Leow Li Yoon *v* Liu Jiu Chang
[2015] SGHC 290

Case Number	: HC/ Registrar's Appeal from the State Courts No 7 of 2015
Decision Date	: 04 November 2015
Tribunal/Court	: High Court
Coram	: Aedit Abdullah JC
Counsel Name(s)	: Ramesh s/o Varathappan (M Rama Law Corporation) for the appellant; Respondent-in-person; Tay Kang-Rui Darius (TSMP Law Corporation) as amicus curiae.
Parties	: Leow Li Yoon — Liu Jiu Chang

Mental Disorders and Treatment – Mental capacity

4 November 2015 Judgment reserved.

Aedit Abdullah JC:

Introduction

1 This case concerned the validity of a Central Provident Fund ("CPF") nomination made pursuant to s 25(1) of the Central Provident Fund Act (Cap 36, 2013 Rev Ed) ("CPF Act"). The question arose as the deceased person, who was in the midst of divorcing his wife, nominated someone other than his immediate family members as the beneficiary of the funds in his CPF account. The wife and some of the rest of the family took issue with that nomination as there were indications that the deceased was not of the right mind when the nomination was made. The District Judge ("DJ") found in favour of the nominated beneficiary. As the issue has apparently not been considered before, I allowed leave to appeal against the decision below. Having heard the arguments, including those of the young *amicus curiae*, and having considered all the circumstances of the case, I conclude that the nomination should be set aside, and that the funds in the account be distributed according to the Intestate Succession Act (Cap 146, 2013 Rev Ed) ("ISA"). I give the detailed reasons for my decision below.

Background

2 The appellant, Mdm Leow Li Yoon ("the Appellant"), was married to Mr Saw Eng Soon ("Mr Saw") in 1970. Sometime in 2012, the Appellant commenced divorce proceedings, with interim judgment granted in February 2013. On 1 June 2013, before final judgment could be granted in the divorce proceedings, Mr Saw passed away, in circumstances raising the suspicion of suicide. The Appellant filed a notice of abatement in respect of the divorce proceedings.

3 Subsequently, the Appellant and her children discovered a CPF nomination form dated 31 October 2011 drawn up by Mr Saw ("CPF Nomination Form") when they went through his documents. In that form, he nominated the respondent, Ms Liu Jiu Chang ("the Respondent"), as his sole beneficiary to receive monies in his CPF account ("CPF Monies") upon his death. The Respondent was described in that form as Mr Saw's "God-daughter".

Mr Saw's interaction with the Respondent

4 The Respondent, a Chinese national pursuing a degree in Hotel Management at the East Asia Institute of Management ("the Institute"), met Mr Saw while she was interning as a waitress at a hotel. The two of them started talking and meeting up to go for meals and visit various sights in Singapore. When the Respondent's mother visited her in December 2010, the Respondent introduced Mr Saw to her mother, who, as the three of them got along well, suggested to Mr Saw to take the Respondent as his "god-daughter". Mr Saw agreed with the suggestion.

5 Sometime in July or August 2011, Mr Saw started confiding in the Respondent about problems he was having. The Respondent states that he told her that he was encountering difficulties with his business and that as a result, "he was experiencing dizzy spells and mood swings and this left him feeling depressed almost every day". [note: 1] Sometime in 2012, he also told her that his wife had filed for a divorce and that he had started taking sleeping pills to go to sleep. During this time, the Respondent started calling Mr Saw more frequently to check up on him. The Respondent states that Mr Saw started showing suicidal tendencies soon after. It should be mentioned that by this time, the Respondent had graduated from the Institute and had secured a job as a Service Attendant at the casino at Marina Bay Sands.

6 Mr Saw drove the Respondent to the airport in March 2013 as she was going back to China for a short trip. That was the last time the Respondent saw Mr Saw. After the Respondent returned to Singapore, she tried contacting Mr Saw but was not able to reach him. Mr Saw got in touch with her some time thereafter and told her he had been admitted to the hospital and suggested that they meet sometime in April 2013. The meeting they planned never materialised. Sometime in April 2013, Mr Saw called the Respondent to inform her that he had been admitted to the hospital again.

7 Thereafter, sometime in July 2013, the Respondent was contacted by the police who asked her to assist with their investigations into Mr Saw's death.

Application to set aside the CPF Nomination Form

8 The Appellant sought to have the CPF Nomination Form declared "null and void" and for the CPF Monies to be declared part of Mr Saw's estate. The Appellant initially commenced proceedings in the High Court but the matter was eventually transferred by consent of the parties to the jurisdiction of the State Courts. The Appellant also applied for an injunction to restrain the CPF Board from paying the Respondent the CPF Monies. An interim injunction was granted on 6 August 2013. The substantive matter was heard on 24 October 2014.

9 Before the DJ, the Appellant relied on three alternative arguments as to why she should be granted the remedies she sought. First, she argued that Mr Saw lacked "capacity" within the meaning of ss 4 and 5 of the Mental Capacity Act (Cap 177A, 2010 Rev Ed) ("MCA") at the time he executed the CPF Nomination Form. Second, she argued that the Respondent might have taken advantage of Mr Saw's vulnerability to unduly influence him into nominating her as the sole beneficiary of his CPF Monies to the exclusion of his own family. Third, she pointed out that r 1A(2) of the Central Provident Fund (Nominations) Rules (Cap 36, R 1, 1998 Rev Ed) ("CPF Nomination Rules") states that all forms used for the purposes of CPF nominations shall be "completed … in accordance with such direction as may be specified in the form or by the Board". The instructions on the CPF nomination form states: "You must sign against any cancellation or alteration. The use of any correction fluid/tape or not signing against amendments will void the application" (see <https://mycpf.cpf.gov.sg/Assets/members/Documents/FORM_6A1_CASH.pdf> (accessed on 29 October 2015) for the currently existing version of the CPF nomination form). She argued that Mr Saw's nomination was void because he failed to countersign against a cancellation he made on the CPF Nomination Form.

10 The DJ delivered his judgment on 28 November 2014. The DJ dismissed the Appellant's application and the interim injunction was discharged. In addition, the Appellant was ordered to pay the Respondent $7,000 in costs.

11 The Appellant applied for leave to appeal against the DJ's decision. She also applied for a stay of execution of the DJ's orders until her application for leave to appeal was heard. The DJ heard the stay of execution application on 12 December 2014, granting a stay limited to the discharge of the interim injunction on condition that the Appellant pay the Respondent the $7,000 that she was ordered to pay in costs in the main application. No payment was forthcoming from the Appellant. The DJ heard and dismissed the application for leave to appeal on 19 December 2014. The Appellant informed the DJ that she would be filing an originating summons in the High Court for leave to file a notice of appeal against the DJ's decision in the main application and asked for the stay of the discharge of the interim injunction to be extended. The DJ granted an extension of the stay on condition that the Appellant pay the Respondent all costs ordered against her up to that point which came up to a total of $8,900. The stay was to be effective up to the date of the hearing of the originating summons in the High Court if the Appellant in fact filed the originating summons. Again, the Appellant did not make payment of the costs ordered against her.

12 The Appellant filed and sought leave from the High Court to file a notice of appeal against the DJ's decision in the main application. She also sought a stay of execution of the DJ's orders. I heard this application on 13 January 2015 and granted the Appellant an unconditional interim stay of the DJ's orders in the main application pending the hearing of the application for leave to file a notice of appeal. Subsequently, I granted leave and also extended the stay pending the disposal of the appeal. The Appellant then filed the present appeal.

13 The hearing of the appeal was fixed on 31 July 2015. I appointed Mr Tay Kang-Rui Darius ("Mr Tay") of M/s TSMP Law Corporation as *amicus curiae* under the Young Amicus Curiae Scheme to assist the court.

The Appellant's case

14 In the course of the hearing before me, it became evident that the Appellant's sole contention on appeal is that the DJ had erred in rejecting her argument that Mr Saw lacked mental capacity at the time he executed the CPF Nomination Form.

15 The Appellant argues that the rules on the allocation of burden of proof in the context of a dispute concerning the testamentary capacity of a testator should be applied where a deceased person's CPF nomination form is challenged on the ground that he lacked mental capacity at the time he made the nomination. She points out that the legal burden of proving testamentary capacity lies on the propounder of the will. A presumption of capacity arises in favour of the propounder if he can show that the will was duly executed and appears rational on its face. The person opposing the will may rebut the presumption by adducing evidence to raise doubts as to the propounder's testamentary capacity. If the objector manages to do so, the evidential burden would shift back to the propounder to establish capacity nonetheless. She argues that the same rules should apply *mutatis mutandis* in the present case

16 If the Appellant's argument set out in the preceding paragraph concerning the rules on the allocation of burden of proof is accepted, then she would only have to raise doubts regarding Mr Saw's mental capacity when he executed the CPF Nomination Form. She would not have to prove on a balance of probabilities that Mr Saw lacked capacity at the material time. Nevertheless, the

Appellant argues that she has adduced sufficient factual and medical evidence to establish on a balance of probabilities that Mr Saw suffered from a mental disability, namely reactive depression before, during and after the period the CPF Nomination Form was executed. The Respondent then has the burden of showing that Mr Saw had the requisite mental capacity at the material time. However, the Respondent has not adduced any conflicting medical evidence. Therefore she argues that she should prevail.

17 The Appellant argues that the error Mr Saw made in the CPF Nomination Form, namely the correction made without an accompanying signature, shows that Mr Saw did not understand what he was doing. Various other facts including his very nomination of the Respondent as his nominee, despite their limited contact and relationship, and the Respondent's evidence concerning what Mr Saw told her of his mental state all point to the fact that Mr Saw did not possess the requisite mental capacity when he executed the CPF Nomination Form.

The Respondent's case

18 The Respondent, being a litigant-in-person, does not make any submissions on the legal issues. She maintains that her claim to the CPF Monies is valid and that she did not do anything wrong. She asks for the appeal to be dismissed.

The arguments of the *amicus curiae*

19 Mr Tay was asked specifically to address the Court on the following matters:

(a) the legal requirements as to mental capacity in respect of nominations made under the CPF Act;

(b) who bears the legal burden of establishing the fulfilment of such legal requirements; and

(c) a comparative study of relevant legislation.

20 Mr Tay argues that the test of mental capacity under the MCA is not applicable for present purposes even though r 7 of the CPF Nomination Rules, which sets out the court's power to revoke a nomination made under the CPF Act, states that a nomination can be revoked if it is shown that the CPF account holder lacked mental capacity within the meaning of s 4 of the MCA. This is because r 7 of the CPF Nomination Rules is not applicable when a CPF nomination is challenged after the death of the CPF account holder. Mr Tay's arguments on this issue are set out in greater detail at [37] below.

21 Mr Tay also argues that the MCA's definition of mental capacity should not be considered to be generally applicable whenever issues of mental capacity are raised as there is nothing to show any parliamentary intention to create a test for mental capacity which would be applicable in all situations. However, the common law test for testamentary capacity and the test of mental capacity contained in the MCA are similar, and should lead to the same result.

22 Mr Tay argues, agreeing with the Appellant, that the rules on the allocation of burden of proof in the context of a dispute concerning the testamentary capacity of a testator should be applied here. The CPF Act does not expressly state that these rules are to apply when a nomination made under that statute is challenged after the CPF account holder's death on grounds that he lacked mental capacity when he made the nomination. However such nominations are testamentary in character and so it would be justified for the aforesaid rules to apply when considering whether a particular nomination should be upheld. If this argument is accepted, then the propounder of a CPF

nomination form would bear the burden of showing that the deceased had the requisite mental capacity when he made the nomination. This will *prima facie* be established by the due execution of the nomination form in ordinary circumstances where the deceased was not known to be suffering from any kind of mental disability. The party opposing the nomination may rebut this presumption by showing that the deceased was suffering from a mental illness that is serious enough for the court to find that the deceased lacked testamentary capacity at the time he made the nomination. In this connection, Mr Tay points out that there are conflicting foreign authorities on whether depression can lead to testamentary incapacity. If the objector manages to do so, the evidential burden of proof would shift back to the propounder to show that the deceased had testamentary capacity at the time he made the nomination. Once testamentary capacity is established, a rebuttable presumption arises that the deceased knew and approved of the contents of the nomination. Although the legal burden lies at all times with the propounder of the will, in ordinary circumstances, the evidential burden would then shift to the objector to rebut this presumption (see *Chee Mu Lin Muriel v Chee Ka Lin Caroline* [2010] 4 SLR 373 ("*Muriel Chee*") at [46]).

The Decision

23 I consider that this appeal turns on the question of whether the rules on the allocation of burden of proof in the context of a dispute concerning the testamentary capacity of a testator should apply in the present case. The second related issue is whether the Appellant has adduced sufficient evidence to discharge the burden of proof she bears.

24 Having considered the arguments, I find that the CPF Nomination Form should be set aside, as Mr Saw did lack the requisite mental capacity at the material time.

Mental Capacity

25 The parties have proceeded, rightly in my opinion, on the basis that the CPF Nomination Form should be set aside if it is shown that Mr Saw lacked mental capacity when he executed the form. Mental capacity refers to the mental condition a person must possess for his decisions to be considered autonomous and hence valid (see *Wong Meng Cheong and another v Ling Ai Wah and another* [2012] 1 SLR 549 ("*Wong Meng Cheong*") at [27]). In *Wong Meng Cheong*, the court considered that a transfer of property can be invalidated if it is shown that the transferor did not possess the requisite mental capacity when the transfer was executed.

26 The statutory test for mental capacity, found in ss 4 and 5 of the MCA, does not differ from the position at common law (see *Wong Meng Cheong* at [27]). Given that the test, and hence the result, should be the same whether the MCA or common law standard is applied, it does not matter for present purposes which is used. To my mind, for convenience, the MCA formulation of mental capacity can be adopted in dealing with CPF nominations.

2 7 *Wong Meng Cheong* explains the MCA (and hence the common law) test for capacity in the following manner:

> 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. …

This test was recently endorsed by the Court of Appeal in *Re BKR* [2015] 4 SLR 81. The court in that case stressed that there must be a causal connection between the mental impairment and the inability to make decisions (at [55] and [109]). Therefore, in order for the Appellant to succeed, it must be shown, to the standard required by the law, that at the time Mr Saw executed the CPF Nomination form, he was (a) suffering from an impairment of brain or mind function; which (b) rendered him functionally unable to make a decision in relation to CPF nomination.

Rules on the allocation of burden of proof in relation to testamentary capacity

28 The common law desires to uphold a testator's decision to leave his assets to those who survive him as he sees fit but only if the testator had capacity when he exercised his testamentary freedom. This point is put across in the following manner in *Vegetarian Society and another v Scott* [2013] EWHC 4097 (Ch) ("*Vegetarian Society*") at [23]–[24]:

23 … [T]here is no legal fetter to the general principle of testamentary freedom by which a person may leave his or her assets as he or she sees fit, whether such disposition be unexpected, inexplicable, unfair and even improper (see *Gill v Woodall* [2010] EWCA Civ 1430, [2011] Ch 380, Lord Neuberger, Master of the Rolls (as he then was) p.390G) or surprising, inconsistent with lifetime statements, vindictive or perverse (the same case and judgment p.390H) or hurtful, ungrateful or unfair to those whose legitimate expectations of testamentary benefit are disappointed, (see *Hawes v Burges* [2013] EWCA Civ 94, Mummery LJ para.14 with whom Patten LJ agreed).

24 However, the law does require that when exercising testamentary freedom the testator has capacity so to do. …

29 Therefore, the propounder of a will is required to demonstrate that the testator had testamentary capacity at the time he executed the will in order for the will to be upheld. Mental capacity is just one element of testamentary capacity. In addition to showing that the testator possessed the requisite mental capacity at the relevant time, the propounder must also establish a number of other things. For example, he must show that the testator knew the extent of the property he was disposing of. The propounder of the will must also show that the testator knew who his beneficiaries were and that he appreciated their claims to his property (see *Muriel Chee* at [37]).

30 The dual aims to on the one hand uphold the testator's wishes and on the other ensure that his decision was an autonomous and informed one produces evidential challenges which are brought about by the fact that the protagonist, the testator, is no longer around to give evidence (see *Fuller v Strum* [2002] 1 WLR 1097at [32]). The rules on the allocation of burden of proof in the context of a dispute concerning the testamentary capacity of a testator are meant to address these evidential challenges.

31 The burden of proof in relation to testamentary capacity is subject to the following rules. First,

the person propounding the will bears the legal burden to prove that the testator had testamentary capacity at the relevant time. The court will presume that the testator had such capacity if the will is duly executed and appears rational on its face. Rationality of the will is determined with regard to its terms and the identities of the beneficiaries. It would seem that an "inofficious" will (*ie*, one where the testator disregards the element of natural affection and the claims of near relationship) detracts from its rationality (see *George Abraham Vadakathu v Jacob George* [2009] 3 SLR(R) 631 at [32] and [67]; *Muriel Chee* at [40]).

32 The evidential burden shifts to the person challenging the will once the testator's capacity has been established on a *prima facie* basis. At this point the objector would have to raise a "real doubt" as to capacity (*Catling and others v Catling and another* [2014] EWHC 180 (Ch) ("*Catling*") at [61]; *Vegetarian Society* at [27]). One way he can go about this is by showing that the testator was suffering from a mental illness *that was serious enough to cause his testamentary capacity to be impaired* (*Muriel Chee* at [40]). It is important to note that the existence of a mental illness alone is not sufficient to establish lack of testamentary or for that matter mental capacity (*Muriel Chee* at [39] and [42]). As noted at [29] of *Wong Meng Cheong*, the existence of a mental illness would only satisfy the "diagnostic threshold". The objector would have to go further to demonstrate that the mental illness was serious enough for the court to infer a functional inability to make decisions from the existence of the said illness.

33 If the objector manages to raise a real doubt, the evidential burden shifts back to the propounder to establish capacity nonetheless.

Should the rules on the allocation of burden of proof in relation to a dispute concerning testamentary capacity apply in the present case?

34 I consider that the rules on the allocation of burden of proof in relation to a dispute concerning the testamentary capacity of a testator should apply in the present case for a number of reasons. First, a nomination under s 25(1) of the CPF Act has testamentary characteristics. It has no effect until the death of the CPF account holder who is free during his lifetime to deal with his share as allowed by the statute. The nominee would have no right to complain nor would he be able to take any steps to prevent the CPF account holder from dealing with his interest during his lifetime. It is open to the CPF account holder to revoke the nomination at any time before his death (see r 7(*c*) of the CPF Nomination Rules). The nomination is ambulatory (*ie*, it is capable of dealing with monies that the CPF account holder acquires in his CPF account after the date the nomination is made). The Malaysian Federal Court in *How Yew Hock (Executor of the Estate of Yee Sow Thoo, Deceased) v Lembaga Kumpulan Wan Simpanan Pekerja* [1996] 2 MLJ 474 referred to these characteristics in holding that a nomination under s 20(*b*) of the Employees Provident Fund Act 1951 (Malaysia) had testamentary characteristics. That section, which allowed a member of the Employees Provident Fund ("EPF") to nominate a person to receive any amount standing to his credit in his EPF account at the time of his death, is similar to s 25(1) of the CPF Act. Therefore the aforesaid holding in that case should be applicable for present purposes as well.

35 Second, it should also be evident that a propounder of a will and a nominee under s 25(1) of the CPF Act are similarly placed. They both seek for the deceased person's assets to be distributed in a manner other than that prescribed in the intestacy regime set out in the ISA (see s 25(2)(*a*) of the CPF Act; see also <https://mycpf.cpf.gov.sg/Members/Schemes/schemes/other-matters/cpf-nomination-scheme> (accessed on 29 October 2015) which sets out what happens if a member dies without making a CPF nomination). Since the person propounding the will bears the legal burden to prove that the testator had testamentary capacity at the relevant time, it would be sensible for the nominee to bear the legal burden of proving that the nominator had mental capacity when he made

the nomination under s 25(1) of the CPF Act as well. Just as with testamentary wishes, the law should seek to uphold a nomination made under s 25(1) of the CPF Act provided that the CPF account holder's decision was an autonomous one. But this would pose evidential challenges that arise from the fact that the CPF account holder has passed on. The dual aims of upholding the CPF account holder's wishes and at the same time ensuring that his decision was an autonomous one can be best achieved by applying the presumption of mental capacity when the nomination is duly executed and rational. The evidential burden would then shift to the objector to rebut the presumption by adducing evidence of a serious enough mental impairment from which the court can infer a functional inability on the CPF account holder's part to make the nomination.

36 A different set of rules on the allocation of burden of proof appears to be contemplated by the CPF Nomination Rules and the MCA. Rule 7(*e*) of the CPF Nomination Rules states that a nomination made under s 25(1) of the CPF Act may be revoked by the court (under s 20(2)(*a*) of the MCA) if the CPF account holder lacked capacity within the meaning of s 4 of the MCA when he made the nomination. While the MCA has the same test for mental capacity as the common law, it prescribes a different set of rules on the allocation of burden of proof. Sections 3(2) and 4(4) of the MCA state:

> **The principles**
>
> **3.—** …
>
> (2) A person must be assumed to have capacity *unless it is established that he lacks capacity*.
>
> **Persons who lack capacity**
>
> **4.—** …
>
> ...
>
> (4) In proceedings under this Act (other than proceedings for offences under this Act), any question whether a person lacks capacity within the meaning of this Act *must be decided on the balance of probabilities*.
>
> [emphasis added]

These provisions require the person who alleges that the CPF account holder lacked mental capacity at the time he made a CPF nomination to prove the same. The question is whether these rules on the allocation of burden of proof set out in ss 3(2) and 4(4) of the MCA should apply where a CPF nomination is challenged *after* the CPF account holder has passed away.

37 As aforementioned, the *amicus curiae*, Mr Tay, submits that r 7(*e*) of the CPF Nomination Rules is not applicable for the purposes of the present application. He submits that r 7(*e*) of the CPF Nomination Rules only allows the court to revoke a nomination during the CPF account holder's lifetime and not posthumously. In support, he refers to the formalities that have to be followed for the revocation to be effective (*ie*, as per r 7(*e*)(ii) of the CPF Nomination Rules, the court order revoking the nomination had to be received by the CPF board "during [the nominator's] lifetime"). It would be helpful to set out r 7(*e*) of the CPF Nomination Rules in its entirety:

> **Revocation of nomination**
>
> **7.** Any nomination made by or on behalf of a member in accordance with rule 2 or 3 (as the case

may be) shall be revoked —

…

(*e*) where he lacks capacity within the meaning of section 4 of the Mental Capacity Act (Cap. 177A), if —

(i) the court makes an order under section 20(2)(*a*) of the Mental Capacity Act providing for the revoking, on his behalf, of the nomination; *and*

(ii) *a copy of the order (sealed with the official seal of the court) is received by the Board during his lifetime.*

[emphasis added]

Mr Tay submits that on the basis of r 7(*e*)(ii) of the CPF Nomination Rules, it was clear that:

> [t]he Court's power under Rule 7 does not seek to "undo" or "void" the nomination, and only has prospective powers. For example, if a CPF Member makes a nomination with the requisite mental capacity and subsequently loses his mental capacity, the court's power to revoke his nomination under rule 7 of the CPF Nomination Rules would only take prospective effect from the date of the Court order. Should a member pass away before the order of Court, the Court cannot undo or revoke the nomination of the Member under rule 7 of the CPF Nomination Rules.

38 The plain language of r 7(*e*) of the CPF Nomination Rules undoubtedly supports Mr Tay's submissions. I also note that there is nothing in the legislative history to controvert the plain meaning of r 7(*e*) of the CPF Nomination Rules. That provision was inserted into the CPF Nomination Rules *vide* Central Provident Fund (Nominations) (Amendments) Rules 2010 pursuant to powers conferred by s 77(2)(*ea*) of the CPF Act. Section 77(2)(*ea*) was added to the CPF Act *vide* Central Provident Fund (Amendment) Act 2009 (No 18 of 2009) and the following is all that was said about the new s 77(2)(*ea*) during the Second Reading of the Central Provident Fund (Amendment) Bill (No 11 of 2009) by the Minister moving that Bill (*Singapore Parliamentary Debates, Official Report* (20 July 2009) vol 86 at cols 846–847 (Gan Kim Yong, Minister for Manpower)):

> The fourth area of change concerns CPF members who are mentally incapacitated. Sir, in 2008, the Mental Capacity Act (MCA) was passed. The Mental Capacity Act allows the court to make, amend or revoke wills on behalf of a mentally incapacitated person based on the principle that the court's decision shall be made in the person's best interests. However, the court cannot, at present, affect a CPF nomination. Section 77 of the CPF Act will be amended to align the position of CPF nominations to that of wills under the MCA. The MCA will be amended to allow the court to make or revoke CPF nominations of mentally incapacitated persons. Correspondingly, the rules dealing with CPF nominations will also be amended to allow the courts to do this. We believe that the "best interest" principle embedded in the MCA will facilitate the appropriate distribution of a mentally incapacitated Member's CPF monies upon his death.

39 The above in no way controverts the plain meaning of r 7(*e*) of the CPF Nomination Rules. In the circumstances, I consider that that provision only grants the court the power to revoke a CPF nomination during the CPF account holder's lifetime on the ground that he lacked mental incapacity within the meaning of s 4 of the MCA. Therefore, r 7(*e*) of the CPF Nomination Rules has no relevance for the purposes of the present application. Consequently, the rules on the allocation of burden of proof prescribed in ss 3(2) and 4(4) of the MCA do not apply. Rather, I consider that the rules on the

allocation of burden of proof in relation to a dispute concerning the testamentary capacity of a testator should apply in the present case. This has the advantage of ensuring that the approach in testamentary situations is the same regardless of the type of testamentary instrument in question. Additionally, it should be noted that the evidential difficulties identified at [30] above would not be present in a situation where a CPF account holder's nomination is challenged *during* his lifetime but they would be present when the same challenge is brought *after* his demise. I consider that this justifies the application of different rules on the allocation of burden of proof depending on whether the challenge is brought before or after the demise of the CPF account holder.

Application

40 It follows from my holding in the preceding part of this judgment that the Respondent bears the legal burden of proving that Mr Saw had the requisite mental capacity at the time he executed the CPF Nomination Form. The court would presume that Mr Saw possessed the requisite mental capacity at the material time if the CPF nomination form in question is duly executed and appears rational on its face. I am satisfied that presumption of mental capacity should apply in this case. The CPF Nomination Form is duly executed. It is clear from the evidence that Mr Saw had a pre-existing relationship with the Respondent for about a year before he executed the CPF Nomination Form. Hence, it is entirely reasonable that he would choose to leave the Respondent a portion of his assets upon his demise. Additionally, Mr Saw's CPF nomination must be viewed in light of the other testamentary instrument he executed – *ie*, his will. [note: 2] Therein, he did make provisions for his family. In the circumstances, his wishes on how he wanted his assets distributed upon his death cannot be described as "inofficious" on account of him disregarding the element of natural affection and the claims of near relationships.

41 Since Mr Saw's mental capacity at the material time has been established on a *prima facie* basis, the evidential burden would shift to the Appellant. She would have to raise a "real doubt" as to Mr Saw's mental capacity when he executed the CPF Nomination Form. She can do so by showing that Mr Saw was suffering from a mental illness at the material time. Additionally, she would have to show that the illness was serious enough for the court to infer from its existence that Mr Saw was functionally unable to make a decision in relation to the CPF nomination at the material time.

42 I am satisfied on the evidence before me that Mr Saw did not have the requisite mental capacity when he executed the CPF Nomination Form.

43 Mr Saw started consulting physicians concerning his mental health in December 2011. Over the course of the next 18 or so months, he received treatment from the National University Hospital ("NUH"), Adam Road Medical Centre and the Institute of Mental Health ("IMH"). The Appellant's solicitors wrote to these institutions to request for all of Mr Saw's medical reports. These were exhibited in an affidavit filed by the Appellant. I note that no objections were raised as to the admissibility of these medical reports. It should also be noted that the medical report that NUH provided was not prepared by the physician who treated Mr Saw. Rather, it was prepared by another physician based on the clinical notes of the physicians who treated Mr Saw. Although not expressly stated, it seems that the medical report that IMH provided was also prepared based on clinical notes by a physician who was not the one who actually treated Mr Saw. The physician who had care of Mr Saw at the Adam Road Medical Centre prepared the medical report provided by that institution.

44 There is enough in the medical reports to raise doubts as to Mr Saw's mental capacity when he executed the CPF Nomination Form. The following can be ascertained from the medical reports:

(a) Mr Saw first engaged the outpatient psychiatric services of NUH on 6 December 2011. It

would be recalled that he had already executed the CPF Nomination Form by this time. The medical report from NUH states that at that point, [note: 3]

> he presented with [a] 3-month history of low mood, irritability, decreased interest in his usual activities and passive thoughts of suicide. His main stressor was the monetary debts that he incurred … He was unable to pay off these debts and very stressed about it. He was diagnosed to have reactive depression and started on antidepressant and anxiolytic medication.

(b) The report also states that over the course of Mr Saw's out-patient treatment at NUH's outpatient clinic, [note: 4]

> his mood remained low and there were episodes of emotional outbursts and fleeting suicidal ideation. He also demonstrated poor coping skills, poor regulation of emotions and impulsivity as evidenced by his repeated thoughts of suicide and taking of various medications that he obtained from different private general family physician and psychiatrist clinics. His main frustrations included his children not providing for him financially and marital conflicts with his wife. Therefore in our clinic, his medications were adjusted and closely restricted.

(c) Mr Saw also sought outpatient psychiatric treatment at Adam Road Medical Centre from September 2012 for panic disorder. He was given a course of anti-depressants and anti-anxiety medication, combined with counselling. The medical report states that he responded well to the treatment for the first two months, but thereafter became progressively more depressed. He attributed his low mood to the divorce proceedings and his financial problems.

(d) Mr Saw sought treatment at IMH's emergency room on 3 March 2013 for "low mood… associated with suicidal thoughts". He declined IMH's offer to have him admitted.

(e) Mr Saw was admitted to NUH's High Dependency Unit and Intensive Care Unit twice in 2013 for serious drug overdose. The first admission was from 23 to 25 March 2013 when he overdosed on 30 to 40 sleeping pills. He was transferred to IMH on 25 March 2013 and discharged the following day at his request. IMH's medical report states that the psychiatrist who treated him at NUH had the impression that he was suffering from "an acute stress reaction rather than a major depressive episode". [note: 5] At IMH, he was "assessed as having full capacity to make his own decisions regarding his own actions". [note: 6] The second admission was from 7 April 2013 to 22 April 2013 when he overdosed on antidepressants. According to IMH's medical report, Mr Saw claimed that he took the tablets to help him sleep rather than to end his life. NUH's medical report states that the two episodes were triggered by his frustration over his financial and marital problems.

(f) He sought treatment for insomnia at NUH's Emergency Department on 22 May 2013. The medical report states that his mood had improved as compared to when he was last admitted to the hospital for treatment. He was also not harbouring any suicidal thoughts.

(g) He sought treatment for "low mood" at NUH's Emergency Department on 30 May 2013. The report states he was not harbouring any suicidal thoughts then.

45 An expert opinion was obtained by the Appellant's counsel from Promises Healthcare Pte Ltd, Winslow Clinic ("Winslow Clinic") on Mr Saw's mental condition when he executed the CPF Nomination Form. Dr Munidasa Winslow ("Dr Winslow") and Dr Julia CY Lam ("Dr Lam") from the Winslow Clinic

jointly prepared an expert opinion ("the Expert Opinion") based on the various medical reports the Appellant's solicitors had acquired from the healthcare institutions that Mr Saw sought treatment from. Neither Dr Winslow nor Dr Lam ever personally treated Mr Saw. The gaps in their medical assessment are apparent from the following excerpt from the Expert Opinion which states:

> 5 We noted that [Mr Saw] executed his CPF Nomination Form on 31 October 2011. When he first presented to NUH on 6 December 2011, a 3-month history of symptoms of depression was recorded. The diagnosis given then was "Reactive Depression". It would thus appear that he could have been depressed at the time when he executed his CPF Nomination Form. We have no idea if he sought treatment elsewhere (other than NUH, IMH and Adam Road Medical Centre) for his depression around that time.
>
> …
>
> 7 In our opinion, there is not enough information to make definitive conclusions about his mental state around the time he executed … [the] CPF Nomination Form. …

46 Dr Winslow was cross-examined on the Expert Opinion by the Respondent's counsel at the hearing before the DJ. Dr Winslow confirmed that he and Dr Lam prepared the Expert Opinion based on the various medical reports without asking for Mr Saw's clinical notes. It seems, from this excerpt of Dr Winslow's cross-examination, that they could have asked for those notes: [note: 7]

> Q: Shouldn't you have asked for the notes?
>
> A: Yes it would help if we had the notes with us.

47 Dr Winslow stated that there are stages to depression and that decision-making is affected to some extent even in less severe forms of depression. The following exchange is instructive: [note: 8]

> Q: How does different stage of depression affect decision making of person?
>
> A: It does impact people's neuro-cognitive functioning, the basis of which you make decision in severe forms of depression, people experience hallucination like voices telling you to go and die. In less severe form, it generally affects to a certain level decision making. Perceptions are also affected because you feel that some people are against you or for you. Usually when a person is moderately severely depressed, we advise no major life decision until their mood improve.

48 Dr Winslow also stated that the mental health conditions of people who suffer from "clinical depression" can vary over time. He said: "You can be depressed for a few weeks then mood can lift and you feel better or stronger". [note: 9] Additionally, Dr Winslow accepted that he could not be 100% certain that Mr Saw was depressed when he executed the CPF Nomination Form. [note: 10] However, in re-examination, he stated that on the balance of probabilities "[Mr Saw] was significantly affected by depression and his depression would have coloured the way he felt about life and people he was in contact with" at the time he made the CPF nomination. [note: 11] The relevant part of his evidence states:

> A: … [H]e was first seen for depression in early December 2011. NUH records … indicates that in 3 months prior to seeking treatment, he would be labouring under depressive disorder. We cannot be 100% certain that it had taken away his ability to make judgments in writing

nominations … What we can say is that at time of nomination signing there was significant depression in place. We say this because not only was the mood low but he was affected in losing interest in usual activities showing change of cognitive functioning as well as passive thoughts of suicide. … I would draw inference that he was significantly affected by depression and his depression would have coloured the way that he felt about life and people he was in contact with.

Q: Can you confirm whether on 31 October 2011 when deceased signed CPF nomination form, the symptoms you described existed at the material time?

A: On the balance of probabilities, he would be affected.

…

Q: Based on perusal of medical reports, would clinical notes add to your report?

A: I have not seen the notes, so I can't tell.

…

Q: … [Y]ou agree that [the medical report prepared by NUH] is accurate?

A: I am certain [Dr Ho] [*ie*, the physician who prepared NUH's medical report] took into account pertinent notes. It appears as major depression. Reactive depression refers to clear cut cause, for eg the monetary debts. From the symptoms, it appears as major depression.

…

Q: Would you agree that deceased was mentally impaired at time he signed form?

A: It was likely he was suffering from depression at time he signed the form.

49 The Appellant relies primarily upon Dr Winslow's evidence to discharge the evidential burden she bears. To reiterate, Dr Winslow stated that depression, even in its less severe forms, can affect an individual's "neuro-cognitive functioning" which forms the basis on which an individual makes decisions. It can also affect the way that an individual perceives people. Furthermore, he inferred from the symptoms that Mr Saw complained of when he first engaged the outpatient psychiatric services of NUH that on the balance of probabilities, Mr Saw was "significantly affected by depression" and that his judgment was "coloured" by his mental condition when he made the CPF nomination.

50 There are reasons to be careful about the weight to be attached to Dr Winslow's evidence. First, Dr Winslow never personally treated Mr Saw. Second, he made his assessment without referring to the clinical notes which the various medical reports were based on. It appears that he could have asked for those notes but chose not to.

51 However, on the other hand, the Respondent has not controverted Dr Winslow's evidence in any way. Additionally, her own evidence corroborates the Appellant's position at least to some extent. She stated that Mr Saw started confiding in her about the problems he was having around July or August 2011. He told her that as a result of these problems, he experienced dizzy spells and mood swings that "left him *feeling depressed almost every day*" [emphasis added]. [note: 12]

52 Bearing in mind that the Appellant only has to raise a real doubt as to Mr Saw's mental capacity at the material time, I am satisfied that the Appellant has discharged the evidential burden she bears. An individual's decision on whom he should leave his assets to would be heavily dependent on how he perceives those who have a natural claim to his assets by virtue of close relationship (biological or otherwise). In the present case, there is uncontroverted medical evidence that depression can affect the way an individual perceives people and that Mr Saw was "significantly" affected by depression when he executed the CPF Nomination Form. In my view, the available evidence does raise a real possibility that Mr Saw's depression might have left him functionally incapable of making a decision in relation to the CPF nomination at the material time.

53 In the premises, the evidential burden shifts back to the Respondent to establish that Mr Saw had the requisite mental capacity at the material time. As stated, the Respondent has not called her own medical experts to controvert Mr Winslow's evidence. She fails to discharge the burden of proof she bears. Therefore, the CPF Nomination Form should be set aside and the CPF monies should be distributed in the manner prescribed in the ISA as per s 25(2)(*a*) of the CPF Act.

54 I would add that the finding that there was a real possibility of depression affecting Mr Saw's mental capacity does not translate into a proposition that depression will always affect testamentary capacity in the same way. Much will depend on the specifics of each case. Additionally, in most cases, one would expect other medical evidence to be put before the court, unlike the situation here.

Conclusion

55 This appeal is allowed for the aforementioned reasons. I order that the CPF Nomination Form be set aside and that the CPF monies be distributed in the manner prescribed in the ISA as per s 25(2)(*a*) of the CPF Act.

56 I gave the parties a brief summary of this decision on 2 November 2015 and indicated that the full decision would be issued shortly. Having heard the parties, and considering the case as a whole, I was of the view that costs of $5,000 all in would be ordered against the Respondent, here and below. The earlier cost orders made below were set aside. It remains for me to thank the *amicus curiae*, Mr Tay, for his assistance to the court.

[note: 1] RA I at p 303.

[note: 2] RA I at pp 317–318.

[note: 3] RA I at p 344.

[note: 4] RA I at p 344.

[note: 5] RA I at p 340.

[note: 6] RA I at p 340.

[note: 7] RA 36.

[note: 8] RA 36.

[note: 9] RA 33.

[note: 10] RA 38.

[note: 11] RA 40–41.

[note: 12] RA 302–303.

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