IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 195

Suit No 45 of 2018

Between

Goh Yng Yng Karen (executrix of the estate of Liew Khoon Fong (alias Liew Fong), deceased)

… *Plaintiff*

And

Goh Yong Chiang Kelvin

… *Defendant*

JUDGMENT

[Mental Disorders and Treatment] — [Legal capacity]
[Agency] — [Construction of agent's authority] — [Power of attorney] — [Undue influence]
[Agency] — [Termination] — [Principal's mental incapacity]

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Goh Yng Yng Karen (executrix of the estate of Liew Khoon Fong (alias Liew Fong), deceased)
v
Goh Yong Chiang Kelvin

[2020] SGHC 195

High Court — Suit No 45 of 2018
Ang Cheng Hock J
5–7, 10–14, 18–21, 24–26 February, 16 July 2020

17 September 2020 Judgment reserved.

Ang Cheng Hock J:

Introduction

1 The central issue in this case concerns the validity of two powers of attorney that were made by an 87 year-old woman, Mdm Liew Khoon Fong @ Liew Fong ("Mdm Liew"), in favour of her son.[1] The first power of attorney authorised him to sell the house where she stayed and for the sale proceeds to be paid to one of her grandchildren, who is his oldest child. The second power of attorney authorised her son to purchase a condominium unit in the joint names of herself and the said grandchild, and included an option for her son to include himself as a joint owner. Mdm Liew's mental capacity to execute the

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[1] Joint Affidavit of Evidence-in-chief ("AEIC") of Goh Yong Chiang Kelvin and Goh Sok Ngoh Jacqueline dated 3 October 2019 ("GYCK") at pp 115 to 127 (Exhibit GYCK 9).

powers of attorney has been called into question by her daughter, who commenced this suit in her mother's place through a lasting power of attorney which came into effect on or around 15 December 2017 because Mdm Liew developed dementia.[2] Further, Mdm Liew's daughter also raised allegations of undue influence that Mdm Liew's son had allegedly exercised over his mother to get her to execute the two powers of attorney.

Facts

The parties

2 This suit was initially brought by Dr Goh Yng Yng Karen ("Karen"), the younger child of Mdm Liew, in Karen's capacity as the sole donee of Mdm Liew's Lasting Power of Attorney ("LPA"), which had been registered on 16 September 2014. The defendant, Dr Goh Yong Chiang Kelvin ("Kelvin"), is Karen's older brother and Mdm Liew's older child. Both Karen and Kelvin are medical doctors. Following Mdm Liew's passing on 10 June 2020, after the trial but before judgment was released, Karen was granted leave to continue the proceedings in her capacity as the executrix of Mdm Liew's estate (see [21] below).

3 When the suit was commenced, there was a second defendant, Pinnacle Development (Greenmead) Pte. Ltd. ("Pinnacle Development"), which is a private company incorporated in Singapore in the business of real estate development. Pinnacle Development was involved in the present suit as the purchaser of 107 Namly Avenue, Singapore 267676 (the "Namly property"),

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[2] AEIC of Goh Yng Yng Karen dated 3 October 2019 ("GYYK") at p 558 ("LPA").

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which Mdm Liew had previously owned.[3] Karen, in her capacity as donee under the LPA, had sought an injunction preventing the sale of the Namly property. This was refused by Lee Seiu Kin J on 1 March 2018 and the sale went ahead.[4] Subsequently, the claims against Pinnacle Development were struck out in their entirety, and it ceased to be a participant in this suit.[5]

Background to the dispute

4 Karen and the defendant have had a strained relationship for some time. From the evidence, this stemmed from the time of their father's death in 1998.[6] At the time their father ("Mr Goh") passed away, he had two main assets to his name. One was the Namly property, and the other was a bungalow at Siglap Bank. Both properties were left to Mdm Liew, his spouse. Mr Goh's intentions, which Mdm Liew informed her two children she intended to honour, were that after Mdm Liew passed away, the Namly property would be given to Karen and the Siglap Bank property would be given to the defendant.[7] When informed of this, the defendant and his wife felt that this was unfair because there remained a substantial loan secured by a mortgage over the Siglap Bank property, as compared to the mortgage on the Namly property which had been paid off.[8] Apart from the housing loans over both properties, Mr Goh had taken a loan for

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3 Defence filed by the Second Defendant dated 14 February 2018.

4 HC/ORC 1411/2018.

5 HC/ORC 5399/2018.

6 GYYK at [33] and [102]; see also [63] and [64].

7 GYYK at [64], [70].

8 GYYK at [109] and [110].

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some investments he had made, and had secured that loan by encumbering the Siglap Bank property.[9]

5 The defendant's evidence is that he had assisted Mdm Liew by agreeing to be a guarantor for the loans which remained unpaid after Mr Goh's passing. His evidence is that, because of this help, the tenure of the loans was extended, the monthly mortgage payments were reduced, and the existing mortgage on the Namly property was discharged.[10] In any event, Mdm Liew still found it difficult to meet the monthly payments for the mortgage on the Siglap Bank property. In 2006, before moving to Melbourne, Australia to stay with Karen and her family, Mdm Liew decided to sell the property.

6 After Mdm Liew's husband died in 1998 but prior to her moving to Melbourne in 2006, she would alternate between staying with Karen's family at Kellock Lodge and the defendant's family at Seasons Park.[11] Mdm Liew did not want to live alone. Both the Namly and Siglap Bank properties were rented out. When the Namly property became vacant in 2003 because the tenant moved out, Karen's family moved into the house with Mdm Liew.[12]

7 In 2006, Karen's husband, Dr Peter Hwang ("Dr Hwang"), got a job at a hospital in Melbourne, Australia.[13] Karen and her family decided to emigrate from Singapore to Australia, and she invited Mdm Liew to move there with

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9 GYYK at [64].

10 Transcript of 11 February 2020, Page 82, Lines 6 to 24.

11 GYYK at [33].

12 GYYK at [37].

13 GYYK at [41].

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them. Mdm Liew agreed, and sold the Siglap Bank property before she left, as described above.[14]

8 In mid-2009, Mdm Liew decided to move back to Singapore.[15] This was because, among other things, she missed her friends and the food in Singapore.[16] She asked the defendant and his family to move in with her at the Namly property, and they did so.[17]

9 In around March or April 2015, Dr Hwang left his position at the Melbourne hospital. In December 2015, he returned to Singapore to assume a position at the National Neuroscience Institute.[18] Karen remained in Australia with their children, who were attending school there. Her evidence is that she was planning to return to Singapore once her two daughters finished their schooling in Australia.

10 Despite Mdm Liew having moved back to Singapore in 2009, she remained close with Karen. They spoke frequently over the phone.[19] Karen would travel to Singapore several times each year to see her mother. These visits to Singapore increased in 2016 because by then, Dr Hwang was working in Singapore.[20] In 2014, Mdm Liew executed the LPA in favour of Karen. The

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14 GYYK at [77].

15 GYYK at [8] and [46].

16 GYYK at [45].

17 GYCK at [33] to [37].

18 AEIC of Hwang Ying Khai Peter dated 3 October 2019 ("HYKP") at [21]; Transcript of 13 February 2020, Page 100, Lines 5 to 16.

19 GYYK at [47].

20 GYYK at [49].

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LPA provided that, *inter alia*, Karen would "have authority to make decisions and act for [Mdm Liew] in respect of **ALL** matters relating to [Mdm Liew's] personal welfare of every description as fully and effectually as [Mdm Liew] could do if [she] had the mental capacity" (emphasis original). The LPA also stipulated that:[21]

> The donee(s) shall have authority to make decisions and act for me in respect of **ALL** matters relating to my property & affairs of every description as fully and effectually as I could do if I had the mental capacity [save that] [t]he donee shall not sell, transfer, convey, mortgage or charge my residential property at 107 Namly Avenue Singapore 267676 without the approval of the court.
>
> [Emphasis original)

11 In the second half of 2017, Karen came back to Singapore on about five occasions.[22] On each return, she would stay for a period ranging from a few days up to a few weeks. She would visit and see Mdm Liew regularly during the time that she was in Singapore. Karen's visits to Mdm Liew at the Namly property would typically coincide with times when the defendant and his wife were not at home, though they were aware of such visits. Karen would also regularly take Mdm Liew out for lunch.[23]

12 Karen's evidence was that, from around June 2017, she started noticing that her mother was behaving more oddly. The evidence on this will be explored in more detail below, but it suffices for me to say at this juncture that Karen's evidence is that Mdm Liew started to exhibit some signs of mental decline and confusion.

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21 LPA Part C at [2].

22 GYYK at [53(g)].

23 GYYK at pp 521 to 533.

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13 On 9 September 2017, during a visit in Singapore, Karen brought Mdm Liew to see a neurologist, Dr Ho King Hee ("Dr Ho").[24] His evidence is quite critical on the issue of Mdm Liew's mental capacity, and will be detailed in the course of this judgment. As this juncture, I need only point out that Dr Ho got Mdm Liew to take a Mini Mental State Examination ("MMSE"), which is a screening tool for dementia. Dr Ho's evidence is that Mdm Liew scored 26/30 on the MMSE, which is a "borderline abnormal" score.[25]

The Powers of Attorney

14 In mid-November 2017, the defendant's evidence is that his mother had become less mobile because of weakness in her legs and could not get around without a wheelchair.[26] According to the defendant, Mdm Liew told him that she wanted to sell the Namly property and buy a condominium unit for her and his family to stay. She then instructed him to see a lawyer because she wanted to appoint him as an attorney to execute her instructions.[27]

15 The defendant then approached Teo Eng Thye ("Mr Teo"), who practises under the name and style of City Law LLC, for assistance. Mr Teo prepared two irrevocable powers of attorney for Mdm Liew to execute (the "POAs").[28] The first of them authorised the defendant to act on Mdm Liew's behalf to sell the Namly property and have the sale proceeds paid to Daniel Goh Eng Sheng ("Daniel"), then 19 years' old, who is the older of the defendant's

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24 GYYK at [354].

25 GYYK at pp 387 to 391.

26 GYCK at [54].

27 GYCK at [60] and [61].

28 GYCK at [65] to [67].

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two sons. The second Power of Attorney authorised the defendant to purchase a condominium unit in Mdm Liew and Daniel's names, but the defendant was given the authority to add himself as a joint owner.

16 Mr Teo then visited the Namly property on 20 November 2017 and met Mdm Liew for the first time.[29] She executed the POAs without asking Mr Teo any questions. On 22 November 2017, the defendant granted an option to "Leow Tang Lie and/or nominees" to purchase the Namly property. Leow Tang Lie was, at the material time, a director of Pinnacle Development, which had also acquired the two neighbouring houses. The option to purchase was exercised on 7 December 2017.[30]

17 Karen attempted to contact Mdm Liew through Mdm Liew's mobile phone throughout November 2017, but was largely unsuccessful.[31] She was able to briefly speak to Mdm Liew on 20 November 2017, but was unable to reach her thereafter. Karen therefore asked Dr Hwang to visit Mdm Liew at the Namly property, which he did on 22 November 2017.[32] Dr Hwang informed Karen that Mdm Liew's condition appeared to have deteriorated significantly in that she seemed confused and disoriented. Karen continued to have difficulty contacting Mdm Liew, and had to contact Mdm Liew's domestic helper, Juwanti, in order to reach Mdm Liew.[33]

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29 GYCK at [71].

30 GYCK from [81] to [90]. See also the first affidavit of Soh Choon Lai dated 8 February 2018 at [8], Tabs 4 and 5, as well as p 46.

31 GYYK from [378] to [380].

32 GYYK from [381] to [389].

33 GYYK at [405].

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18 On 3 December 2017, the defendant, his family, and Mdm Liew moved out of the Namly property to the Capella Residence at Sentosa.[34] They stayed there for six weeks until mid-January 2018. They then moved to the Great World City serviced apartment. It is not disputed that for the period from December 2017 until February 2018, the defendant and his wife refused to inform Karen where they were residing or where Mdm Liew was. Instead, Karen was merely told that Mdm Liew was on "holiday".[35] A few phone calls with Mdm Liew were permitted by the defendant and his family, but Karen was specifically instructed not to ask for Mdm Liew's location.[36] As a result, she could not see Mdm Liew in person, despite repeated requests in person and through lawyers. There was only one occasion, on 8 December 2017, where a meeting with Mdm Liew was arranged at the Toast Box café in Sentosa. The details of that meeting and how Mdm Liew behaved are relevant to the question of her mental capacity and will be delved into in more detail in the course of this judgment.

19 After discovering, on or about 13 December 2017, that a purchasers' caveat had been lodged against the Namly property by Pinnacle Development, Karen commenced proceedings against Kelvin and the purchaser. She applied urgently for an interlocutory injunction to restrain the sale of the Namly property from being completed.[37] As alluded to at [3] above, this was refused as Lee Seiu Kin J was of the view that the balance of convenience was in favour

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34 Transcript of 19 February 2020, Page 54, Line 21 to Page 55, Line 24.

35 Exhibit GYYK-2 in file titled "041217 Audio 4 min 47 s"; GYYK at p 1425.

36 GYYK at [488].

37 GYYK at [590].

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of not granting an interim injunction.[38] Eventually, the sale was allowed to proceed, and the sale proceeds were paid into Court. As stated above, Karen's claims against Pinnacle Development were subsequently struck out, with Kelvin remaining as the sole defendant in these proceedings.

20 In the course of those proceedings for an injunction, it was revealed by the defendant that Mdm Liew had been hospitalised at Mount Elizabeth Hospital ("MEH") for some periods from December 2017 to February 2018. She was found to have suffered from pneumonia in her first admission from 16 December 2017 to 23 December 2017, chest infection with congestive cardiac failure during her second admission from 25 December 2017 to 8 January 2018, and cardiac arrhythmia with chest infection during her third admission from 15 January 2018 to 20 April 2018.[39] Eventually, Mdm Liew was transferred to Karen's charge, pursuant to the directions in the LPA. In April 2018, she was transferred from MEH to Tan Tock Seng Hospital ("TTSH"), where she came under the care of Dr Mark Chan, a Senior Consultant at TTSH's Department of Geriatric Medicine.[40] It is common ground between the parties that, by the time of her admission to TTSH, she was suffering from moderate to severe dementia.

21 Mdm Liew was subsequently discharged from TTSH on 1 October 2018 into Soo's Nursing Home.[41] Subsequently, she passed away on 10 June 2020. This was after the trial had been heard before me from 5 February 2020 to 26 February 2020, and also after written closing and reply submissions had been

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38 Minute Sheet of 27 February 2018 in HC/S 45/2018, SUM 234/2018.

39 GYCK at pp 338 and 339.

40 AEIC of Dr Mark Chan Peng Chew dated 3 October 2019 ("MCPC"), at [1].

41 AEIC of Soo Chieng Wern Andrew dated 3 October 2019 at [15].

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exchanged. Karen was named as the sole executrix in Mdm Liew's final will dated 17 July 2007, and the Grant of Probate was issued to her on 9 July 2020. I granted leave for further submissions to be made on the effect of Mdm Liew's passing on the present action. Karen subsequently sought to be made a party to the suit and for the proceedings to be carried on as if she had been substituted for Mdm Liew pursuant to O 15, r 7(2) of the Rules of Court (Cap 322, 2014 Rev Ed, R 5). This was granted on 14 July 2020.[42]

The parties' cases

22 Karen brought these proceedings in her capacity as Mdm Liew's attorney and on her behalf, pursuant to the LPA. Following Mdm Liew's passing, Karen has been made a party to the present proceedings as Mdm Liew's executrix. She claims that the POAs are not valid because Mdm Liew did not have mental capacity when she executed them. She relies on expert testimony, which is to the effect that Mdm Liew was suffering from dementia at the time she executed the two POAs on 20 November 2017. In particular, her case is that Mdm Liew was suffering from moderate dementia at that time, and could not have understood the implications of the POAs that she signed.[43]

23 Karen also alleges that the defendant exercised undue influence over Mdm Liew to procure her execution of the POAs.[44] In this regard, she relies on "Class 1" undue influence, that is, that actual undue influence was exercised by the defendant on Mdm Liew. Alternatively, Karen relies on "Class 2B" undue influence, that is, that the relationship between the defendant and Mdm Liew

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42 HC/ORC 3769/2020.

43 Plaintiff's Closing Submissions dated 8 April 2020 ("PCS") at [1].

44 PCS at [2].

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was one of trust and confidence, the nature of the POAs is such that they call for an explanation, and that, in these circumstances, there is a rebuttable presumption that the defendant exercised undue influence over Mdm Liew. Specifically, Karen contends that the issuance of the POAs gave rise to an obvious disadvantage to Mdm Liew without any countervailing compensation, and that there is no evidence illustrating that Mdm Liew was genuinely acting of her own free will in executing them.

24 In terms of remedies, Karen seeks, in her closing submissions:[45]

(a) A declaration that Mdm Liew lacked mental capacity when she signed the POAs and/or that Mdm Liew signed the POAs under undue influence exercised by the defendant, and that the POAs are accordingly null and void;

(b) Pre-judgment interest as damages, being interest on the sale proceeds of S$5,099,660.67 from the Namly property for the period between 12 April 2018 and 5 February 2020, at the default rate of 5.33% per annum, deducting the interest accrued from the payment into Court in that period; and

(c) Punitive damages.

25 The defendant's case is that Mdm Liew had mental capacity at the time she executed the POAs.[46] She had initially been reluctant to sell the Namly property when he first raised this as an idea in early 2017, and again in June

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45 PCS from pp 56 to 67.

46 Defendant's Closing Submissions dated 8 April 2020 ("DCS") at [7].

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2017. He had suggested that the Namly property be sold and that they use the sale proceeds to buy a condominium unit, where they would all move to. But, in November 2017, after her legs became too weak for her to get around by herself, Mdm Liew told the defendant to go ahead with his plan to buy a condominium unit for all of them to live together. His case is that Mr Teo explained the details of the two POAs to Mdm Liew and she understood what she was signing.[47] He denies having exercised undue influence over Mdm Liew to get her to sign the POAs.

26 Shortly before the trial, the defendant indicated that he was not contesting Karen's claim, under Mdm Liew's LPA, to the sale proceeds that had been paid into Court. Pursuant to an application which was granted on the first day of trial, I ordered the sale proceeds to be paid out to Mdm Liew and managed by Karen for Mdm Liew's care and maintenance.

The issues

27 There are two broad issues which I have to decide.

28 The first is whether Mdm Liew had mental capacity at the time that she executed the two POAs on 20 November 2017. This requires an analysis of the medical evidence of the doctors who were called as witnesses by the parties. I am also required to examine the evidence as to Mdm Liew's behaviour in the months leading to the execution of the POAs, insofar as such behaviour indicates whether she is likely to have had the capacity to understand what she was signing on 20 November 2017. If she did not have mental capacity, then the POAs are void as a matter of law and are of no effect. If Mdm Liew did

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47 DCS from [99] to [103].

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have mental capacity, then the POAs are not void and without effect, but their validity will then turn on the second main issue before me.

29 This second main issue is whether the defendant exercised undue influence, in the form of "Class 1" or "Class 2B" undue influence, over Mdm Liew to procure the execution of the two POAs. Under this broad issue, there are sub-issues as to (i) whether the defendant exercised *actual* undue influence over Mdm Liew, (ii) whether the relationship between the defendant and Mdm Liew was one of trust and confidence, (iii) whether the nature of the POAs are such that they call for an explanation, and (iv) whether the defendant has rebutted any presumption of undue influence that has arisen.

Mdm Liew's mental capacity

The law as to mental capacity

30 Section 4(1) of the Mental Capacity Act (Cap 177A, 2010 Rev Ed) ("MCA") provides the following definition of lacking capacity:

> … [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.

31 Section 5(1) of the MCA further provides that:

> For the purposes of section 4, a person is unable to make a decision for himself if he is unable –
>
> (a) to understand the information relevant to the decision;
>
> (b) to retain that information;
>
> (c) to use or weigh that information as part of the process of making the decision; or
>
> (d) to communicate his decision (whether by talking, using sign language or any other means).

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Section 5(2) states that a person is not to be found to be unable to understand the information relevant to a decision if he is able to understand an explanation of it using simpler language or by other means, while s 5(3) specifies that the fact that a person is able to retain information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.

32 In *Re BKR* [2015] 4 SLR 81 ("*Re BKR*") at [134], the Court of Appeal explained the nature of the test for capacity in s 4(1) of the MCA as follows:

> … [T]he test for capacity in s 4(1) of the MCA may be thought of as having a functional and a clinical component – the functional aspect is that P must be unable to make a decision, and the clinical aspect is that this inability must be caused by a mental impairment. It is not difficult to see that we require the assistance of expert evidence when addressing the clinical component of the test: we need medical professionals to tell us whether P has a mental impairment based on the observable symptoms and any other diagnostic tools available, and if so, what that impairment is, and what effect it has on P's cognitive abilities. But as to the functional component, it is in our judgment a question for *us* to grapple with leaving perhaps a limited scope for the involvement of the medical experts …
>
> [Emphasis original]

33 It is clear therefore that, in relation to the clinical component of the s 4(1) MCA test, a close examination of the expert evidence is required to determine if Mdm Liew had an impairment of mind. As for the functional component, an examination of all the evidence regarding Mdm Liew and her interactions with others is necessary to determine if she is likely to have been unable to make a decision for herself in relation to the POAs.

34 This approach to applying the guidance in *Re BKR* was applied by Aedit Abdullah J in *BUV v BUU and another and another matter* [2020] 3 SLR 1041,

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and I agree with his view at [31] that "the court's assessment as to mental capacity should be made holistically".

35 I begin with the analysis of Mdm Liew's conduct and interactions with her friends and family. This will provide the proper context to the medical opinions that come later as to what such conduct and interactions reveal about Mdm Liew's impairment of mind, if any, at the relevant time.

Mdm Liew's changes in behaviour

36 I will consider the evidence as to Mdm Liew's conduct in the periods leading up to and following the execution of the POAs.

The first half of 2017

37 By all accounts, Mdm Liew had been an intelligent and sociable person. She had attended university in Australia for an accounting degree, and did not complete the course only because she got married and had a family.[48] She worked as, *inter alia*, secretary to the businessman Robert Kuok, and was also an accounts officer.[49] She stopped work in 1976. She remained active by playing mahjong with her friends, attending church on Sundays, and weekly cell group meetings, where there would be Bible study sessions. She was able to drive around on her own until about 2011. After that, she would get about by taxi on her own or with her domestic helper. She was known to like to go to Ghim Moh market to buy food.[50]

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48 Transcript of 26 February 2020, Page 17, Line 21 to Page 18, Line 4.

49 Transcript of 21 February 2020, Page 58, Lines 5 to 7.

50 Transcript of 12 February 2020, Page 116, Lines 14 to 18.

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38 Liew Min Chee, Mdm Liew's nephew, enjoyed a close relationship with her. He gave evidence that Mdm Liew was knowledgeable about investing in shares and that they would often chat about such investments when he visited her.[51] She was able to take care of her own finances. He visited her in February 2017, during the Chinese New Year period, which was when he last saw her before she signed the POAs. His evidence was that her mind was still sharp then, and she could move about by herself.[52]

39 Karen's evidence was that, for the first half of 2017, Mdm Liew still appeared to be her regular self.[53] She continued attending church and cell group meetings, and went for lunch together with Karen when Karen was in Singapore.[54] Mdm Liew also expressed plans to make various home improvements, including converting the ground floor mahjong room and toilet into her new ground floor bedroom and ensuite bathroom.[55] This was so that she did not have to climb the stairs to the second floor of the house where her bedroom was located.

July to September 2017

40 According to Karen, Mdm Liew started to exhibit changes in her behaviour from around mid-2017. She was far less communicative when they spoke on the phone. Instead of chatting freely like they used to, Mdm Liew would not say much and seemed withdrawn, and Karen found that she often had

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51 AEIC of Liew Min Chee dated 3 October 2019 ("LMC") at [9] and [10].

52 Transcript of 12 February 2020, Page 72, Lines 6 to 8.

53 GYYK at [313].

54 See, for example, GYYK at [238].

55 GYYK at [243].

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to talk more to draw her mother out of her shell. When Mdm Liew did communicate, she made inexplicable errors such as insisting that it was Monday when it was instead a Tuesday.[56]

41 In even more tangible terms, Mdm Liew failed to pay her electricity bills for June, July, and August 2017 on time.[57] On or about 26 August 2017, Karen called Singapore Power after noticing an email dated 10 August 2017 stating that there was an outstanding amount of over S$1,500 due on 22 August 2017 for the property.[58] I note at this point that Karen received emails concerning Mdm Liew's utilities bills because Mdm Liew had previously entrusted Karen with her online SingPass, Singapore Power, Starhub, and Singtel accounts, and Karen assisted Mdm Liew with her bills.[59] Karen was surprised by the 10 August 2017 email because Mdm Liew had indicated in a conversation on 25 August 2017 that she had previously filled out a number of cheques to pay for the outstanding Singapore Power bills. When Karen informed Mdm Liew of the amount outstanding for her utilities on 26 August 2017, Mdm Liew said that the most recent cheques she had written were on or about 18 May 2017 for air-con servicing, and on 16 July 2017 for S$490.10 to Singapore Power for the July utilities bill. However, a sum of S$490.10 had *already* been paid to Singapore Power on 9 June 2017, and went towards the May bill.[60] Mdm Liew appears to have simply not realised that she had *already* paid the sum of S$490.10, and wrote another cheque for that amount. That second cheque of

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56 GYYK at [313].

57 GYYK from [319] to [320]. See also GYYK at pp 936 to 939.

58 GYYK at [320].

59 GYYK at [9].

60 GYYK at [321] to [322].

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S$490.10 was returned on 19 July 2017 because the payee had been wrongly indicated, but what is significant for present purposes is that Mdm Liew appears to have believed that the second cheque for S$490.10 was for her *July* utilities bill (which was actually S$497.41[61]), when that sum was actually the amount due for her *May* utilities bill.[62]

42 As it turns out, Mdm Liew had in fact written a *further* cheque on 16 July 2017, which she had omitted to tell Karen about, for S$475.28 for her June utilities bill. However, as she had mis-spelled "hundred" as "hudred" and addressed the cheque to "SP group" instead of "SP Services Ltd", this cheque was returned.[63] The upshot of this is that Mdm Liew's ability to manage her finances and recall previous transactions she had entered into appeared to be starting to decline in the second half of 2017.

43 Mdm Liew also appeared to have missed payments for her Singtel and Starhub bills.[64] Even where certain payments were made, Mdm Liew appears to have on occasion forgotten that she had made prior payments and thus paid the exact same sum twice. These instances of unusual behaviour were recorded in notes Karen prepared and emailed to herself.[65]

44 Stella Ong Swi Teng ("Stella"), who was a close friend of Mdm Liew, gave evidence corroborating Karen's position. Stella's evidence was also that Mdm Liew appeared to be deteriorating mentally from around the middle of

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61 GYYK at p 931.

62 GYYK at p 838.

63 GYYK at [324].

64 GYYK at [334] and [335].

65 GYYK at pp 953 to 973.

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2017. In the period from June to August 2017, she saw Mdm Liew two to three times a week. They would attend church and weekly cell group meetings together. She would usually get in touch with Mdm Liew by calling her on her mobile phone because there was no landline at the Namly property. But, the phone calls lessened considerably from around June 2017 because Mdm Liew stopped answering her calls on her mobile phone. On occasion, Mdm Liew would call Stella on the latter's phone, but then would not know who she had called.[66]

45 In addition, Stella noticed that Mdm Liew had stopped attending church service since August 2017, and had also reduced the number of cell group meetings she attended.[67] Stella gave evidence that Mdm Liew got around with a walking stick, but agreed that she might have suffered from mobility issues even though Mdm Liew never mentioned this to her.[68]

46 Stella visited Mdm Liew on 3 September 2017 and found that she was not herself. Her bedroom was very messy, which was not usual. When Stella was there, Mdm Liew did not try to speak to her. Instead, she just ignored Stella and continued watching television. She conveyed her concerns to Karen in a call on 4 September 2017, and also asked the defendant whether Mdm Liew might have suffered a stroke. However, the defendant brushed her question off.[69]

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66 AEIC of Ong Swi Teng Stella dated 3 October 2019 ("OSTS") from [18] to [26].

67 OSTS from [41] to [46].

68 OSTS at [15] and [106].

69 OSTS from [34] to [39].

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47 Separately, Dr Hwang would visit Mdm Liew once every few weeks. He did this to pick up some of his mail that was still addressed to the Namly property. During these visits, he would typically chat with Mdm Liew for about ten minutes before he left. After Karen called him sometime in August 2017 to express concerns about Mdm Liew, he paid a visit to her on 28 August 2017. During the visit, he asked Mdm Liew why she was not picking up the calls to her mobile phone, and her reply was that she did not hear the phone ring. He found this to be unusual because she never had this problem before.[70]

48 Dr Hwang dropped by the Namly property for another visit on 29 August 2017. He parked his car in the driveway and walked up to Mdm Liew, who was standing by her doorway. He was surprised when Mdm Liew asked where his car was parked, when the car was right in front of her. On that day, he spoke to Mdm Liew for about twenty minutes. He asked her about a number of her financial transactions and cash withdrawals, but she could not explain what they were for. Mdm Liew also could not remember whether she had paid her electricity bill.[71] After this visit, he called Karen and told her that Mdm Liew was "not quite right".[72]

49 As stated at [13] above, Karen brought Mdm Liew to see a neurologist, Dr Ho, on 9 September 2017 because she had noticed a change of behaviour in Mdm Liew over the preceding few months, including a number of failures in recollection.[73] Dr Ho spoke directly to Mdm Liew and conducted an MMSE for

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70 HYKP at [60] to [64].

71 HYKP at [66] to [71].

72 Transcript of 13 February 2020, Page 13, Lines 3 to 6.

73 GYYK from [354] to [370].

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her. His conclusions are as set out from [81] to [85] below. After the visit, Mdm Liew recorded in her diary that "… The result told by [Karen] that I was alright, there is no wary [*sic*] with me. Thank you Jesus. [Karen] + Jepan [*sic*] left on 11 Sept 2017 @ 10:15 Are back to Melb with God's Speed at bleesng [*sic*]".[74] In her oral evidence, Karen testified that these spelling errors – the words "worry", "Zephan" (who is Karen's son) and "blessing" – were highly uncharacteristic of her mother.[75] Karen's evidence was that, after the consultation with Dr Ho, she was planning to arrange for a neuropsychological examination for Mdm Liew when she was going to be in Singapore for a longer period in December 2017.

October to November 2017

50 For the month of October 2017, Mdm Liew only attended one cell group meeting.[76] According to Stella, Mdm Liew was quiet and not responsive during this meeting. She was still able to walk with the help of a walking stick. Karen's evidence for this period is that Mdm Liew appeared to be confused when she spoke to her. For instance, Mdm Liew claimed that she had given her domestic helper S$100 to pay for the utility bills at a Seven-Eleven store, and that she had also walked to the post office with her domestic helper to post a number of letters.[77] However, this was contradicted by Juwanti who told Karen that all this was not true.[78] These concerns were recorded by Karen in a note dated 19 October 2017.

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74 2 Agreed Bundle ("AB") at p 1525.

75 Transcript of 11 February 2020, Page 123, Lines 1 to 8.

76 OSTS from [44] to [46].

77 GYYK at [374].

78 GYYK at [375].

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51 Karen, who was in Melbourne, continued to try to speak to her mother over the phone in the months of October and November, but the conversations were few and far between because Mdm Liew was not picking up her mobile phone.[79] It will be recalled that Mdm Liew signed the two POAs in the evening of 20 November 2017. On that day, sometime before Mr Teo arrived at the Namly property for the signing of the POAs, Karen tried to call Mdm Liew on her mobile phone. She was able to speak to Mdm Liew, but found that Mdm Liew sounded unwell and confused. No mention was made by Mdm Liew of the POAs which were subsequently signed, nor was there any indication given by Mdm Liew of any intention to sell the Namly property.[80]

52 Dr Hwang subsequently visited Mdm Liew in the late morning on 22 November 2017, two days after the POAs were executed.[81] Karen had called him and expressed concern because she had not been able to contact her mother. Dr Hwang found Mdm Liew to be in a confused state. Her eyes were caked with secretions. He was told by Juwanti, who was present, that Mdm Liew was suffering from a flu. But, Dr Hwang's physical examination of Mdm Liew allowed him to conclude that she was not suffering from any of the usual symptoms of flu, such as fever, blocked nose, or coughing. She was breathing comfortably, and her limbs were not cold or blue.[82] Dr Hwang suggested that Mdm Liew be taken to the hospital, but she declined to go.

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79 GYYK from [378] to [380].

80 GYYK at [380].

81 HYKP from [77] to [96].

82 Transcript of 13 February 2020, Page 23, Lines 1 to 25.

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53 Dr Hwang then looked for Mdm Liew's mobile phone to check that it was charged and was ringing. He tried to get Mdm Liew to hold the phone and answer it when he called, but she dropped the phone several times and did not appear to know that she had to press the "answer" button. Dr Hwang then initiated a WhatsApp video call between Mdm Liew and Karen using his mobile phone.[83] Karen's evidence in relation to this call is that Mdm Liew did not recognise her or realise that she was talking to her. It was only after Karen repeatedly told Mdm Liew her identity that Mdm Liew acknowledged her. Mdm Liew often mumbled unintelligibly during the call, and even when she did speak more clearly, she responded with *non sequitur* answers such as "God bless you forever and ever" and "In the name of the Father and the Son and the Holy Spirit", which did not correspond with the conversation which Karen was attempting to have.[84]

54 While looking at the screen of Mdm Liew's phone to check the battery level after the video call had ended, Dr Hwang noticed a text message from one Serene Ang, a property agent who stated in the text message that she had sold the next-door property along Namly Avenue. Strangely, this text message was addressed to Jacqueline, the defendant's wife, requesting that Jacqueline "call [Serene] back".[85] When he asked Mdm Liew if she intended to sell the property, she replied in the negative. Mdm Liew also denied that the property had been sold. Nonetheless concerned, Dr Hwang informed Karen of this message

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83 HYKP from [83] to [85].

84 GYYK from [382] to [383].

85 AEIC of Hwang Chew Song @ Ong Chew Chong dated 3 October 2019 ("HCS") at [55] and p 65.

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thereafter. Before Dr Hwang left, he told Juwanti that he would be returning every day to check on Mdm Liew's condition.[86]

55 On the afternoon of that same day, 22 November 2017, Dr Hwang's father, Hwang Chew Song ("Mr Hwang"), came by the Namly property to visit Mdm Liew. Mr Hwang and his wife were friendly with Mdm Liew, and saw her on occasion. Mr Hwang had also been informed by Dr Hwang of Mdm Liew's condition and the text message from the property agent on her phone. Mr Hwang found that Mdm Liew was lying in bed and unable to sit upright. His impression was that she was confused and very much unlike her usual self. He was informed by Juwanti that Mdm Liew had to be fed and required assistance with using the bathroom, showering, and changing her clothes. Mr Hwang asked Mdm Liew whether she was planning to sell her house, and she replied in the negative. Mdm Liew did not make any mention of the POAs which she had signed two days' prior.[87]

56 Dr Hwang paid another visit to Mdm Liew on 23 November 2017. He found that Mdm Liew could not get out of bed. She appeared drowsy and disoriented. When Dr Hwang asked whether she was feeling better and why she was not answering her phone, she only mumbled "ya".[88] The defendant's younger son, David Goh, was present during this visit. David's evidence was also that his grandmother could not get out of bed when Dr Hwang visited.[89] David expressed his surprise to see Dr Hwang, and said that he thought Dr

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86 HYKP from [88] to [94].

87 HCS from [54] to [69].

88 HYKP at [102].

89 Transcript of 21 February 2020, Page 99, Line 25 to Page 100, Line 1; and Page 101, Lines 19 to 21.

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Hwang was still living in Australia.[90] Dr Hwang explained that he was back in Singapore for work and was at the property to check on Mdm Liew. Dr Hwang advised David to call an ambulance if he sensed that something was wrong with Mdm Liew and his parents were not around, before letting David know that he would return daily to check on Mdm Liew. When Dr Hwang came to visit again on 24 November 2017, the gate was not opened for him and he was unable to gain entry to the property.[91]

57 On the urging of Karen, Stella visited Mdm Liew on 25 November 2017. Stella was accompanied by one Janice, who was one of their cell group members.[92] Stella's evidence is that Mdm Liew appeared to be in a worse state of health than when she last saw her in October.[93] Stella described Mdm Liew as looking very frail and sickly, and stated that Mdm Liew's hands were trembling. Mdm Liew's speech was also slurred and unintelligible, and neither Stella nor Janice were certain if Mdm Liew recognised them. Mdm Liew's condition was such that Stella was concerned that she had had a stroke.[94] Again, David was present during this visit. In his oral evidence, he confirmed that, throughout this visit, Mdm Liew was lying in bed, and could not sit up at all.[95] According to Stella, David also asserted, ostensibly on Mdm Liew's behalf, that Mdm Liew did not wish to speak to Karen when Stella had asked Mdm Liew if she wanted to speak to her daughter. Further, David informed Stella and Janice

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90 HYKP at [103].

91 HYKP from [105] to [108].

92 OSTS from [47] to [51].

93 Transcript of 7 February 2020, Page 93, Lines 1 to 3.

94 OSTS at [50].

95 Transcript of 21 February 2020, Page 111, Lines 18 to 23.

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that they would have to make an appointment with the defendant the next time they intended to visit Mdm Liew, and provided the defendant's contact number.[96]

December 2017 to February 2018

58 On 1 December 2017, Stella and Janice paid another visit to Mdm Liew after having made an appointment with the defendant to visit at around 1.00pm. This time around, they found Mdm Liew propped up in a chair in her bedroom when they arrived. The defendant, Jacqueline, and their two sons were present and seated around Mdm Liew. Stella's evidence was that Mdm Liew was quite quiet and did not speak much, which was not her usual self. Mdm Liew did not even greet Janice by name, which she normally would have done. Stella and Janice showed Mdm Liew a photo of the members of their cell group which had been taken during a celebration for Janice's birthday that had just taken place earlier that day, but she was not able to recognise their faces in the photo or identify who they were. Stella's evidence was that Mdm Liew looked ill and quite confused.[97]

59 As already mentioned at [18] above, on 3 December 2017, the defendant and his family, together with Mdm Liew, moved from the Namly property to the Capella Residences on Sentosa. The defendant did not inform Karen, Dr Hwang, or Stella about where they were staying. Karen returned to Singapore on 2 December 2017, but found that she was not able to contact Mdm Liew.[98] After much difficulty, she was able to speak to Mdm Liew briefly over the

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96 OSTS at [49] and [51].

97 OSTS from [55] to [63].

98 GYYK at [421].

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phone on 4 December 2017, with the defendant's family also present on the call. During the call, Mdm Liew said that she was at "Marina … Marina", to which Jacqueline interjected and said "Marina Bay", even though Mdm Liew was at Sentosa.[99] During the call, Karen pleaded with the defendant's wife that she wanted to see her mother. A meeting was subsequently arranged for Karen and her family to see Mdm Liew on 8 December 2017. The venue of the meeting was fixed by the defendant at Toast Box at the Resorts World Sentosa.[100]

60 There are several video and audio recordings taken of this meeting. They were taken by Karen, Dr Hwang and Jaelle Hwang, who is their youngest child. I have reviewed the evidence in the form of these recordings and the transcripts.[101] It suffices for me to say that they show that Mdm Liew was not able to identify some of her grandchildren, and could not answer simple questions such as her age, where she was, what she had just eaten, and how she had gotten there. Some other significant examples of Mdm Liew's odd statements included:

(a) Repeatedly wishing Karen's son, Zephan, "happy birthday", even though his birthday was not for several more months;

(b) Claiming that she jumped up and down for exercise when she was in fact wheelchair-bound by that time;

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99 Exhibit GYYK-2 at file titled "041217 Audio 6 min 8 s"; GYYK at p 1434.

100 GYYK from [444] to [454].

101 GYYK from pp 1472 to 1482, 1527 to 1597, 1442 to 1455, 1456 to 1471, and 1483 to 1526.

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(c) Claiming that she went to church "regularly" and "by herself" when she had not been to church since August, and even then only with her domestic helper;

(d) Failing to name any foods she liked to eat, and instead claiming that she would go to the market to "eat something funny funny [*sic*]";

(e) Insisting that she was 34 years' old and failing to remember her own date of birth or where she was born;

(f) Failing to remember Karen's name until prompted; and

(g) Failing to remember the names of *all* her grandchildren, including that of David, who was living with her at that time.

61 The defendant himself admitted to Karen at the meeting on 8 December 2017 that Mdm Liew remembered her own name only "most of the time".[102] Mdm Liew also appeared tired and confused, and repeatedly provided nonsensical answers. She claimed, for instance, that the year was "six six" when it was 2017.[103] When asked several times whether she wanted to sell the Namly property, however, Mdm Liew repeatedly denied ever wanting to sell the property.[104]

62 Karen had brought a bank officer from HSBC Bank ("HSBC") to the meeting. This was because Mdm Liew needed to sign some documents. The officer from HSBC, Wong Tsi Yin, was a subpoenaed witness at the trial. Ms

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102 Exhibit GYYK-2 at file titled "081217 Audio 1 h 12 min"; GYYK at p 1582.

103 GYYK at pp 1446 to 1447.

104 GYYK at pp 1577 to 1580.

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Wong testified that she spoke briefly with Mdm Liew to ascertain whether she was able to understand the nature of the documents she had to sign. She asked Mdm Liew some questions about her accounts, but there was no response from Mdm Liew at all. Ms Wong felt uncomfortable with proceeding further, and so left the meeting with her documents unsigned.[105] Her evidence at trial was that she was unsure that Mdm Liew was able to understand what documents she had to sign and why she had to sign them. Ms Wong therefore thought it would be prudent to try again on another day.

63 On or about 13 December 2017, Karen learnt that a purchaser's caveat had been lodged against the Namly property.[106] On the same day, Karen was able to speak to Mdm Liew, though there was heavy interference from the defendant and his family during the call. I have listened to the recording of the call, and note that several of Mdm Liew's replies were incoherent. She once again could not remember the names of Karen's children. When Karen tried to obtain details of Mdm Liew's whereabouts by asking where she was, the call was abruptly cut off. Karen tried to call back, but was unsuccessful.

64 Shortly thereafter on the same day, the defendant called back and insisted that Karen only ask "non-location-based questions". The defendant also demanded, "Stop ah, stop, stop it", and told Karen, "Don't try to be funny ah, don't try to be a bloody monkey".[107] After these outbursts, Karen was able to speak to Mdm Liew again. However, Mdm Liew appeared to have difficulty understanding the conversation. When Karen asked her what the capital of

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105 Transcript of 12 February 2020, Page 37, Lines 1 to 13.

106 GYYK from [293] to [294].

107 GYYK from [487] to [488].

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Thailand was, she replied "Yep … thank God" instead. Mdm Liew also suddenly declared "Happy birthday, Zephan" during the call, echoing her statements at the meeting on 8 December 2017 (see [60(a)] above).[108] Quite simply, Mdm Liew could not speak coherently or sensibly during these calls with Karen.

65 As already mentioned, the defendant admitted Mdm Liew to MEH in December 2017. There were two other admissions in December 2017 and January 2018, for the reasons outlined above at [20]. Karen and Dr Hwang were not told where Mdm Liew was from December 2017 onwards. I find it particularly disturbing that the defendant's entire family was complicit in refusing to disclose Mdm Liew's location, even when they were asked over phone calls and in person at the meeting at Toast Box on 8 December 2017.[109] This went on until 27 February 2018, when the defendant's solicitors were asked by the Court point-blank during the hearing of Karen's application for an injunction to stop the sale of the Namly property. Karen and Dr Hwang were finally able to visit Mdm Liew in the hospital on 28 February 2018.

66 In my judgment, the evidence quite clearly showed that Mdm Liew's personality and behaviour had changed drastically from the first half of 2017 to her state in December 2017. I am unable to accept the defendant's evidence that she was behaving quite normally, save that she was suffering from some short-term memory loss. The defendant pointed to the fact that Mdm Liew was

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108 GYYK at [489].

109 Exhibit GYYK-2 at, *inter alia*, files titled "041217 Audio 4 min 47 s" (GYYK at pp 1424 to 1428), "041217 Audio 6 min 8 s" (GYYK at pp 1429 to 1441), "081217 Audio 1 h 12 min" (GYYK at pp 1527 to 1597), and "131217 Audio 9 min" (GYYK at pp 1598 to 1609).

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able to add his son Daniel as a joint-account holder to her bank account, and to Mdm Liew's interaction with Mr Teo, the solicitor who prepared the POAs, to argue that Mdm Liew was behaving normally.[110] I will address Mr Teo's evidence subsequently, but it is clear to my mind, and in particular from the video and audio recordings of Karen's calls with Mdm Liew and the meeting at Toast Box Sentosa on 8 December 2017, that Mdm Liew was, to put it mildly, not quite herself.

67 As for Daniel's evidence that he had accompanied Mdm Liew to the POSB branch located at Ngee Ann City on 11 November 2017, and that she had added him as a joint-account holder, I do not find that his evidence by itself indicates that Mdm Liew was functioning normally.[111] Daniel's evidence as to what happened at the bank was far from clear. He was tentative and hesitant in explaining what transpired between Mdm Liew and the bank officer when they were at the bank. I also have reservations more generally about the credibility of his evidence as explained later in this judgment (see [144] below).

68 I move now to consider the medical opinions as to the cause of Mdm Liew's deterioration, and whether she had the mental capacity to execute the POAs.

The medical evidence

69 For her three admissions to MEH from December 2017 to February 2018, the doctor in charge of care was Dr Chan Tiong Beng. His specialty is in respiratory medicine, with a subspecialty in intensive care medicine. His notes

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110 DCS from [89] to [99].

111 Transcript of 10 February 2020, Page 11, Lines 21 to 23.

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record that he had not examined Mdm Liew for her mental competence, and he cannot be faulted for this because the defendant did not inform him of any history of mental decline.[112] In any event, the defendant's case is that Mdm Liew's mind was functioning quite normally, as far as he was concerned. Dr Chan Tiong Beng was not called by either side to give evidence at the trial.

70 After she was discharged from MEH, Karen arranged for Mdm Liew to be transferred to the care of Dr Mark Chan at TTSH. Mdm Liew was admitted to TTSH on 20 April 2018. The history of her mental decline was provided by Dr Hwang and Karen. Dr Mark Chan administered Abbreviated Mental State tests and Chinese Modified MMSE tests on Mdm Liew several times over the period from April to June 2018. His clinical diagnosis was that Mdm Liew was suffering from moderate-severe Alzheimer's Dementia in April 2018.[113] The CT scans and imaging he carried out ruled out the possibility of other causes of cognitive impairment such as vascular dementia or Parkinson's disease.[114]

71 Dr Mark Chan's clinical assessment of Mdm Liew's mental condition as of April 2018 is not seriously challenged in these proceedings. The real dispute between the parties is as to what was likely to have been Mdm Liew's mental condition on 20 November 2017, when she executed the POAs.

72 Dr Mark Chan's view in his second medical report is that, given Mdm Liew's moderate to advanced stage of dementia as at April 2018, and the history

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112 Dr Chan Tiong Beng's medical report dated 7 September 2018, at GYYK at p 356.

113 Dr Mark Chan's medical report dated 18 September 2018, at MCPC at pp 15 to 17 (Exhibit MC-2).

114 Transcript of 14 February 2020, Page 60, Line 20 to Page 63, Line 14; Page 66, Line 24 to Page 67, Line 13; Page 80, Line 14 to Page 82, Line 21.

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that he had been given that she was fine in the earlier part of 2017, it is likely that Mdm Liew suffered from moderate dementia in the second half of 2017 and it is "highly improbable" that [Mdm Liew] was not suffering from Alzheimer's Disease in November 2017.[115]

73 Mdm Liew was discharged from TTSH on 1 October 2018 and was moved to live at and be cared for in Soo's Nursing Home.[116] She required round-the-clock assistance and care. Dr Mark Chan examined her again in May 2019 and was of the view that she was in an advanced stage of dementia by that time.[117]

74 Karen called Dr Ang Yong Guan ("Dr Ang"), a psychiatrist, as an expert. Dr Ang examined Mdm Liew on several occasions.[118] He first examined her in February 2018, and again on 20 April 2018. Both these examinations took place at MEH. Subsequently, on 31 May 2019, Dr Ang examined Mdm Liew again, this time at his clinic.

75 Dr Ang's assessment is that Mdm Liew was likely to have been suffering from dementia from the middle of 2017. As to when Mdm Liew started suffering from dementia, his assessment in his later reports is that she probably started suffering from it even before mid-2017.[119] Dr Ang believes that Mdm Liew's state of dementia in the period of November 2017 was likely to be

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115 MCPC at p 26.

116 GYYK at [657].

117 MCPC at p 25 (Exhibit MC-3).

118 AEIC of Ang Yong Guan dated 3 October 2019 ("AYG") at Exhibits AYG-4, AYG-5, and AYG-6.

119 AYG at pp 133 to 152 (Exhibit AYG-5) and pp 189 to 212 (Exhibit AYG-6).

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moderate dementia. The clinic criteria for the diagnosis of dementia in the Diagnostic and Statistical Manual of Mental Disorders (Fourth Edition) published by the American Psychiatric Association ("DSM-IV") cited to me included a finding of a combination of amnesia (referring to forgetfulness) and at least one of three other factors: aphasia (word-finding difficulty and/or difficulty communicating), apraxia (difficulty with simple functioning like buttoning, dressing, or using utensils at mealtime), and agnosia (difficulty recognising familiar faces or items).[120] Dr Ang expressed the view that, by December 2017, Mdm Liew had deficits in *all* of the abovementioned DSM-IV cognitive domains.

76 When questioned as to whether Mdm Liew might have lucid intervals even if she was suffering from dementia, such that she could have had a lucid interval on 20 November 2017 and been able to understand and execute the POAs, Dr Ang gave a clear explanation about this phenomenon of lucid intervals.[121] His explanation is that, during a lucid interval, the patient may appear to be alert and attentive, but it does not follow that the patient is able to carry out higher-order executive functions, meaning that the patient may not be able to plan, prioritise, organise, and understand the consequence of her actions. In his view, even if Mdm Liew was having a lucid interval on 20 November 2017, and appeared alert and attentive to those she interacted with, such as Mr Teo, it is not likely that she was able to understand the nature and effect of the POAs.[122]

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120 AYG at, *inter alia*, p 117.

121 Transcript of 18 February 2020, Page 31, Line 16 to Page 32, Line 24.

122 Transcript of 18 February 2020, Page 33, Line 1 to Page 34, Line 14. See also exhibit P15.

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77 The defendant called Dr Rajakarier Nagulendran ("Dr Nagulendran"), a psychiatrist, as his expert witness. He only examined Mdm Liew on 24 April 2019, by which time, she was in an advanced stage of dementia.[123] He does not dispute Dr Mark Chan's clinical diagnosis that Mdm Liew was suffering from moderate to severe dementia caused by Alzheimer's Disease as at April 2018. But, Dr Nagulendran's view is that Mdm Liew was not suffering from early dementia in September 2017, nor was she suffering from dementia even in November 2017.[124] Even if Mdm Liew was suffering from dementia in November 2017, Dr Nagulendran expressed the view that she may have had a lucid interval during the 20 November 2017 meeting where the POAs were signed. He explained that this was based on the information and facts that he had been given. The difficulty with this is that the history of Mdm Liew he had been given was provided by the defendant. Dr Nagulendran therefore was not provided and did not consider several incidents showing Mdm Liew's mental deterioration starting from July 2017, such as her inability to explain her financial transactions. Significantly, he did not have the benefit of the transcript of the video and audio recordings of the meeting at Toast Box on 8 December 2017, and the incoherent and nonsensical answers given by Mdm Liew when asked questions by her family members.[125] He was not given these transcripts by the defendant. Dr Nagulendran only watched the video, and admitted during cross-examination that he could not hear several of Mdm Liew's answers to questions in the video.[126] He only noted that she was smiling and appeared to be answering questions.

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123 AEIC of Rajakarier Nagulendran dated 3 October 2019 ("RN") at p 28.

124 Exhibit RN-1.

125 Transcript of 26 February 2020, Page 38, Line 1.

126 Transcript of 26 February 2020, Page 38, Line 20 to Page 39, Line 2.

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78 In my judgment, I found Dr Nagulendran's evidence to be of very limited assistance given that he had not examined the overwhelming majority of Mdm Liew's interactions involving Dr Hwang, Karen, and Stella, and had relied mostly on the history of the patient provided to him by the defendant. Dr Nagulendran also unhelpfully expressed the view that Mdm Liew could have executed the POAs during a lucid phase, without much elaboration in his report as to whether that would mean that she was likely to be able to understand the nature and effects of the POAs.[127] As already explained at [76] above, Dr Ang had clarified in his evidence that lucid intervals, for a dementia patient, do not indicate that the patient is capable of higher-order executive functions.

79 Dr Nagulendran also expressed the opinion that Mdm Liew's illness and hospitalisation from December 2017 to February 2018 could have brought about the "onset of dementia".[128] I found this view to be unsupported by the literature and medical texts that were put in evidence by the parties. Dr Mark Chan also disagreed with Dr Nagulendran's view in this regard. Dr Mark Chan expressed the view that:[129]

> We do know that physical illnesses can worsen a person's cognitive abilities, and that is the development of delirium on top of the patient's basic cognitive function, which is, I think, what Dr Nagu[lendran] is actually suggesting here [at [14] of Dr Nagulendran's medical report]. But rather than the onset of dementia, I think that it is more likely that her physical illness would have contributed to the decline in her mental abilities, *but her mental [dis]abilities actually would have onset even before January 2018*.
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> […]

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127 Exhibit RN-1 at [34].

128 RN at p 14, [30].

129 Transcript of 14 February 2020, Page 23, Line 24 to Page 24, Line 24.

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> So it's always [a] worry for us, no matter how good the patient's previous performance is, if someone comes in with a very, very obtunded [state] because of physical illness, we worry about their previous cognitive status.
>
> […]
>
> If they come in very obtunded or very confused, then we worry that *even prior to the illness itself, the patient may already have a cognitive ability that is impaired, just based on the statistics alone*.
>
> [Emphasis added]

80 Dr Ang agreed with Dr Mark Chan's view, and explained in his evidence that Mdm Liew's illness and hospitalisations cannot contribute to the "onset of dementia", although they can worsen the symptoms of dementia by causing the patients to suffer from delirium.[130] This view is buttressed by an article cited in Dr Ang's evidence. In "*Prevalence, presentation and prognosis of delirium in older people in the population, at home and in long term care: a review*" by de Lange, Verhaak, and van der Meer, the authors refer to a study by Fick *et al* in 2005 which describes a group of patients with delirium superimposed on dementia. In 33% of those cases, delirium was diagnosed first and dementia later, while the other 66% had dementia diagnosed first, and delirium only later.[131] When Dr Nagulendran's attention was drawn to this, he conceded that in more cases than not, one gets diagnosed for dementia first and then *subsequently* develop delirium.[132] Delirium is thus far more likely to *post-date* the onset of dementia, and in any event does not appear to in and of itself cause the onset of dementia.

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130 Transcript of 14 February 2020, Page 23, Line 19 to Page 27, Line 18.

131 AYG at pp 274 to 281.

132 Transcript of 26 February 2020, Page 91, Lines 18 to 25.

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81 Finally, I come to the evidence of Dr Ho, who was a subpoenaed witness. He had examined Mdm Liew on 9 September 2017 when she was brought to see him by Karen. Mdm Liew had told Dr Ho that there was nothing wrong with her, except for pain in her knees.[133] Dr Ho explained in his evidence that it is not uncommon for dementia patients to deny that there was anything wrong with them.[134] From his examination of Mdm Liew, he found that she was able to walk normally and give her age accurately. Based on what Mdm Liew told him, Dr Ho noted that she was able to carry out her activities of daily living with minimal supervision.[135]

82 Dr Ho also took a history of Mdm Liew's changes of behaviour from Karen. He administered an MMSE on Mdm Liew, and she scored a 26/30. His evidence is that this was "borderline abnormal", and may indicate that Mdm Liew was suffering from dementia at that time.[136] In his view, a score of 25 to 27 would show there is some abnormality, but it would be a borderline case. As the MMSE is simply a screening tool for dementia, Dr Ho was not able to rule out the possibility that Mdm Liew was suffering from dementia from her MMSE test score without carrying out any structural tests such as imaging of her brain, or carrying out a neuropsychological assessment.

83 While Dr Ho recorded in his notes of examination on 9 September 2017 that Mdm Liew had "no neurological deficits", he explained in his oral evidence that this meant that he had tested her upper and lower limbs for power and

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133 Transcript of 24 February 2020, Page 7, Lines 20 to 23.

134 Transcript of 24 February 2020, Page 7, Line 24 to Page 8, Line 8.

135 1 AB at p 129.

136 Transcript of 24 February 2020, Page 21, Line 16 to Page 22, Line 10.

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coordination, which is an indicator of whether she might have been suffering from Parkinson's disease, and found that there were no problems.[137] He explained that this was a test of Mdm Liew's physical ability and coordination, just like when he tested her "gait" and found that she was able to walk without difficulty. The reference to there being no "neurological deficits" did not entail a test of her mental faculties or her higher-order executive functions.

84 At the consultation on 9 September 2017, Dr Ho did not prescribe any medication or follow-up action to be taken. This is not surprising as dementia is a progressive, incurable disease, and there is no treatment for it. He did speak to Karen about how to manage Mdm Liew's affairs. While he does not recall this specifically, Karen's evidence is that Dr Ho had recommended that she try to increase the amount of Mdm Liew's social interactions.[138]

85 Dr Ho's evidence in Court was that in retrospect, after studying Dr Ang's report and reviewing his own findings, it is likely that Mdm Liew was suffering from dementia at the time of his examination of her in early September 2017. His view is that Mdm Liew was probably suffering from early-stage dementia by then.[139]

86 From my analysis of the medical evidence, it is clear to me that Mdm Liew was suffering from dementia from around mid-2017, and possibly even earlier. As all the experts agree, dementia is a relentlessly progressive disease that marches from mild dementia, through to moderate, then to severe dementia. While it is difficult to ascertain the stage of dementia that Mdm Liew suffered

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137 Transcript of 24 February 2020, Page 35, Line 11 to Page 36, Line 23.

138 GYYK at [356].

139 Transcript of 24 February 2020, Page 33, Lines 5 to 10.

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from on 20 November 2017, given that Mdm Liew was suffering from moderate to severe dementia in April 2018, and the opinion expressed by Dr Ho that she was already suffering from mild dementia in September 2017, it is likely that Mdm Liew was probably suffering from mild to moderate dementia on 20 November 2017. I do not accept the defendant's case that Mdm Liew's dementia was brought on by the hospitalisations from December 2017 to February 2018, as there is no credible medical opinion that supports such a postulation. Dr Nagulendran's suggestion to that effect is speculative and not borne out by any assessment he personally conducted on Mdm Liew. Further, it is not corroborated by any of the medical texts placed before me.

87 My findings as to the clinical component of Mdm Liew's mental state on 20 November 2017 are not determinative of the issue of whether she had mental capacity as a matter of law. An assessment of the functional component is also necessary. In other words, the issue is whether, from the evidence of her conduct leading to and surrounding the execution of the POAs, it is likely that she was able to understand the nature and effects of the POAs and thus able to make a decision for herself in relation to the execution of the POAs. I turn now to my analysis of that evidence.

The execution of the POAs

88 It is clear that Mdm Liew was suffering from cognitive decline from mid-2017. There is a clear disjoint between her active lifestyle with weekly church attendance and mahjong sessions with her friends on the one hand, and being unable to remember the names of her children and grandchildren and giving nonsensical answers to questions on the other (see [60] to [63] above).

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89 I do not accept the evidence of the defendant and his wife that there was nothing wrong with Mdm Liew. On balance, I prefer the evidence of Karen, Dr Hwang and Mr Hwang as to their interactions with Mdm Liew, which showed that she was often confused and forgetful. Their evidence is more credible because there were contemporaneous notes taken as to the condition of Mdm Liew in the form of notes and emails which Karen had sent to herself, and for which the date and time stamps are clear. I also note the clear and objective evidence from the various videos and recordings of, in particular, the 8 December 2017 meeting. I should add that the videos and recordings of Mdm Liew before the second half of 2017 provided a sharp contrast with those taken after that, particularly, those in November and December 2017.[140] The videos tendered are illuminating in that they evidence a clear decline in her mental faculties. I include in this the few short videos of Mdm Liew that were recorded by the defendant's family in the month of December 2017.[141] It is apparent from these short clips that Mdm Liew was simply repeating certain answers to simple questions, which she had done in other recordings as well.[142] When Mdm Liew managed to repeat the desired answers, the questions and answers were video recorded as evidence. These were ill-conceived attempts to demonstrate her apparent mental competency.

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140 Exhibit GYYK-2 at, *inter alia*, files titled "200116 Audio 3 min 48 s" (GYYK at pp 1406 to 1410), "090514 Video 3 min 15 s" (GYYK at pp 1394 to 1396), "090514 Video 3 min 19 s" (GYYK at pp 1397 to 1399), *cf* "081217 Video 28 min 16 s" (GYYK at pp 1483 to 1526), and "221117 Video 1 min 13 sec" (GYYK at pp 1422 to 1423).

141 Exhibit GYCK-13, at files titled "20171223_195222" (GYYK at pp 1619 to 1621), "IMG_5277" (GYYK at pp 1622 to 1624), "20171231_114506" (GYYK at pp 1625 to 1627), and "20171231_114821" (GYYK at pp 1616 to 1618).

142 Exhibit GYYK-2 at file titled "131217 Audio 9 min" (GYYK at pp 1598 to 1609).

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90 Also significant was the evidence of Stella, Mdm Liew's good friend, which was of assistance to me in determining that Mdm Liew's mental state had progressively declined from the middle of 2017 to early December 2017, which was when Stella last saw her that year. Contrary to the defendant's arguments, I am not satisfied that Stella was biased against him simply because he had declined to give her certain prescription medicines for her coughing.[143] Stella's evidence was corroborated by the recordings of the various phone calls she had with Karen, and was firm and unshaken in relation to Mdm Liew's condition. As a longstanding friend of Mdm Liew, it is clear from what she told Karen at the material time about Mdm Liew's health that her actions were borne out of real concern that Mdm Liew was becoming mentally impaired. I do not accept that Stella would have concocted evidence simply to vindicate what appeared to me as at most a petty slight that even she did not appear to have placed much weight on.[144]

91 Turning to the preparation and execution of the POAs, the surrounding circumstances suggest to me that Mdm Liew was not able to understand what she was signing. There was no satisfactory explanation by the defendant as to why, if Mdm Liew was perfectly fine, she could not have given instructions to Mr Teo directly for the sale of the Namly property, instead of appointing the defendant as her attorney to carry this out. After all, it is obvious to me that the defendant and the developer must already have had talks as to the sale of the property. The dates are telling in this regard – the POAs were executed on 20 November 2017, and the option to purchase was granted by the defendant merely two days later, on 22 November. In other words, I am not able to

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143 DCS at [134].

144 Transcript of 7 February 2020, Page 129, Lines 4 to 12.

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understand why, if Mdm Liew's mental faculties were intact, she could not have either given instructions directly to Mr Teo, or met with the potential purchaser and then granted the option to purchase by signing it herself.

92 Further, even if one were to ignore why Mdm Liew could not have given instructions for the sale of the property directly, it puzzles me why Mdm Liew could not have given instructions to Mr Teo directly for *even the preparation of the POAs*. After all, the defendant did explain that he chose Mr Teo because he makes "house visits" to see his clients.[145] It would have therefore been entirely open to Mr Teo to have spoken to his client, Mdm Liew, directly and without the defendant as an intermediary. I note that Mr Teo only had the defendant's contact details, and had no way of independently contacting Mdm Liew.[146] If, as the defendant contended, Mdm Liew did in fact have mental capacity to sign the POAs, it strikes me as profoundly odd that there was such limited contact between her and Mr Teo for arrangements that she allegedly wished to make.

93 Mdm Liew's conduct during the short meeting with Mr Teo for the execution of the POAs also calls into question her state of mind. According to the evidence of both Mr Teo and the defendant, Mdm Liew did not ask any questions of Mr Teo at all during the meeting.[147] She just smiled and nodded as Mr Teo was speaking.[148] I find this to be surprising because the details of the two POAs certainly called for some questions for Mr Teo to answer. I will deal

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145 Transcript of 20 February 2020, Page 108, Lines 3 to 6.

146 Transcript of 20 February 2020, Page 108, Lines 15 to 19.

147 Transcript of 20 February 2020, Page 150, Lines 3 to 11.

148 Transcript of 20 February 2020, Page 150, Line 21 to Page 151, Line 7.

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with this issue more fully later in my judgment (see [135] to [142] below), but for now, I will just refer to three unusual features.

94 First, *both* POAs are stated as being "irrevocable" unless the donor (Mdm Liew) has "written approval from GOH YONG CHIANG KELVIN or the Family Court". It struck me as very odd that Mdm Liew would have had to seek the written consent of the defendant in order to revoke the POAs. Under this arrangement, even if Mdm Liew changed her mind about selling the Namly property, it was really up to the defendant to decide whether he still wanted to go ahead to sell the property. The only alternative envisaged is for Mdm Liew to seek an order from the Family Court to revoke the POAs.

95 Second, the POA for the sale of the Namly property (the "sale POA") authorises the sale proceeds to be paid to Daniel, the older of the defendant's two sons. This is again surprising given that the defendant's case is that the instructions of Mdm Liew to him were that he use the sale proceeds of the Namly property to acquire a condominium unit. Not only that, all the sale POA provides is that the defendant is "[t]o *request* for all sale proceeds … issued to GOH ENG SHENG DANIEL … to be held on trust for [Mdm Liew] for purchase of a private single storey condominium" (emphasis added).[149]

96 Third, the POA for the purchase of the condominium unit (the "purchase POA") provides that the condominium unit to be purchased is to be in the joint names of Mdm Liew and Daniel. It does not stipulate that the stated joint owners, Mdm Liew and Daniel, will own shares in the condominium unit in accordance with their respective contributions. Thus, on its face, the purchase

149 GYCK at p 117, [9].

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POA appears to manifest an intention to gift the condominium to Daniel on Mdm Liew's passing, given that they are stated to be joint owners without any specified shares. The purchase POA also allows the defendant to add himself as a joint owner of the condominium unit together with Mdm Liew and Daniel.

97 With these unusual features, I am very surprised that Mdm Liew did not ask Mr Teo any questions at all about the POAs, if she was indeed fully aware of and understood the nature and effect of their terms. After all, Mdm Liew was known to be an intelligent woman who was able to take care of her finances. She had worked as an accounts officer for several years, and had even been known to discuss various investments with, *inter alia*, Stella and Liew Min Chee, her nephew.[150] There is nothing in the evidence that suggests to me that she ever intended to make a gift of the Namly property or the sale proceeds to one of the defendant's sons. Unfortunately, Mr Teo did not check to verify if she did.

98 Further, as I have already recounted at [52] to [55] above, two days after the execution of the POAs, on 22 November 2017, Mdm Liew was visited separately by both Dr Hwang and, later in the day, Mr Hwang. Both had called on her to check up on her state of health. Mdm Liew made no mention to Dr Hwang, or during the WhatsApp video call with Karen made during that visit, that she had decided to sell the Namly property. When Mr Hwang visited in the afternoon later that day, he had specifically asked Mdm Liew whether she intended to sell the Namly property, and she had clearly stated "no". There does not appear to be any credible reason for Mdm Liew's silence and/or denial about her decision to sell the Namly property, other than her not understanding the

150 LMC at [9]; OSTS at [9].

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import of what she had signed two days earlier, or not even being able to recall the POAs at all.

99 In this regard, I am unable to accept the reason given by the defendant, that Mdm Liew decided to keep the sale of the property a secret because she did not want Karen to kick up a fuss and get upset.[151] This evidence is completely inconsistent with the clear evidence which demonstrates that Karen and Mdm Liew enjoyed a very close relationship. For instance, not only did Mdm Liew appoint Karen as the sole donee under her LPA and as the executrix of her final will, she entrusted Karen with the original certificate of title for the Namly property and to manage joint bank accounts they shared. Mdm Liew also regularly spoke to Karen even while Karen was living overseas in Melbourne, and there was ample evidence in the form of various photographs of outings illustrating that the mother and daughter were close. The evidence in the form of the video and audio recordings of the meeting on 8 December 2017 is itself sufficient to show that mother and daughter enjoyed a very close bond. In fact, when asked at that meeting whether she intended to sell the Namly property, Mdm Liew flatly denied it. I set out the relevant portions of the 8 December 2017 recording transcript below:[152]

> Karen: Do you ever want to sell your house?
>
> Mdm Liew: Please … No … Please … No … Please … No.
>
> Karen: Never to sell your house?
>
> Mdm Liew: Never.
>
> […]
>
> Karen: Do you want to sell your house?

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151 GYCK from [171] to [175].

152 GYYK from pp 1563 to 1591.

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> Mdm Liew: No, no, no, no, no, no, no, no.
>
> Karen: Mom, do you ever want to sell your house?
>
> Mdm Liew: No, no, no, no, no, no, no, no.
>
> Karen: Never?
>
> Mdm Liew: Never, never, never ..
>
> […]
>
> Karen: Do you ever want to sell the house?
>
> Mdm Liew: Never, never, never, never.
>
> Karen: Your 107 Namly Avenue is yours right?
>
> Mdm Liew: Yes.
>
> Karen: Do you ever want to sell it?
>
> Mdm Liew: No.
>
> […]
>
> Karen: Ok, I will do that. I will come back to the Namly house and live with you and look after you, forever and ever.
>
> Mdm Liew: Fantastic, fantastic.
>
> Karen: Do you want me to do that?
>
> Mdm Liew: Yes.

100 As I have already said, I find it difficult to accept the defendant's submission that his mother was lying to Karen about the Namly property so as not to hurt her feelings. This submission suggests that Mdm Liew had planned to secretly sell the Namly property and move in with the defendant's family at a new home, all without informing her daughter and leaving it to her to find out on her own. In fact, it is tantamount to alleging that Mdm Liew was actively misleading Karen when she told Karen that she wanted to move in with her family to stay at the Namly property at the 8 December 2017 meeting. All this is not only far-fetched, it is simply inconsistent with the evidence of how Mdm Liew and Karen's family shared a close relationship over the years. The clearly more logical explanation is that Mdm Liew either had no recollection of what

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she had signed 18 days earlier, or did not understand the nature and effect of the POAs.

101 In my judgment, a proper analysis of the evidence leads to the ineluctable conclusion that Mdm Liew's dementia was of such a degree that she was not able to understand the nature and effect of the POAs she executed on 20 November 2017, and thus unable to make a decision for herself in relation to the execution of the POAs. In short, I find that Mdm Liew lacked mental capacity when she executed the two POAs. As a matter of law, given my findings on both the clinical and functional components of the test outlined in *Re BKR* ([32] *supra*), it follows that the POAs in question are void.

Did the defendant exercise undue influence over Mdm Liew?

The applicable principles on undue influence

102 I turn to consider, assuming *arguendo* that Mdm Liew had mental capacity to grant the POAs, whether they were procured by undue influence.

103 The categorisation of classes of undue influence is fairly well-established. Three main categories of undue influence have been identified in Singapore law, and the analytical framework for undue influence has been clearly set out by a five-judge *coram* of the Court of Appeal in *BOM v BOK and another appeal* [2019] 1 SLR 349 ("*BOM*") at [101]. In understanding the distinction between the categories of undue influence, *BOM* at [101] is extremely helpful and is partially reproduced (*sans* references) below:

> (a) "Class 1" undue influence is also known as actual undue influence. Here, the plaintiff has to demonstrate that he entered into the impugned transaction because of the undue influence exerted upon him by the defendant. To do this, the plaintiff has to demonstrate that (i) the defendant had the capacity to

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> influence him; (ii) the influence was exercised; (iii) its exercise was undue; and (iv) its exercise brought about the transaction.
>
> (b) "Class 2" undue influence is also known as presumed undue influence. Under this class of undue influence, the plaintiff is not required to prove actual undue influence. It suffices for the plaintiff to demonstrate (i) that there was a relationship of trust and confidence between him and the defendant; (ii) that the relationship was such that it could be presumed that the defendant abused the plaintiff's trust and confidence in influencing the plaintiff to enter into the impugned transaction; and (iii) that the transaction was one that calls for an explanation. This class of undue influence is further divided into "Class 2A" and "Class 2B" undue influence, as follows:
>
> > (i) Under "Class 2A" undue influence, there are relationships that the law *irrebuttably* presumes to give rise to a relationship of trust and confidence. Such relationships include solicitor-client relationships, but exclude husband-wife relationships. Once the plaintiff shows that his relationship with the wrongdoer triggers the presumption and that the impugned transaction calls for an explanation, there is a *rebuttable* presumption that the wrongdoer has exerted undue influence.
> >
> > (ii) Under "Class 2B" undue influence, the plaintiff must prove that there is a relationship of trust and confidence. If it is shown that there was such a relationship and that the transaction calls for an explanation, then there is a *rebuttable* presumption of undue influence.
>
> [Emphasis original]

104 The Court of Appeal also made clear in *Re BKR* that where there was an interaction between mental impairment and allegations of undue influence in proceedings under the MCA in which a person's mental capacity was in issue, the court had to have regard to the actual circumstances in which that person lived, and ought not to adopt a theoretical analysis that overlooked those circumstances. Put another way, the required causative nexus between any impairment of mind and a person's inability to make decisions would be established even where the person's inability to make decisions was caused by

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both her mental impairment and actual circumstances: *Re BKR* from [117] to [120]. The Court of Appeal in *Re BKR* went on to elaborate at [127] as follows:

> … If P is unable to retain, understand or use information relevant to a decision because of a combination of mental impairment and the circumstances he finds himself in, the statutory test for incapacity will be met, and it is no answer then to say that P's mental impairment would not necessarily rob him of decision-making ability in a different set of circumstances.

It is therefore clear that questions of mental impairment and considerations of undue influence should be considered holistically, and that it is relevant to consider if there is interaction between a party's mental impairment and the exertion of undue influence on her by other parties.

105 I will consider "Class 2B" undue influence first, before I consider "Class 1" undue influence. If the plaintiff is successful in establishing a presumption of undue influence which is unrebutted, there will be no need for me to consider whether actual undue influence arises on the facts.

Was the relationship between the defendant and Mdm Liew one of trust and confidence?

106 I accept the evidence from Karen and the plaintiff's other witnesses that Mdm Liew did not want to live alone. This has not really been challenged by the defendant. In any event, the undisputed facts are that, since her husband's passing, Mdm Liew was living either with Karen's or the defendant's family at all times. She initially shuttled between the two homes. Then, when the Namly property became available for occupation because the tenant had moved out in 2003, Mdm Liew moved to live there with Karen and her family.[153] She then

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153 GYYK at [37].

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moved with Karen and her family to Melbourne in January 2007.[154] When she returned to Singapore in mid-2009, Mdm Liew asked the defendant and his family to move in with her to live together at the Namly property.[155]

107 Karen's evidence of Mdm Liew's relationship with the defendant while Mdm Liew was living in the Namly property from mid-2009 onwards is that the defendant and his family largely ignored Mdm Liew and left her alone most of the time.[156] Admittedly, the defendant was running a busy medical practice with the help of his wife, but Karen's evidence is that Mdm Liew was often left to eat alone and watch television in her room by herself. The defendant did not provide much evidence in his joint affidavit with his wife as to his relationship with Mdm Liew while they lived together in the Namly property from mid-2009. Regardless, it appears to me from the evidence that the defendant must have given Mdm Liew the impression that he was making a big sacrifice by moving in with his family to live with her at the Namly property. This in turn created an unequal relationship where Mdm Liew felt that she owed the defendant something. I infer this from the following pieces of evidence.

108 First, both the defendant and his wife, Jacqueline, gave evidence that Mdm Liew had given the defendant the sum of S$1,000,000 via a deed of arrangement dated 15 July 2009, ostensibly as a "gift" for helping to take care of her.[157] Granted, the deed of arrangement stipulated that Jacqueline was to return this sum to Mdm Liew in the event that the defendant should pre-decease

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154 GYYK at [41].

155 GYYK at [46].

156 GYYK at [57].

157 GYCK from [158] to [162].

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Mdm Liew, but the payment of such a substantial sum to her own son for his living with her and taking care of her does not appear to have been fully explained on the evidence before me. Whatever the ultimate reason for such a "gift", Mdm Liew appears to have felt indebted in some way to the defendant.

109 Second, despite the defendant and his family living at the Namly property, together with a foreign domestic worker, all the utilities, repair costs (including for maintenance of the remote-controlled gate, air-conditioners, and even a collapse in the roof), and other home expenses for the Namly property were paid for by Mdm Liew.[158] This was pursuant to a tenancy agreement which the defendant had entered into with Mdm Liew, his mother. This tenancy agreement provided, *inter alia*, that Mdm Liew was to pay for "all water, electricity, starhub [*sic*] and other related charges" for the property, and that the agreement was to remain "in full effect and binding even upon the death of [the] parties".[159] The rent stated to be payable by the defendant to Mdm Liew was the sum of S$1,000 per month. The defendant claims that the tenancy agreement was entered into "to make it clear that [the defendant] [was] not trying to take over [Mdm Liew's] ownership of the house".[160] Be that as it may, I find it odd that Mdm Liew was willing to enter into the tenancy agreement. She had never entered into any such tenancy agreements during other periods of time when she was living with her children, and I find the fact that Mdm Liew agreed to enter into this tenancy agreement, with obligations surviving *even after her passing*, to be somewhat unusual. Mdm Liew also appears to not even

158 GYCK from [136] to [137]. See also GYYK from [147] to [152].

159 GYCK at p 208 (Exhibit GYCK-23).

160 GYCK at [131].

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have retained a copy of the tenancy agreement.[161] In my view, at the very least, the fact that Mdm Liew agreed to enter into this agreement is illustrative of the influence which the defendant was able to exercise over Mdm Liew.

110 Third, Mdm Liew signed a series of notes which the defendant had prepared for her to sign.[162] These notes were for Mdm Liew to acknowledge in writing that she was fine for the defendant to take his family for overseas holidays and leave her alone at the house. According to Karen's testimony, Mdm Liew signed these notes prepared by the defendant reluctantly. She did not want to sign them, but felt that she really had no choice but to do so.[163] This is apparent from four notes which were produced by Karen and signed by Mdm Liew, in which Mdm Liew expressed, *inter alia*, frustration at having been made to sign notes prepared by the defendant.[164] These four notes which Karen produced had been prepared around January 2013,[165] and were kept in a safe deposit box in the branch of HSBC Bank at Claymore Hill on Mdm Liew's instructions.[166] This reinforces Karen's evidence that Mdm Liew did not want to sign the notes prepared for her by the defendant.

111 Tellingly, Mdm Liew entrusted Karen with a copy of the aforementioned deed of arrangement for safekeeping and administration should the defendant pre-decease Mdm Liew.[167] This underscores the trust she reposed in Karen.

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161 PCS at [118].

162 See Exhibit D-10; GYCK at pp 260 to 263.

163 GYYK at [72].

164 See Exhibits P-2 to P-5.

165 Transcript of 11 February 2020, Page 31, Line 25 to Page 32, Line 3.

166 Transcript of 11 February 2020, Page 48, Lines 9 to 15.

167 GYYK at [9].

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112 I also find the evidence regarding the three most recent wills made by Mdm Liew to be quite illuminating. The first of these three wills was dated 3 November 2006. Karen was, as with the deed of arrangement, entrusted with a copy of it.[168] She was also named as the executrix of the will. That will provided that the Namly property was to be wholly bequeathed to Karen, with the rest of Mdm Liew's assets going to the defendant. The second of these three wills was made on 9 July 2007, which was during a visit by Mdm Liew back to Singapore. At that time, she was living with Karen's family in Melbourne, and had returned to Singapore for a visit. While in Singapore at that time, she was staying with the defendant. This second will provided that the *defendant* was to be Mdm Liew's executor, and that her assets were to be divided equally between Karen and the defendant.[169] The defendant's evidence is that Mdm Liew showed him the will after she returned from her lawyer's office, where she had just signed it. But, barely eight days later, on 17 July 2007, Mdm Liew visited her lawyer's office again before returning to Melbourne to make the third of the three most recent wills. She did this on her own, without informing the defendant. The contents of this third will are substantively the same as the will dated 3 November 2006, and reversed the changes made in the second will.

113 The lawyer who prepared these wills, Maria Anne Ng, was a subpoenaed witness at the trial. Ms Ng testified that Mdm Liew had told her that the defendant was paranoid.[170] Mdm Liew had entrusted the original of that third will to Ms Ng for safekeeping, with instructions that it was not to be shown to

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168 GYYK at [9].

169 GYCK at p 81.

170 Page 3 of Bundle of Wills. See also Transcript of 11 February 2020, Page 84, Lines 23 to 25.

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either of her children until she passed away. That will came to light only when it was ordered to be produced in the course of these proceedings.

114 To my mind, Mdm Liew's conduct in relation to the making of the second and third wills shows that she made the second will to mollify the defendant and to convince him that she was going to give him a 50% stake in the Namly property after she passed away. This was obviously just for the sake of appearances, because she quickly reverted to her original intention of giving the Namly property to Karen in her final will just over a week later. I find that Mdm Liew's conduct showed that she was afraid of making the defendant angry, perhaps because she was then living with him during her trip back to Singapore, and he had been exerting pressure on her.

115 From the evidence, it is clear that Mdm Liew also grew more and more reliant on the defendant over time. Sometime in 2014 or 2015, Mdm Liew prepared a handwritten note setting out her instructions for her care if she should fall ill, or if she should pass away.[171] Mdm Liew handed this note to the defendant, and obviously hoped that he would comply with it and respect her wishes. This shows that Mdm Liew knew that she was getting more feeble with age, and that she trusted the defendant to carry out her instructions if she became incapacitated.

116 When we consider Mdm Liew's state of health in the second half of 2017, this degree of reliance becomes even more obvious. Even if I were to assume that the defendant was entirely oblivious to the fact that Mdm Liew was suffering from dementia, the defendant *himself* told Karen and Dr Hwang at the

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171 1 AB at p 609.

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meeting on 8 December 2017 that Mdm Liew had been suffering from short-term memory loss.[172] By then, Mdm Liew was unable to stand or walk by herself, and was confined to a wheelchair.[173] The defendant also told Karen that Mdm Liew needed assistance to finish her food. Critically, he repeatedly told Karen and Dr Hwang that he was her main caregiver, and that he would make the decisions regarding her care.[174] He said that it was his "absolute requirement" that there would be no "private discussions" with Mdm Liew.[175] To this end, he told Karen that she would not be permitted to speak to Mdm Liew alone, and also restricted when and the amount of time Karen would be allowed to speak to Mdm Liew over the phone on, *inter alia*, 13 December 2017. As outlined at [57] above, even Mdm Liew's personal friends – Stella and Janice – were not exempt, and had to make prior appointments with the defendant in order to see Mdm Liew. By September 2017, the defendant also did not permit the domestic helper to accompany Mdm Liew out of the house, which effectively restricted Mdm Liew to the house since she needed assistance to move around.[176] These statements and actions show quite clearly that the defendant knew that Mdm Liew was in a vulnerable position and that he had taken on the responsibility, at that time, to provide for her care.

117 Finally, even on the defendant's case, it was Mdm Liew who instructed him to see lawyers for the preparation of the POAs so that the Namly property could be sold and a condominium unit be purchased. This was even though,

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172 GYYK at p 1545.

173 GYYK at [379].

174 GYYK at [452].

175 Exhibit GYYK-2 at file titled "081217 Audio 20 min 19 s"; GYYK at p 1481.

176 Exhibit GYYK-2 at file titled "040917 Audio 17 min 52 s" (GYYK at pp 1411 to 1421).

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according to the defendant, Mdm Liew was perfectly capable of giving instructions to the lawyers directly. Accepting *arguendo* that Mdm Liew had in fact instructed the defendant thus, this is *itself* indicative that she placed strong reliance on the defendant.

118 In my judgment, the evidence, in its totality, showed that (i) Mdm Liew was afraid of angering the defendant, (ii) she was increasingly reliant on him to care for her, and (iii) by November 2017, she was in such a weakened state physically and mentally that she had no real choice but to trust him to take care of her. Quite clearly, there was a relationship of trust and confidence, and in fact one of reliance, between Mdm Liew and the defendant.

Do the POAs call for an explanation?

119 It is well-established that what amounts to a transaction that calls for an explanation is a "fact-sensitive inquiry" where "much would depend on the strength of inferences to be drawn from the circumstances": *Moh Tai Siang v Moh Tai Tong and another* [2018] SGHC 280 at [80]. I note also the observation in *Royal Bank of Scotland plc v Etridge (No 2)* [2002] 2 AC 773 at [22] citing with approval the view of Lindley LJ in *Allcard v Skinner* (1887) 36 Ch D 145 at 185 that a transaction calls for an explanation where it cannot "be reasonably accounted for on the ground of friendship, relationship, charity or other ordinary motives on which ordinary men act".

120 I have already alluded to the fact that the terms of the POAs were rather unusual, particularly when seen in the context of the transaction which the defendant claims they were supposed to effect. According to him, Mdm Liew's instructions were that the Namly property was to be sold and the sale proceeds used to purchase a condominium unit in her name and that of Daniel. That

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condominium unit was to be jointly owned by Mdm Liew and the defendant in shares according to the proportion of their contributions. That was the defendant's pleaded case.[177] However, the two POAs had several features which did not reflect these purported instructions and were not explicable on the facts of the case.

121 First, it is not clear to me why there was a need for two POAs when, according to the defendant, his instructions from Mdm Liew was to sell the Namly property and use the sale proceeds to acquire a condominium unit for her to stay in. Surely, one POA in favour of the defendant would have sufficed.

122 Second, as outlined at [95] above, the sale POA provides that the sale proceeds are to be paid to Daniel, but there is no provision *requiring* that these moneys are to be held on trust for Mdm Liew. The only semblance of any such provision is at [9] of the sale POA, which provides that the defendant is "[t]o *request* for all sale proceeds … issued to GOH ENG SHENG DANIEL … to be held on trust for [Mdm Liew] for purchase of a private single storey condominium" (emphasis added). However, this stipulation merely requires the defendant to "request" that Daniel hold the proceeds on trust for Mdm Liew. The need for this convoluted arrangement, which requires the defendant to ask Daniel to apply the sale proceeds the latter has received when the defendant exercises the purchase POA to acquire a condominium unit, was not satisfactorily explained from the evidence.

123 Third, the purchase POA gives the attorney, the defendant, the authority to add himself as a joint owner, even if he has not paid any part of the purchase

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177 Bundle of Pleadings at p 152, at [5].

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price. This is expressly provided for at [1] of the purchase POA. This is clearly at odds with what is stated in the defendant's own affidavit of evidence-in-chief, where he claims that the condominium unit was to be jointly owned in shares according to the proportion of the purchasers' contributions.

124 Fourth, assuming the sale proceeds of the Namly property are used for the purchase of the condominium unit, there is no provision in the purchase POA that Mdm Liew and Daniel are to be registered as tenants in common in accordance with their respective shares. Rather, the POA for the purchase simply provides that they are to be joint tenants. Thus, on Mdm Liew's passing, Daniel would become the sole owner of the condominium unit if the defendant elected not to add himself as an owner of the unit. If the defendant elected to add himself as an owner, the condominium unit would be jointly owned by him and his son on Mdm Liew's passing.

125 Fifth, and more importantly, the sale of the Namly property by Mdm Liew runs contrary to the evidence that (i) she intended to live in the house for the rest of her life, and (ii) she wanted to bequeath the Namly property to her daughter, Karen. It will be recalled that Mdm Liew had specifically changed her will dated 9 July 2007 to ensure that it reverted back to the contents of the will dated 3 November 2006, wherein Karen was appointed executor and would be entitled to the Namly property on Mdm Liew's passing. In fact, the state of Mdm Liew's wills dating back to 1999 is instructive:[178]

S/N	Date of Will	Executor/Executrix	Namly property beneficiary
1	16 Aug 1999	Defendant	Karen
2	11 May 2001	Karen	Karen

[178] Exhibit P-12 at pp 6, 11, 16, 21, and 24.

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3	3 Nov 2006	Karen	Karen
4	9 Jul 2007	Defendant	50% Karen, 50% Defendant
5	17 Jul 2007	Karen	Karen

Two points are clear from this table. First, save for the 9 July 2007 will, which appears to have been signed to mollify the defendant, *every* other will from 1999 onwards names Karen as the sole beneficiary of the Namly property. This is deeply illustrative of Mdm Liew's intentions *vis-à-vis* the property. Second, since 2001 and with the exception of the 9 July 2007 will, Mdm Liew had *consistently* decided to appoint Karen as the sole executrix of her will.[179] This shows the close relationship between the two, making the defendant's evidence about Mdm Liew's supposed *insistence* on keeping the sale of the Namly property a secret from Karen particularly unbelievable.

126 Sixth, and as already pointed out, even after Mdm Liew executed the POAs for the sale of the property, she informed Karen and others on several occasions that she had no intention of selling the property and she intended to stay there. A non-exhaustive list of the relevant occasions where such statements were made is as follows:

(a) On 22 November 2017, Mdm Liew informed Dr Hwang that she was not selling her house and that she had not sold her house;[180]

(b) On 22 November 2017, Mdm Liew informed Mr Hwang that she was not planning to sell the Namly property;[181]

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179 I note for completeness that the 11 May 2001 will provided that Karen was to be the executrix, and that if Karen were to pre-decease Mdm Liew, Kelvin would become the executor.

180 GYYK at [387].

181 GYYK at [392].

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(c) On 8 December 2017, Mdm Liew gave Karen several repeated indications that she did not wish to sell her house.

The implication of the above instances is that Mdm Liew either had no recollection whatsoever of having sold the property, or did not understand the sale POA which she had already signed.

127 Seventh, the fact that both POAs provide that the *defendant's* (and not Mdm Liew's) written permission is required to revoke them is very unusual, as has been explained at [94] above. This is yet another odd feature of the POAs, which was not satisfactorily explained on the evidence before me.

128 In my view, the circumstances are such that the POAs clearly call for an explanation by the defendant. The onus thus shifts to him to rebut the presumption of undue influence.

Has the defendant rebutted the presumption of undue influence?

129 The defendant claims that Mr Teo properly explained the POAs to Mdm Liew on his visit to her on 20 November 2017, and that she executed the two POAs with full understanding of their terms and effects. In other words, she had the benefit of independent legal advice before she signed the POAs. Hence, she exercised her own independent judgment when executing the two POAs.

130 Mr Teo gave evidence that he first met the defendant on 17 November 2017 at his law firm's office. The defendant told Mr Teo of Mdm Liew's alleged instructions about wanting to appoint the defendant as her attorney and for the Namly property to be sold and a condominium unit purchased. He did

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not present to Mr Teo any written instructions or notes from Mdm Liew setting out what she wanted.[182]

131 In his oral evidence, Mr Teo claimed that he explained to the defendant the differences between owning the condominium unit as joint tenants and as tenants in common, including about the right of survivorship.[183] *After* he explained the two concepts, the defendant told him that the co-owners of the new condominium unit to be purchased will own the unit as *joint tenants*. Mr Teo was quite clear on this point in his oral evidence, that is, that the defendant did *not* inform him that the new property to be purchased was supposed to be held in proportion to the co-owners' respective contributions to the purchase price.[184]

132 Mr Teo also gave evidence that the defendant specifically instructed him that his appointment as Mdm Liew's attorney was to be irrevocable, unless *the defendant* himself gave his approval for the revocation of his appointment in writing.[185]

133 Based on what the defendant told him, Mr Teo started work on the preparation of the POAs. He did not ask for Mdm Liew's contact number, nor did he make any attempt to speak to her over the phone first to confirm her instructions. Under cross-examination, he said that it is common practice for

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182 AEIC of Teo Eng Thye dated 3 October 2019 ("TET") from [7] to [9].

183 Transcript of 25 February 2020, Page 110, Lines 4 to 23.

184 Transcript of 25 February 2020, Page 59, Line 4 to Page 60, Line 19.

185 Transcript of 25 February 2020, Page 63, Lines 21 to 24.

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children to make powers of attorney for their parents and that this is "no big deal".[186]

134 At the visit with Mdm Liew on 20 November 2017, Mr Teo's evidence is that he told her that he was there for the execution of the POAs.[187] To this, Mdm Liew simply nodded her head. He then claimed that he went through the POAs with Mdm Liew, emphasising the important terms, and asking whether those were her instructions. To this, Mdm Liew again simply nodded her head. She did not ask him any questions. According to Mr Teo, he asked Mdm Liew whether she had seen any psychiatrist or been treated at the Institute of Mental Health, to which she said "no".[188] The defendant, who was standing next to his mother, confirmed this. Mr Teo gave evidence that this was enough for him to be satisfied that Mdm Liew was not suffering from any mental defect, because the defendant was "a doctor", and if he did not believe "a doctor", in Mr Teo's own words, "who else can you believe"?[189]

135 I find the approach taken by Mr Teo in the preparation and execution of the POAs to fall below the well-established standard expected of solicitors in discharging their duties to their clients. First, Mr Teo should have but did not make any attempt to first speak to Mdm Liew, either over the phone or in person, *before* he started preparation of the POAs. In my view, he should have first ascertained Mdm Liew's instructions, and her capacity to give those instructions, before he proceeded to accept instructions conveyed by the

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186 Transcript of 25 February 2020, Page 65, Line 21 to Page 66, Line 2.

187 Transcript of 25 February 2020, Page 72, Line 24 to Page 73, Line 12.

188 Transcript of 25 February 2020, Page 77, Line 20 to Page 78, Line 1.

189 Transcript of 25 February 2020, Page 78, Lines 6 to 11.

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defendant. After all, he had been told that Mdm Liew was an 87 year-old woman, and the effect of the POA for the purchase of the condominium unit was that she would effectively be making a gift of her interest in the property to Daniel and any other co-owner when she passed away. This was particularly so when, according to Mr Teo, he was aware that Mdm Liew had other children, even though he did not know precisely how many.[190]

136 All this is compounded by the fact that, at the visit on 20 November 2017, Mr Teo did not explain to Mdm Liew the legal implications of having Daniel as a joint tenant of the new property to be purchased. He should have explicitly told Mdm Liew that Daniel, and any other co-owners, would be entitled to ownership of the property, to the exclusion of her other potential beneficiaries at law. In fact, Mr Teo does not even appear to have explained the distinction between a joint tenancy and a tenancy in common to Mdm Liew, despite such distinction clearly being of fundamental importance in *any* case where a property is to be owned by joint-owners. I emphasise that such explanation is *basic* and to be expected of any solicitor when advising his client on a purchase of real property by joint owners. Mr Teo's own evidence is that he only explained the concepts of joint tenancy and tenancy in common *to the defendant*, who was potentially a major beneficiary under the POAs. I reject Mr Teo's explanation, under cross-examination, that these were all "family matters" and that it was not for him to ask why they had been arranged that way.[191] This excuse is no justification for failing to carry out his duties as a solicitor to his actual client – Mdm Liew. Mr Teo also explained that he had

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190 Transcript of 25 February 2020, Page 98, Lines 15 to 25.

191 Transcript of 25 February 2020, Page 97, Line 17 to Page 98, Line 14. See also Page 98, Lines 22 to 25. See further Page 96, Line 21 to Page 97, Line 1. See in addition Page 96, Lines 3 to 6.

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assumed that Mdm Liew and the defendant had discussed the matter, and that the defendant had accurately conveyed Mdm Liew's instructions to him.[192] Given that the defendant and his son potentially stood to gain significantly from the POAs, and considering the entirety of the circumstances, I was surprised that Mr Teo was prepared to accept the defendant's claim at face value without making any real inquiries of his own *whatsoever*.

137 In this regard, the defendant's position was hopelessly inconsistent because, while it is pleaded that Mdm Liew's and his intention was that the two of them would own shares in the condominium unit in accordance with their respective financial contributions,[193] he later testified under cross-examination that Mdm Liew intended for Daniel to be a true owner of the property, and not just a nominee. This was allegedly because Daniel was her favourite grandson.[194]

138 In my judgment, Mr Teo appears to have forgotten that his duty was owed in this instance to his client, Mdm Liew. He owed her a duty to act in her best interest and in accordance with *her* instructions. That being the case, he failed in this duty by not ascertaining from Mdm Liew, when they met in person for the first time, whether she intended for Daniel and any other co-owners to be entitled to own the property to the exclusion of her other children and grandchildren. Mr Teo tried to explain that he would have drawn the fact that Mdm Liew was effectively making a gift to her son's family only if she was making a will, but that it was not necessary in this case because he was only

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192 Transcript of 25 February 2020, Page 98, Lines 1 to 6.

193 Bundle of Pleadings at p 152, at [5].

194 GYCK at [62]. See also Transcript of 10 February 2020, Page 22, Lines 3 to 6.

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preparing powers of attorney.[195] I found this distinction to be an illusory one because, in substance, it was entirely clear that Mdm Liew was executing an irrevocable instrument which effectively made an *inter vivos* gift of a property that she was to be a co-owner of to her grandson. The Namly property was a significant asset by any stretch of the imagination, and Mr Teo's approach to dealing with the transaction for its sale and the use of the sale proceeds was at odds with his client's interests.

139 Second, I find that Mr Teo had failed to take sufficient steps to satisfy himself that Mdm Liew had sufficient mental capacity to understand the nature and effect of the two POAs she was executing. It is woefully inadequate to simply ask Mdm Liew whether she had seen a psychiatrist or been admitted to a mental institution before. It is also not enough merely to get verbal confirmation from the defendant, who is in any event a potential beneficiary under the POAs, that Mdm Liew was mentally capable of executing the POAs, just because the defendant is a doctor. Given the circumstances, Mr Teo should have asked for a recent medical report confirming that Mdm Liew had sufficient mental capacity to give authority to the defendant to sell her house and buy a new property in her name. Mr Teo should also have asked Mdm Liew more questions (*e.g.* pertaining to the issues raised at [136] and [138] above) to ascertain if she had the mental capacity to understand the POAs and if she was able to make a decision for herself. The fact that Mdm Liew had nodded in response is not enough to indicate that she understood the terms of the POAs. In my view, Mr Teo should have been alerted to the fact that something was not quite right because Mdm Liew did not ask any questions at all but mostly only nodded when he spoke.

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195 Transcript of 25 February 2020, Page 111, Line 19 to Page 112, Line 2.

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140 Third, the terms of the POAs do not fully capture the instructions that had been conveyed by the defendant to Mr Teo. As I have already pointed out at [95] above, the sale POA curiously directs the defendant to pay the entirety of the sale proceeds to Daniel. That being the case, Mr Teo should have expressly confirmed with Mdm Liew that she was fine with leaving the sale proceeds with Daniel, *on the understanding* that he would turn over the sale proceeds to the defendant for the latter's use to buy the new condominium unit. When this was raised in Mr Teo's cross-examination, he claimed that he had told Daniel, who was present by his grandmother when the POAs were signed, that he would be holding the sale proceeds on trust.[196] Mr Teo also claimed to have explained to Daniel what being a trustee of the sale proceeds entails. I must say that I do not accept Mr Teo's evidence as being credible. This conversation with, and advice given to, Daniel is not found in Mr Teo's affidavit of evidence-in-chief or his attendance note for this meeting. Worse, neither Daniel, David, the defendant, nor the defendant's wife mentions any such explanation given to Daniel in their evidence.

141 Mr Teo's failings in this regard are all the more egregious given the clear and longstanding nature of the authority governing a solicitor's obligations *vis-à-vis* the disposal of property to one's successors. In *Chee Mu Lin Muriel v Chee Ka Lin Caroline (Chee Ping Chian Alexander and another, interveners*) [2010] 4 SLR 373, the Court of Appeal found that the evidence surrounding the preparation and execution of a will in that case did not show that it had been properly or even explained to the testatrix. Given the testatrix's mental state, she could have *appeared* to understand the contents of the will when it was read to her, but this did not necessarily indicate actual understanding, especially

196 Transcript of 25 February 2020, Page 79, Lines 5 to 13.

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when there was no explanation of what the lines meant. At [60], the Court of Appeal made clear that:

> In our view, this case demonstrates that solicitors who undertake the task of preparing wills and/or witnessing the execution of wills *must* take the necessary precautions or steps in order to fulfil their duties to their clients … In any case, as solicitors, they must do what is required, *however complicated or difficult the task may be*. The central task is to ensure that the terms of the will reflect the wishes *of the testator* … In every case, the solicitor should be *cautious about taking instructions from any person who is to be named as a beneficiary in the will*. If a testator is known to be suffering from any mental infirmity, a doctor should be called to certify her mental capacity before she is allowed to sign the will to ensure that such a testator fully understands the will. In the case of a person with mental infirmities like Mdm Goh, it should have included attending on Mdm Goh personally to take instructions *from her*, providing her with and explaining a draft of the will *to her*, and if there is *any* doubt as to her mental capacity, to advise that a psychiatrist (or some other qualified medical practitioner) attend on her to assess her mental capacity. Furthermore, the solicitor should *ask the appropriate questions* to ascertain the testator's capacity to understand the contents of the will …
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> [Emphasis added]

142 In a similar vein, the Court of Appeal unequivocally stated in *Low Ah Cheow and others v Ng Hock Guan* [2009] 3 SLR(R) 1079 ("*Low Ah Cheow*") at [73] and [74] that:

> 73 The preparation of a will involves serious professional responsibilities, which solicitors must ***uncompromisingly*** observe and discharge. Regrettably, it seems to us that, all too often nowadays, solicitors appear to consider the preparation of a will to be no more than a routine exercise in form filling. This is *wrong*. Before preparing a will, the solicitor concerned ought to have a thorough discussion with the testator on ***all the possible legal issues and potential complications that might arise*** in the implementation of the terms of the will. The solicitor ought to painstakingly and accurately document his discussions with and his instructions from the testator. He should also confirm with the testator, prior to the execution of the will, that the contents of the will as drafted accurately express the latter's intention … Half measures or the cutting of

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> corners in the discharge of these serious professional responsibilities will not do.
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> 74 In our view, the solicitor concerned should also conscientiously seek to avoid being in any situation where a potential conflict of interest may appear to exist. If the solicitor might be perceived as anything less than a completely independent adviser to the testator, he ought not, as a matter of good practice, to be involved in the explanation, the interpretation and the execution of the will. In particular, exceptional restraint and care are called for if the solicitor concerned has a pre-existing relationship and/or past dealings with the sole beneficiary under a will, ***and all the more so if the will has been prepared urgently and executed in unusual circumstances with that sole beneficiary's active involvement***. Where such a case occurs, the solicitor involved ***must be prepared to have his conduct microscopically scrutinised and, perhaps, even his motives called into question***.
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> [Original emphasis in italics; emphasis added in bold italics]

While both the above-cited cases concern the preparation of wills, I reiterate that I see no material distinction between those situations and that in the present case, where Mdm Liew was in effect making an *inter-vivos* gift of her most significant asset, the Namly property. Mr Teo's conduct appears to not meet the standard expected of solicitors, and is quite inadequate in rebutting the presumption of undue influence.

143 I should add that I find the evidence given by the defendant, Daniel and David about the visit by Mr Teo and the execution of the POAs to be most unsatisfactory, and of little effect in rebutting the presumption of undue influence.

144 Daniel was present in Mdm Liew's bedroom, together with his brother, David, and the defendant, at the time when Mr Teo was speaking to Mdm Liew about the POAs. In fact, the defendant put into evidence some photos taken by his wife of him and his two sons watching intently when Mr Teo was with Mdm

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Liew, and the precise moment when she was signing the POAs.[197] Yet, when it came to giving evidence of what transpired in that room when Mr Teo was there, Daniel was incredibly reticent in his answers. There were long pauses to simple questions, as if he was trying his best to remember how he was supposed to answer the questions.[198] He gave me the impression that he was extremely concerned that his answers would damage his father's case. To many questions, his answer was that he could not remember.[199] Despite standing right next to his grandmother,[200] he could not remember whether Mr Teo asked any questions of Mdm Liew or whether Mdm Liew asked any questions of Mr Teo.[201] He also could not remember *any* of the main points of what Mr Teo had said.

145 As for David, who was 17 years' old at the time the POAs were signed, I was left with the distinct impression that his answers to questions as to what transpired in his grandmother's bedroom when Mr Teo was present were completely rehearsed, and that when the questions were not in his prepared script, his answer was that he could not remember. Like his brother, David said that Mr Teo was very "thorough" and went through documents with Mdm Liew "paragraph by paragraph".[202] This can be contrasted with Mr Teo's own

197 GYCK at pp 185 and 186.

198 See, for example, Transcript of 10 February 2020, Page 20, Line 2 to Page 22, Line 25. See further, for example, Page 24, Lines 3 to 11.

199 Transcript of 10 February 2020, Page 39, Line 19 to Page 44, Line 15.

200 Transcript of 10 February 2020, Page 37, Lines 21 to 23.

201 Transcript of 10 February 2020, Page 46, Line 3 to Page 48, Line 23.

202 Transcript of 21 February 2020, Page 79, Lines 8 to 14.

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evidence, which is that he only emphasised the main points when he went through the POAs.[203]

146 I have already touched upon the credibility of the defendant as a witness in these proceedings. Like his two sons, his evidence as to the visit of Mr Teo to the Namly property on 20 November 2017 leaves much to be desired in terms of details and authenticity. His answers were uncannily similar to those of David and Daniel, in that all of them seemed reluctant to get into the details of what precisely happened.[204] What struck me most though was the defendant's evidence that he did not remember much about the visit. This is very surprising given that it was a highly significant event that the defendant had clearly been planning for some time. Let me explain.

147 The defendant's evidence is that he had tried to persuade his mother in February 2017, and again in June 2017, to sell the Namly property so that they could move into a condominium unit. She was reluctant to do so. But when Mdm Liew started to lose mobility in November 2017, she agreed to sell the Namly property and move to a single-storey condominium unit.[205] On the defendant's account, Mdm Liew wanted to appoint him as the attorney to carry this out. He claimed that Mdm Liew's instructions to him were to make the POAs irrevocable because he had questioned whether she really wanted to sell the Namly property or whether she would change her mind again.[206]

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203 Transcript of 25 February 2020, Page 76, Lines 11 to 23. See also Page 77, Lines 14 to 19.

204 Transcript of 20 February 2020, Page 147, Line 3 to Page 157, Line 6.

205 GYCK at [51].

206 Transcript of 20 February 2020, Page 117, Lines 6 to 20.

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148 It is also clear that the defendant wanted to keep the fact of the sale of the Namly property a secret from Karen for as long as possible. This is evident from the fact that he knew that the certificate of title ("CT") for the property had been entrusted by Mdm Liew to Karen for safekeeping, but instead of simply approaching his sister to ask for the CT which he needed to complete the sale, the defendant instructed Mr Teo to incur significant expense to apply for a replacement CT. In this regard, he lied to Mr Teo that the original CT was lost.[207]

149 The defendant also took steps to impede Karen from meeting alone with Mdm Liew from early December 2017. As already mentioned at [18] above, he refused to disclose Mdm Liew's whereabouts from early December 2017. In my judgment, the defendant wanted to conceal the fact of the sale of the Namly property from Karen for as long as possible. It is remarkable that he went so far as informing Dr Hwang at the meeting at Toast Box Sentosa on 8 December 2017 that he was willing to move out of the Namly property and let their family live there with Mdm Liew.[208] This was despite the fact that, by then, the option granted for the sale of the Namly property had already been exercised.[209] The defendant must have known that Karen would have tried to stop the sale on the basis that Mdm Liew did not have the mental capacity to understand what she was doing.

150 All this being the case, it is simply unbelievable that the defendant would not be extremely concerned about the visit of Mr Teo to the Namly property on

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207 Transcript of 25 February 2020, Page 70, Lines 20 to 25. See also Transcript of 21 February 2020, Page 26, Lines 22 to 24.

208 Exhibit GYYK-2 at file titled "081217 Video 9 min 19 sec"; GYYK at p 1467.

209 GYYK at pp 866 to 878.

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20 November 2017 and the execution of the POAs. He would have been anxious to ensure that everything went smoothly. For these reasons, I find it quite incredible that the defendant appears to shrug off the events of that day and that visit as something completely ordinary, of which he does not have much recollection.

151 In my judgment, on the evidence before me, the defendant has failed to rebut the presumption of undue influence.

Actual undue influence

152 Given my findings as to "Class 2B" undue influence, it is not necessary for me to delve into the issue of whether the defendant exercised actual undue influence over his mother to get her to sign the POAs.

Remedies

153 For the reasons set out in this judgment, I find that Mdm Liew did not have the mental capacity to make the POAs on 20 November 2017. Alternatively, even if she did have mental capacity, the POAs ought to be set aside because they were procured by the undue influence of the defendant.

154 In the circumstances, I will grant a declaration that the POAs are void. There is no need for me to make an order that the registrations of the POAs are to be cancelled and removed, as Karen seeks, because, amongst other reasons, the Namly property has been sold and Mdm Liew has passed away.

155 I come to the question of damages. It will be recalled that the defendant had been ordered by Lee Seiu Kin J to pay the proceeds from the sale of the Namly property into Court. This was done on 5 March 2018. Just before the

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trial commenced, Karen applied for an order for the sale proceeds to be paid to Mdm Liew's account. This application was consented to by the defendant and, pursuant to an order that I made on the first day of trial, the Accountant-General was directed to pay out the moneys from the Namly property's sale proceeds to Mdm Liew on 12 February 2020.[210] Thus, *prima facie*, Mdm Liew has been compensated by the receipt of the sale proceeds. I note for completeness that Karen had initially argued that the Namly property had been sold at an undervalue, and that this undervalue was actionable loss, but this point was not eventually pursued in her closing submissions, nor was any evidence tendered as to the alleged undervalue.[211]

156 Karen also claims to be entitled to damages in the form of the interest that could have been earned if the sale proceeds had been released to Mdm Liew earlier. She claims interest on the amount of S$5,099,660.67 for the period between 12 April 2018 and 5 February 2020, at the default interest rate of 5.33% p.a., less the interest accrued from the payment into Court for that period. However, nowhere in Karen's submissions is the legal basis for claiming interest as a head of damages *in and of itself* outlined. Karen relies on s 18(2) and [6] of the First Schedule to the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"), which, when read together, provide that the Court shall have the:

> [p]ower to direct interest to be paid on damages, or debts (whether the debts are paid before or after commencement of proceedings) or judgment debts, or on sums found due on taking accounts between parties, or on sums found due and unpaid by receivers or other persons liable to account to the court.

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210 HC/DRO 11/2020

211 Statement of Claim (Amendment No. 3) dated 29 August 2019 ("SOC") from [57] to [60].

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157 I am not persuaded that the parts of the SCJA which Karen relies upon are adequate to ground her claim for damages in the form of interest. First, the SCJA confers a power to grant interest *on* damages, and not interest *as* damages. This distinction was recognised at [129] of *The Oriental Insurance Co Ltd v Reliance National Asia Re Pte Ltd* [2009] 2 SLR(R) 385, which makes clear that s 12 of the Civil Law Act (Cap 43, 1999 Rev Ed) will apply to the interest to be awarded on damages for a late payment, but will not apply to an award of interest as damages. Second, I do not understand [6] of the First Schedule to the SCJA as conferring power to award interest on the sale proceeds of the Namly property. The sale proceeds are not "damages", "debts", "judgment debts", "sums found due on taking accounts between parties", or "sums found due and unpaid by receivers or other persons liable to account to the court", and I accordingly do not find the parts of the SCJA relied on by Karen to apply to the instant facts.

158 Karen also seeks punitive damages. The Court of Appeal in *ACB v Thomson Medical Pte Ltd and others* [2017] 1 SLR 918 ("*ACB*") established at [176] that "punitive damages may be awarded in tort where the totality of the defendant's conduct is so outrageous that it warrants punishment, deterrence, and condemnation". Such conduct must be "beyond the pale and therefore deserving of special condemnation". The Court of Appeal further elaborated, at [200], that punitive damages serve not only to punish the defendant, but also wider social functions:

> … When it performs its retributive function, a punitive award looks backwards at the conduct of the defendant and imposes a condign sanction; however, a punitive award also looks *forward* by making an example of the particular defendant to deter would-be tortfeasors from committing similar transgressions, influencing societal behaviour, and allowing the victim of the wrong an avenue to vindicate his/her rights…

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[Emphasis original]

159 Karen's argument in relation to punitive damages is that they should be awarded on the instant facts because the defendant has committed elder abuse of a financial nature. However, she also recognises that there is, at least as the law presently stands, no basis in any legislation penalising "elderly financial abuse".[212] She therefore invites this Court to fill that "lacuna" and award punitive damages in order to do so.[213]

160 I have a number of difficulties with this analysis. First, I am not satisfied that there is any settled definition of "elder abuse" as a matter of law. While Karen referred me to a pamphlet from the Office of the Public Guardian concerning elder abuse, my attention was not drawn to any specific provisions indicating that the pamphlet's definitions of "elder abuse", that Karen is relying on, have legal effect.[214] The pamphlet appears to be merely an informational document describing financial abuse as "taking advantage of the elderly person's funds or resources, for personal gain" and stating that the "abuser may exercise undue influence to bring about changes in the making/ execution of wills". Second, no authority was cited to support the argument that "elder abuse" would warrant the imposition of punitive damages at common law. Third, I have reservations that punitive damages should be awarded even if Karen's case on "elder abuse" was made out. On that approach, *every* instance of undue influence vitiating a decision made by an elderly person would, at least *prima facie*, give rise to possible punitive damages. Fourth, it appears to me from the comments made during the Parliamentary debates on the Vulnerable

212 PCS at p 60.

213 PCS at pp 60 to 67.

214 GYYK at pp 1388 to 1389.

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Adults Bill (Bill No. 20/2018) that Parliament made a conscious decision to focus its legislation on physical and emotional abuse to the exclusion of financial abuse.[215] In particular, Mr Desmond Lee, then Minister for Social and Family Development, observed that his Ministry would continue to study "the complex issue of financial exploitation among family members" and would debate legislation on that "at an appropriate time". Given the specific exclusion of financial abuse under the Vulnerable Adults Act 2018 (No. 27 of 2018), I am not satisfied that the Courts should impose punitive damages for claims of elder abuse of a financial nature. In reaching that conclusion, I am mindful of the guidance in *UKM v Attorney-General* [2019] 3 SLR 874 ("*UKM*"). *UKM* addressed the role of public policy considerations in the context of an application by two gay men to adopt a child. In outlining the proper role of public policy considerations more generally, Menon CJ observed at [112] that:

> … In line with this, the court should, as a general rule, be more cautious in resting its decision on public policy where the legal context falls under Category 1A [where the type of public policy relied on is socio-economic, and the type of law relied on is judge-made law]. That is because judges have no special expertise in socio-economic matters.

Given Parliament's expressed views on the subject, and for the reasons outlined above, I decline to award punitive damages on the instant facts.

161 I note for completeness that, following Mdm Liew's passing, parties made written submissions on the effect her passing might have on the availability of any remedies. The defendant argued that, relying on s 10(3)(*a*)(i) of the Civil Law Act (Cap 43, 1999 Rev Ed), where a cause of action survives for the benefit of the estate of a deceased person, the damages recoverable for

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215 Plaintiff's Supplementary Bundle of Authorities, Tab 17, pp 390 to 391.

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the benefit of the estate of that person shall not include any exemplary damages. The term "exemplary damages" in this context is used interchangeably with "punitive damages": *ACB* at [156] and *Aries Telecoms (M) Bhd v ViewQwest Pte Ltd (Fiberail Sdn Bhd, third party)* [2020] 3 SLR 750 at [97]. However, given my prior findings at [160] above, there is no need for me to address this argument.

162 Finally, Karen seeks an order that that the defendant and his family members render an account of any moneys that have been taken from Mdm Liew's assets from 20 November 2017. As the defendant's wife and two sons are not parties to this action, Karen is clearly not entitled to any remedy against them as a matter of law. Not only that, Karen has not pleaded or proven that the defendant or any of his family members have wrongfully appropriated any of Mdm Liew's funds or taken her assets, apart from the proceeds of the sale of the Namly property which have already been accounted for. As such, the claim for an account is entirely misplaced.

Conclusion

163 For the reasons set out in this judgment, I find that Mdm Liew lacked mental capacity to execute the two POAs on 20 November 2017. Even if she did have mental capacity, I find that the POAs are vitiated by reason of undue influence in the form as set out in my judgment. In the result, I grant a declaration that the two POAs are void.

164 I shall deal separately with the question of costs.

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Ang Cheng Hock
Judge

Kang Kim Yang, Mary Leong Sut San, and Ang Jian Xiang (Templars Law LLC) for the plaintiff;
Tan Teck San Kelvin and Chng Hu Ping (Drew & Napier LLC) for the defendant.

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