ng was almost blind in the left eye from cataract and glaucoma and did not have his reading glasses on the day he signed the Will. However, it was not Alan Lee's evidence that Mr Ng was able to read the contents of the Will but that he had interpreted the contents of the Will to Mr Ng. The fact that he did not do so line by line was irrelevant since the Will remained unchallenged. In the circumstances, it was also not open to the plaintiffs to suggest that Mr Ng was not in a position to confirm whether his wishes were correctly set out in the Will.

159 I find the plaintiffs' various allegations about the Will to be desperate and irresponsible. They cannot justify such allegations by the excuse that the evidence on the preparation and execution of the Will came out only at the trial.

160 First, for example, Alan Lee's first AEIC sworn on 11 September 2006 had already mentioned that Mr Ng had executed two copies of the Will. The plaintiffs knew only one was exhibited. The plaintiffs had plenty of time to consider whether they wanted to make an issue of it.

161 Secondly, while it is true that some of Alan Lee's evidence came out only at trial, the plaintiffs, who were represented by counsel, could and should have decided what suggestions they wanted to make to him at trial and, if necessary, apply to amend their pleadings. No application to amend was made although I had reminded their counsel about the state of their pleadings. No suggestion of the sort found in PCS was made to Alan Lee. The plaintiffs cannot choose to go beyond the perimeters they have set for themselves just because they now feel like doing so.

The submission that the Will does not record the full intention of Mr Ng

162 The plaintiffs submitted that the Will did not record all of Mr Ng's intention. They relied on the fact that Sebastian had admitted that Mr Ng had told him to let Mdm Low stay in 1A Wiltshire. Also, Sebastian had admitted that Mr Ng had instructed him to pay for a tombstone for Mr Ng in China. These two instructions were not stipulated in the Will.

163 In my view, these two instructions do not advance the plaintiffs' claims. It is not uncommon for a testator to give instructions of the sort disclosed which are not stipulated in a Will. Furthermore, such instructions may not be intended to be legally binding. It is still for the plaintiffs to establish the specific claims, a burden which they acknowledge.

"Wei tok"

164 The plaintiffs also submitted that witnesses of Sebastian, other than Alan Lee, had said that Mr Ng had told them he was leaving everything to Sebastian but their evidence was that Mr Ng had used the Hokkien words "wei tok" which means "entrusted" whereas "wei chok" means "Will". For reasons which I shall elaborate on later, I find the evidence of these other witnesses generally unreliable and I doubt if Mr Ng even mentioned to them his intentions about his Will. I would add that Alan Lee was clear that Mr Ng did not use the words "wei tok".

165 However, I note that Sebastian's evidence was that Mr Ng did say "wei tok" to him although Sebastian then said it could be "wei tok" or "wei chok". I believe that Mr Ng had said "wei tok" to Sebastian but what would the consequence be? As I have mentioned, there must be more than a moral obligation. The words "wei tok" are consistent with an intention to entrust everything to Sebastian with a moral obligation to take care of family members as Sebastian thought fit. The words in themselves would not translate into a legal obligation to make specific gifts.

Sebastian's other witnesses

166 Aside from Alan Lee, Sebastian had three other witnesses as mentioned in [17] above.

167 Huang Fu Chuan ("Huang") said he was Mr Ng's nephew in that he was the son of a cousin of Mr Ng. He was a retired construction worker residing in rented accommodation in Hong Kong S.A.R. ("HK SAR"). He lived on his savings and financial support from his children. Paragraph 8 of his AEIC stated that during the last months of Mr Ng's life, Mr Ng had told him on many occasions in China and in HK SAR that he was leaving his entire estate to Sebastian. The last time Mr Ng told him this was in or around March 2001 when Huang was preparing to return to HK SAR from Singapore.

168 Paragraphs 9 to 12 of Huang's AEIC stated his observations of Mr Ng's relationship with his

immediate family members and an incident in February 2001 when Mdm Low allegedly asked Mr Ng for $500,000 which evoked a furious response from Mr Ng.

169 In oral evidence, he initially said that when he came to Singapore in August 2006, it was to prepare his AEIC for the present case. However, he then changed his evidence and said it was to try and reconcile Mr Ng's family members. When he was told by Sebastian that the case had already gone to court and the hearing would commence shortly, he decided not to meet up with the other family members. Yet, the action had already been filed in February 2006. Huang would have known that before taking the trouble to come down to Singapore in August 2006. Furthermore, he admitted that he did not know the other family members well. Therefore, he was not in a position to influence them or advise them to reconcile. It was also illogical that he should embark on a mission to bring reconciliation which entailed his flying to Singapore and then abandon the mission without even talking to any of the other family members just because Sebastian told him the case had already started and the hearing would commence shortly. His excuse was that he was not familiar with Singapore law but he already knew about this lack of familiarity before he came to Singapore in August 2006. I am of the view that Huang had lied when he changed his evidence on the purpose of his visit to Singapore in August 2006. He was entitled to come to Singapore in August 2006 to prepare his AEIC for Sebastian but obviously he thought that this might demonstrate partiality on his part and so he came up with a different reason.

170 Huang also said he had been to Singapore in October 2006 and subsequently in March 2007. The trip in October 2006 was to find out the progress of the present case. The trip in March 2007 was in anticipation of his having to give oral evidence which was in fact given from 23 to 25 April 2007. Notwithstanding his financial situation and the purpose of his trips to Singapore, Huang said Sebastian did not pay and did not offer to pay for any of his expenses. His airfare and accommodation and other expenses were paid by himself or his daughter or a cousin or a brother. I find this unbelievable.

171 It is clear to me that Huang was prepared to say anything to avoid any suggestion of partiality on his part. In so doing, he demonstrated his unreliability as a witness.

172 In yet another demonstration of his unreliability this time on a point of specific relevance, Huang said during cross-examination, that Mr Ng had mentioned twice that he was giving everything to Sebastian, once in HK SAR and the second time in China. He confirmed during cross-examination that there was no third occasion in either of these two places or anywhere else (see NE 25/4/07, pg 9 to 15) when Mr Ng mentioned this again to him. Yet, when paragraph 8 of his AEIC (see [167] above) was pointed out to him in re-examination, he confirmed that the last time Mr Ng mentioned this to him was in or around March 2001 when Huang was preparing to return to HK SAR from Singapore. When he was asked why he did not mention that last occasion in cross-examination, his lame excuse was that he was not asked whether Mr Ng had said this in Singapore (NE 25/4/07, pg 26 and 27).

173 Tai Yun Shan ("Tai") said in his AEIC that he was a close personal friend of Mr Ng and was retired. He had been working in United Malayan Bank Corporation Berhad ("UMBC") and was handling the account of the subsidiary.

174 Paragraphs 8 and 9 of Tai's AEIC stated that it was obvious to him that Mr Ng did not have a good relationship with his children, save for Sebastian. On the many occasions that he saw Mr Ng, he rarely saw any of the other sons, apart from Sebastian and he never saw any of Mr Ng's other children speak to him. Paragraph 10 mentioned an occasion when Mr Ng told him that Ricky had lost a lot of money in gambling. Paragraph 11 stated that on another occasion, Mr Ng told him that Sunny had sold houses which Mr Ng had bought for Sunny and Mr Ng looked unhappy then. Paragraph 12 stated that Tai could see from his interaction with Mr Ng that he was not happy with Raymond.

Paragraph 19 stated that on one occasion in 2000 or 2001, when Tai visited Mr Ng in hospital, Mr Ng told him that he would give everything to Sebastian. Tai clarified in oral evidence that this was said in the presence of a group of friends.

175 Tai elaborated that he was 89 years old when he was giving oral evidence. He had retired about 24 years ago. He had had coffee with Mr Ng from time to time when he was at UMBC and after he retired. However, Tai was inconsistent as to whether this activity continued up to the time when Mr Ng was first hospitalised in 2000. First, he said it stopped after Raymond's wedding in November 1991, then he suggested it continued and then he appeared to accept that it stopped.

176 Also, although he took the trouble to make an observation about Mr Ng's relationship with Raymond in his AEIC, he then asked whether that relationship was important or related to the case when he was cross-examined about his own evidence on it (see NE 7/5/07, pg 60).

177 As for his evidence about what Mr Ng said to him in the presence of a group of friends, he said they were definitely Mr Ng's friends but made the strange remark, "Whether or not they were my friends, it depends" (NE 8/5/07, pg 4). He accepted that he had no recollection of the identity of the group of friends.

178 As for what Mr Ng told him about giving everything to Sebastian, he said Mr Ng had used the Hokkien words "chu li" which means "handle" or "deal with" (NE 7/5/07, pg 48) and "kao" meaning "hand over" or "deliver" (NE 7/5/07, pg 50). However, when he continued to give evidence the next day, his evidence shifted. He said Mr Ng had used the Hokkien word "hor" meaning "give to", that is, Mr Ng was giving to Sebastian his assets. When asked, he denied he had discussed his evidence with anyone since the break in the evening of the day before (NE 8/5/07, pg 6 and 7). It seems to me that he was tailoring his evidence the next day to suit Sebastian's position.

179 After considering Tai's evidence in its entirety, I find him to be an unreliable witness.

180 I come now to the third witness (of the three witnesses), Mr Ng Koon Ting ("Koon Ting"). In his AEIC, he stated that he was a close friend of Mr Ng. He had worked for Mr Ng as his personal driver and general office assistant and stopped in the 1980, due to health reasons.

181 Paragraphs 10 and 11 of his AEIC stated that Mr Ng told him that he often quarrelled with Mdm Low about his children's demands for money and that he had witnessed some of the quarrels. Mr Ng also told him that as a result of the quarrels, they hardly spoke to each other. Paragraph 12 stated that he observed Mdm Low to be a thrifty person but she would not hesitate to use her money to pay off her children's debts. Paragraph 14 stated that despite the strained relationship between Mr Ng and Mdm Low, he continued to pay for her expenses.

182 Paragraphs 15 to 22 contained Koon Ting's evidence on Mr Ng's relationship with various children. In paragraph 24, he stated that on one occasion in 2001, when Mr Ng's health worsened, Mr Ng told him he was giving 1A Wiltshire to Sebastian.

183 However, I find Koon Ting to be generally an unreliable witness. I need mention only one aspect of his oral evidence to illustrate why I say this. Raymond had telephoned Koon Ting on 29 May 2006 to check whether he had heard Mr Ng saying that he would give everything to Sebastian. Unknown to Koon Ting then, the conversation was recorded by Raymond. The transcript thereof apparently showed that Koon Ting was saying that he did not hear Mr Ng saying he would give everything to Sebastian.

184 However, Koon Ting gave a different version of that conversation even though the recording was played for him to hear and he had had the benefit of the transcript and the assistance of an interpreter. He suggested that an initial unimportant part of the conversation when Raymond inquired how he was and his response was excluded from the recording. More importantly, he said Raymond had asked him whether he was present when Mr Ng made his Will and he replied he was not. That was not what was recorded. Also, Koon Ting was saying that some parts of the recording were not his words and the voice said to be his voice was not his. Yet he was not suggesting that the recording had been fabricated even though I gave him the opportunity to say so. Furthermore, the recording and the transcript had been made available to Sebastian's solicitors earlier and they in turn had spoken to Koon Ting about it before. When Raymond was giving evidence, it was not suggested to him that the recording was in any way inaccurate. Yet, here Koon Ting was giving a version of the conversation with Raymond different from what was recorded (NE 22/5/07, pg 21 to 36).

185 Accordingly, as I have mentioned, I did not give any weight to the evidence of any of these three witnesses on contentious issues.

Whether Sebastian was willing to disregard Mr Ng's instructions

186 The plaintiffs submitted that in another instance, Sebastian had demonstrated that he was willing to disregard Mr Ng's instructions in his Will. Clause 2(ii) of the Will provided that the executor was to use Mr Ng's estate to pay his debts, funeral and testamentary expenses. In Suit No. 464 of 2005, Sebastian had refused to pay the funeral and testamentary expenses and wanted the subsidiary to pay the same. It was submitted that he maintained this position all the way up to the trial and finally changed his mind after being cross-examined. This showed that he had no intention of obeying Mr Ng's written wishes much less Mr Ng's oral wishes communicated to him (PCS paragraph 65).

187 On the other hand, Sebastian submitted that the claim for him to pay such expenses was not initially based on the terms of the Will. When it was drawn to his attention that the terms of the Will provided for the executor to pay such expenses from the estate, he willingly agreed.

188 Looking at some notes of evidence in that case and the remarks of the trial judge there, I am of the view that Sebastian's version portrayed the situation more accurately.

189 Therefore, even if the evidence of Sebastian's conduct in that action was admissible in the action before me, such evidence carried little probative value in the light of Sebastian's clarification. Significantly, the burden was still on the plaintiffs to prove the oral gifts made by Mr Ng before it could be said that Sebastian was willing to disregard them. For reasons I have stated, the plaintiffs have failed to do so.

Whether the other family members knew about the Will before Mr Ng's demise

190 Sebastian asserted that the other family members knew before Mr Ng's demise that Mr Ng had made a Will. He also suggested that they knew about the terms of the Will and it was open to them to ask Mr Ng to change his Will as Ricky allegedly did. The plaintiffs main witnesses denied that they had known about the Will and its terms before Mr Ng's demise.

191 I need not elaborate on the evidence on this issue which I find to be inadequate to persuade me that the plaintiffs knew about the existence and the terms of the Will before Mr Ng's demise. Even if they had known, such knowledge does not in itself rule out the existence of secret trusts.

Conclusion

192 Interestingly, it appears that the only formal demand that was made of Sebastian before the present action was filed, was a demand dated 26 September 2005 by Arul Chew & Partners for the return of Mdm Low's jewellery which, as I have mentioned, is not even the subject of the present action.

193 Although Sebastian has not been entirely truthful, neither have the plaintiffs on whom the burden of proof lies. The plaintiffs' evidence is fraught with inconsistencies and is unreliable.

194 I am of the view that Mr Ng gave his entire estate to Sebastian in the expectation that Sebastian would do right by the other family members. He left it entirely to Sebastian, whom he trusted, to decide what to do with his estate. Sebastian will have to be dictated by his conscience but there is no legal obligation on him. The plaintiffs have failed to prove their case and I dismiss their claims.

195 I will hear the parties on costs.