IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 32

Suit No 4 of 2019

Between

(1) WHR
(2) WHS
(both suing as Executors of the Last Will and Testament dated 25 March 1999 and Codicil dated 6 August 2008 of LLT, deceased)

… *Plaintiffs*

And

(1) WHT
(2) WHU
(3) WHV
(4) WHW
(5) WHX
(6) WHY
(7) WHZ
(8) WIA
(9) WIB
(10) WIC
(11) WID
(12) WIF
(13) WIH
(14) WIG

… *Defendants*

JUDGMENT

[Succession and Wills—Codicils]
[Succession and Wills—Testamentary Capacity]

Version No 2: 07 Aug 2023 (15:16 hrs)

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WHR and another
v
WHT and others

[2023] SGHCF 32

General Division of the High Court (Family Division) — Suit No 4 of 2019
Choo Han Teck J
5-6 July and 31 October 2022, 15-17 May 2023, 10 July 2023

19 July 2023 Judgment reserved.

Choo Han Teck J:

1 LLT was born in China on 3 March 1917 but emigrated to Singapore in 1935 when he was 18 years old. He first worked as a watch repairer for his uncle, but eventually started his own business selling luxury watches wholesale. That business grew, and by the time he died on 13 March 2009 at the age of 92, he had amassed a large estate that included his business and several real properties. He left behind seven children:

(a) The 2nd Defendant, born in 1943;

(b) The 3rd Defendant, born in 1946;

(c) The 4th Defendant, born in 1947;

(d) The 5th Defendant, born in 1950;

(e) The 1st Defendant, born in 1953;

(f) The 6th Defendant, born in 1955; and

(g) The 1st Plaintiff, born in 1957.

LLT also had many grandchildren, including the 2nd Plaintiff and the 7th to 13th Defendants. The 14th Defendant is LLT's adopted goddaughter who has been living in Indonesia. After his death, LLT's estate remained unadministered, and about five years later, on 9 October 2014, the 1st and 2nd Defendants filed caveats against the grant of probate in LLT's estate, and on 23 February 2015, they asked their siblings to state their intention to apply for a grant of letters of administration to administer the estate. On 3 March 2015, the 1st Plaintiff, and the 3rd to 5th Defendants informed the 1st and 2nd Defendants that the 1st Plaintiff had found the key to a safe belonging to LLT.

2 A meeting of the children was convened at LLT's office to open the safe. There, on 8 March 2015, a Will dated 25 March 1999 (the "Will") and a Codicil dated 6 August 2008 (the "Codicil") was read for the first time, in the presence of LLT's children. Under the Will, all the Defendants, with the exception of the 3rd, 5th, 12th and 13th Defendants, are pecuniary legatees. The Plaintiffs, together with the 3rd, 5th, 12th and 13th Defendants, are residuary legatees. The 2nd Plaintiff and the 12th Defendant are specific legatees of shares in [D] Pte Ltd a company that owns two properties in Duchess Road, and the 13th Defendant is a specific legatee of another property, also in Duchess Road. The 2nd Plaintiff is the son of the 3rd Defendant. The plaintiffs are co-executors under the Will.

3 The Codicil expanded the Will so that LLT's properties in Duchess Road were bequeathed to his three grandsons. The pecuniary legatees' entitlement under the Will was also changed. A cap of $6,600,000.00 was placed on the amount to be paid out to the cash beneficiaries, and the source of funds from which the monies were to be paid out was also specified. This latter provision

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meant that if there were any shortfall, the beneficiaries would only be entitled to a pro-rated amount based on their entitlements under the Codicil.

4 Shortly after the reading of the Will and Codicil, the 1st and 2nd Defendants disputed the validity of the Will and Codicil, and asked that they be proved. When the Plaintiffs took no action, the 1st and 2nd Defendants issued a Citation on 8 June 2018 for the Will and Codicil to be propounded and sought for a grant of Letters of Administration. The 1st and 2nd Defendants were unable to serve the Citation on the Plaintiffs and thus applied for a grant of *ad colligenda bona* on 27 February 2019 to enable them to deal with the assets of the estate of LLT. The Plaintiffs then commenced this action to prove the Will and Codicil.

5 In these proceedings, the 1st, 2nd, and 6th Defendants are the only parties disputing the Will and Codicil (the "Opposing Defendants"). The other Defendants support the Plaintiffs' application and do not dispute the validity of the Will and Codicil. In opposing the application to prove the Will and Codicil, the Opposing Defendants have not pleaded a positive case as to why the Will and Codicil are not valid. They merely require the Plaintiffs to prove the Will and Codicil. They were content to have counsel cross-examine the Plaintiffs' witnesses. In essence, their case is simply that the Plaintiffs bear the burden of proving the Will and Codicil, and that burden was not sufficiently discharged. They asserted, through counsel's cross-examination only, that LLT was not aware of and did not approve the contents of the Will and the Codicil when he executed them. None of the Opposing Defendants gave evidence.

6 The first requirement in these proceedings is for the court to be satisfied that the documents were duly executed in ordinary circumstances where the testator was not known to be suffering from any kind of mental disability. This

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will determine whether or not the presumption of testamentary capacity has been raised, thus shifting the burden of proof to the parties disputing the validity of the Will and Codicil. As the Will and Codicil were executed nine years apart, their validity must be determined independently of each other. The Plaintiffs' evidence is as follows.

7 Around February or March 1999, LLT's friend, one Mr Ho Sai Kee ("HSK"), introduced him to Ms Evelyn Ho ("EH"), HSK's daughter. EH is an advocate and solicitor in Singapore since 1991, specialising in corporate, conveyancing and family matters. It was not disputed that LLT was illiterate and could converse only in the Cantonese dialect. EH grew up in a Cantonese speaking household and could converse fluently in the Cantonese dialect.

8 EH testified that in or around early March 1999, LLT called her on the phone, following the recommendation of HSK. EH then met LLT a few days later at a Japanese café in the Paragon Mall along Orchard Road. Throughout the meeting, EH and LLT conversed in the Cantonese dialect. LLT gave EH a list of his family members, including their names, ages, identification numbers and their relationship with him. This said list was duly annexed in EH's affidavit of evidence-in-chief. LLT then gave detailed instructions to EH regarding his Will. EH made handwritten notes of his instructions.

9 A few days later, on 25 March 1999, LLT executed the Will at EH's office. At EH's office, he told EH that he had changed his mind and decided to give the 4th and 6th Defendants a cash legacy. EH testified that she then amended the draft Will on her computer, had it engrossed, and explained the amended will to LLT. LLT then signed at the execution block of the Will, in the presence of Ms B ("B"), who was a secretary of another law firm, and EH , the

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two witnesses to the execution of the Will in accordance with the statutory requirements.

10 In these proceedings, the Opposing Defendants say that the Will and Codicil were prepared under "suspicious circumstances". However, as the case unfolded, it became clear that the misgivings of the Opposing Defendants regarding the circumstances concern only the Codicil executed in 2008, and not the Will that was executed in 1999. The Opposing Defendants did not allege that LLT did not possess the mental capacity to execute the Will, nor was it the case that, as with the Codicil, that someone other than LLT was substantially involved in the preparation of the Will. There is no evidence of suspicious circumstances, and therefore, I am satisfied that the Will was validly executed in 1999, but nonetheless, I will deal with the submissions regarding the suspicious circumstances concerning the Will before I deal with the submissions regarding the Codicil.

11 So far as the circumstances surrounding the Will are concerned, counsel for the 1st and 2nd Defendants, Mr William Ong, was content to challenge the testimonies of the Plaintiff's witnesses, and he based his final submissions accordingly. First, he picked at EH's evidence that LLT did not initially plan to give the 4th and 6th Defendants anything because he had already given them shares in one of his companies, [C] Pte Ltd, but he subsequently changed his mind and decided to give them a cash gift of $250,000 each. Mr Ong says that the decision to give an equal amount of the $250,000 cash to the 4th and 6th Defendant suggests that LLT must have wrongly thought that these two Defendants held equal shares in [C] Pte Ltd. By this argument, counsel assumes that LLT intended for the cash gift to be given in the same proportion as their shareholding in [C] Pte Ltd. But there is no evidence to support this assumption.

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12 Secondly, Mr Ong pointed out the inconsistency in EH's evidence in respect of the proportion of the estate to be given to the 3rd Defendant. Mr Ong says that whereas EH had averred on affidavit that LLT's instructions to her at Paragon was for the 3rd Defendant to get half a share, the evidence she gave at trial was that LLT instructed her to give the 3rd Defendant one share, being the same as all the residuary legatees. Following the questions asked by Ms Anna Oei, counsel for the 3rd and 5th Defendants, EH then accepted that the instruction for the 3rd Defendant to get half a share only happened at the meeting on 25 March 1999 when the Will was executed. I accept that there were inconsistencies in EH's evidence. However, this was EH's recollection of details which occurred over two decades ago and some lapses in memory are inevitable. What is crucial, however, was that the instructions for the 3rd Defendant to receive 0.5 shares out of the six shares to be distributed among the residual legatees (and which was eventually reflected in the Will as $^1/_{12}$ of LLT's estate), was properly reflected in the Will when LLT signed the Will.

13 Finally, Mr Ong says that it is not clear that the Will was in fact explained to LLT by EH. Mr Ong points to B's testimony that she was not in the room when the Will was read over to LLT, but was only present for the appending of his signature to the execution block. Accordingly, Mr Ong submits that the evidence of EH must be treated with due circumspection. I am of the view that this does not rebut the presumption that LLT knew and approved of the contents of the Will. First, although B was not in the room when EH read back the contents of the Will to LLT, she affirmed on affidavit that "EH said to LLT in Cantonese that the contents of the Will had been explained and for him to sign the Will if he deemed correct". This evidence was not challenged at trial. Secondly, no evidence was led by Mr Ong to question the mental capacity of LLT. I am satisfied that LLT was aware of his conduct and dealings and was

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amply capable of giving instructions to EH concerning his legacy — he was able to seek out a Cantonese speaking solicitor, recount his family tree and properly justify the rationality of his desired distribution.

14 This brings me to Mr Ong's final point. Counsel submits that there was no evidence that EH had taken full instructions from LLT at Paragon, and if she had, the instructions were not accurately reflected in the Will. I find to the contrary, the fact that LLT requested EH to make amendments to the Will on the day of execution (as corroborated by B), meant that LLT must have been apprised of the contents of the Will. Further, it is not Mr Ong's case that the Will that LLT signed did not accurately include the amendments which he had requested. Neither does the evidence support that submission. Accordingly, I am of the view that the presumption that LLT possessed testamentary capacity in relation to the Will remains unrebutted.

15 As far as the evidence shows, I am of the view that the Will had been duly executed and there is no dispute as to the mental capacity of LLT at the material time. The onus is on the Defendants to prove that the Will is not valid, and the grant of probate ought not to be issued. None of the Defendants (including the Opposing Defendants) testified, or called evidence from other witnesses. I thus find that the Will dated 25 March 1999 is valid and so declare.

16 I now consider the validity of the Codicil. As with the Will, the question is whether the presumption of testamentary capacity arises. EH testified that she had three meetings with the 1st Plaintiff and LLT regarding the Codicil — the first on 7 July 2008, the second on 22 July 2008 and the third on 6 August 2008, when the Codicil was executed.

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17 The first meeting was initiated by the 1st Plaintiff, who called EH and told her that LLT would like to bequeath the Duchess Road properties to his grandchildren (E, K and J). Accordingly, EH attended at LLT's office. The 1st Plaintiff was also present. A number of instructions were given by LLT to EH at this meeting.

18 EH was given a hand-drawn chart of the corporate structure of [D] Pte Ltd — the company that owned two of the Duchess Road properties. [D] Pte Ltd was, in turn, owned by LLT, the 1st Plaintiff, the 3rd Defendant and the 5th Defendant, in equal shares. LLT wanted the 1st Plaintiff, 3rd, and 5th Defendants to transfer their shares in [D] Pte Ltd to E and K. EH says that LLT told the 1st Plaintiff to convey his instructions to the 3rd and 5th Defendants, but the 1st Plaintiff declined and suggested that LLT do so personally — which he did. The 3rd and 5th Defendants agreed to transfer their shares as LLT directed. Accordingly, EH advised LLT that the shares could be transferred by way of a trust deed, executed by each of the three siblings.

19 Secondly, EH testified that the 1st Plaintiff asked LLT how the pecuniary legatees would be paid if the estate had insufficient funds. LLT's instructions were that if there were insufficient cash, the pecuniary legatees would have to share the reduced cash legacy in the same proportion as under the Will.

20 Finally, EH asked LLT whether he wished to execute a new will or execute a codicil. She explained the difference between the two, and LLT chose the latter. This concluded the meeting on 7 July 2008.

21 On 22 July 2008, EH went to LLT's office again. EH testified that LLT instructed her that the cash legacy was to be paid only out of cash in hand, deposits with banks or financial companies, and monies receivable or debts due

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to him. EH testified that LLT made clear that this pool was to exclude loans to companies, which he had interests as a director or a shareholder, which have not been repaid. EH admitted that this was an amendment to her AEIC, in which she said that these instructions were given to her on 7 July 2008, not 22 July as she told the court.

22 On 6 August 2008, EH met LLT at his office to execute the trust deeds of the 1st Plaintiff, the 3rd Defendant, and the 5th Defendant, as well as the Codicil. EH then explained the contents of the Codicil to LLT in Cantonese, after which LLT signed on both the original copies of the Codicil. EH and Mr W ("W"), an advocate and solicitor who is also the husband of EH,then signed as witnesses to the Codicil.

23 In their closing submissions, Mr Ong, and Ms Poon Pui Yee (counsel for the 6th Defendant), argue that there ought not be a presumption of testamentary capacity because the Codicil was prepared under "suspicious circumstances". First, they say that the Codicil was prepared by the 1st Plaintiff, who took a substantial benefit under it, and who was heavily involved in the procurement of its execution. Secondly, they say that there were significant changes made by the Codicil to the original Will that largely benefitted him and his son. Thirdly, they submit that LLT did not have access to independent legal advice, suggesting that there was a potential conflict of interests given that the 1st Plaintiff and EH had an ongoing commercial relationship for other conveyancing matters. Fourthly, they say that LLT was feeble and that his mental capacity was not confirmed by a medical practitioner. Lastly, they point to the delay of 1st Plaintiff in making known to the family that LLT had left a Will and Codicil.

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24 I accept that the Plaintiffs should bear the burden of propounding the validity of the Codicil, given the involvement of 1st Plaintiff, who benefited from the Codicil through the reduction of the pool of funds from which the pecuniary legatees would receive their cash benefits. I agree with the 1st and 2nd Defendants that 1st Plaintiff would be a beneficiary of this insertion given that he was a shareholder and director of the companies whose loans were excluded by that clause. Thus, in this context, the 1st Plaintiff's involvement in the Codicil may give rise to suspicion. But there is no evidence that enables me to find anything on his part that ought to vitiate the Codicil. I am satisfied that the plaintiffs have discharged their burden to prove the Codicil in solemn form.

25 The mental capacity of LLT when the Codicil was executed is crucial. The Plaintiffs rely on the evidence of EH that LLT's speech was "clear and his instructions were very specific. He was lucid." They also relied on the evidence of LLT's nurse, John Leong ("Nurse Leong"), who testified that he had always known LLT to be "very mentally alert and had a fairly good memory" and that "[he] never observed any issue with or deterioration in his mental ability, alertness and rationality". On the contrary, the Opposing Defendants relied on records of the nurse who took the night shift when Nurse Leong was off duty, where the night nurse noted on multiple occasions that LLT had lapses in his memory. The specific phrase used was "memory on and off". It was noted that LLT "forgot the dinner" on one occasion. Counsel for the 1st and 2nd Defendants suggested that LLT's memory lapses might have been caused by the medication he was taking, but as I indicated to counsel during trial, such an assertion would only be of utility if backed by the testimony of an expert, of which none was called. Furthermore, Nurse Leong was quick to refute that suggestion when he took the stand. He testified that he had been helping to administer the medication for LLT and he recalled vividly that LLT was mentally alert to his

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own affairs. He rejects Mr Ong's suggestion that LLT was mentally unsound because he had forgotten whether he had his dinner on one occasion. During cross-examination, it was suggested to Nurse Leong that LLT was fairly lethargic given the number of naps he took each day. Nurse Leong disagreed, and stated that it was common for patients of LLT's age to take naps, and that it does not indicate a "mental lethargy". Furthermore, he testified that LLT was coherent, sound, and mentally alert in all the time he had looked after him. This was not a nurse who filled in one or two occasions but a regular nurse who had worked for LLT for three years, beginning in 2006. He appeared to me forthright and professional, and I have no hesitation in accepting his evidence.

26 There is thus this discrepancy between the testimony of Nurse Leong and EH, and the night nurse. The night nurse did not give evidence. I find that on the balance of probabilities, LLT possessed the requisite mental capacity to execute the Codicil. I do not think that occasional memory lapses without more, meant that LLT lacked the capacity to understand his affairs. Mr Ong's references to the night nurse's notes were incomplete and ambiguous — every notation of "memory on and off" by the night nurse was prefaced by the words "Stable & alert". Moreover, apart from the records and testimony of Nurse Leong, who had been dutifully attending to the nursing needs of LLT since 2006, LLT was able to convey instructions concerning the Codicil. For example, it was not disputed by the Opposing Defendants that LLT was the one who asked the 3rd and 5th Defendants to give their shares in [D] Pte Ltd to E and K.

27 Mr Ong questioned whether EH in fact explained and read back the Codicil to LLT before he signed it on 6 August 2008. In this regard, none of the Opposing Defendants have adduced any evidence to dispute EH's testimony that she did. In fact, when EH was asked by Mr Ong to re-enact to the Court how she explained clause 4 of the Codicil to LLT in Cantonese, she did so

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fluently. As the Court of Appeal held in *Chee Mu Lin Muriel v Chee Ka Lin Caroline (Chee Ping Chian Alexander and another, interveners)* [2010] 4 SLR 373 (at [48]), evidence that the testamentary instrument was read back to the testator is affirmative evidence of the testator's knowledge and approval. On the totality of the evidence, I accept the testimony of EH on the balance of probabilities that she had read and explained the contents of the Codicil to LLT, and that he gave his approval when he signed it.

28 The 1st and 2nd Defendants suggested several reasons as to why the Plaintiffs have not shown that LLT possessed testamentary capacity. Among them:

(a) that EH did not comply with LLT's instructions concerning the declaration of trust, but I think this point is immaterial, as the trust deeds and the Codicil are separate documents, and in any event, I have found that LLT affirmed the final version of the Codicil and signed it;

(b) that it was the 1st Plaintiff, and not LLT, who gave instructions to EH about the terms of the Codicil, but again, even if that were so, I accept that the 1st Plaintiff was merely conveying LLT's instructions to EH. There is neither allegation nor proof of undue influence;

(c) that there was a conflict of interest between 1st Plaintiff and EH because of other ongoing commercial dealings between them, but in the same vein, EH had also acted for the other children of LLT;

(d) that LLT did not in fact give any instructions at all, and that it was the 1st Plaintiff who made all the suggestions. This seems to be irrelevant once it has been proved, as I so find, that the Codicil was read back and explained to LLT's satisfaction;

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(e) that LLT did not appreciate the source of funding for the cash gifts, but this is inconsistent with the unrefuted evidence of EH that LLT did not wish to sell any asset to ensure there was cash; and

(f) that the 1st Plaintiff was not forthcoming in revealing that there was a Will and Codicil, while he was managing the finances of the estate all this time. I accept that this seems that the 1st Plaintiff had some ulterior motive, but without more, it will be wrong to extrapolate that into a grand theory, duly proved by the speculation of a hidden agenda, that LLT did not make the Codicil of his own volition and was not possessed of sound mind when he did. Were we to embark on an inquiry as to motives, the motives of the 1st and 2nd Defendants may also have to be similarly examined (Ms Anna Oei, counsel for the 3rd and 5th Defendants, suggests that the 1st and 2nd Defendants stand to gain much more were the Will and Codicil be found to be invalid), and given the many issues concerning other matters that the family may yet fight over, that exercise may yet be carried out —— but not in these proceedings as there was neither a clear set of pleadings nor any evidence that require such an inquiry to be made.

29 As no witnesses were called on behalf of the Opposing Defendants, and in the absence of any evidence contrary to that adduced by the Plaintiffs, I find that the Will and Codicil had been validly executed by LLT, and declare that they are proved in solemn form.

30 Under r 855 of the Family Justice Rules 2014, no order as to costs should be made unless the Court finds that the opposition to a testamentary instrument was without reasonable grounds. In the light of the suspicious circumstance that I found above, including the delay of seven years, I will not say that that there

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was no reasonable ground to oppose the Codicil (although I think it is quite clear there was no reasonable ground to oppose the Will). However, as trial unfolded, it became clear from the cross-examination of counsel for the Opposing Defendants that they were unable to find a reason to oppose the Codicil. Nonetheless, on the whole, I think that it will be fair to order that each party bears his own costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Tan Teng Muan and Loh Li Qin (UniLegal LLC) for the plaintiffs;
William Ong, Tan Xeauwei, Racheal Wong Shu Yi, Alfred Li (Allen & Gledhill LLP) (instructed) and Goh Kok Yeow (De Souza Lim & Goh LLP) for 1st and 2nd defendants;
Anna Oei Ai Hoea and Christine Chuah Hui Fen (Tan, Oei & Oei LLC) for 3rd and 5th Defendants;
Sarbjit Singh Chopra and Loh Weijie, Leonard (Selvam LLC) for 4th, 7th to 14th Defendants;
Hee Theng Fong, Poon Pui Yee and Cherrilynn Chia (Harry Elias Partnership LLP) for 6th Defendant;
Philip Ling (Wong Tan & Molly Lim LLC) for Non-Party.

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