Wong Meng Cheong and another *v* Ling Ai Wah and another
[2011] SGHC 233

Case Number : Suit No 607 of 2010 and Originating Summons No 1435 of 2005

Decision Date : 27 October 2011

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Andre Maniam SC, Chua Sui Tong, Aw Wen Ni and Edwin Cheng (WongPartnership LLP) for the plaintiffs; Cavinder Bull SC, Yarni Loi, Yvette Anthony and Kong Man Er (Drew & Napier LLC) for the first defendant/first intervener; Daniel Koh, Adrian Tan and Lanx Goh (Eldan Law LLP) for the second defendant; Anthony Lee and Marina Chua (Bih Li & Lee) for the second intervener.

Parties : Wong Meng Cheong and another — Ling Ai Wah and another

Mental Disorders and Treatment

Trusts

Civil Procedure

27 October 2011

Lai Siu Chiu J:

Introduction

1 It is a happy thing to be the father unto many sons. [note: 1] That was true for most of the life of the octogenarian Wong Yip Chong ("WYC"), the central figure in this case, Suit No 607 of 2010 ("the Suit"). He was the patriarch of the Wong family and a prominent psychiatrist in Singapore until he was stricken with Alzheimer's disease. WYC's eldest son was Wong Meng Cheong ("WMC"), the first plaintiff, while Wong Meng Leong ("WML"), who is the second plaintiff was his second son. The second defendant Wong Meng Weng ("WMW"), was WYC's youngest son. WMW was born to a different mother from the plaintiffs, namely to Patricia Ling Ai Wah ("PL"), the first defendant. WMC and WML are the sons of Tan Kim Yam ("TKY"), who was WYC's wife. Besides the three sons, WYC had a fourth son in Wong Meng Kong ("WMK") a psychiatrist, and a daughter, Wong Mei Sheong ("WMS") who is an artist, with TKY. Both appeared as witnesses for the plaintiffs.

2 This Suit started life on 2 July 2010 as an originating summons ("OS 648 of 2010") filed by WMC, WML and WMW as the plaintiffs with PL as the sole defendant. It was converted to a writ on 11 August 2010 as the dispute raised highly contentious issues of fact. The then plaintiffs had prayed that a transfer IA/54236J dated 8 December 2004 ("the Transfer") in respect of a property situated at 5 Chancery Hill Road, Singapore 309644 ("5CHR") (whereby the manner of holding had been changed to include PL as a joint tenant) be declared null and void. After OS 648 of 2010 was converted to a writ, WMW declined to be a plaintiff and he was therefore made a co-defendant to the Suit with PL.

3 In their statement of claim, the plaintiffs pleaded in the alternative that the joint tenancy of

5CHR should be severed and the property sold if the Transfer was found to be valid. On 30 November 2010, before the Suit came on for trial, the plaintiffs filed two statutory declarations in their capacities as WYC's deputies. One of the statutory declarations was to sever the joint tenancy of 5CHR. On 1 December 2010, they followed that up with an applicationin the Suit for a declaration that their statutory declaration to sever the joint tenancy of 5CHR be declared valid. I dismissed this application on 1 February 2011 because it raised the identical issue which was going to be litigated at this trial.

4 Besides her defence, PL filed a counterclaim against the plaintiffs on 20 September 2010. She prayed for a declaration that she is the sole beneficial of 5CHR and another property located at No 50 Draycott Park, #28-01 Draycott Towers, Singapore 309644 ("the Draycott Property") which she had held in joint tenancy with WYC since 2002. The plaintiffs had also attempted to sever the Draycott Property's joint tenancy – the other statutory declaration they filed on 30 November 2010 was for this purpose.

5 In another action, Originating Summons No 1435 of 2005 ("the Originating Summons"), WMC, WML and WMW were appointed as members of a committee of the person and estate of WYC ("the CPE") by the Court on 20 October 2005 under s 9 of the Mental Disorders and Treatment Act (Cap 178, 1985 Rev Ed). When the Mental Disorders and Treatment Act was repealed and the Mental Capacity Act (Cap 177A, 2010 Rev Ed) ("the MCA") came into force on 1 March 2010, the members of the CPE were deemed to be deputies appointed by the Court under the MCA to act jointly to make decisions on WYC's behalf, pursuant to the savings provisions in the Third Schedule of the MCA.

6 After the CPE was constituted, it took out an *ex parte* Summons No 5378 of 2006 on 23 November 2006 to seek repayment of a loan that WMC allegedly extended to WYC on 30 January 1999 in a transaction which involved a company called Synapse Company Pte Ltd ("Synapse"). Pursuant to this application, which was made unanimously, the Court ordered that a sum of about $1m be returned to WMC from WYC's estate on 14 December 2006 ("the Synapse Order"). On 7 April 2010, the three deputies of WYC took out another *ex parte* Summons No 1542 of 2010. This application was for them to be empowered to sell WYC's properties. The power to sell was granted on 13 May 2010 ("the 2010 Order").

7 On 15 December 2010, WMW applied *via* three summonses to revoke the appointments of WMC and WML as deputies of WYC; set aside the 2010 Order and set aside the Synapse Order. The substance of these summonses filed by WMW in the Originating Summons was the same as several of the reliefs prayed for in the counterclaims of both defendants in the Suit. Given the substantial overlap in issues of fact and law, the Originating Summons was consolidated with the Suit on 28 January 2011. I also granted leave to PL and TKY, the second intervener, to intervene in the issues arising from the Originating Summons under s 38(2), MCA and O 99 r 2 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("ROC") . Both were sufficiently connected to WYC and clearly had a real interest in the plaintiffs' appointment and powers as WYC's deputies.

8 I had decided the following issues in the oral judgment that I delivered on 8 August 2011 after the trial concluded:

(i) whether PL was the sole beneficial owner of 5CHR;

(ii) if PL was not the sole beneficial owner of 5CHR, whether the Transfer was valid;

(iii) if the Transfer was valid, whether 5CHR's joint tenancy should be severed and the property sold;

(iv) whether PL was the sole beneficial owner of the Draycott Property;

(v) whether the Synapse Order should be set aside;

(vi) whether the 2010 Order should be set aside; and

(vii) whether the plaintiffs' appointments as deputies of WYC should be revoked.

Essentially, I dismissed the plaintiffs' claims in the Suit with costs and awarded judgment to the two defendants on their counterclaim. As the plaintiffs have filed an appeal (in Civil Appeal No 104 of 2011) against my decision, I shall now set out the grounds of my judgment in full.

Whether PL was the sole beneficial owner of 5CHR

9 WYC met PL sometime in 1969 while she was his clinic assistant. They developed a friendship. In or around 1972, WYC told PL that he had developed feelings for her. He disclosed to her that TKY suffered from schizophrenia. PL was initially reluctant to begin a relationship with WYC in view of his married status. I should point out that WYC was also 22 years older than PL. WYC's sincerity however eventually won PL over. He promised PL that he would take care of her and treat her as his wife. He also bought her two rings and hosted a dinner with PL's parents and siblings to formalise their union as husband and wife, albeit not in a legally valid way since WYC never divorced TKY. Soon after that, WYC and PL began cohabitating, initially at a house in Jalan Novena Selatan. After they began living together, TKY and her children continued to live in another house at 37 Goldhill Avenue ("37GHA"). However, WYC visited TKY and his children at 37GHA daily.

10 In 1975, WMW was born. A year later, WYC bought a property at 7 Whitley Road ("7WR") for PL to effectuate his promise of taking care of her. The plaintiffs submitted that 7WR was not beneficially owned by PL as its purchase was funded by WYC, and that gave rise to a presumption of resulting trust in favour of WYC: *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [34]. I found that the presumption of resulting trust was rebutted. I accepted PL's evidence that 7WR was intended by WYC to be a gift to her. WYC and PL were not married to each other, and PL would have had no claim against WYC for her maintenance if their relationship ended. Under those circumstances, it was reasonable that WYC sought to assure PL of the security of their relationship by providing her with a house in which they could raise their child. The gift was perfected when 7WR was bought in PL's sole name. WYC, PL and WMW lived there together, and PL considered it her "matrimonial home".

11 Sometime in 1981, WYC and PL decided to purchase a new property for their occupation as 7WR was not a conducive place to raise WMW. They chose 5CHR. 5CHR was acquired in this way. 7WR was sold on or about 3 April 1982 for $670,000. Since 5CHR was purchased before the sale of 7WR, WYC borrowed monies from Wong Yip Chong Pte Ltd ("WYCPL") to pay for the purchase price of $790,000 first. WYCPL was a company incorporated by WYC in 1972 to run his psychiatric hospital, which was then called the Singapore Nursing Home and situated at Dunearn Road.

12 In a letter dated 5 May 1981, WYC gave specific instructions to the vendor of 5CHR that it should be transferred to PL on completion. Those instructions were also conveyed to the vendor's solicitors. Pursuant to the instructions, 5CHR was transferred to PL's sole name on 17 July 1981. Because 5CHR was to be extensively renovated and hefty costs would be incurred in the process, WYC asked PL whether she was willing to transfer 5CHR to WYCPL as a temporary measure. On 18 March 1982, PL transferred 5CHR to WYCPL for a sum of $770,000 which was in fact never paid to her.

13 I found that the parties' common intention, immediately after 5CHR was transferred to WYCPL, was for PL to own the beneficial interest of 5CHR solely. The parties had intended for PL's interest in 7WR to be replaced by her interest in their new "matrimonial home", 5CHR. To this end, on 13 September 1982, PL transferred the sale proceeds of 7WR to WYC for the payment of 5CHR's purchase. This was reflected in the flow of funds set out in PL's and WYC's bank passbooks. A common intention constructive trust had arisen, and it therefore did not matter that the purchase price of 5CHR exceeded the proceeds obtained from selling 7WR. WYCPL, which was then under the control of WYC, held 5CHR on trust for PL.

14 On 11 February 1985, however, WYC caused WYCPL to transfer 5CHR to himself solely. This transfer was motivated principally by tax considerations as there was a tax concession for owner-occupied properties. PL did not explain in her affidavit of evidence-in-chief ("AEIC") why 5CHR was transferred to WYC rather than herself despite her assertion of being the sole beneficial owner of 5CHR even after 11 February 1985. At the trial, PL revealed that the transfer was made to WYC instead of to her in order to pre-empt TKY's relatives from alleging that WYC was favouring her as TKY was not the owner of 37GHA. This reason was also stated in a document called "the Christmas Recommendations" which will be discussed below. It was a reasonable explanation which I accepted. At that point in time, the renovated 5CHR (at a cost in excess of $300,000) was also a superior residence to 37GHA, and had a swimming pool.

15 PL testified that their mutual understanding was that WYC would eventually transfer 5CHR back to her. However, PL could not adduce any evidence to show whether WYC and PL agreed that this transfer of 5CHR's beneficial interest back to PL was to take place at a specific date or even during WYC's lifetime. On the balance, I found that PL had acquiesced to giving up the whole of her beneficial interest in 5CHR to WYC in 1985, and there was a common intention between them that WYC was to be its new beneficial owner solely.

16 This common intention could be inferred from how WYC was able to unilaterally deal with 5CHR after 1985. These dealings were documented over the years. First, in the wills WYC made prior to the Transfer, his expressed intention was for 5CHR to be transferred to PL upon his death. The wills were dated 11 May 1997 (updated on 27 September 2000 and 27 January 2001) and 4 September 2003. There was no reason to think that WYC was not referring to PL's beneficial interest in 5CHR in those wills.

17 Further, in April 2002, WYC spoke to his solicitor Tan Yah Piang about effecting a transfer of 5CHR to PL as joint tenants. The plaintiffs learnt of this intended transfer and on 2 July 2002 organised a meeting with WYC and Tan Yah Piang. PL was notified of this meeting by WYC and attended it. At the meeting, the plaintiffs objected to WYC's decision to transfer 5CHR to PL as a joint tenant for many reasons, one of which was that WYC should continue to hold 5CHR in his sole name in case funds were required to bail out WYCPL. On 3 July 2002, the plaintiffs visited WYC at 5CHR to reiterate their objections in the presence of PL. As a result, WYC instructed Tan Yah Piang to put the intended transfer on hold. It was in this context that PL stated in her AEIC that she "was at a loss to understand why [the plaintiffs] took such pains to prevent me from having title over a property, which was always intended to be mine." In an e-mail she sent to WMW dated 3 July 2002, she described this aborted transfer:

> … My [*ie* PL's] question to the lawyer is what if [5CHR] is mortgaged or sold before the will [bequeathing 5CHR to PL] could be effected … Yah Piang confirms that it will only be useful if there is something to be given at [WYC's] passing on. … [WMC] went further to say that if [WYC] were to give me the 50% now I may desert him. … On my part my reasons for wanting to have 1/2 the house is simply for my immediate and future security. … Not having the property

now is ok …

18 Both her AEIC and that e-mail to WMW showed that PL treated WYC as the sole beneficial owner of 5CHR in 2002, and the transfer which did not materialise was meant to give her some share in the property.

19 Thirdly, before the Transfer took place, WYC was entitled to use 5CHR to raise funds without PL's consent. From 2001 to the middle of 2004, WYC shouldered heavy financial burdens. After WMC became actively involved in WYCPL in 1995 and took over its management, he caused WYCPL to become a property investment company. WYC became the personal guarantor for $13m worth of loans which WYCPL took to purchase numerous properties as WMC embarked on ambitious property acquisitions. This personal guarantee became a perennial worry of WYC and after 2000, he was constantly thinking of ways to alleviate this concern in order to retire with peace of mind. WYC's worry about the personal guarantee was well known to the family members and expressed in e-mails and notes over those years. Various arrangements were contemplated to address the concern.

20 In early 2001, following failed negotiations for a sale of WYC's psychiatric hospital Adam Road Hospital Pte Ltd ("ARHPL"), the financial strain on WYCPL increased. WMC promptly found another potential purchaser of ARHPL in Pacific Healthcare Holdings Pte Ltd ("PHH"), in June 2001. A deal was struck in December 2001 between WYCPL and PHH for the sale of 80% of ARHPL's shares to PHH ("the PHH deal"). This, however, did not free WYCPL and correspondingly WYC, from financial difficulties because the substantial part of the deal pertained to the sale of 19 Adam Road, the land on which ARHPL sat. This sale which would have netted WYCPL $11m was not completed until June 2004. In the interim period, there were real risks that the PHH deal would fall through. WYC also endured a genuine prospect of the guarantee being called upon, especially during 2003 when poor market conditions meant that WYCPL's property investments fared badly.

21 In the light of his financial commitments, WYC handed to PL a personal note on 19 January 2003 to explain his decision to postpone the transfer of 5CHR to her as joint tenant. Part of the note read:

> While I was going downstairs I heard you reading to the grandchildren [WML's children]. In what would be a dark moment in your life that you still cared for them signifies a sincerity in your attachment to the Wong's family.
>
> For this reason apart from others, you deserve [5CHR].
>
> Accordingly in the next few days, subject to my satisfying myself that the current financial crisis with regard to my property investment, will not be likely to bankruptise me, I will get my lawyers to work on the transfer of 50% or thereabouts to you.
>
> My hesitation is because of my anxiety largely in respect of my finances facing a severe downturn in the present negative market condition especially were it to worsen.

22 This note stated unequivocally that WYC thought that any transfer of 5CHR was "subject to" his own financial security. WYC's financial position did not improve over the next few months. In fact, WMC caused WYC to cross-guarantee a further sum of $7.92m in August 2003. But WYC was determined to ensure that his promise to PL would eventually be fulfilled. Hence, he wrote to Tan Yah Piang on 6 October 2003 and repeated his wish to bequeath 5CHR to PL. He also enquired about the effect of lodging a caveat in favour of her:

> I understand a caveat would protect Patricia's interest. However, Meng Leong understands that

by doing so, I am giving up my total rights to the house even before my death i.e. if the Bank demands payment; I have no right to sell the house. Is this so please?

23 It was clear from the quoted portion of the above letter that WYC was entitled to use 5CHR to satisfy his liabilities if they crystallised without first having to obtain PL's consent. This showed that it was WYC and not PL who solely owned 5CHR beneficially up till the time the Transfer was executed in December 2004.

24 During cross-examination, PL persisted in stating that WYC never regarded himself as having at least some beneficial share in 5CHR because "he knew it all along" that 5CHR was intended to be hers eventually. PL's lay understanding was natural, but it was mistaken as well. The couple's shared understanding that 5CHR would "eventually" be PL's did not in itself give PL a beneficial interest in 5CHR. The eventuality was also subject to the abatement of WYC's financial liabilities. That only happened some months before the Transfer took place. Hence, I held that PL was not the sole beneficial owner of 5CHR.

Whether the Transfer was valid

Did WYC have the mental capacity to execute the Transfer?

25 In the absence of other vitiating factors, the Transfer's validity depended on whether WYC had the requisite mental capacity to execute it. After reviewing the applicable law, and the factual and medical evidence, I decided that WYC was competent to execute the Transfer at the material time. WYC was unlikely to be suffering from Alzheimer's disease then. Even if I was wrong and he did suffer from an impairment of the mind in December 2004, I found that WYC was still able to make a decision for himself regarding the execution of the Transfer.

26 WYC's conduct which preceded the execution of the Transfer showed that his decision was not merely rational in its outcome, but was carefully taken. WYC made his decision after he had identified and weighed the respective interests of parties who would be potentially affected, including his own. The activities which he continued to engage in and the various corporate documents he signed after December 2004 also rendered the allegation that he lacked the capacity to execute an instrument in the nature of the Transfer implausible.

The law on mental capacity

27 Although the MCA had not come into force when WYC executed the Transfer in December 2004, the statutory test for capacity can be applied here. The statutory test is consistent with the common law definitions which were applied to determine whether decisions made in other contexts should be upheld: *eg George Abraham Vadakathu v Jacob George* [2009] 3 SLR(R) 631 at [29] which states the test for testamentary capacity. The common law definitions uphold the value of autonomy because capacity is a necessary condition for an individual to behave autonomously. In a similar vein, the underlying philosophy of the MCA emphasises an individual's autonomy and the right to decide for himself. For example, the MCA provides that decisions cannot be taken on behalf of another person unless it is established that he lacks statutorily-defined capacity in relation to the specific matter. As a corollary, if a person possessed statutorily-defined capacity, his decision should stand as it is an autonomous one, assuming that other vitiating factors are absent. Given that the MCA was enacted to guide proxy decision-making and not to alter the pre-existing conception of autonomy embodied in the common law, its concept of capacity was not different from the common law's.

28 The MCA's test is found in s 4(1). It states:

> For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

Section 5(1) of the MCA defines a person as being "unable to make a decision for himself" if he is unable to understand the information relevant to the decision; to retain that information; to use or weigh that information as part of the process of making the decision; or to communicate his decision.

29 The MCA's test for capacity can therefore be reduced into two components. There is a diagnostic threshold of an impairment of brain or mind function, and that must result in a functional inability to make a decision due to the lack of any of the elements in s 5(1) of the MCA. These two components were adopted from the equivalent United Kingdom legislation. The requirement for a functional inability directs our attention to the person's decision-making process rather than the outcome of his decision. This focus is reinforced by s 3(4) of the MCA which states that a person is not to be considered incapacitated merely because he makes an unwise decision. Because a purely functional approach may still overreach, the Law Commission of England and Wales recommended an additional diagnostic threshold to be satisfied in order for incapacity to be established: *Mental Incapacity* (1995) (Law Com No 231) London: HMSO at pp 34 to 36. This threshold serves to prevent individuals from being caught by the MCA's provisions simply for making unwise or eccentric decisions.

30 The plaintiffs also bore the burden of proving on a balance of probabilities that WYC lacked capacity at the material time because s 3(2) of the MCA provides that a person "must be assumed to have capacity unless it is established that he lacks capacity". This allocation of the burden of proof is unlike a case which concerned testamentary capacity since that is for the propounder of a will to prove: *Chee Mu Lin Muriel v Chee Ka Lin Caroline (Chee Ping Chian Alexander and another, interveners)* [2010] 4 SLR 373 at [52].

WYC's functional abilities to make decisions around the time of the Transfer

WYC's conduct in the period surrounding the Transfer

31 Shortly before he signed the Transfer, WYC had attempted to transfer 5CHR in a different manner of holding. On or about 17 November 2004, WYC approached one G D Balakrishnan ("Balakrishnan"), a senior lawyer to act for him in the transfer of the entire beneficial interest in 5CHR to PL and WMW as tenants-in-common holding a 60% and 40% share respectively. Balakrishnan was WYC's neighbour since 1968 when he moved to 39 Goldhill Avenue. Over the years, he became WYC's close friend. Balakrishnan testified that WYC telephoned him to prepare the necessary documents for the transfer of 5CHR in the manner of tenancy-in-common. During the period from 17 November 2004 to 3 December 2004, they kept in regular contact and WYC was generally prompt in providing Balakrishnan with the relevant information for the transfer. Balakrishnan observed that WYC's responses to his queries were always clear, coherent and concise.

32 On 5 December 2004, Balakrishnan brought the transfer documents he had prepared to 5CHR. According to Balakrishnan, WML and PL were present at this meeting before he arrived. Balakrishnan testified that because WML objected to the transfer strenuously at that meeting, he advised WYC to take time to reconsider the matter, before taking the transfer documents away with him.

33 The plaintiffs disputed Balakrishnan's account. WML's version of what took place on the evening of 5 December 2004 was diametrically different from PL's and Balakrishnan's. In his AEIC for OS 648 of 2010, WML claimed that WYC had called him, sounding "anxious", sometime towards the end of 2004, and asked him to go to 5CHR immediately and "help him to look over some documents that he had

been asked to sign." WML alleged that WYC told him that he "sensed the documents were of some importance and wanted [WML] to be there with [WYC]." This implied that WYC did not even know the nature of the documents that were placed before him at that time. WML described what happened next as follows:

> When I got there, I noticed that a lawyer, Mr Balakrishnan was also there together with [PL]. … I noticed that the document my father was about to sign was a [t]ransfer relating to [5CHR]. I asked my father if he knew what he was signing and tried to explain it to him. My father was muddled and confused. At that point in time, Mr Balakrishnan then said something to the effect that "we don't have to do this now if you want to consider it". Mr Balakrishnan then left with the document not signed.

34 At the trial, WML embellished his account. He claimed to have been awakened by a telephone call from WYC early in the morning of 5 December 2004, and rushed to 5CHR where he distinctly recalled seeing Balakrishnan's car already parked when he arrived. I found WML's version of what took place on 5 December 2004 to be unlikely to be true. First, Balakrishnan explained that the meeting which took place on a Sunday could not have been in the morning because as a Christian, he would have been in church at that time. Balakrishnan was also unlikely to be wrong about the date of the meeting because it was corroborated by PL's account. Secondly, Balakrishnan testified that the transfer documents were kept in an envelope and were not taken out and shown to WYC at all during the meeting. Hence, WML could not have read them. This meant that WML went down to 5CHR not to assist a confused WYC but because WYC had informed him of his intention to transfer 5CHR to the defendants, and WML wanted to stop the transaction. Thirdly, Balakrishnan testified that WYC was attentive and it was obvious from WYC's demeanour that he fully understood the implications of transferring 5CHR to the defendants. Fourthly, Balakrishnan's evidence showed that the only pressure that was applied during the meeting was by WML. WML repeatedly urged WYC not to execute the transfer by raising issues such as WYC's fiscal commitments and the rights of TKY. This evidence was consistent with the contents of a contemporaneous note that PL made during that meeting which stated that WML objected to the transfer because, "my father is much older; if father is infirm, I don't want Pat to have the house, 'bedrock' to hang on" and "I prefer after his life time". This note was dated 5 December 2004 and WML did not deny that he said those words at that meeting. PL testified that WML insisted that WYC continued to "have a stake" in 5CHR, in the event WYC's finances dipped in the future. WML even asked Balakrishnan about the possibility of a joint tenancy instead of the proposed tenancy- in-common. Finally, it could be inferred that WYC understood what took place on 5 December 2004 from his actions shortly after that. WYC informed PL that he had carefully considered WML's remonstrations and decided to transfer 5CHR to PL as a joint tenant with himself. This fresh decision to transfer 5CHR to PL as a joint tenant was an ample demonstration of WYC's ability in December 2004 to listen to competing arguments, weigh them and arrive at a decision.

35 Balakrishnan also inferred that WYC understood the nature of the transpired events because WYC called him some time after the 5 December 2004 meeting, and told him WMC was similarly trying to influence him on the same issue. WYC told Balakrishnan that he had considered the matter and decided to transfer 5CHR to PL and himself as joint tenants. Balakrishnan prepared the necessary documents and met WYC at 5CHR again.

36 At this meeting on 7 December 2004, WYC signed the transfer instrument in Balakrishnan's presence. Balakrishnan testified that throughout this meeting, it was clear that WYC was fully aware of the implications of what he was doing, and neither appeared muddled nor confused. The instructions WYC gave to Balakrishnan were very clear and concise. That same night, PL overheard WYC informing WML that he signed the said documents. WML disputed learning of the execution of the Transfer on that night. But what transpired the day after showed that news of the Transfer had

reached the plaintiffs on 7 December 2004.

37 On the morning of 8 December 2004, WMC telephoned Balakrishnan's office before 9am to request a meeting. The call was diverted to his secretary's handphone. WMC then called a second time shortly after 10am and demanded to see Balakrishnan. He then turned up, unscheduled and unannounced, at Balakrishnan's office to object to the Transfer on various grounds. However, among his many objections, WMC never once said to Balakrishnan that WYC could not understand the nature of the Transfer. Instead, he informed Balakrishnan that he would return later that day with WML and WYC. WMC initially claimed emphatically that he did not make that morning visit to Balakrishnan's office. He later changed his evidence in cross-examination. His memory was supposedly jolted by a drive past People's Park where Balakrishnan's office is presently located. WMC's explanation was untrue because in December 2004, Balakrishnan's office was at Robinson Road.

38 Balakrishnan called WYC after WMC left that morning to inform him of the objections WMC had registered with him. WYC instructed Balakrishnan to proceed with the Transfer nevertheless. WYC also sent a fax and a letter to Balakrishnan to confirm his oral instructions to "proceed with the transfer of [5CHR] with immediate effect".

39 Just as WMC had intimated to Balakrishnan, a second meeting took place in the afternoon of 8 December 2004 at the latter's office. The plaintiffs attended together with WYC. I found that WYC probably attended this meeting to placate the plaintiffs. Once again, the plaintiffs rehearsed their objections to the Transfer and argued that leaving 5CHR in the *status quo* would be most convenient for it to be used as collateral for WYCPL's business. WMC originally denied any recollection of this second meeting but eventually admitted to it. However, he refused to give a direct answer on whether WML was present as well because WML had categorically denied in his AEIC to visiting Balakrishnan's office at all. Upon hearing that Balakrishnan's secretary would be called as a rebuttal witness, WML was compelled to change his evidence and admitted his statement in his AEIC was untrue. After that afternoon meeting, WYC again called Balakrishnan to proceed with registering the Transfer which he had executed. It was evident that WYC was resolute not to give in to the plaintiffs' objections any more.

40 Because Balakrishnan was apprised by WMC that WYC was "forgetful" and was sensitive to the dynastic squabble surrounding the Transfer, he prudently took the extra step of checking with WYC, on or about 23 December 2004, whether WYC could remember the Transfer and asked WYC to repeat his instructions of the previous fortnight. WYC did so and even agreed to put those instructions in a statutory declaration. On 23 December 2004, WYC went to Balakrishnan's office and read the draft statutory declaration in his presence before meeting a Commissioner for Oaths, one B Rengarajoo who had an office in the same building, to affirm the same. Balakrishnan emphasised that this was only a precautionary measure because he had no doubts at all that WYC understood exactly what he did regarding the Transfer. The transfer instrument was eventually lodged with the Land Titles Registry in March 2005 after the title deeds of 5CHR were found.

WYC understood and signed many complex corporate and financial documents up till 2006

41 It was undisputed that WYC signed corporate documents on behalf of WYCPL around and after the date of the Transfer. Many of those documents were co-signed by the plaintiffs. They included, amongst others, consents to short notice (3 February 2004, 30 September 2004); directors' resolutions (3 February 2004, 1 March 2004, 16 September 2004, 11 October 2004, 15 December 2004, 30 December 2004, 22 August 2005 and 19 January 2006); a certified extract of resolutions passed at a WYCPL directors' meeting on 16 February 2004 which WYC signed as chairman of the meeting; a supplemental deed between WYCPL and PHH as part of the PHH deal (25 June 2004); a

deed of gift (25 June 2004); a deed of release (25 June 2004); minutes of the annual general meeting (30 September 2004); a directors' resolution relating to the sale of 19 Adam Road (4 July 2005); minutes of an extraordinary general meeting (19 July 2005); a letter of consent (30 December 2004); and the financial statements of WYCPL for the year ended 31 March 2005. The plaintiffs were shown those documents at trial and admitted that WYC was able to read and understand all of them.

42 Because such corporate documents were *prima facie* equal to or greater in complexity than the Transfer, WMC sought to explain away their significance. He asserted that they were nothing more than a follow-through of earlier decisions taken in 2001 when WYC was mentally unimpaired, whereas the Transfer was not. This distinction was unsustainable. The directors' resolution of WYCPL dated 30 December 2004, for example, was not a follow-through of any prior decision. It was actually one of the decisions carried out pursuant to the proposals contained in the Christmas Recommendations which were prepared for WYC in December 2004. The resolution of 30 December 2004 bore the plaintiffs' signatures in addition to WYC's. It diluted WYC's shareholding in WYCPL from 90% to 15%. It also allowed the plaintiffs, WMK and WMW to acquire shares in WYCPL for the first time. It was undisputed that WYC's consent was essential for this to take place. The plaintiffs said they would not have allowed WYC to sign the resolution if they thought that WYC was unable to understand it. It was untenable for the plaintiffs to maintain that WYC could understand a share issuance transaction which diluted his shareholdings in a company of some worth but could not understand the workings of a simple transfer for which he had consulted with his solicitor and contemplated for years.

WYC practised successfully as a psychiatrist until he retired in mid-2005

43 WYC was engaged in an active medical practice and saw patients on his own until his retirement on 3 May 2005, five months after he executed the Transfer. WMC himself exhorted WYC to delay his retirement because the PHH deal required ARHPL to satisfy certain revenue targets. In an e-mail to PL, WMC told PL that the "optimum time" for WYC to retire would be between April and June 2005. This implicitly affirmed that WYC was mentally robust to withstand the rigours of medical practice. WMC's confidence in his father was vindicated.

44 Throughout 2004, WYC had performed electro-convulsive therapy, prescribed medication and attended to challenging patients. No patient of WYC had made malpractice claims against him regarding any treatment he provided in 2004. The financial statements of ARHPL showed that WYC saw a total of 7,821 patients in 2004, averaging 650 patients each month that year. He saw 727 outpatients in December 2004 on top of inpatients. He was the highest earner at ARHPL by far for each and every month in 2004 for both inpatients and outpatients, earning an income of about $80,000 in December 2004 alone. Dr Francis Ngui ("Dr Ngui"), the medical director of ARHPL who was then in active practice himself, testified that WYC saw more patients than him that month. Dr Ngui also testified that WYC could have seen complicated cases even after June 2004, and he was unaware that WYC was diagnosed with dementia in December 2004.

45 There was also documentary evidence which showed that WYC handled fetch cases in June and August 2004. Fetch cases required WYC to attend at the patients' home with some nurses. He would have had to administer medication, coax the agitated and uncooperative patients into the ambulance (which he drove), and speak with the patients' families in those scenarios.

WYC continued to drive, swim and engage in social activities until 2008

46 Apart from his professional life, WYC was also functioning normally in his daily life up until at least 2008. There were various sources of evidence to confirm this. I begin with the evidence of WMS. She had written an e-mail to PL and WYC on 3 September 2004 to explain her personal plight

and she requested financial assistance from WYC. She testified that she felt WYC was able to understand her situation (she was in the midst of divorce proceedings) and competent enough for her to be asking him for money at that time.

47 WYC's niece Patsy Graieg, who is based in Australia, was an important witness. She visited Singapore about twice a year from 1997 to 2008 and met up with WYC and his family each time. In 2004, Patsy Graieg visited Singapore thrice, in February, August and November. She was a trusted relative of WYC with whom WYC periodically consulted from 1997 to 2006 on financial issues regarding his retirement, business succession and the PHH deal, as she was a trained accountant. She testified that she had no doubt that WYC fully understood the complex issues surrounding the business deal in 2001, and he continued to display his trademark intelligence and high level of mental sharpness in the years leading up to the execution of the Transfer.

48 According to Patsy Graieg, from 1997 until 2004, WYC told her that he was dissatisfied that PL's name was not included in the title deed of 5CHR. She recalled WYC telling her that he wanted to transfer 5CHR to PL because PL had always treated him well and had made many sacrifices for the family over the years; there was more than one such discussion. Patsy Graieg was also told that a transfer was not carried out because one of WYC's sons was strenuously opposing it. Significantly, she recalled that during the Chinese New Year of 2005, WYC informed her of the Transfer, and he felt very proud of his deed. This testimony which I accepted to be true and accurate showed two things. First, it was WYC's long-held intention for PL to have a share of 5CHR and the Transfer was not impulsively carried out. Second, WYC remembered his decision for at least a month after he made it and was very satisfied with it.

49 Patsy Graieg continued to interact with WYC on several occasions after 2005. She recalled that in 2007, WYC had engaged in a meaningful conversation with her on the Kosovo war. In March 2008, they celebrated the birthdays of WYC and Patsy Graieg's father at a restaurant called Spring Court. Patsy Graieg recollected that WYC was perfectly capable of interacting with various people at the luncheon, and had spoke with the restaurateur on Spring Court's history.

50 Whilst Patsy Graieg was a witness for the defendants, I did not doubt the veracity and impartiality of her evidence. It was undisputed that she had always been and still was on good and close terms with the plaintiffs, who were her first cousins. She also regarded the defendants well. She had no self-interest in the matter, and had chosen to give evidence as a matter of conscience because WYC could not speak for himself.

51 WYC was also driving his car as at August 2005 and gave up his driver's licence only on 22 May 2006. PL confirmed that WYC would drive alone most of the time for as long as he had a driver's licence and she would have stopped him immediately if she thought that it was unsafe for him to do so. Patsy Graieg also testified that WYC regularly picked her up from Changi Airport and drove her to her sister's place at Club Street after he had retired from ARHPL in mid-2005. WYC did not get lost on those occasions.

52 WML, who was a medical doctor, also certified WYC to be fit to drive on 5 November 2003. WML knew that this medical certification was valid for three years. In the medical examination form, the only remark which WML thought was pertinent to make was that WYC had undergone a coronary artery bypass grafting surgery in 1992. He declared WYC to not show "any evidence of psychiatric disorder" and accepted that WYC was not suffering from any "mental disability".

53 WYC also continued with other daily activities including attending various appointments with doctors and the barber, and having lunches with friends. He held a coherent discussion on

26 February 2004 with his doctor. He continued to swim without assistance in August 2008. WYC attended social functions in 2007, as evidenced by a letter one Oei Hong Leong had sent to him on 8 February 2007 which stated that WYC had "contributed to the sparkle and cheer" at a wedding which WYC had attended the previous month. WYC went on a ten-day trip to Japan in 2005 with WMW, PL and WMK's family, and visited WMK's family in Hong Kong in 2007. Critically, both Patsy Graieg and PL testified that WYC appeared to have faltered in his ability to manage his personal affairs only sometime in late 2008 or early 2009.

The plaintiffs' allegations with respect to their father's functional abilities

54 Against this abundant and corroborated evidence that WYC possessed sufficient functional dexterity to discharge his professional duties as a clinical psychiatrist, drive a car with passengers and socialise with third parties after the Transfer was executed, the plaintiffs' allegations of their father's deficient mental state at the material time could not be countenanced. WML's statement in his AEIC for OS 648 of 2010 that, "For years prior to the execution of the Transfer, my father could not even tell the time of day" was therefore patently untrue.

WYC's medical condition at the time of the Transfer

The plaintiffs' experts' evidence

55 The plaintiffs' experts were Dr Alexander P Auchus ("Dr Auchus") and Dr Christopher Chen ("Dr Chen"). They were also the treating physicians of WYC. Dr Auchus was the neurologist who first saw WYC at the Singapore General Hospital ("SGH") on 3 December 2002 and again on 28 February 2003 and 25 July 2003. Shortly thereafter, Dr Auchus relocated to the United States and Dr Chen was the neurologist who took over the care of WYC. Dr Chen saw WYC at SGH on five occasions altogether – on 23 October 2003, 26 February 2004, 17 March 2005, 23 March 2005 and 1 June 2005. Clinical notes were recorded in all eight visits.

56 Three neuropsychology reports ("the Neuropsychology Reports") were rendered on WYC's condition pursuant to various neuropsychological tests which were carried out on three visits with Drs Auchus and Chen. They were dated 3 December 2002, 25 July 2003 and 23 March 2005. The first two Neuropsychology Reports were co-signed by Dr Auchus and a neuropsychologist.

57 In the Suit, Dr Auchus and Dr Chen each produced an expert's report dated 18 May 2011 and 13 May 2011 respectively (collectively "the plaintiffs' Expert's Reports"). The plaintiffs' Expert's Reports considered the issue of whether WYC was able to make a decision for himself to execute the Transfer at the material time. Previously, Dr Auchus and Dr Chen had also each issued a medical report for the purposes of the appointment of the CPE in the Originating Summons. These medical reports were dated 3 September 2005 ("the 3 September 2005 Medical Report") and 15 September 2005 ("the 15 September 2005 Medical Report") respectively, and were annexed to the plaintiffs' Expert's Reports.

58 I found that the plaintiffs' Expert's Reports which had been prepared for the Suit did not satisfy the requirements laid down by O 40A r 3(2) of the ROC for the following reasons. First, an expert owes his duty to the Court (O 40A r 2, ROC) and this requires him to disclose any special relationship between the party who called him and the expert because the expert must not only be impartial but must also appear to be so: *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 ("*Pacific Recreation*") at [73]. Hence, the expert should avoid being the witness of a party with whom he has a special relationship. If that was unavoidable, he must disclose the relevant facts. On this point, there must be absolute transparency from the expert witness and their

legal advisers as both are officers of the court: *Gunapathy Muniandy v Khoo James* [2001] SGHC 165 at [12.16], followed in *Pacific Recreations*.

59 It emerged at the trial that both Drs Auchus and Chen enjoyed a fairly close relationship with the plaintiffs which they had failed to disclose in the plaintiffs' Expert's Reports. Dr Auchus did not say in his report that when he was employed at the Neurology Department of the SGH from 1998 to 2003, WMC was the head of department for most of that period. It was a small department and Dr Auchus worked closely with WMC. They had collaborated on research projects during his time at the SGH and continued to collaborate on numerous research publications after he left Singapore. Dr Auchus also admitted that the person who referred WYC to him for consultation in the first place was probably WMC.

60 Dr Chen failed to disclose, in both his AEIC and expert's report, his friendship with WMC. In fact, he had been friends with WMC for 17 years; WMC was Dr Chen's head of department at the Neurology Department at the SGH for eight years; WMC was Dr Chen's first superior on Dr Chen's return to Singapore from his studies and work in the UK; in the past 17 years, they collaborated in approximately 50 research projects; those collaborations continued even after WMC ceased to be the head of department. On the day he testified at the trial, Dr Chen was jointly writing three papers with WMC and he had received a hamper from WMC's wife on or about 1 February 2007.

61 Dr Chen was also friends with WML. He even addressed WML by his nickname "Merng" in correspondence. It emerged that Dr Chen had met WML through his wife at least a decade earlier. His children played with WML's children and he had visited 5CHR for WML's daughter's birthday party.

62 Given the extent of the personal and professional relationships of Dr Auchus and Dr Chen with the plaintiffs, it should have been plain to the plaintiffs and/or their solicitors, that the two doctors should not have been briefed as expert witnesses. Paragraph 4.8.4 of the Code of Practice: Mental Capacity Act 2008 ("the Code") issued by the Office of the Public Guardian, which applied by virtue of s 41(6) of the MCA, also stated that, to avoid any conflict of interest the doctor who conducts the mental assessment capacity of a person "should not be related to … the individual seeking the formal assessment of the person." That was in substance what had transpired in this case when WMC first referred WYC to Dr Auchus for diagnosis, and subsequently when Dr Auchus and Dr Chen were asked to opine on WYC's capacity in the application for the CPE's appointment, the Originating Summons and the Suit.

63 Secondly, apart from any appearance of bias, I found that both of the plaintiffs' experts did display instances of partiality to the plaintiffs' case. They were selective in the presentation of the relevant medical evidence as they had highlighted only material which supported the plaintiffs' case and omitted to mention matters adverse to it.

64 In his Expert's Report and in the 3 September 2005 Medical Report which was annexed to the Expert's Report, Dr Auchus mentioned that his examination of WYC on 3 December 2002 "revealed marked impairment of memory function with 0/3 objects recalled at 5 minutes, as well as disorientation of day and date". What was not mentioned was that Dr Auchus had asked WYC other questions which WYC could answer. Dr Auchus's clinical notes indicated that WYC had "good attention, January to December and December to January without errors. Good language, follows three step commands, names" and "good attention … accurate clock face" and these were not referred to in the Expert's Report although Dr Auchus testified that they were relevant matters. He chose instead to select from the many questions he had asked WYC and stated those that supported the opinion he was trying to convey. This was unjustified because all the questions he had quoted were actually parts of one standard questionnaire test, called the mini-mental state examination

("MMSE"), which was commonly used to screen for dementia. WYC had scored 26 out of 30 for the MMSE, and any score above 22 was in the normal range of MMSE scores.

65 The MMSE, in turn, was one of the various neuropsychological tests that were carried out in order to render each neuropsychology report. The manner in which Dr Auchus referred to the contents of the 2003 Neuropsychology Report in his Expert's Report was also misleading. He had quoted from the 2003 Neuropsychology Report as a basis to say that WYC was impaired in verbal memory and visual memory. But he did not point out that the same neuropsychology report stated that WYC's "global dementia screening scores", "language", "visuoconstruction and visuomotor speed task performances" were unimpaired, and WYC's "attention" not only was unimpaired but registered an improvement when compared with the results in the 2002 Neuropsychology Report. It was also significant that Dr Auchus did not annex the 2002 and 2003 Neuropsychology Reports to his Expert's Report, when both of them did not support his diagnosis of Alzheimer's disease and the latter of which he had quoted from selectively.

66 Dr Chen was not impartial as well. He testified that he had no independent recollection of the consultations WYC had with him seven years ago except for what his clinical notes recorded. His Expert's Report, however, gave a slanted interpretation of those clinical notes. While no mention of any decline in WYC's cognitive abilities were recorded in Dr Chen's notes taken between October 2003 and March 2005, Dr Chen stated in his Expert's Report without qualification that WYC's cognitive functions were declining during that period. Dr Chen claimed that the 2005 Neuropsychology Report supported his view that WYC had deteriorated. But not only was this neuropsychology report not annexed to his Expert's Report, Dr Chen also did not point out that it had concluded that WYC's "neuropsychological profile showed generally stable cognitive status". The results of the various neuropsychological tests done in 2005 were in fact the same or better for more than half of the tests done in 2002.

67 There was also no mention by Dr Chen that the 2005 Neuropsychology Report indicated that WYC was "ADL-independent" (which meant that WYC was able to perform activities of daily living independently) and his attention was unimpaired. Most importantly, Dr Chen failed to inform the Court that WYC had obtained a full score on the "Frontal Assessment Battery" test ("the FAB test") which indicated that there were no problems with WYC's executive functioning as at March 2005. The significance of the FAB test will be elaborated on below.

68 Nothing in Dr Chen's Expert's Report alluded to his observation in February 2004, that WYC was able to make decisions for himself and coherently discuss his medical practice, social events and driving, all of which were found in the clinical notes. Dr Chen admitted that those were relevant facts, especially since what he was doing in his Expert's Report was to extrapolate from the limited information he gathered from the five consultations WYC had with him.

69 Thirdly, an expert's report must give details of any literature or other material on which the expert witness had relied in making the report (O 40A r 3(2)(*b*), ROC) and, where there is a range of opinion on the matters dealt with in the report, summarise the range of opinion and give reasons for his opinion (O 40A r 3(2)(*e*), ROC).

70 Both of the plaintiffs' Expert's Reports did not fulfil the mandatory criteria because they did not attempt to explain the contradictory objective medical evidence which I found to be highly relevant on the basis of PL's expert's evidence. Dr Auchus and Dr Chen had merely provided the Court with their factual accounts of consultations with WYC and stated their bare conclusions in support of the plaintiffs' case. Both appeared to have written their Expert's Reports under the mistaken belief that their opinions would be accepted because they were WYC's treating physicians.

71 With respect to Dr Auchus, his Expert's Report did not explain why he claimed to have diagnosed WYC with Alzheimer's disease on 3 December 2002 when the conclusion of the 2002 Neuropsychological Report he co-signed had indicated otherwise. An explanation was warranted since he acknowledged that neuropsychological tests were an objective tool that was useful in making a diagnosis of Alzheimer's disease. Dr Auchus also accepted that he had selectively excluded reference to information which did not support the plaintiffs' case.

72 Dr Chen's clinical notes on the first four visits by WYC (from October 2003 to March 2005) recorded that WYC only had clinically "mild" and not moderate or severe dementia. He agreed that a person who had mild dementia was usually able to make decisions for himself. But he offered no reasons in his Expert's Report and at trial for concluding that WYC was, unusually, unlikely to be able to make a decision for himself to execute the Transfer. Dr Chen also did not explain how he arrived at his conclusions when the neuropsychology reports showed that WYC's cognitive status was generally stable between December 2002 and March 2005.

73 Fourthly, neither of the plaintiffs' experts was able to give a reliable expert opinion on the issue of WYC's mental capacity in December 2004. Dr Auchus stated candidly in his AEIC that he was unable to express a definitive opinion on the issue. He confirmed this position at trial. He also said he had no reason to challenge Dr Chen's view that WYC was still able to make decisions for himself in February 2004.

74 I was of the view that Dr Chen's conclusions on WYC's mental state in December 2004 were unreliable. At trial, Dr Chen stood by his opinion that WYC was able to make rational and coherent decisions in February 2004, which was the last occasion Dr Chen examined WYC before the Transfer took place. There were serious deficiencies in the analysis Dr Chen undertook to then conclude that WYC became mentally incompetent about nine months later. Dr Chen admitted that there was a gap in the information he had because he had no contemporaneous medical records of WYC in December 2004, and had instead extrapolated towards a conclusion. He also accepted that the rate of deterioration for patients with dementia was not constant. Despite these undisputed propositions, he gave a definitive opinion in favour of the plaintiffs' case.

75 Further, Dr Chen admitted that he did not consider any other facts or documents relating to what WYC was able to do in and after December 2004. Although he had asked for them, the plaintiffs did not provide him with any of that information. Thus, he had based his opinion on incomplete information. The plaintiffs denied him information such as the tasks WYC was doing professionally as a doctor, a company director and socially. Dr Chen agreed that such information was relevant in the determination of WYC's mental competence. Even the information he relied upon and found in his clinical notes was not completely accurate. For example, WYC was still driving independently in June 2005 despite what was recorded in the clinical notes of 1 June 2005. Hence, I rejected the plaintiffs' Expert's Reports and attached no weight to the opinions expressed therein. I only took into account the factual aspects of the evidence of Dr Auchus and Dr Chen.

The first defendant's expert's evidence

76 PL's expert, Dr Chong Piang Ngok ("Dr Chong"), provided a more useful expert's report. Dr Chong opined that although WYC had mild dementia, he was unlikely to be suffering from Alzheimer's disease in December 2004, and that it was highly unlikely that WYC was incapable of understanding the nature of the Transfer. In his report and at trial, he carefully explained how he came to his conclusion. Dr Chong first showed why the plaintiffs' experts' opinions on WYC's medical condition and functional ability were not supported by the objective medical evidence such as the neuropsychology reports and other scan results. He then elucidated why a clinical assessment of WYC in December

2004 also should not have diagnosed WYC with Alzheimer's disease.

The objective medical evidence

77 In September 2000, WYC had undergone magnetic resonance imaging ("MRI") and positron emission tomography ("PET") scans of the brain, and also consulted one Dr Tommy Chan ("Dr Chan"), a clinical psychologist in Hong Kong. Dr Chan found WYC to be weak in short-term memory but did not consider it to be pathological for his age. WYC was assessed to have exceptional performances in comprehension of social conventions, abstract thinking, integration and perceptual ability. Dr Chan found no significant signs of dementia in WYC and concluded that the findings did not fulfil the full diagnostic criteria for dementia (Alzheimer's type or vascular) as defined by the Diagnostic and Statistical Manual of Mental Disorders ("DSM-IV"). The MRI scan results were interpreted by one Dr Hector T G Ma to show that "[t]he total changes are consistent with normal aging process with atherosclerosis of the brain. Serial follow-up is worthwhile to see if the pace of deterioration is quicker than in a normal aging brain or not." The report of the PET scan results prepared by one Dr Kevin K M Tse stated, "In a patient presented with dementia-like picture, the possible diagnosis may include an early case of Pick's disease."

78 Dr Chong reasoned that since Dr Chan had ruled out dementia at that point in time, the "possible diagnosis" of Pick's disease was inapplicable. Dr Chong then highlighted the aforementioned deficiencies in the analysis of the plaintiffs' experts and how the plaintiffs' experts' opinions were inconsistent with the objective medical evidence. He testified that due weight should be given to formal objective and quantifiable information in this case.

79 I accepted Dr Chong's reasons for placing emphasis on the objective medical evidence. First, the neuropsychological tests were conducted by specialised professionals in an unrushed environment as opposed to a brief examination by a doctor in a busy clinic. Dr Chen, for example, admitted that he was in a rush during WYC's consultation with him on 23 March 2005. Dr Auchus also conceded under cross-examination that the 2002 neuropsychological tests were performed after WYC's consultation on 3 December 2002. Hence, whilst Dr Auchus wrote "mild [Alzheimer's disease] likely" in his clinical notes, little weight should be given to that because he co-signed the 2002 Neuropsychology Report which contradicted this possibility. Secondly, evidence from the various factual witnesses showed that different people had arrived at opposing conclusions on WYC's mental state. Patsy Graieg and WMS who had made periodic visits to WYC gave differing descriptions of his mental state. Unlike Dr Auchus, Dr Chen said that WYC only had mild cognitive impairment. In the face of these disagreements, the neuropsychological test results had to be given greater weight. Above that, given the relationships between the plaintiffs' experts and the plaintiffs and the instances of bias I had found in the plaintiff's Expert's Reports, it was only correct for a fact-finder to rely more heavily on the objective medical evidence.

The criteria for a diagnosis of Alzheimer's disease were not satisfied

80 Dr Chong also testified that based on the contemporaneous clinical notes, a subjective approach would similarly turn up no valid grounds for diagnosing WYC with Alzheimer's disease in December 2004.

81 The DSM-IV criteria for the diagnosis of Alzheimer's disease were described in the Ministry of Health's 2007 clinical guidelines for dementia with which both Dr Auchus and Dr Chen were familiar. In order to satisfy the DSM-IV criteria for Alzheimer's disease, a patient must have memory impairment and deficits in one other cognitive domain (*ie* aphasia, apraxia, agnosia and executive dysfunctioning) of sufficient severity to cause impairment in occupational or social function. Dr Chen's claim at the

trial that WYC fulfilled these criteria because he avoided taking on complicated cases in his medical practice and drove only on familiar routes was incorrect. As noted above at [45], the evidence showed that WYC was handling fetch cases by himself in 2004 and driving from Changi Airport to Club Street in 2005. Even if WYC could only drive on familiar routes, it indicated a loss of memory and not apraxia since WYC retained the ability to drive and apraxia was a condition characterised by an inability to perform a learnt function. WYC did not suffer from aphasia as he could hold coherent discussions with Dr Chen about his social and professional activities. He could not have suffered from agnosia since he had no difficulty recognising familiar faces or items.

82 Dr Chong was fair to note that by 15 September 2005, WYC's condition could have progressed to clinical Alzheimer's disease. In the light of the objective medical evidence and Dr Chong's opinion, I did not think WYC was suffering from Alzheimer's disease at the time when he executed the Transfer. I also found that it was more probable than not that Dr Auchus had made the diagnosis of Alzheimer's disease retrospectively, when he wrote the 3 September 2005 Medical Report, while Dr Chen merely embraced that incorrect diagnosis in the 15 September 2005 Medical Report without evaluating the facts himself.

Immaterial even if WYC had Alzheimer's disease

83 Even if I was wrong and WYC had Alzheimer's disease or any other impairment of mind such as mild dementia at the material time, I was satisfied that the impairment did not cause him to lose the functional ability required for him to execute the Transfer.

84 All three expert witnesses agreed that someone with Alzheimer's disease may still be capable of making a decision for himself. For example, Dr Chen recorded in his clinical notes of 23 October 2003 that WYC was competent to make a will. This was also consistent with Dr Chong's evidence that WYC's short-term memory deficits would not have affected his ability to understand the nature of the Transfer. With respect to the Transfer, however, WYC's patchy forgetfulness was immaterial against the context of Balakrishnan's evidence that WYC could remember his own instructions more than a fortnight later and Patsy Graieg's evidence that WYC recounted proudly to her during the Chinese New Year period the following year about having executed the Transfer.

85 WYC's executive functioning was also the subject of Dr Chan's report dated 18 October 2000 and the 2005 Neuropsychology Report. Drawing from their findings, Dr Chong said that WYC's higher order thinking was unimpaired on 23 March 2005, and it was highly unlikely that WYC was incapable of understanding the documents relating to the Transfer. The 2005 Neuropsychology Report showed that WYC achieved a maximum score on the FAB test in March 2005. Dr Auchus acknowledged that this indicated that WYC's executive functioning was intact. Dr Auchus explained that executive functioning referred to the ability to make decisions, to follow through, to stay focussed and to shift topics. During re-examination, Dr Auchus elaborated on how "executive dysfunction" was related to the ability to make decisions. He said, "executive function is … largely a result of proper functioning of the frontal lobes of the brain … it is important in decision-making and in this case, Dr Wong scored, ah, well on this test."

86 Dr Auchus also testified that he would not have waited till the last moment in his patient's decline to stop him from treating patients of his own; and as at 28 February 2003, Dr Auchus did not feel a need to stop WYC from practising medicine. Notably, none of the doctors who had dealt with WYC, including Dr Ngui and the plaintiffs, had reported to the Singapore Medical Council in 2004 that WYC was unable to practise medicine although they were under a professional and ethical duty to report such doctors to the authorities. Instead, WMC prevailed upon WYC to postpone his retirement. WMC clearly did not think WYC was going to bungle the patients' treatments at ARHPL and jeopardise

the PHH deal.

87 Dr Chong stated that the ability to practise medicine, administer treatments and prescribe medication required WYC to understand, distinguish and analyse difficult issues. Dr Auchus stated that a doctor who attended to a fetch case such as the ones WYC did would have been required to make judgment calls on how best to manage the patient in a dynamic environment.

88 The factual and medical evidence together left me with no doubt that WYC was able to understand the nature and consequences of the Transfer which he executed on 7 December 2004. I found that the plaintiffs had not discharged their burden of proving their allegations to the contrary.

Was the Transfer was procured by undue influence?

89 The plaintiffs argued that even if WYC was competent to execute the Transfer at the material time, it should still be set aside because it was procured by undue influence exerted by PL. At law, the plaintiffs bore the burden of proving that actual undue influence was exercised. But they sought to have the burden of proof reversed by relying on presumed undue influence. Before there can be presumed undue influence however, the plaintiffs must first show two elements existed: (i) a relationship of trust and confidence and (ii) the transaction concerned was inexplicable; neither was proven.

90 With respect to the first element, there is ordinarily no presumption of trust and confidence applicable in a husband and wife relationship: *Howes v Bishop and wife* [1909] 2 KB 390 and *Barclays Bank plc v Khaira and another* [1992] 1 WLR 623 at 632. As the plaintiffs had repeatedly stressed, the relationship between WYC and PL was not even one of husband and wife even though they did live together as a couple. The plaintiffs were also unable to convince me that WYC reposed actual confidence in PL or that she had acquired "domination" over him: *Goldsworthy v Brickell and another* [1987] 1 Ch 378 at 404. This was evident from the way WYC consistently prioritised his own financial security ahead of his wish for PL to have a share of 5CHR. Even if I was wrong on the first element, the Transfer was readily explicable in the light of the long-held intention of WYC that PL should eventually have 5CHR. This was an intention which had its roots in the purchase of 5CHR itself. Hence, I rejected the contention that the plaintiffs could rely on presumed undue influence.

91 The plaintiffs failed to show that PL had exercised any undue influence or exerted illegitimate pressure on WYC to execute the Transfer. Conversely, the evidence showed that it was the plaintiffs who had mounted a sustained campaign which stretched from 2002 until the date of the trial, to prevent any interest in 5CHR from being transferred by WYC to PL in any way, whether *via* an *inter vivos* transfer or a will. They blocked WYC from instructing Tan Yah Piang to execute a transfer of 5CHR; forced WYC to worry about his fiscal fitness; counselled him on the seeming prudence of keeping 5CHR under his sole ownership; caused him to believe that PL might leave him once she had 5CHR; persuaded WYC to revoke his will in late 2003 which had left 5CHR to PL; and tried to prevent WYC from instructing Balakrishnan on the execution of the Transfer.

The plaintiffs' pleadings

92 In any case, the plaintiffs' pleadings on this issue were insufficient to support a claim of undue influence. The only reference to any alleged pressure exerted by PL on WYC was in paragraph 23 of the statement of claim which reads:

> As WYC's cognitive functions declined, [PL] began to harangue and urge WYC to transfer assets to her. Between 2000 and 2006, [PL] made WYC pay for or reimburse her for her various

insurance premiums. [PL] also arranged for WYC to change the beneficiaries of two of his own life insurance policies, which were purchased in December 1968 and November 1970 respectively, from that of the estate to [PL] and [WMW] on or about 16 October 2002. [PL] had threatened to leave WYC if he did not give in to her.

93 The allegations in relation to the insurance premium payments and the policies' beneficiaries bore no connection to the issue of whether WYC had executed the Transfer due to PL's alleged undue influence. PL also provided a reasonable explanation why WYC took over the payments of her insurance premiums – she had lost her job at that time. The sole allegation of undue influence that could be identified in the statement of claim was that PL had threatened to leave WYC if he did not give in to her. However, in the further and better particulars furnished by the plaintiffs, they were unable to state what PL had allegedly demanded from WYC. The plaintiffs said they "were not present when [PL] made demands to WYC. However, from the heated quarrel between [PL] and WYC, the plaintiffs understood [PL's] threat to be related to [PL's] demand for assets". Therefore, they had no personal knowledge of the substance of any alleged demands made by PL. They did not call any other witness with personal knowledge of the alleged demands to testify.

The alleged undue influence exerted by PL

94 Quite apart from the deficient pleadings, the plaintiffs' allegations were not founded on any credible evidence. WML described the quarrel referred to in the plaintiffs' further and better particulars as having taken place in 2003. He claimed to have received a telephone call from WYC to go to 5CHR, and when he arrived, he inferred from the tense atmosphere that WYC and PL had just quarrelled. Even if I were to accept WML's word at face value, the problem was that he did not witness the quarrel and had no inkling of what had transpired. PL testified that the quarrel arose because of the stress she experienced from the plaintiffs' unrelenting pursuit of information on her finances. She naturally felt aggrieved at repeated intrusions into her privacy. Her subsequent decision to leave 5CHR that evening to cool down was therefore unrelated to the Transfer. I accepted her explanation. WYCPL was facing financial pressures at that time and that caused the plaintiffs to attempt to identify which of PL's assets they could take from her if they deemed necessary.

95 WML attempted to show that the Transfer was inexplicable by alleging in his AEIC for OS 648 of 2010 that WYC had expressed the intention to always retain 5CHR in his name. But this was contradicted by WYC's attempts to transfer an interest in 5CHR to PL over the years. It was also contradicted by several notes WYC wrote in 2003. WML, however, claimed that those notes written in 2003 revealed the pressure PL was putting on WYC to transfer 5CHR to her. In cross-examination, WML was forced to admit that none of the notes demonstrated what he asserted at all. They only reflected WYC's clear intention that PL should have 5CHR at some point in time. In the note dated 19 January 2003 (see above, at [20]), WYC had written that PL "deserve[d]" 5CHR because he was moved by a scene he had witnessed of PL reading to his grandchildren. In another note dated 3 September 2003, WYC penned, "Transfer house through will to Pat + MR. Pat's worry: if will is 'changed' she gets nothing." WML conceded that this only indicated that PL was worried and did not display any pressure being applied on WYC. WML also agreed that a third note dated 10 September 2003, where WYC had jotted down, "Spoke with ML that I give No. 5 to Pat + Rong. Will effect it on Saturday" did not reveal any pressure exerted by PL. A fourth note dated 20 September 2003 exhibited a rational thought process applied by WYC to deal with his assets and showed that he was capable of making decisions about his affairs in September 2003.

96 Finally, the plaintiffs also alleged that PL had threatened to leave WYC unless he transferred assets to her. The plaintiffs' counsel suggested to her, with reference to an e-mail to WMW dated 3 July 2002 (also referred to above, at [17]), that she had left Singapore to visit WMW in 2002 to

"put pressure" on WYC. In the e-mail, she wrote that she wished to "hop over" to WMW's place in the United States for "a short while" before returning to live in Singapore on her own. However, the e-mail to WMW did not evince any real intention of PL leaving WYC for good if the circumstances under which it was written were taken into account. PL explained that the e-mail was written in a moment of deep frustration and sadness because she was emotionally drained and had thought that she could no longer put up with the plaintiffs' high-handed treatment.

97 Her actions subsequent to the e-mail buttressed her explanation. PL did not leave Singapore until two months later. In fact, WYC was supposed to accompany her on that trip to visit WMW, but could not do so because WMC insisted that WYC remained in Singapore to generate revenue for ARHPL. WMS took his place. Eventually, the visit lasted only three weeks. WMS testified that it was originally intended to last three months and was "part of PL's plan to make a stand against [WYC] in a bid to get him to transfer assets to her." I rejected the evidence of WMS that PL had an ulterior motive behind this trip apart from that of wishing to visit her son who was studying in the United States. WMS's allegation was pure speculation.

98 In fact, substantial parts of WMS's AEIC were speculative and discussed matters that were not within her personal knowledge as she was based in Australia since 1988, and only returned to Singapore annually for three weeks each time. It also contained highly scandalous and irrelevant allegations on the characters of her father and PL. She was a noticeably partisan witness. The fact that she was called by the plaintiffs merely to be their mouthpiece was accentuated by the language she used in her testimony at trial. Under cross-examination it became apparent that she was coached by the plaintiffs to say what they had prepared for her especially with respect to the issues on the Christmas Recommendations.

The plaintiffs' campaign to prevent any interest in 5CHR from being transferred to PL

99 The plaintiffs were keenly aware that WYC had always wanted to transfer 5CHR to PL at some point in time. Over the years, they had made many successful efforts to thwart WYC's attempts to do so. On 24 April 2002, WYC sought advice from Tan Yah Piang about the transfer of 5CHR to PL and himself as joint tenants. PL accompanied WYC to meetings with Tan Yah Piang for this purpose. She testified that she understood from those meetings that a transfer of 5CHR to a joint tenancy would protect it from the banks in that she would have to be kept informed if the plaintiffs wanted to sell 5CHR to raise funds. A sale of 5CHR was a possibility around that time because WYCPL's financial health became worrisome through the property investments it had made. PL also testified that whilst 5CHR was originally intended to be bequeathed in WYC's will, Tan Yah Piang had advised against it because a will could be contested. WYC then gave Tan Yah Piang instructions to transfer 5CHR to PL as a joint tenant. In a letter dated 2 May 2002 to WYC, Tan Yah Piang explained how the right of survivorship operated in a joint tenancy.

100 But WYC's plan to transfer 5CHR to PL was derailed in July 2002 because of strenuous objections by the plaintiffs (see above, at [17]). On 2 October 2002, another meeting with Tan Yah Piang was held and attended by WYC, PL and the plaintiffs. Again, the plaintiffs objected to the transfer of 5CHR. The plaintiffs' rude behaviour toward Tan Yah Piang eventually caused him to discharge himself in relation to that matter.

101 Sometime in August 2003, WMC approached WYC to provide a personal guarantee for $7.92m in relation to an investment in shop-houses at Tras Street. WYC agreed. Although WYC once again had to postpone the transfer of 5CHR as immense financial liabilities weighed on his mind, he was always certain of executing the instrument once he was financially secure. Eventually, on 25 June 2004, WYCPL entered into an agreement with Medilane Pte Ltd (a wholly-owned subsidiary of PHH), to sell

19 Adam Road at $10.8m. By a deed of guarantee dated 25 June 2004, PHH's directors guaranteed the due performance of the obligations of Medilane Pte Ltd. Hence, by late 2004, the cloud over WYC's financial liabilities had largely lifted.

102 Another strategic manoeuvre of the plaintiffs was to plant the fictitious idea in WYC's mind that PL might leave him once he effected an *inter vivos* transfer of 5CHR to her. They advised him to carry out any transfer of 5CHR to PL only *via* his will. WYC's fears that PL would leave him was documented in several of his handwritten notes around 2002 and 2003. PL testified that she had no idea why he would think that. Apart from visiting WMW in the United States in September 2002 which was a trip WYC was supposed to make as well, she had never left WYC – he was the man she loved and around whom her life revolved for decades. I found that it was very likely that WYC expressed worries about PL leaving him only because the plaintiffs had repeatedly made that suggestion to him. There was no proof of PL's intentions to leave WYC once she obtained 5CHR. In reality, PL did not leave WYC after 5CHR was transferred to her as a joint tenant in December 2004.

103 Finally, as described earlier at [37] and [39], the plaintiffs also attempted to block WYC's instructions to Balakrishnan in late 2004 to effect the Transfer, although that ultimately failed. In cross-examination, it was put to WMC that he applied pressure on WYC on how to deal with his assets. WMC's reply was telling. He said:

> I---put pressure---or rather I put con---expressed my concerns to my father that when he had dementia and when he did not understand the extent of his liabilities.

It was clear to me that WMC was not only putting pressure on WYC on what liabilities to assume but also on how to deal with the latter's assets.

104 Having considered the entire history leading up to the Transfer, which included the plaintiffs' many strenuous objections to their father, I was of the view that it was implausible that WYC transferred 5CHR to PL out of undue influence. The plaintiffs' (unpleaded) allegation which they introduced in their opening statement, *ie* the Transfer was executed under duress, was likewise untenable. No facts had been pleaded or evidence adduced to show the existence of a wrongful or illegitimate threat or pressure by PL that left WYC with no practical alternative but to execute the Transfer.

Whether 5CHR's joint tenancy should be severed and the property sold

How should 5CHR's joint tenancy be dealt with?

105 The authority conferred on the plaintiffs as WYC's deputies was subject to the provisions of the MCA and in particular, s 3 ("the principles") and s 6 ("best interests"): s 25(5), MCA. Therefore, in deciding what to do with 5CHR's joint tenancy, the plaintiffs must act in WYC's "best interests". Section 6 of the MCA provides a checklist of factors which a proxy decision-maker such as a deputy must "consider" or "take into account" without limiting his general duty to consider "all the relevant circumstances" in deciding what was in the best interests of the person.

106 Deputies are also bound by the Code by virtue of s 41(5), MCA. Paragraph 9.8.9 of the Code stated that deputies must act in good faith, with honesty and integrity; and para 9.8.7 stated that deputies are under a fiduciary duty not to take advantage of their position to benefit themselves and should not allow considerations other than the best interests of the person to influence the way that they carry out their duties.

Determining WYC's best interests

Determining WYC's best interests

107 Sections 6(3) to 6(8) of the MCA specified certain steps which a deputy must take in construing what were in the best interests of the person of which they are deputies. The relevant subsections state:

> **Best interests**
>
> 6. - …
>
> (7) [A deputy] must consider, so far as is reasonably ascertainable –
>
> (*a*) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity);
>
> (*b*) the beliefs and values that would be likely to influence his decision if he had capacity; and
>
> (*c*) the other factors that he would likely to consider if he were able to do so.
>
> (8) He must take into account, if it is practicable and appropriate to consult them, the views of –
>
> (*a*) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind;
>
> (*b*) anyone engaged in caring for the person or interested in his welfare; …
>
> as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection (7).

108 On the whole, the concept of best interests as prescribed by the MCA suggests that the proxy decision-makers who are WYC's deputies in this case, must weigh the relevant factors and the circumstances to arrive at an outcome that maximally promotes the welfare of the incapacitated person. There may be cases where there are conflicting interests that must be balanced against each other. For example, an incapacitated person's present feelings could be different from his past wishes.

109 The present case was not such a complicated case because there was no evidence that WYC felt any differently in December 2004 with respect to how 5CHR should be held as compared to his earlier decision. Hence, I gave much weight to WYC's expressed intentions in relation to 5CHR while he was still able to decide for himself. If his intentions were for 5CHR to be held as a joint tenancy, then a severance and sale of 5CHR would *prima facie* not promote his welfare. The plaintiffs must prove that severance was necessary for some legitimate reason, *eg* that WYC faced a shortage of funds for his medical treatment and there were no alternative sources of funds to meet those needs. Otherwise, the manner of 5CHR's holding must remain as it is.

WYC's expressed intentions with respect to 5CHR

The Transfer

110 In the absence of any invalidating factors, WYC's execution of the Transfer *per se* was conclusive evidence of his intentions. Where a property was put in joint tenancy after its owner received legal advice from his solicitor on its effect, that was indicative of the owner's intention for survivorship to operate in respect of the property: *Lau Siew Kim v Yeo Guan Chye Terence and*

another [2008] 2 SLR(R) 108 at [115]. It was undisputed that WYC had received legal advice on the effects of a joint tenancy from both Tan Yah Piang and Balakrishnan. The Transfer therefore confirmed that WYC had intended for PL to own 5CHR as a joint tenant in his lifetime and solely upon his demise. WYC chose this manner of transfer after he had carefully considered the various ways to give 5CHR to PL, taking into account the plaintiffs' forceful objections over the years and his own financial security.

The wills of WYC

111 WYC had made two wills prior to December 2004. One was executed on 11 May 1997 ("the 1997 Will"), which he revised on 27 September 2000 and 27 January 2001. Another was executed on 4 September 2003 ("the 2003 Will"). With respect to 5CHR, the 1997 Will and its revisions provided that it was to go to "my wife Patricia and Meng Rong (Weng)." The 2003 Will provided that 5CHR was to be given to "Patricia Ling Ai Wah and Wong Meng Weng, free of any tax or duty arising in respect of [WYC's] death, if they survive [WYC] in equal share, absolutely." Thus, it could not be said that WYC had always wanted to keep 5CHR for himself without making at least one important qualification to that statement – WYC had also consistently wanted a share of 5CHR to be given to PL upon his death.

The revocation of wills in 2003

112 In October 2003, WYC liaised with Tan Yah Piang to execute a new will which provisions were to be substantially the same as those of the 2003 Will. The differences between them pertained to a change of the executor to WYC's half-brother, Wong Yip Yan, gifts to be given free of estate duty and an inclusion of TKY as a beneficiary of 37GHA in addition to WML and WMK. However, the draft will that Tan Yah Piang prepared, dated 16 October 2003, was never executed.

113 Instead, after Dr Chen assessed WYC on 23 October 2003 to be of "sound mind & can make rational, coherent decisions" for the purposes of making a will, WML brought WYC to see one Yeoh Lam Hock, a lawyer, on or around 3 November 2003. This was for WYC to revoke his previous wills in the presence of Yeoh Lam Hock and another lawyer Johnny Cheo. There was no evidence before the court on who instructed Yeoh Lam Hock and why the draft will prepared by Tan Yah Piang was never signed.

114 There was, however, a note which WYC wrote on 1 November 2003, two days before the revocation was carried out, which recorded his plan to "Prepare a Will". There was also no legitimate reason for WML to bring WYC to Yeoh Lam Hock to have the 2003 Will revoked since the plaintiffs knew from a meeting they attended together with WYC and Tan Yah Piang on 2 October 2003, that WYC had already instructed Tan Yah Piang to draft a new will which he would be executing very shortly.

115 Those events led me to believe that the plaintiffs procured the revocation of the 2003 Will as part of their overall plan to obtain 5CHR for themselves. On the one hand, they had attempted to prevent WYC from making an *inter vivos* transfer of 5CHR by taking various measures which included creating the false impression that PL would leave WYC once the property was hers, and that it would be more prudent to bequeath it instead. On the other hand, they forced WYC to revoke the 2003 Will and not sign the draft will dated 16 October 2010 which bequeathed 5CHR to PL and WMW.

116 The plaintiffs were fully aware that WYC would never bequeath 5CHR to them in the light of his long-held intentions and the association of 5CHR with PL and WMW. Save for time spent overseas, WMW had lived there with his mother since 1981. Therefore, in order to secure 5CHR for themselves,

one prong of the plaintiffs' plan was to have WYC pass away intestate. PL and WMW would not be entitled to any part of WYC's estate under intestacy laws, and the nature of their relationship with WYC meant that they would not have *locus standi* to make a claim under the Inheritance (Family Provision) Act (Cap 138, 1985 Rev Ed). The merits of their claim even if they had *locus standi* would be very weak. The other prong of the plaintiffs' plan, which had been put into motion in these proceedings, was to challenge WYC's competence if he made an *inter vivos* transfer of 5CHR. Both prongs of their plan were encapsulated in a paragraph of their opening statement which claimed that:

> The Plaintiffs were, at the time, unaware that a will had purportedly been executed by WYC in December 2004. As with the Transfer, the Plaintiffs' position is that WYC did not have sufficient capacity to make the purported will.

The Christmas Recommendations

117 The last two documents which recorded WYC's intentions regarding 5CHR were the 23rd version of the "Wong Yip Chong Christmas Recommendations" dated 24 December 2011 (referred to above as "the Christmas Recommendations") and the will which WYC executed pursuant to it ("the 2004 Will"). They are dealt with in turn.

118 The Christmas Recommendations came about in this way. In 2004, WMW who was then based overseas returned to Singapore from 7 to 13 May. During this trip, WMC asked WMW to work on a document which was to contain a plenary review of WYC's assets and liabilities and propose actions to be taken in relation to them. It was contemplated that the drafting of this document would entail discussions among WYC's immediate family members (*ie* all of WYC's children, TKY and PL). Drafts of the document were to be circulated amongst them for review and comment in order to gather unanimous agreement. WMC had asked WMW to work on it on an urgent basis so that the document could be presented to WYC before Christmas. WMC also weighed in on the process to be taken. In an e-mail dated 11 May 2004, he wrote to WMW:

> Dear Rong,
>
> When u craft your document, a preamble may be useful. You could say that all five children want to minimise potential discord, especially family member fighting family member over money.
>
> Suggest Step One, u get all 5 children to agree. Then Step Two, for them to get their mothers to agree. Once all 7 agree, it will be easier for Dad to agree. And he deserves the rest of his life, without conflict.
>
> Let us work hard to find a roughly fair type agreement. Please align all our interests rather than against each other.
>
> I pray you succeed and we can go back to enjoying our family's company without this painful stuff. …
>
> Meng Cheong

119 Due to the tight schedules of the peripatetic parties, they were unable to complete the document in May 2004. WMC sent WMW another e-mail on 30 November 2004 to remind him of the preparation of the document:

> But first we need to agree amongst ourselves (i.e the five siblings), which I think is do-able, as I

believe that each of the five just want reasonable fairness and minimal acrimony. After the five of us agree (and we can use my phone to call those who might be in HK [WMK] or in Adelaide [WMS]), and we should try to agree completely unanimously, it will help us do the next step. The next step is to get our mothers to endorse and support our agreement. I believe if we are reasonable to all, this is do-able. Once we have the unanimous agreement of all 5 kids and 2 mothers, we need to get Dad's agreement. I think that if all are unanimous, and he can see that this outcome will generate least acrimony, Dad's agreement is do-able. Once we have agreement of ALL 8, the rest is easy implementation by professionals.

120 WMW finally completed the document in December 2004, when he returned to Singapore for a three-week visit from around 8 to 25 December. In total, WMW prepared about 23 versions of the Christmas Recommendations. As was planned, several of the versions were circulated through e-mails to the plaintiffs, WMK and WMS for their review and input from 17 to 24 December 2004. All four persons received at least the 17th and 22nd versions of the Christmas Recommendations.

121 WYC was also apprised of the preparation of the Christmas Recommendations and raised no objection to the process. During its preparation, WMW presented the second version of the Christmas Recommendations to WYC on 18 December 2004 at a dinner. WMW asked WYC what his wishes were and WYC wrote on the document in his own hand, "Good hardworking children with a good dose of social and moral responsibility. May these qualities reverberate through the generations." On 21 December 2004, WMW informed WMC and WMK that he spent three hours discussing the proposals in the document with WYC and PL that day.

122 The 23rd version, which was the final version of the document, was signed by WMW and the plaintiffs on 24 December 2004 and PL on 7 January 2005. WMK and WMS were not in Singapore during that time, and communicated their approval of its contents to WMW by telephone on 24 December 2004 for him to sign it on their behalf. WMS also sent an e-mail to confirm the same. With respect to TKY, who was residing with WML at 37GHA, WML e-mailed WMW on 7 January 2005 and said, "received Christmas document signed by Pat and my mum has signed". Contrary to the appearance that unanimous agreement was obtained and recorded, it would later be discovered that TKY's signature was not on the Christmas Recommendations.

123 WMW had rushed to complete the Christmas Recommendations and secure the agreement of the concerned parties because WYC was due to travel overseas soon thereafter; WMW himself was due to leave Singapore on 25 December 2004. Further, WMC had told WMW several times that the Christmas Recommendations should be finalised by 22 December 2004. WMW presented the Christmas Recommendations to WYC in the afternoon or early evening of 24 December 2004, with the assurance that there was consensus amongst the family members and that the signatures from TKY and PL would be forthcoming.

124 The final version of the Christmas Recommendations assembled a list of WYC's assets and liabilities, delineated proposals to distribute and discharge them respectively under an "Actions" section and attached a draft of WYC's revised will which WYC would later execute to become the 2004 Will. The Christmas Recommendations and its various versions consistently stated that 5CHR was to be held in joint tenancy between WYC and PL, with everybody else to disclaim interest in it. WMC had even written an e-mail on 20 December 2004 to state that he preferred WMW to be added as a joint tenant of 5CHR along with PL.

125 In the Suit, the plaintiffs and their witnesses did a *volte face* on the Christmas Recommendations. WML affirmed (untruthfully in my view) in his AEIC:

> I never considered the Christmas Recommendations to be a legally binding document of any sort. Rather, I believe it was treated by all as a tentative first step towards achieving some family amity for my father's sake. At most, it was intended to set out the broad outlines for further discussion between PL, WMW, my mother, my siblings and me. … I signed it in the hope that this would be the first step towards family harmony and despite my reservations as to the fairness of the proposals. … I had never really read through any of the drafts circulated by WMW in detail, as I had never considered the Christmas Recommendations to be a legally binding document. … I believe that [TKY] never signed the official transmittal letter [of the Christmas Recommendations]. … I do not remember her signing the document, nor ever having presented it for her signature.

In WMC's AEIC, he agreed fully with WML's stated position. The plaintiffs and their siblings tried to diminish the importance of the Christmas Recommendations with two main theories: the document was not legally binding and WYC could not understand its contents so as to have adopted them.

126 The plaintiffs cavilled that the proposals in the Christmas Recommendations were not legally binding because their mother's signature was absent on the "Official Transmittal Letter" page, which stated "Signatures are not binding unless all other signatures are also present". But this was a paralogism. The defendants had not asserted that the Christmas Recommendations were a legally binding agreement in the nature of a contract, deed or estoppel. It was apparent that nobody's legal rights, including WYC's, would be altered by the document even if it was signed by everybody concerned. It was meant to contain the family members' proposals to WYC, which WYC could then accept or reject. Hence, those who signed it had agreed with the proposals therein even if others had not.

127 The plaintiffs' second theory was that WYC was unable to understand the Christmas Recommendations or act upon it in December 2004 because he was mentally incapacitated. The ancillary aspects of this theory were that the Christmas Recommendations did not make it clear that the Transfer had already been executed; that WYC himself did not even realise that he had executed the Transfer; if WYC had known that he had executed the Transfer, he would not have accepted the Christmas Recommendations. I rejected all those contentions in turn.

128 First, for the same reasons as given earlier in relation to the Transfer, WYC comprehended the contents of the Christmas Recommendations. PL also testified that in her discussions with WYC about the Christmas Recommendations, WYC was happy that the issue of 5CHR was resolved, meaning that the property would devolve to her upon his demise.

129 Second, in the draft revised will attached to the 17th version of the Christmas Recommendations which was received by all of WMW's half-siblings on 23 December 2004, it was stated that PL was on her way to becoming a registered joint tenant of 5CHR:

> The property known as 5 Chancery Hill Road, Singapore 309644, comprised in Lot 1245W of Mukim 17, is held in joint tenancy with Patricia. As a joint tenant, she enjoys the right of survivorship on this property. It is my intention that title should pass to her.
>
> If the paperwork involving joint tenancy filed in December 2004 does not succeed, I give her this property free of any tax or duty arising in respect of my death, absolutely.

There was no doubt that by then, the plaintiffs and their two siblings knew that PL was in the process of being registered as a joint tenant of 5CHR.

130 Third, the argument of the plaintiffs and their witnesses that they treated the Christmas Recommendations as a mere prefatory step to achieving family harmony was refuted by the effort they themselves had invested in its drafting process. At the time it was prepared by WMW, WMC purportedly wanted to use the Christmas Recommendations to definitively resolve the tussles over WYC's assets. Likewise, their claim that they did not know that the Transfer had already been executed because they did not take the Christmas Recommendations seriously and had not looked at the numerous versions of the document sent by WMW was farcical.

131 WMS initially said that she had only given her "cursory approval" of the Christmas Recommendations. Under cross-examination, it was shown that she had gone through the document carefully, informed WMW of possible typographical errors, made specific suggestions to its contents, and even provided details of her children to enable WMW to draft the revised will that was annexed to the Christmas Recommendations. In an e-mail to WMW on 24 December 2004, she also acknowledged that 5CHR had always been PL's home.

132 WMK claimed that he did not know that some of the items in the Actions section were going to be implemented by way of testamentary disposition. His lie was quickly exposed. Item 10 of the Actions section expressly stated that WYC would be signing another will. WMK had also actively corresponded with WMW through e-mail regarding this revised will:

(i) on 21 December 2004, in response to WMW's call for comments on the "proposed new will", WMK asked "why the difference in wycpl % under action cf will";

(ii) on 23 December 2004, WMK provided his children's particulars to WMW to prepare the revised will in an e-mail titled "Re: drafting dad's will"; and

(iii) on that same day, WMK responded to WMW's request for him to review the Actions section of the Christmas Recommendations and the proposed revised will. WMK added that he was "glad to be substitute executor"!

Confronted with this evidence, WMK conceded that he knew all along that one of the objectives of the Christmas Recommendations was to help WYC to execute a revised will.

133 WMK also admitted that he had read the 17th version of the Christmas Recommendations and that the commitment to have 5CHR and the relevant paperwork effecting the Transfer completed sometime in December 2004 was stated therein. Despite giving comments to various versions of the Christmas Recommendations, WMK never once wrote an e-mail to say that 5CHR should not be held in joint tenancy between WYC and PL. He was unable to give an intelligible answer as to why he did not object to 5CHR being held in joint tenancy in December 2004 but was objecting to the Transfer in these proceedings. I found that WMK's attempts in the Suit to distance himself from his agreement to the Christmas Recommendations' proposals in December 2004 to be wholly indefensible.

134 It was patently clear that TKY's children were now attempting to renege on their agreement to certain proposals in the Christmas Recommendations. Every member of WYC's family had actually been provided for by the proposals, but the plaintiffs were now objecting to items in the Actions section which only benefited PL. For example, the children benefited from, among others, WYC's shares in WYCPL and investment companies. TKY was to receive a share of 37GHA. The plaintiffs readily executed those other proposals in the Christmas Recommendations. On 7 January 2005, one Foo Siew Shan who was an accountant at WYCPL wrote an e-mail to WYC's children and PL in which she stated that WMW had requested that she prepare paperwork to transfer ownership of all investment companies from the family members to WYCPL pursuant to item 7 in the Actions section. None of the

children responded to this e-mail to inform Foo Siew Shan that they had not agreed to the Christmas Recommendations. On 11 April 2005, WMK e-mailed the plaintiffs and the defendants and opined that to reduce financial risks to WYC, "we need to fully implement the Christmas agreement".

135 The current cherry-picking of the proposals invariably called into question the plaintiffs' motives for causing the Christmas Recommendations to be prepared. WMW had been tasked to labour over an impossible task of aligning agendas he never knew existed, for the document was likely to be nothing more than the plaintiffs' ruse to reap WYC's assets for themselves with the least resistance. They had led the defendants and WYC to believe that everyone concerned was satisfied with the document's proposals and bided their time till WYC could not speak for himself before carrying out the latter part of their hidden agenda, which was to claw back what had been given to PL. Although we did not hear from TKY the reasons for her not signing the document as she chose not to appear in Court (despite the Court being earlier informed by her counsel that she was well), the plaintiffs were likely to have had manipulated their own mother to act as a safeguard against the implementation of all of the Christmas Recommendations' proposals. They had either not informed her of the document or prevented her from signing it. This inference could be drawn from WML's inability to give a cogent reason why he told WMW that TKY had signed it despite her not having done so. WML also could not offer a reason why TKY, who lived with him, did not sign it. Throughout the drafting process, WML had also not told WMW that TKY objected to any of the proposals in the document although he well knew that WMW relied on him to communicate the proposals to his mother.

The 2004 Will

136 On the same day WYC received the Christmas Recommendations, he executed the draft will that was annexed to it which became the 2004 Will. In the light of my findings regarding the plaintiffs' extensive involvement in preparing the Christmas Recommendations, I rejected WMC's claim that he was unaware that WYC executed the 2004 Will pursuant to the Christmas Recommendations and that he only saw the 2004 Will after the commencement of these proceedings. His feigned ignorance was another step in the plaintiffs' plan to ensure WYC died intestate.

137 The 2004 Will explicitly acknowledged that 5CHR was held in joint tenancy with PL and its title should pass to PL by the operation of survivorship. Balakrishnan and one Jessica Lirazan, who was WYC's long-time domestic helper, witnessed WYC's execution of this will. Balakrishnan testified (and Jessica Lirazan corroborated) that WYC was his usual self on the day he executed the 2004 Will.

WYC's needs

138 The plaintiffs prayed for a sale of 5CHR if the Court ordered that its joint tenancy be severed so that the sale proceeds could be applied towards WYC's maintenance and upkeep. The plaintiffs asserted that such a course of action was necessary because WYC's cash reserves were depleted and his medical expenses were mounting. At the trial, they confirmed that to be the only pleaded basis for a severance and sale of 5CHR.

Other available sources of funds to meet WYC's needs

139 It was not difficult to see through the plaintiffs' charade of beneficence. Not only did WYC have other sources of funds which he could have drawn upon but for the plaintiffs' actions, the plaintiffs had also not attempted to monetise any of WYC's unencumbered assets. This refuted their claim that WYC needed cash urgently. For example, at the hearing on 1 February 2011 of the plaintiffs' application for a declaration that their statutory declaration to sever 5CHR's joint tenancy be declared valid, the option of mortgaging 37GHA was put forth. WMW also suggested this

alternative to the plaintiffs at meetings of the CPE. However, even at the trial, the plaintiffs had not considered mortgaging 37GHA to raise funds for WYC's upkeep. WYC owned 37GHA solely and funds could have been more readily obtained by mortgaging the property than to seek a severance and sale of 5CHR.

Plaintiffs' plan to starve WYC of liquidity

140 The evidence established that WYC's other sources of funds were wrongfully withheld or withdrawn from his estate by the plaintiffs. I found that the plaintiffs had done all this either to directly benefit themselves or to contrive an excuse to target PL's properties.

Improperly withdrawing monies from WYC's estate: the Synapse Order

141 On 14 December 2006, the CPE obtained the Synapse Order which caused a sum of about $1m ("the sum") to be paid from WYC's estate to WMC. This application was made on WMC's allegation that a sum of $1,151,105.20 had previously been lent to WYC by himself and TKY, the shareholders of Synapse. I need not enter into the merits of WMC's allegation in this decision. It sufficed to set out the procedural flaws in the process of obtaining the Synapse Order which justified setting it aside.

142 First, whilst the relevant summons (*ie* Summons No 5378 of 2006) had prayed for $1,220,000 to be paid to WMC and TKY, the Synapse Order was for $1,060,105.20 to be paid to WMC alone. Eventually, a slightly lower amount constituting the sum was paid out. WML was unable to give an acceptable explanation for the discrepancy between the wording of the Summons and the resultant Order. He merely said that TKY did not ask for the money. This suggested that WML did not examine the merits of the application at all.

143 Secondly, contrary to what WMC claimed in his AEIC, it turned out that he did not furnish all the material facts to the other CPE members regarding his alleged loan before he made the application. WML's testimony disclosed that in 2006, the CPE had not conducted any proper investigation into WMC's claim and had only relied on WMC's representations and some casual discussions with the family, excluding PL. WMW's attempts to investigate the issue failed. On 30 March 2006, he e-mailed WMC (with WML and WMK as co-addresses) to seek the plaintiffs' confirmation that the alleged loan was undocumented. WMW further stated that if the loan agreements were oral, the CPE could document the terms of those agreements and ratify them. WMC replied that there were no loan documents, but he did not say that there was an oral loan agreement. WMC admitted that he did not answer WMW's query. However, WMC claimed that he had answered most of WMW's questions verbally. The transcripts of a meeting of the CPE on 16 April 2011 showed that this was highly improbable. At this meeting held more than four years after the Synapse Order was made, WMW revived the issue and pointedly asked WMC whether WYC had understood that he had to repay that alleged loan. WMC refused to give a direct answer to that question. Instead, he launched into a tirade on his relationship with WMW. When WMW pressed for an answer, WMC evaded the question again, although he incriminatingly remarked to WMW that "this is one little blip".

144 Thirdly, because the CPE failed to ascertain the material facts which surrounded the alleged loan to WYC, the Court was not provided with a full and frank disclosure of the facts when the application was heard and allowed. At the trial, the plaintiffs emphasised that the application was made pursuant to a unanimous decision of the CPE. Indeed, at the time of the application, WML, WMW and WMK had filed affidavits to confirm that they did not object to the CPE's proposal to repay the sum to WMC. But this unanimity was irrelevant to the issue of whether there was full and frank disclosure. Apart from WMC, none of them had personal knowledge of the particulars of the alleged loan. Numerous documents which were relevant to the issue were not exhibited in affidavits filed in

Court. Significantly, the application was not served on PL even though WMC knew that she had personal knowledge about the workings of Synapse.

145 On 6 March 2008, PL's solicitors wrote to the plaintiffs' solicitors to ask the CPE to apply to set aside the Synapse Order because she discovered that WMC's affidavits filed for the application had contained material inaccuracies. There was no response to this letter. WMC was also given many opportunities while he was on the stand to agree to the setting aside of the Synapse Order and the immediate return of the monies he had received thereunder for WYC's use. He declined to do so. However, after WMC's initial refusal to budge, the plaintiffs changed their minds and agreed to have the Synapse Order set aside and to return the sum to WYC when the trial concluded on 5 August 2011.

146 The return of the sum by WMC would go a long way towards paying for WYC's medical expenses and other needs. It would also restore WYC's liquidity status to levels as envisaged by the Christmas Recommendations. As WMK conceded, item 11 of the Actions section clearly stated that a then existing sum of approximately $1m in WYC's cash accounts was to remain as a cash reserve for WYC's peace of mind and to meet emergency expenses. Stipulated therein was also a process to be followed before those funds may be paid out. It was therefore reprehensible of WMC to procure a payment of this very sum to himself in disregard of the family's agreement, on top of failing to prove his entitlement to the Court.

Reclassifying a $3.7 million debt owed to WYC by WYCPL

147 Since 1999, an amount of about $4m had been recorded in the accounts of WYCPL as a loan owing to WYC from the company. In 2008, the plaintiffs as directors and shareholders of WYCPL caused this loan to be reduced to $3.7m on the basis that WYC had earlier borrowed $300,000 from TKY. (This $3.7m loan due to WYC is hereafter referred to as "the Loan").

148 At the trial, the plaintiffs were shown WYCPL's financial statements for the years 2007 to 2010 which they had signed and which recorded the Loan as owing to WYC alone. On or about 29 April 2010, the plaintiffs acting as a majority of the board of WYCPL instructed WYCPL's accountant Phoebe Sim, to reclassify the Loan as owing to both WYC and TKY. WMC also instructed Phoebe Sim in an e-mail that same day not to entertain any requests to apportion the sum between WYC and TKY. He claimed that the sum was part of a legally indivisible matrimonial estate. This invented justification to Phoebe Sim was bizarre and is unacceptable. It also contradicted the underlying basis of reducing the Loan by $300,000 in 2008.

149 The plaintiffs justified the reclassification by arguing that monies for the Loan had come from a bank account held jointly by WYC and TKY. In WMC's AEIC, he exhibited a letter dated 1 March 2010, ostensibly written by his mother, addressed to WYCPL to request the Loan to be reclassified. A cursory examination of the letter's contents alone showed that the amounts which were stated as having been paid from WYC and TKY's joint POSB current account no XXX-XXXXX-X ("the POSB current account") did not add up to $3.7m. Yet, the plaintiffs and WMK agreed to reclassify the Loan, while WMW objected. Apart from the letter of 1 March 2010, the plaintiffs sought to rely on bank statements of the POSB current account and some e-mails between the directors of WYCPL, who were then the plaintiffs, WMK and WMW.

150 There was no valid basis for the reclassification. First, WMC was the mastermind of the 1 March 2010 letter, not TKY. WML admitted that WMC "played some part in the construction of the phrasing" and "helped in the execution" of the letter. WMC himself confirmed that he had helped to draft the letter in February 2010. Under intense cross-examination, he twice referred to the letter as

"my letter".

151 Secondly, the origin of the funds was conclusively demonstrated to be WYC's sole POSB personal account no XXX-XXXXX-X ("WYC's personal POSB account"), which meant that he was the beneficial owner of the funds that were used to advance the Loan. The POSB current account was merely a current account with a zero balance. Shortly after a cheque was drawn on the POSB current account to reduce its balance to a negative value, there would be a corresponding deposit of funds from WYC's personal POSB account to restore the POSB current account's balance to nil.

152 WMC claimed that he was unsure of the origin of the funds that were used to maintain the zero balance of the POSB current account because PL had withheld WYC's banking documents from the CPE. He also claimed that he did not instruct WYCPL's accountant to investigate the origin of those funds. I disbelieved him. As I had observed during the trial, in a bank document which WMC had exhibited in his AEIC to prove a payment of $2m from the POSB current account on 30 August 2000, it was clearly identified that WYC's personal POSB account was the source of these monies. WMC's reply was that he did not have the documents relating to WYC's personal POSB account in order to confirm that it was the source. That again was an untruth. The plaintiffs themselves had disclosed excerpts from the passbooks of WYC's personal POSB account which showed that the following monies came from that account:

(i) $2m lent on 4 February 1999;

(ii) $500,000 lent on 10 April 1999;

(iii) $2m lent on 30 August 2000; and

(iv) $150,000 lent on 19 February 2004.

Moreover, on 20 February 2004, WMC signed a confirmation that a cheque no 805733 for $150,000 was a loan from WYC to WYCPL. An OCBC Bank deposit slip for that sum of $150,000 also recorded it as a "[Transfer] from Dr WYC". The documents were in the plaintiffs' possession since 2006. Furthermore, the words "Loan to Wong Yip Chong Pte Ltd" had been annotated against the entries in the passbooks of WYC's personal POSB account regarding the transfer of the monies on 10 April 1999 and 30 August 2000 to the POSB current account for the loan to WYCPL. Confronted with the documents, WMC asserted that the documents had been kept with his accountants. This was another prevarication. He had in fact relied on the very same page of the passbook of WYC's personal POSB account (which reflected the transfer of $2m to the POSB current account on 4 February 1999) to support the application for the Synapse Order in 2006.

153 WMC's last-ditch attempt at justifying the reclassification was that from an accounting perspective, the origin of the funds was irrelevant. He argued that the Loan could be reclassified as long as the monies were transferred to WYCPL from the POSB current account. But WMC is no accountant. Phoebe Sim, WYCPL's accountant who had carried out the reclassification on the plaintiffs' instructions, testified that she did not think it would necessarily be accurate or correct from an accounting perspective to ignore the source documents for the monies constituting the Loan. She also testified that if she had seen the excerpts of the passbooks of WYC's personal POSB account which showed that the Loan originated therefrom, she would not have reclassified it without clarification.

154 Thirdly, this reclassification was a manoeuvre to put the monies out of WYC's reach to enable the plaintiffs to target 5CHR and the Draycott Property as properties which needed to be sold to raise

funds for WYC's maintenance. Just two weeks after WYCPL received the letter of 1 March 2010, the CPE filed an application to obtain the 2010 Order. The plaintiffs did not disclose to the Court in that application, which was to seek a power to sell WYC's properties, that the Loan was owing to WYC and an issue of its reclassification had cropped up.

155 The plaintiffs had repeatedly wrongfully rebuffed WMW's attempts to get the Loan repaid. Whenever WMW brought up the subject, the plaintiffs deliberately gave him nonsensical responses. WML admitted that WMC was trying to stonewall WMW, and he did nothing. At the time of the trial, no request had been made by the CPE to WYCPL to seek repayment of the $3.7m to WYC. At a meeting of the CPE on 17 February 2011, WMW asked WMC to look into this issue. WMW received a ludicrous response – WMC replied that it was inappropriate for him (*ie* WMC) to look into the matter because he was only one of four directors of WYCPL. WML gave an equally absurd response. He said, "You go and ask my mother, right, to go and return things while you protect your mother's assets. Go, go. I suggest this! That he be tasked to spearhead a subcommittee to go and ask Mrs Wong to return assets. Would you do that?" At another meeting on 20 April 2011, WMW suggested "squeezing out" $100,000 of the $3.7m to meet WYC's immediate needs. The plaintiffs rejected this proposition, saying that it would "favour the mistress". When WMW mentioned that he would like to approach TKY as WYC's deputy and ask for her permission to disburse some of the $3.7m, WMC informed WMW that he would advise his mother not to do so. Subsequently, WMW's solicitors wrote to TKY's solicitors on 29 April 2011 to request that TKY authorise the repayment of $200,000 to WYC out of the reclassified loan. This request went unanswered. A further request on 13 May 2011 met with silence.

156 On 10 May 2011, WMW wrote to the plaintiffs to request a board meeting to be held at short notice before 14 May 2011 to consider and approve a repayment of $200,000 out of the Loan to WYC from WYCPL to meet WYC's immediate needs. The plaintiffs brushed off WMW's suggestions at a meeting of the CPE that same day. WML commented, "So you want my mom to…you want to call the board of directors to go and release money back to the thing, whereas at the same time the house and all that are reserved for your mom?" When counsel for the first defendant asked WML if he had ever considered bringing the issue of the reclassification of the Loan to Court, WML said that the reclassification was raised as a "rebuttal" to WMW's opinion that the Loan should be repaid to WYC.

157 WMW had also asked for the repayment of the Loan to WYC years before the reclassification took place. For example, in a meeting of the CPE on 6 November 2008, WMW's minutes recorded that WMC would allow funds to come out of WYCPL "over [his] dead body" unless PL agreed to make payment for her share in 5CHR and the Draycott Property. In another meeting of the CPE on 23 April 2008, TKY's claim to a proportion of the $3.7m was discussed. WMW requested a copy of TKY's claim to be made in writing and wanted to bring it to the Court's attention. However, WMC was against it as he thought it would "open up a whole can of worms". Such conduct was clear evidence that the plaintiffs applied irrelevant considerations when they refused to accept WMW's legitimate requests to repay the Loan. The plaintiffs had never denied that WYCPL was able to repay the Loan.

158 The plaintiffs' actions also evinced an utter disregard for their father's well-being. In order to maintain the excuse to target PL's properties, WMC was unwilling to consent to have even $3,000 of the Loan monies repaid to WYC. They chose to jeopardise their father's life instead of acceding to or considering requests that funds which belonged to WYC be released from WYCPL. On 20 April 2011, WYC was initially refused admission into the intensive care unit at the Accident and Emergency department of a private hospital despite being in a serious condition, because his medical bills were unpaid. The plaintiffs' game of brinkmanship was iniquitous.

Writing off directors' fees due to WYC from various individuals

159 WMW had testified that the accounts of WYC's estate showed that a sum of $595,000 was due to WYC for director's fees that were being held by others. This allegedly arose from a family arrangement whereby all directors' fees paid to WYC's family members were supposed to be returned to WYC. There was evidence that WYC would even reimburse his sons for the extra income tax they incurred because of the fees they received on his behalf. Whether those director's fees should be called in was discussed at a meeting of the CPE on 6 January 2011. According to WMW, WMC asked Phoebe Sim to write off all such fees that may be due to WYC with WML's concurrence. The unsigned draft minutes of this meeting contained a paragraph which said: "Directors fees – owing by Mrs Wong ($310k)?, wml ($50k)?, wmk ($235k)? PS [Phoebe Sim] informed the [CPE] Finance will not include the above amount in Dr WYC's statement of affairs as Finance has no documentation to support it though it was reflected in WYC accounts as maintained by previous book-keeper." The signed version of those minutes omitted that paragraph. I found that the insouciant manner in which the plaintiffs wrote off the sum of $595,000 without investigating whether WYC had a valid claim against TKY, WMK and WML for its repayment to be against the interests of WYC.

Voting against WYC's participation in a share buyback scheme

160 WYC was entitled to participate in a share buyback scheme in WYCPL in February 2010. Had he participated in it, he would have received at least $70,000 as of the date of the trial. During the meeting of the CPE on 8 February 2010, WMW voted for WYC to participate in the scheme, but he was outvoted by the plaintiffs. The minutes of the meeting revealed that there was only $10,132 left in WYC's cash account at that point, and the CPE had to lend monies to WYC's estate.

161 The only reason that WMC stated in his AEIC for the way he voted was the existence of an alleged verbal agreement that had been reached with PL to sell the Draycott Property for funds to maintain WYC. I found that there was no such agreement and the plaintiffs themselves did not believe that there was such an agreement. WMC admitted that he had not even heard personally from PL about the proposed sale of the Draycott Property. The minutes of the CPE's meeting on 8 February 2010 also showed that they already faced difficulties obtaining from PL a copy of the tenancy agreement of the Draycott Property. On 22 and 23 February 2010, PL's solicitors wrote to the plaintiffs' solicitors to highlight that the CPE was not authorised to sell "any property". It was evident to the plaintiffs by then that PL was not agreeable to sell the Draycott Property. Yet, the plaintiffs did not revisit the share buyback scheme.

What was the real reason behind the plaintiffs' attempts to sever 5CHR's joint tenancy?

162 I had held that the statutory declaration to sever 5CHR's joint tenancy was invalid because it was not in WYC's best interests to have 5CHR's joint tenancy severed. It was also wrong for the plaintiffs to execute the statutory declaration and file an urgent application to have it declared valid in December 2010 for another reason. On 2 July 2010, the plaintiffs had already commenced the present proceedings by way of OS 648 of 2010 (which was converted into the Suit on 11 August 2010). The plaintiffs knew full well that the severance and sale of 5CHR was a live issue in the Suit which needed to be ventilated at trial. I surmised that their statutory declaration and the related application were made to steal a march on PL and to circumvent a full hearing on the issue. Any urgent need for funds to maintain WYC, which was what allegedly motivated the plaintiffs to issue the statutory declaration, was deliberately engineered by them.

Plaintiffs' selfish motives

163 It was also clear to me that the plaintiffs' real reasons for seeking a severance and sale of 5CHR were not to benefit WYC at all. They were also not trying to safeguard his or TKY's interests.

Their actions were aimed at increasing their share of what they felt was a potentially large inheritance. And if that could not be achieved, they wished to deprive PL of her properties by selling them. Such actions were egregious breaches of paras 9.8.7 and 9.8.9 of the Code (see above, at [106]).

164 A recording of the CPE meeting of 28 February 2011 which WMW obtained, and which accuracy was undisputed, reflected those were the plaintiffs' intentions:

> [WMC]: We haven't started our CoP meeting. So we are about to start when Phoebe comes in. But we are not yet in the CoP meeting. I'm going to make one comment. The way things are going to go, you are going to be the richest inheritor by far of all the children. That's mathematic. You know, if let's say 5CHR goes to your mother, at $1,500 psf, that's $12M headed to you. If 37GHA goes to Mrs Wong, and she has four children (called Meng Cheong, Mei Sheong, Meng Leong, and Meng Kong), maybe one a quarter of that goes to them, and if Draycott goes somewhere or the other, at least half to Patricia Ling and half to Dr Wong, then Rong [*ie* WMW], your bounty in this, your inheritance, is much more than any of your siblings.

WMC admitted during cross-examination that the above passage demonstrated that he was looking to inherit some part of 37GHA from his mother. WMW testified that the plaintiffs saw their mother, TKY, as a "conduit" through which they and their own families and children would inherit assets. They wanted 5CHR and the Draycott Property because those properties were not going to TKY or themselves upon WYC's death. I accepted WMW's testimony as an accurate description of the state of affairs – WMC had treated WYC "as the source of all the family funds and the two wives as the conduits through which the bounty would eventually flow to the next generation and it was foremost in his mind to calculate the inheritance that would flow to him and to the other siblings."

WYC had always treated and provided for all his loved ones fairly

165 At the trial, the plaintiffs attempted to characterise PL pejoratively and continually described her as the "mistress" who had "overreached" by taking more than she deserved. The plaintiffs asserted that PL had "designed certain transfers to her … beyond [WYC's] intentions". This was far removed from the truth. The two properties which the plaintiffs had set their sights on were the only properties which PL held jointly with WYC. The backgrounds to those properties were innocuous – 5CHR was PL's "matrimonial" home with WYC for more than three decades, whilst the Draycott Property was her investment property.

166 In the course of his testimony, WMC preached the themes of "fairness" and "equity" in supposed contradistinction to how PL had gradually acquired more than she deserved and supplanted WYC's other family members. WMC's speeches on this issue were empty rhetoric. The evidence showed that WYC had made adequate provisions for TKY and her children. WYC ensured that TKY was well maintained and would always have a home at 37GHA as evidenced in all the wills he made. He had also given her an apartment at Novena Ville (which she chose to sell according to PL). He had even resisted giving PL an interest in 5CHR originally, out of respect for TKY and her family. And to equalise PL's subsequent acquisition of an interest in 5CHR, WYC gave a share of 37GHA to TKY in the 2004 Will.

167 WYC also helped TKY's children to finance their private property purchases. He gave WMS an apartment in Paris. WMC received a house a stone's throw away from 5CHR at Padang Chancery, as well as monies to purchase an apartment in New York. WYC also agreed to give WMC one-third of all profits in respect of WYCPL's shop-house investments. Further, pursuant to the Christmas Recommendations' proposals, some of which were implemented by the 2004 Will, all of WYC's shares in

the shop-house investments were transferred to WYCPL. This was followed by a reduction of WYC's shareholding in WYCPL from 90% to 15% by a redistribution of his shares to his children. This transfer of 75% of WYCPL's shareholdings to his children for $47,000 was in substance a gift because WYCPL had a net asset value of over $50m. PL had received none of those shares because she turned them down. Having regard to the full picture, it was disingenuous for the plaintiffs to claim that WYC would not have wanted 5CHR to devolve to PL through survivorship because he would have wanted a fairer distribution of his assets. The plaintiffs' argument only manifested animus or avarice or a mixture of both. It would be the most unkindest cut of all [note: 2] if the plaintiffs were allowed to sever 5CHR's joint tenancy on their father's behalf when their motives for doing so were *mala fide*.

Whether PL was the sole beneficial owner of the Draycott Property

168 I found that PL was the sole beneficial owner of the Draycott Property and granted her prayer for a declaration of the same. First, the funds that were used to purchase the Draycott Property could be traced back to a gift of money in a POSB joint account, XXX-XXXXX-X ("the POSB joint account"), which WYC opened with PL in 1982. Although the account was in their joint names, WYC had gifted the monies in it totalling $200,000 to PL to help her build up an investment portfolio for her own financial security. The first property she purchased was at Angullia Park ("the Angullia Park Property") which she sold to purchase a property at Four Seasons Park ("the Four Seasons Property"). Part of the sale proceeds of the Four Seasons Property were then used to purchase the Draycott Property.

169 PL's account was supported by documentary evidence. On or about 23 March 1983, PL purchased the Angullia Park Property using funds from the POSB joint account and a bank loan. PL testified that she included WYC's name on the title deed so that if anything untoward happened to her, WYC would be able to take over the property and hold it for WMW who was then a young child. I accepted her testimony that she was unconcerned about the manner of the legal title of the property at that point in time and she did not know the difference between a joint tenancy and a tenancy-in-common. The Angullia Park Property was sold in 1991 and the sale proceeds went towards purchasing the Four Seasons Property. She continued with the practice of holding the property in two names although she could not remember if it was in joint tenancy or tenancy-in-common as it was immaterial to her. PL testified that WYC had always recognised her sole beneficial ownership of the Four Seasons Property. The Four Seasons Property was sold in 1994 and the sale proceeds belonged to her solely. In December 1994, PL purchased the Draycott Property. She chose to fund this purchase from the Four Seasons Property's sale and a housing loan. Following her established practice, she put the legal title of the property in a tenancy-in-common with WYC. PL retained its beneficial ownership solely.

170 Secondly, PL had managed all the aspects of the investments, the tenancy agreements and the sale and purchase of the series of properties. Balakrishnan testified that when he acted in the sale of the Angullia Park Property, he was acting only for PL, and WYC was not involved at all.

171 Thirdly, consistent with the common intention that PL had sole beneficial ownership of the Draycott Property, she received all the rental income accruing therefrom since the time of its purchase to date. She was also entitled to the rental proceeds arising from the previous properties. For example, her entitlement to all rental proceeds arising from the Angullia Park Property was communicated to the Inland Revenue Authority of Singapore ("IRAS") by way of letter dated 4 April 1984, in which she informed the authorities that although the property was held in joint names, she was the person who paid fully for the property. She explained that half of the rental income accruing from the Draycott Property was later reported in WYC's income tax forms only because this was a requirement prescribed by the IRAS. PL also incurred almost all of the expenses relating to the maintenance and upkeep of the Draycott Property.

172 Fourthly, the tenancy-in-common of the Draycott Property was transferred to a joint tenancy in February 2002 on the advice of Tan Yah Piang to protect PL's sole beneficial ownership of the property. At that time, there was a prospect that the plaintiffs were going to mortgage the property to raise monies for investments. Prior to the threat of this occurrence, PL had not concerned herself with legal terminologies and did not care if the properties in her chain of investments leading to the purchase of the Draycott Property were held in joint tenancies or tenancies-in-common. In those premises, I declared the statutory declaration the plaintiffs had filed on 30 November 2010 to change the manner of holding the Draycott Property to be invalid and of no effect.

What did the plaintiffs' attempt to sever the Draycott Property's joint tenancy show of their motives?

173 I needed to address the issue of the plaintiffs' attempted severance of the Draycott Property's joint tenancy despite holding that the property was beneficially solely-owned by PL because it was relevant to the plaintiffs' conduct as WYC's deputies. The plaintiffs had failed to show any valid basis for trying to sever this joint tenancy. Hence, even if I was wrong and the Draycott Property was not solely beneficially owned by PL, its joint tenancy should not be severed.

174 The plaintiffs did not cite any reason in their pleadings or AEICs for trying to sever the Draycott Property's joint tenancy in November 2010. At the trial, the plaintiffs gave two explanations for their decision. The first was to raise funds for WYC. For the same reasons stated above in relation to why a severance of 5CHR's joint tenancy was not required to raise funds for WYC, I rejected this ground without more.

175 The second explanation was that the plaintiffs were unable to obtain WYC's alleged share of the rental proceeds derived from the Draycott Property. Not only was this not pleaded as part of the plaintiffs' case, PL had also shown that she was the beneficial owner of the property and was therefore entitled to all its rental proceeds.

176 Further, it would be inconsistent with WYC's intentions to sever the Draycott Property's joint tenancy over issues about its rental proceeds. By way of an e-mail dated 6 June 2006, Foo Siew Shan who was WYC's accountant informed the CPE that WYC had called her that afternoon to instruct her not to include the Draycott Property's rental income in his estate's portfolio. Foo Siew Shan also wrote that WYC had "stressed that these rental income are meant for Ms Ling, his effective wife." Taking WYC's intentions as expressed in that e-mail together with PL's evidence that she had always received the rental proceeds and managed the tenancies of the Draycott Property, I drew an adverse inference against the plaintiffs for failing to call Foo Siew Shan to give evidence. I found that WYC had intended for PL to receive all the rental proceeds of the Draycott Property.

177 The plaintiffs had acted for ulterior purposes in making their belated claim for a share of the rental proceeds. Two things pointed to this. At the trial, Phoebe Sim testified that WMC only raised the issue of obtaining the rental proceeds from PL when WMW asked for repayment of the Loan owing by WYCPL to WYC. The plaintiffs also did not dispute that WYC was able to understand and execute the transfer of the Draycott Property to a joint tenancy in 2002. They acknowledged at trial that WYC intended for it to be held in joint tenancy. If the plaintiffs had honestly believed that WYC was entitled to the rental proceeds of the Draycott Property, the obvious and proper course of action was to claim for the rental proceeds and not to sever the property's joint tenancy. Hence, I held that the attempted severance was a move to defeat yet another of WYC's clearly expressed intentions, which was for PL to enjoy the right of survivorship over the Draycott Property. The plaintiffs were pursuing a vendetta rather than WYC's best interests when they signed the statutory declaration for severance of the Draycott Property on 30 November 2010.

Whether the 2010 Order should be set aside

178 On 18 February 2010, the plaintiffs' solicitors wrote to PL to seek details of the lease on the Draycott Property and informed her that the plaintiffs intended to sell the property. PL responded by asserting that she was its sole beneficial owner. Despite that, in March 2010, the plaintiffs took out an *ex parte* Summons No 1542 of 2010 and obtained the 2010 Order, which conferred on them the power to sell 5CHR and the Draycott Property. PL was neither informed of the application nor was she served the court papers until the 2010 Order was extracted.

179 In his affidavit filed on 7 April 2010 for this application, WML stated that the CPE was seeking an order to empower them to sell and dispose of WYC's shares and interest and title in all his assets because the CPE anticipated that in the near future, WYC's funds would be insufficient to maintain him. The affidavit did not identify the properties that were intended to be sold. On 8 April 2010, the Court directed that a supplementary affidavit be filed to state the properties the CPE proposed to sell, whether there were any other family members who may object to the application and whether there was any need to inform any other family members of the application and serve the summons on them. WML filed the supplementary affidavit on 30 April 2010, but the summons was not served on PL.

180 When WML was questioned on the failure to serve the summons on PL, he advanced a defence of pedantry and defined "family members" to exclude PL. I found his explanation to be specious. In any event, WML's affidavit of 30 April 2010 specifically listed 5CHR and the Draycott Property properties which the CPE was seeking a power to sell. PL was their co-owners at that time and she should have been notified if the CPE was trying to acquire a power to sell her properties, even if the exercise of the power would eventually need PL's consent. WML also tried to explain away the plaintiffs' omission to serve the summons on PL by saying that he relied on WMW to inform PL. He eventually conceded that WMW did not know that the plaintiffs intended to sell 5CHR.

181 The second irregularity of the application was more serious. The papers filed in support of this application conspicuously failed to mention the other sources of funds that WYC had access to even though the basis of the application was that WYC's funds were running out. Both affidavits of WML made no reference at all to the Loan owed to WYC. As at 7 April 2010, the Loan was not even wrongfully reclassified by the plaintiffs yet. The plaintiffs also omitted to tell the Court that WYC was entitled to participate in a share buyback scheme in WYCPL in February 2010 which would have netted him at least $70,000. This was a grave failure to give full and frank disclosure of material facts.

182 The plaintiffs had also inflated WYC's expenses. In WML's affidavit filed on 7 April 2010, he itemised what he claimed were the monthly expenses of WYC. It showed that:

(i) WMC was charging WYC $4,000 as WYC's share of the $10,000 rent of an apartment at Wing on Life Gardens, to which WMC moved his family of four to (after removing WYC from 5CHR on 10 February 2010 to live with him);

(ii) the plaintiffs were using an existing employee of WYCPL to do the accounts of WYC's estate but had charged the estate $2,675 for the work. That employee, Phoebe Sim, testified that she was not paid for the work she did for WYC's estate and her salary was not increased because of the additional work she did;

(iii) a sum of $1,200 was listed as TKY's accommodation and utilities at 37GHA even though it included the charges for utilities that WML and his own family were incurring; and

(iv) a sum of $1,300 was included and described as property tax and maintenance fees for the Draycott Property although PL was paying for them in April 2010.

WML inevitably conceded that he had given the Court an exaggerated figure of the cost of maintaining WYC in April 2010. The plaintiffs further conceded that they had not given the Court an accurate picture of WYC's financial situation when they filed the summons. I set aside the 2010 Order for those reasons.

Whether the plaintiffs' appointments as WYC's deputies should be revoked

183 Under s 20(8), MCA, the Court may revoke the appointment of a deputy of a person if it is satisfied that the deputy has behaved, or is behaving, in a way that is not in the person's best interests. Deputies must take certain steps in construing what was in the best interests of the person: see above, at [105]. Section 6(10), MCA also provides that:

> In the case of an act done, or a decision made, by a person other than the court, there is sufficient compliance with this section if (having complied with the requirements of subsections (1) to (8)) he reasonably believes that what he does or decides is in the best interests of the person concerned.

184 I found that not only did the plaintiffs completely ignore the precepts of s 6(7) and (8), MCA, they had no belief at all that they were acting in WYC's best interests with respect to the actions they took as WYC's deputies. The extent of their improper conduct was scandalous. They made a *mala fide* application to procure the 2010 Order without disclosing material facts to the Court, and then used the power they obtained to try to wrest from her properties which PL co-owned with WYC. They also used the power improperly to attempt to sever the joint tenancies of those properties. They procured the Synapse Order by withholding material facts from the Court which caused WYC's cash reserves to be depleted. They wrongfully reclassified the Loan to put $3.7m out of WYC's reach. They wrongfully wrote off directors' fees that may be owed to WYC from various family members. They voted against WYC's participation in the share buyback scheme without justification. They attempted to sever the joint tenancies of 5CHR and the Draycott Property against WYC's express intentions. Finally, they instituted these proceedings in bad faith. In short, they were acting purely for collateral and improper purposes. The plaintiffs sought to benefit their own interests at the expense of WYC's well-being. Their actions were reprehensible breaches of their fiduciary duty to act in WYC's best interests. I felt compelled to revoke their appointments as WYC's deputies. I also ordered an account of WYC's assets and liabilities to be provided by the plaintiffs to WMW from the date the CPE was appointed.

What was wrong with the application to have the CPE appointed?

185 In the light of the medical evidence and the evidence of WYC's functional abilities which I had accepted (see above, at [31] to [88]), the affidavit filed by the plaintiffs and WMW on 7 October 2005 to support their joint application to have the CPE appointed and for them to become members of the CPE was shown to contain misrepresentations. It was falsely alleged to the Court that WYC had "difficulty with the simple activities of daily living such as using his telephone, finding and operating light switches" and the brain scans done on WYC in 2000 revealed "abnormal results".

186 The plaintiffs had also concealed material information from the Court. In their 7 October 2005 affidavit, it was claimed that "[a]ll members of the family, including Wong Yip Chong's wife and his five children, unanimously agree that he is significantly cognitively impaired and is unable to manage his personal and financial affairs." The plaintiffs also claimed that it was the unanimous view of WYC's

family that the plaintiffs and WMW should form the CPE. They gave the Court the impression that everyone who ought to have been notified of the application had actually given their written consent to it. This was a false impression. PL was not told of the application although, as WML conceded, she was living together with WYC and would have been the best person to know whether WYC could manage his daily affairs. PL could have offered highly relevant evidence on WYC's functional abilities to the Court. Shockingly, PL was neither mentioned in the application nor in the 7 October 2005 affidavit. At the hearing, the Court was not even told of PL's existence. The failure to apprise PL of the application was aggravated by the fact that in that application, the plaintiffs also sought the power to sell and dispose of 5CHR. The plaintiffs did not tell the Court that PL had been living at 5CHR for 25 years.

187 The plaintiffs attempted to justify their omission to inform PL of the application. First, they argued that they had assumed that WMW would have informed PL of the application. This was hard to believe. WMW was in the United States at the time the application was made. On the other hand, PL was in Singapore and the plaintiffs knew her well. I found that there was no reason why the plaintiffs could not have told PL of the application except for wishing to keep it from her. Secondly, WMC claimed that PL was mendacious when she said that she was surprised to find out in January 2006 about the application and the Order of Court to form the CPE. WMC claimed that PL knew about the application. WML also claimed that he had been transparent with PL about this application. The plaintiffs relied on an e-mail that WMC had sent to the family members, which included PL, on 3 June 2005 to support their contentions. The relevant part of the e-mail said:

> Please let me know if you have a preference of choice of lawyers; we can discuss any of your suggestions of a lawyer, but all 7 of us ([TKY], PL, WMC, WMS, WML, WMK, WMW) need to be informed about any choice of lawyer and the entire process …

This e-mail thus refuted the plaintiffs' claims because it would have given PL the impression that she would be kept updated of the "entire" application. Despite this assurance from the plaintiffs in June 2005, she was not notified of the filing of the application. It was with much reluctance during cross-examination that WMC finally admitted that PL was "not aware of the Court application".

188 PL confirmed in Court that she only knew of the appointment of the CPE in January 2006 and was "very upset" that the application was made without her input. She explained that she had not applied to set aside the Order appointing the CPE then because she thought she lacked the standing to do so. When she was queried as to why she did not take issue with the timing of the application for a CPE to be appointed, PL explained that she had trusted WMC's judgment as he was a neurologist.

189 The premature application to appoint the CPE and the clandestine manner in which it was carried out suggested sinister motives on the part of the plaintiffs to supplant their father as soon as they could. I found that WMW did not participate in the surreptitious acts. He was based in the United States at the time of the application and had trusted his half-siblings who were medical professionals to do the right thing. It was highly likely that the plaintiffs had placed WMW on the CPE for two reasons. First, it was to give a veneer of propriety. With respect to actions that the CPE would propose that were against WYC's interests, WMW would always either be deceived into making an unanimous application together with the plaintiffs or outvoted when he opposed it. Secondly, WMW would be a convenient excuse should it be alleged that the plaintiffs kept certain actions of the CPE away from PL. WMW is PL's son and the plaintiffs shrewdly but mistakenly calculated that it would naturally be presumed he would convey relevant information to her in a timely manner.

Who should become WYC's deputy or deputies?

190 I decided against appointing new deputies for WYC. Any new appointment was undesirable because the expenses and potential complications involved would outweigh any benefits to WYC – I believed that WYC would not be with his loved ones for much longer (which proved to be the case as he passed away three weeks after oral judgment was delivered). I directed that WMW should remain as WYC's sole deputy. I found that WMW was completely disinterested in his father's assets unlike his half siblings; he was only interested in his computer business which by all accounts was successful. WMW had put in his best efforts to attempt to resolve the disputes regarding his father's assets between PL and the plaintiffs amicably. For example, he took time off to work hard on the Christmas Recommendations by coordinating the views and input from all the family members which he sincerely believed was going to be a definitive solution.

191 WMW was also largely neutral towards the plaintiffs and PL until he was forced to take an adversarial stance against the plaintiffs in these proceedings. Even then, it was primarily out of his father's interest than anything else. The contents of the transcripts of the CPE meetings showed that he was not biased towards PL and was genuinely looking out for WYC's interests. Although the transcripts were supplied by WMW, the plaintiffs had not challenged their accuracy nor alleged that WMW's behaviour became any different after he had started recording the proceedings of the CPE without the plaintiffs' knowledge. Their only complaint was that they were unaware the recordings were being made. WMW had explained that he took to recording the entire proceedings of the meetings because he found that the minutes prepared at the plaintiffs' behest were inaccurate and/or incomplete.

Whether the plaintiffs should bear the costs of the Suit personally

192 Order 99 rule 13, ROC provides that the costs of proceedings under the MCA shall be paid by the deputised person or charged to his estate, unless the Court otherwise directs. Section 40(2), MCA provides that the Court has full power to determine by whom and to what extent the costs are to be paid. The issue of costs was therefore at the Court's discretion. The plaintiffs' counsel submitted that if the plaintiffs' claims in this action are dismissed and the defendants' counterclaims succeed which was my judgment (save that I did not grant one of PL's counterclaims regarding the beneficial ownership of 5CHR), the Court should apply the general rule that a trustee who sues for the protection of trust property against a third party will be indemnified against his costs; and therefore, costs of these proceedings should be borne by WYC's estate. I accepted the authority of this general rule because the fiduciary relationship between a deputy and the person is akin to that of trustee and beneficiary. But this rule is qualified, and the plaintiffs fell within the qualification.

193 In *In re Beddoe; Downes v Cottam* [1893] 1 Ch 547, the English Court of Appeal held (at 558) that a trustee is entitled as of right to full indemnity out of his trust estate against all his costs, charges and expenses if they were "properly incurred" in an action respecting the trust estate. Bowen LJ stated (at 562) that:

> The principle of law to be applied appears unmistakeably clear. A trustee can only be indemnified out of the pockets of his *cestuis que trust* against costs, charges, and expenses properly incurred for the benefit of the trust—a proposition in which the word "properly" means reasonably as well as honestly incurred.

The CA distinguished reasonableness from *bona fides*. Before the costs could be considered "proper", the trustee must satisfy two tests, reasonableness and *bona fides*. The Court also warned that while the fact that the trustee had acted on counsel's opinion would be relevant to the reasonableness of the action, it will not guarantee it.

194 Bowen LJ also stated (at 562):

> If there be one consideration again more than another which ought to be present to the mind of a trustee, especially the trustee of a small and easily dissipated fund, it is that all litigation should be avoided, unless there is such a chance of success as to render it desirable in the interests of the estate that the necessary risk should be incurred.

The trustee will not be unfairly burdened with the issue of risk assessment because a trustee who was uncertain about the desirability of litigation had an available solution, which later came to be called a *Beddoe* application:

> If a trustee is doubtful as to the wisdom of prosecuting or defending a lawsuit, he is provided by the law with an inexpensive method of solving his doubts in the interest of the trust. He has only to take out an originating summons, state the point under discussion, and ask the Court whether the point is one which should be fought out or abandoned. To embark in a lawsuit at the risk of the fund without this salutory precaution might often by to speculate in law with money that belongs to other people.

I accepted all these propositions of law to apply in this case.

195 The plaintiffs had clearly not acted properly in commencing this litigation. The litigation was not carried out *bona fide*. I had earlier detailed why the plaintiffs' attempt to set aside the Transfer was not to protect WYC's interests but to pursue their own private agenda.

196 The litigation was also patently unreasonable. First, they had commenced this action despite the objections of a co-deputy. The substance of WMW's objections was that the plaintiffs' claims would be inconsistent with WYC's wishes and there were other sources of funds for WYC's maintenance that could and should have been used. WYC's wishes were something that WYC's deputies were obliged to have regard to in the discharge of their fiduciary duties. The plaintiffs also knew that the alternative sources of funds existed. Thus, WMW's objections were well-founded. In *In Re England's Settlement Trusts; Dobb v England* [1918] 1 Ch 24, a trustee commenced an action in the name of himself and his co-trustee to recover damages from the tenants of a house which was trust property. Although the trustee succeeded in recovering some measure of damages, he was found to have acted unreasonably and disentitled from costs from the estate. The trustee had failed to make a *Beddoe* application and did not consult his co-trustee before taking the decision to sue.

197 The plaintiffs in the present case had acted more wrongfully than the trustee in *Dobb v England* since they ignored well-founded objections from a co-deputy. After they learnt of this difference in opinion, the plaintiffs ought to have at least made a *Beddoe* application before pursuing their claims.

198 Secondly, the costs of commencing the action were entirely out of proportion to the amount of liquid funds available in WYC's estate at the time the proceedings were initiated. As at 30 June 2010, shortly before the commencement of the action on 2 July 2010, WYC's estate was left with only $11,617.25 in cash. Because of WYC's medical condition, the use of those remaining funds should have been prioritised for WYC's medical care. In this context, the costs incurred were therefore not only extravagant but perverse. Consequently, I ordered the plaintiffs to pay costs personally.

Should the plaintiffs pay costs on an indemnity basis?

199 The Court is conferred the discretion to decide the extent of costs to be borne by each party

under O 59 r 2(2), ROC. Order 59 r 5 of the ROC sets out the relevant factors the Court shall take into account in exercising this discretion. The conduct of the parties, including conduct before and during the proceedings is a relevant factor. In *Macmillan Inc v Bishopgate Investment Trust plc and others (No 3)* [1995] 3 All ER 747, Millett J delivered an unreported ancillary judgment on the award of costs. The relevant portion of Millett J's judgment is quoted in *Takako Sakao (f) v Ng Pek Yuen (f) & Anor (No 2)* [2010] 2 MLJ 181 at [8]. It stated:

> The power to order taxation on an indemnity basis is not confined to cases which have been brought with an ulterior motive or for an improper purpose. Litigants who conduct their cases in bad faith, or as a personal vendetta, or in an improper or oppressive manner, or who cause costs to be incurred irrationally or out of all proportion as to what is at stake, may also expect to be ordered to pay costs on an indemnity basis if they lose, and have part of their costs disallowed if they win. Nor are these necessarily the only situations where the jurisdiction may be exercised; the discretion is not to be fettered or circumscribed beyond the requirement that taxation on an indemnity basis must be "appropriate".

Based on the above principles enunciated by Millett J, I ordered the plaintiffs to pay costs to PL on an indemnity basis. Apart from those particulars which I had listed above with respect to the plaintiffs' lack of *bona fides* and reasonableness in commencing the action, the manner in which they had conducted the litigation left much to be desired.

200 First, they did not provide their main expert witness, Dr Chen, with the necessary documents or information from December 2004 for him to form a reliable expert's opinion despite Dr Chen asking for them. Dr Auchus, the plaintiffs' other expert witness was unable to provide an expert opinion on the relevant issue. The plaintiffs had also sought to bring in additional expert's opinions in the form of the AEICs of two of their factual witnesses who were medical doctors. This resulted in much wasted costs since the defendants' counsel had to deal with four experts' opinions, none of which were useful.

201 Secondly, the plaintiffs and their two siblings frequently prevaricated in the witness stand. Instead of being forthright, they chose to argue with counsel in cross-examination and regularly delivered irrelevant and lengthy speeches. Because of their (at times) untruthful testimony, the proceedings were unnecessarily lengthened. I highlight one example – a rebuttal witness had to be called by PL to disprove WML's statement that he had never been to Balakrishnan's office.

202 Finally, the plaintiffs were a little more than kin and less than kind. [note: 3] In the negotiations prior to the Suit, they had threatened PL in the hope that she would capitulate to their unfair terms. PL alleged that WML had intimidated her in an attempt to persuade her to relinquish her rights in the Draycott Property. During cross-examination, PL testified that WML threatened her with seven years of litigation, which WML thought would see PL to the end of her life, if she did not agree to sell the Draycott Property and give the plaintiffs half of the sale proceeds. This testimony was not challenged. She further testified that by January 2010, she decided to engage legal counsel because she could not stomach the intimidation any longer. PL's testimony was corroborated by WMW, who testified that WML and WMK had "made [his] mother cry" during preliminary stages of the negotiation in relation to the contemplated sale of the Draycott Property in early 2010. Crucially, under cross-examination and re-examination, WMC did not deny that he had expressed his desire to go through "four bruising rounds in court" with the defendants in relation to the contested assets during a meeting of the CPE on 28 February 2011, and was "very happy" to litigate against the defendants. The conduct of the entire action was therefore an exercise in oppressing the defendants in general and PL in particular.

203 I therefore ordered PL's costs of this action to be paid by the plaintiffs to PL on an indemnity basis. These costs were to include those incurred in respect of the Originating Summons and the applications by WMW therein, which PL intervened in and which were consolidated with the Suit. WMW's costs of this action, including the Originating Summons and the applications filed in the Suit were to be paid by the plaintiffs to him on a standard basis. The shortfall between WMW's costs recovered on a standard basis and his own solicitor's costs were to be paid out of WYC's estate as he had acted reasonably in these proceedings as his father's deputy. The second intervener, TKY, was to bear her own costs.

Conclusion

204 The poignant opening lines of *Anna Karenina*

> Happy families are all alike; every unhappy family is unhappy in its own way.

were quoted in the Christmas Recommendations. Tolstoy had surely written it in the present tense instead of his usual past tense to urge his readers to philosophise about family happiness. In that tradition and in view of the unique circumstances of this family (described by WML as "unconventional"), I ruled that PL's wishes were to prevail over the wishes of all the other family members, including those of WMW's, with respect to decisions concerning the care of WYC for the rest of his remaining time here.

205 While this case should never have come to Court, the tragedy that it was looks set to continue for a while longer. I note that the plaintiffs chose to file their appeal against my judgment on 29 August 2011, the day their father passed away.

[note: 1] *Henry VI Part 3*, 3.2.104-5.

[note: 2] *Julius Caesar*, 3.2.184.

[note: 3] *Hamlet*, 1.2.65.