IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2024] SGHCF 36

Suit No 7 of 2019

Between

XBO

… *Plaintiff*

And

XBP

… *Defendant*

And Between

XBP

… *Plaintiff in counterclaim*

And

XBO

… *Defendant in counterclaim*

JUDGMENT

[Succession and Wills — Testamentary capacity — Mental disability]

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XBO
v
XBP

[2024] SGHCF 36

General Division of the High Court (Family Division) — Suit No 7 of 2019
Tan Siong Thye SJ
11–14, 18–20 June, 23 September 2024

9 October 2024 Judgment reserved.

Tan Siong Thye SJ:

Introduction

1 The plaintiff and the defendant are the children of the testator, the late Mr [A]. In 2012, the testator made a will ("the 2012 Will") giving his estate, which includes a single storey bungalow at [address redacted] ("the Property"), to the plaintiff. However, in 2011, he had previously made a will bequeathing the Property to the defendant ("the 2011 Will"). The parties do not challenge the validity of the execution of the 2011 Will in which the sole beneficiary of the Property was the defendant. The defendant is now challenging the validity of the 2012 Will on the ground that the testator did not have the testamentary capacity to make the 2012 Will. Therefore, the central issue is whether the testator had the requisite testamentary capacity to execute the 2012 Will.

2 For the reasons which follow, I find that the testator had testamentary capacity when he made the 2012 Will. Consequently, the 2012 Will – not the 2011 Will – is the testator's last true will and valid in law. Accordingly, I grant the plaintiff's suit in HCF/S 7/2019 for pronouncement in solemn form that the 2012 Will is the last true will and grant probate of the 2012 Will to the plaintiff. I dismiss the defendant's counterclaim for pronouncement in solemn form that the 2011 Will is the last true will and the grant of letters of administration with will annexed in her favour.

Facts

3 The testator had six children, including the plaintiff, Mr [XBO], and the defendant, Mdm [XBP].[1]

4 The testator passed away on 13 March 2019.[2] The assets of the testator's estate include the Property.[3] After the demise of the testator, the defendant remained in exclusive occupation of the Property.[4]

Which is the last true will of the testator?

The 2011 Will

5 On 10 October 2011, the testator executed the 2011 Will. The substantive clause of the 2011 Will reads as follows:[5]

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1 Statement of Claim dated 31 October 2019 ("SOC") at para 4; Defence & Counterclaim (Amendment No 2) dated 11 September 2020 ("D&CC") at para 5.

2 SOC at para 1; D&CC at para 3.

3 SOC at para 6; D&CC at para 6.

4 SOC at para 7; D&CC at para 7.

5 Agreed Bundle of Documents dated 30 May 2024 ("AB") at p 762.

> This is my last will and Testament. I, [A], do hereby leave my house and present residence, [the Property], to my loving daughter, Mrs [B] now residing at [address redacted].

It is not disputed that "Mrs [B]" refers to the defendant.

6 The parties do not challenge the validity of the execution of the 2011 Will. They similarly do not challenge the testator's capacity to have made the 2011 Will.[6] Hence, as of 2011, the 2011 Will was certainly the testator's last will and testament.

The 2012 Will

7 Subsequent to the execution of the 2011 Will, the testator executed the 2012 Will on 24 November 2012.[7] The substantive clauses of the 2012 Will read:[8]

> I, [A] NRIC No [xxx] and last residing at [the Property] revoke all former wills and testamentary dispositions made by me and declare this to be my last will and testament.
>
> 1. I **Appoint** [XBO] NRIC No [xxx] of [address redacted], to be my sole Executor of this, my Will.
> 2. **I Give, Devise And Bequeath** all my real, immovable and personal property whatsoever and wheresoever, to my son [XBO] NRIC No [xxx], absolutely.
> 3. The rest of my surviving children namely, will get
>
> | | |
> |---|---|
> | [name redacted] | 0% |
> | [name redacted, alias of XBP] | 0% |
> | [name redacted] | 0% |
> | [name redacted] | 0% |

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6 Agreed Statement of Facts dated 11 June 2024 ("ASOF") at para 1.

7 ASOF at para 2.

8 AB at p 952.

[emphasis in original]

8 The execution of the 2012 Will by the testator was witnessed by one Mr [F] and one Mr [G] (collectively, "M/s [F] and [G]").[9]

The parties' cases

The plaintiff's case

9 The plaintiff avers that the 2012 Will constitutes the last true will of the testator and, conversely, the court should pronounce that the 2011 Will does not constitute the last true will of the testator as it was validly revoked by the 2012 Will.[10] Accordingly, the plaintiff submits that the court should rule that the last will of the testator is the 2012 Will, which makes the plaintiff the sole executor and sole beneficiary of the testator's estate.[11]

10 The plaintiff submits that he discharged the legal burden, as the propounder of the 2012 Will, to prove that the 2012 Will was made whilst the testator had testamentary capacity to execute it. This onus was discharged with the evidence of the two witnesses to the 2012 Will's execution, namely, M/s [F] and [G] (see above at [8]), whose evidence the plaintiff urges the court to accept as credible and reliable.[12] Their evidence shows that the testator read out the 2012 Will before handing it over to the two witnesses, he recognised the witnesses and could recall the prior occasions on which he had met them, and understood the will's contents.[13]

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9 AB at p 952.

10 SOC at p 5 prayers (1)–(2).

11 SOC at para 1 and p 5 prayer (3).

12 Plaintiff's Closing Submissions dated 19 July 2024 ("PCS") at para 5.

13 PCS at paras 15–17.

11 Conversely, the plaintiff submits that little weight should be accorded to the various documents relied on by the defendant to allegedly show that the testator was labouring under various mental disorders at the time of the execution of the 2012 Will, which the plaintiff characterises as ambiguous on their face and unreliable in all the circumstances.[14]

12 The plaintiff relies on the independent lifestyle of the testator, in particular, the fact that he was making payments for his utilities bills on his own in 2011–2012.[15] The plaintiff also argues that the testator conducted his own banking transactions with the HSBC bank account held jointly with the defendant until, at the least, September–October 2012.[16] On his case, these external circumstances indicate that the testator had continued possession of his mental capacity at the time of the execution of the 2012 Will.

13 Finally, the plaintiff draws a distinction between mere memory loss and a loss of testamentary capacity, pointing to case law including *WHR and another v WHT and others* [2023] SGHCF 32 ("*WHR v WHT*") at [26], as standing for the proposition that a testator or testatrix may suffer from occasional lapses of memory without losing the requisite testamentary capacity.[17] For these reasons, the plaintiff prays for his claim to be allowed, and the defendant's counterclaim to be dismissed, with costs awarded in his favour.[18]

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14 PCS at paras 21–32.

15 PCS at para 33.

16 PCS at para 35.

17 Plaintiff's Reply Submissions dated 26 July 2024 ("PRS") at paras 16–17.

18 PRS at paras 31–33.

The defendant's case

14 The defendant claims that, at the time of the 2012 Will, the testator "was not of sound mind, memory and understanding", and instead had been diagnosed with and/or was suffering from dementia and/or Alzheimer's disease since in or about January 2012.[19] The defendant clarified by way of providing further and better particulars that the basis for the defendant's claim is the testator's medical history set out in the Discharge Summaries from Changi General Hospital ("CGH"), which mention Alzheimer's disease, vascular dementia and chronic microvascular ischemia.[20] In particular, the defendant identified the Discharge Summaries from CGH dated 21, 23 and 25 November 2012.[21] I shall refer to these documents respectively, as the "Discharge Summary of 21 November 2012", the "Discharge Summary of 23 November 2012", and the "Discharge Summary of 25 November 2012", and collectively, as the "November 2012 Discharge Summaries".

15 The defendant submits that the November 2012 Discharge Summaries constitute evidence that the testator's mental state was deteriorating, and it shows that the testator lacked mental capacity at the time of the execution of the 2012 Will. Further, the November 2012 Discharge Summaries show that the testator was suffering from dementia, Alzheimer's disease and chronic microvascular ischemia at the material time. Moreover, he was brought to the hospital on multiple occasions in November 2012 by ambulance. The testator could not remember why he was calling the ambulance repeatedly on

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19 D&CC at paras 4 and 9.

20 Defendant's Further and Better Particulars dated 21 January 2020 ("D's FNBPs") at para 3(i).

21 D's FNBPs at para 3(ii).

23 November 2012,[22] just a day before the 2012 Will was executed. This called into question the testator's memory and mental state at the relevant time. All these factors mean that the plaintiff has failed to discharge his legal burden of affirmatively proving that the testator had the requisite testamentary capacity at the time.[23]

16 In addition to relying on the November 2012 Discharge Summaries, the defendant also invokes a number of other allegedly suspicious circumstances surrounding the execution of the 2012 Will. The defendant urges the court not to give any weight to the plaintiff's evidence regarding the dictation of an earlier draft of the 2012 Will to the plaintiff in November 2011.[24] The defendant also submits that the plaintiff's evidence as to an alleged second dictation of the 2012 Will by the testator on 18 November 2012 is irreconcilable with the fact that the testator had been taken by ambulance to CGH that day.[25] The defendant argues that the fact that the 2012 Will was purportedly prepared in consultation with a solicitor, but executed without that solicitor being present or giving him legal advice, is suspicious.[26] Further, the two attesting witnesses to the 2012 Will were not well known to the testator.[27] The defendant also claims that it is suspicious that the plaintiff never told the defendant about the 2012 Will after it had been executed.[28]

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22 PCS at para 55; Defendant's Closing Submissions dated 19 July 2024 ("DCS") at para 17; AB at pp 819–821 and 951.

23 DCS at paras 14–20.

24 DCS at paras 22–23.

25 DCS at paras 26–27.

26 DCS at para 30.

27 DCS at para 32.

28 DCS at para 34.

17 In so far as any of these particulars were not expressly stated in the defendant's pleadings, she argues that they are relevant to the pleaded issue of whether the testator had the requisite testamentary capacity when he executed the 2012 Will. She cites the case of *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 2 SLR 235 ("*How Weng Fan*") at [19]–[20] for the proposition that the court ought to permit an unpleaded point to be raised and determined if there is no irreparable prejudice occasioned to the other side that cannot be compensated in costs or where it would be clearly unjust for the court not to do so. She also cites *How Weng Fan* at [29(b)] for the proposition that no prejudice is occasioned where both sides engaged with the same issue at trial, *ie*, on the testator's testamentary capacity. Hence, she submits that it would be unjust for this court to disregard the totality of the suspicious circumstances surrounding the testator's making of the 2012 Will.[29]

18 Accordingly, the defendant argues that the 2011 Will was the last true will of the testator and not the 2012 Will which purportedly appointed the plaintiff as the sole executor and sole beneficiary of the testator's estate.[30] Given the defendant's allegation that the testator did not have the testamentary capacity to make the 2012 Will, the defendant claims that the 2011 Will was the last true will of the testator, in which the defendant was named as the sole beneficiary of the Property.[31] Thus, the defendant counterclaims for relief pronouncing in solemn form that the 2011 Will constitutes the last true will of the testator instead of the 2012 Will, and for letters of administration with will annexed to be granted to the defendant.[32]

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29 Defendant's Reply Submissions dated 26 July 2024 ("DRS") at paras 22–24.

30 D&CC at pp 3–4 paras 13(a)–13(b).

31 D&CC at para 12.

32 D&CC at p 4 paras 13(b)–13(c).

Issue to be determined

19 The central issue in this dispute is whether the 2011 Will or the 2012 Will is the last true will of the testator. The outcome turns on whether the testator had testamentary capacity at the time he executed the 2012 Will.

The law on testamentary capacity

20 It is trite that for a will to be valid, the testator must (a) have the mental capacity to make a will; (b) have knowledge and approval of the contents of the will; and (c) be free from undue influence or the effects of fraud: *Chee Mu Lin Muriel v Chee Ka Lin Caroline (Chee Ping Chian Alexander and another, interveners)* [2010] 4 SLR 373 ("*Muriel Chee*") at [37].

21 As set out in *Muriel Chee* at [37], referring to the earlier case of *George Abraham Vadakathu v Jacob George* [2009] 3 SLR(R) 631 ("*Jacob George*") at [29], the essential requisites of testamentary capacity are:

(a) the testator understands the nature of the act and what its consequences are;

(b) he knows the extent of his property of which he is disposing;

(c) he knows who his beneficiaries are and can appreciate their claims to his property; and

(d) he is free from an abnormal state of mind (*eg*, delusions) that might distort feelings or judgments relevant to making the will.

22 The court must look at the totality of the evidence as a whole, comprising both factual (including evidence of friends and relatives who had the opportunity to observe the testator) and medical components. The court

should generally accord equal importance and weight to both types of evidence, so long as both the factual and medical witnesses had the opportunity to observe the testator at the material time: *Muriel Chee* at [38].

23 It is important to bear in mind that even if the testator suffers from a serious mental illness, such as dementia, at the material time of executing the will, the court is not precluded from finding that the testator had testamentary capacity. As such, the existence of a serious mental illness at the material time does not completely address the issue of testamentary capacity, which is a related but distinct question: *Muriel Chee* at [42]. This was recognised in the Victorian Supreme Court decision of *Norris v Tuppen* [1999] VSC 228 at [335]–[336] and the English High Court Chancery Division decision of *Cattermole v Prisk* [2006] 1 FLR 693 at [75], both of which were cited with approval in *Muriel Chee* at [42]–[43]. These cases held that a testator or testatrix may labour under a medical condition, such as dementia, at the time of the execution of the will, whilst still retaining his or her testamentary capacity to execute it. Likewise, in *WHR v WHT* at [26] (see above at [13]), it was held that occasional memory lapses on the part of the testator there did not, without more, prove that he lacked the mental capacity to understand and discharge his own affairs.

24 The propounder of the will bears the legal burden of proving that the testator possessed testamentary capacity. Often, this is *prima facie* established by proof of the due execution of the will in ordinary circumstances where the testator was not known to be suffering from any kind of mental disability. The party opposing the will may rebut that presumption by, for example, adducing evidence that the testator was suffering from a mental illness serious enough to support a finding of a lack of testamentary capacity (see *Muriel Chee* at [40]).

25 Accordingly, per *Muriel Chee* at [46] and [48]:

> 46 Once testamentary capacity has been established, a rebuttable presumption arises that the testator knew and approved of the contents of the will at the time of execution. While the legal burden of proof lies at all times with the propounder of the will, the evidential burden of proof shifts in ordinary circumstances to the opponent of the will to rebut this presumption. However, it is necessary to note that under established law, the presumption does not arise where there were circumstances surrounding the execution of the will which would raise a well-grounded suspicion that the will (or some provision in it) did not express the mind of the testator …
>
> …
>
> 48 One oft-cited example of suspicious circumstances is where a will was prepared by a person who takes a substantial benefit under it, or who has procured its execution, such as by suggesting the terms to the testator or instructing a solicitor to draft the will which is then executed by the testator alone … In such suspicious circumstances where no presumption arises, the propounder of the will must produce affirmative evidence of the testator's knowledge and approval. …

26 With these principles in mind, I shall turn to address the main issue in this case, *viz*, whether the testator had testamentary capacity to execute the 2012 Will. The answer to that question will determine the outcome of the present case as to whether the 2012 Will is the testator's last true will at the time of his passing.

The testator did have testamentary capacity when making the 2012 Will

27 As established (see above at [24]), the plaintiff, as the propounder of the 2012 Will, has the legal burden of proving that the testator had the necessary testamentary capacity when he made the 2012 Will. I shall now assess the evidence proffered by the plaintiff at the trial.

The testimonies of the witnesses to the 2012 Will demonstrate that the testator had testamentary capacity at the time of his executing the 2012 Will

28 As I had noted (see above at [8]), M/s [F] and [G] were the two witnesses to the 2012 Will. They both gave evidence that the testator executed the 2012 Will.

Mr [F]'s evidence

29 I shall first look at Mr [F]'s evidence. According to Mr [F], he knew the testator for many years, since his primary school days,[33] and he visited the testator's house regularly.[34] This continued even after the testator had shifted his residence to the Property.[35] Mr [F] had seen the testator around a week prior to the day that the 2012 Will was executed (*ie*, prior to 24 November 2012).[36]

30 Mr [F]'s evidence was that the plaintiff had made arrangements for him to be a witness to the 2012 Will.[37] On 24 November 2012, the day that the 2012 Will was executed, Mr [F] went to the testator's home in order to witness the execution of the 2012 Will.[38]

31 Mr [F] testified that the testator was "lucid and vigilant" and Mr [F] "did not suspect that [the testator] was sick or incapable of understanding."[39] Under

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33 Affidavit of Evidence-in-Chief ("AEIC") of [F] dated 6 May 2022 ("AEIC [F]") at para 1; Notes of Evidence ("NE") of 12 June 2024 at p 3 lines 10–15 and 24–25 and p 4 lines 1–20.

34 AEIC [F] at para 2; NE of 12 June 2024 at p 4 lines 15–20.

35 AEIC [F] at para 2.

36 NE of 12 June 2024 at p 4 line 25 to p 5 line 10.

37 AEIC [F] at paras 5–7.

38 AEIC [F] at para 8.

39 AEIC [F] at para 19.

cross-examination, Mr [F] explained that his assessment of the testator's lucidity and vigilance was based on his observations of the testator that day. In particular, Mr [F] explained that the testator was able to relate to him and converse with him, even in Mr [F]'s own dialect of Malayalam.[40] In Mr [F]'s Affidavit of Evidence-in-Chief ("AEIC"), he stated that: (a) the testator had tested Mr [F] on his Malayalam;[41] (b) the testator had asked Mr [F] about his work and his children;[42] (c) the testator had remembered that Mr [F] was a keen sportsman and asked Mr [F] about his fitness routines;[43] and (d) the testator regaled Mr [F] with his experience during the Japanese Occupation of Singapore.[44]

32 In addition, when Mr [F] was directly asked by the court if there was any suspicion that the testator was not mentally stable or if there was anything else suggesting that the testator did not have mental capacity at the time of his executing the will,[45] Mr [F] unequivocally denied having any such suspicions at that time. He stated as follows:[46]

> *Not at all. It never crossed my mind*, because [the testator] was chatty, the normal person, and also [the testator] was questioning me about the job I am doing. So I looked at [the testator], *he was a perfect guy, a normal person*, a sportsman, I was a sportsman too, so we were talking, yes, in general, yes. *So I didn't see anything, not at all.*
>
> [emphasis added]

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40 NE of 12 June 2024 at p 12 lines 3–10.

41 AEIC [F] at para 8.

42 AEIC [F] at para 8.

43 AEIC [F] at para 8.

44 AEIC [F] at para 19.

45 NE of 12 June 2024 at p 21 lines 14–18.

46 NE of 12 June 2024 at p 21 lines 19–25.

33 Finally, I note that Mr [F] had even sought clarification from the testator about the contents of the 2012 Will, particularly the fact that, save for the plaintiff, the testator's other children were not going to receive anything from the testator's estate.[47] In response, the testator said that this was because the plaintiff was his favourite son and the plaintiff would know what to do.[48] Mr [F] explained that he left the matter at that because he did not want to confront the testator further, as he was afraid of the testator, who was known to be strict and intimidating.[49]

34 Mr [F] is an honest and truthful witness. There is no reason for the court to doubt Mr [F]'s testimony that the testator was lucid and capable of normal conversation, and that the testator did not display any sign of mental problems when he executed the 2012 Will. Mr [F] did not stand to gain anything from the 2012 Will and he has no stake in the outcome of the proceedings. Furthermore, when Mr [F] sought clarification from the testator about the allocation of his estate, Mr [F] wanted to be certain that the testator did not wish for his other children to have a share of the inheritance and that the testator was sure about making the plaintiff the sole beneficiary of his estate.

35 In my view, Mr [F]'s testimony is highly probative as to the mental state of the testator at the time of the execution of the 2012 Will. Indeed, as one of two witnesses to the 2012 Will and one of three people who had interacted with the testator at the very time that the 2012 Will was executed, Mr [F]'s observations are highly relevant and enlightening as to the testator's contemporaneous mental capacity *at the time of the execution* of the 2012 Will.

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47 AEIC [F] at para 14; NE of 12 June 2024 at p 21 lines 1–13.

48 AEIC [F] at para 15; NE of 12 June 2024 at p 21 lines 1–13.

49 AEIC [F] at para 15; NE of 12 June 2024 at p 21 lines 1–13.

36 The response of the testator to Mr [F]'s clarificatory question about the allocation of the testator's estate amongst his children indicates that the testator understood the nature and consequences of executing the 2012 Will. He was able to sufficiently elucidate: (a) his reasons for wanting the plaintiff to be the sole beneficiary of his estate; and, more importantly (b) to indicate to Mr [F] that he was conscious about his choice and understood the consequences of it. This strongly suggests that the testator had the requisite testamentary capacity at the time of the execution of the 2012 Will.

Mr [G]'s evidence

37 I shall now evaluate Mr [G]'s evidence. Mr [G] was acquainted with the testator through Mr [C] who, by virtue of being the plaintiff's son,[50] is also the testator's grandson.[51] Mr [G] had met the testator about four times prior to the execution of the 2012 Will on 24 November 2012.[52] The last time Mr [G] had met or talked to the testator prior to the execution of the 2012 Will was in November 2007, at the one-month anniversary celebration of the birth of Mr [C]'s child.[53]

38 Mr [G]'s evidence was that Mr [C] had contacted him to request that he be a witness to the execution of the 2012 Will.[54] On the day that the 2012 Will was executed (*ie*, 24 November 2012), Mr [G] had attended at the testator's home to witness the execution of the will.[55]

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50 NE of 12 June 2024 at p 26 lines 12–13.

51 AEIC of [G] dated 10 May 2022 ("AEIC [G]") at para 1.

52 NE of 12 June 2024 at p 26 line 19 to p 27 line 5.

53 NE of 12 June 2024 at p 27 line 13 to p 28 line 3.

54 AEIC [G] at para 3; NE of 12 June 2024 at p 27 lines 6–10.

55 AEIC [G] at para 6.

39 Similar to Mr [F], Mr [G] had observed the testator to be "lucid and vigilant" at the time of the execution of the 2012 Will.[56] In his AEIC, Mr [G] explained that the testator had remembered that Mr [G] was present at the one-month anniversary celebration of Mr [C]'s child.[57] Under cross-examination, Mr [G] further explained that he found the testator to be lucid as: (a) the testator could remember his name; and that (b) he was Mr [C]'s friend despite the length of time since their last meeting.[58] Mr [G] found the testator to be vigilant as he had advised Mr [G] to drink at least six glasses of water a day to avoid Crohn's disease. Mr [G] opined that the testator knew how to take care of himself and that he gave good advice to others.[59] Mr [G] observed the testator to be authoritative and in control of the situation and this suggested to him that the testator was "definitely very clear minded".[60]

40 When the court asked Mr [G] about his observations of the mental state of the testator, Mr [G]'s answer was unequivocal. He gave clear and cogent evidence that the testator had an ordinary mental capacity at the time:[61]

COURT:	I want you to focus on [the testator], on that day itself.
A.	Okay.
COURT:	Did you suspect that [the testator] may not be mentally stable or mentally alert?
A.	*No, he's very alert.*
COURT:	He's very alert?

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56 AEIC [G] at para 13.

57 AEIC [G] at para 13.

58 NE of 12 June 2024 at p 32 lines 5–18, p 32 line 25 to p 33 line 2.

59 NE of 12 June 2024 at p 32 lines 20–24, p 35 lines 8–17.

60 NE of 12 June 2024 at p 33 lines 4–10.

61 NE of 12 June 2024 at p 38 line 13 to p 39 line 5.

A. Yes.

COURT: And any -- did he show any sign that he may not be mentally normal?

A. *Not that I know of, no.*

COURT: No?

A. Yes.

COURT: And did you suspect that he might not be acting normally?

A. *He's I think very normal.*

COURT: *He's very normal?*

A. *Yes.*

[emphasis added]

41 I also find Mr [G] to be an honest and truthful witness. He candidly testified that the testator had the requisite testamentary capacity at the time of the execution of the 2012 Will. Mr [G]'s evidence is materially relevant and highly probative as to the testator's mental capacity at the time of the execution of the 2012 Will (see above at [35]).

Conclusion on the credibility of M/s [F] and [G]'s evidence

42 I shall make two further observations about the evidence of M/s [F] and [G]. First, M/s [F] and [G] are independent witnesses, neither of whom have a stake in the outcome of the proceedings. Their testimonies materially corroborate each other. They confirmed that the testator looked very healthy and that nothing in his words or conduct at the time indicated that he lacked the testamentary capacity to make the 2012 Will. Such material congruence between their evidence is an external consistency in their testimonies (see *Farida Begam d/o Mohd Artham v Public Prosecutor* [2001] 3 SLR(R) 592 at [9(c)] and *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 at [39]–[42]), thereby bolstering the weight and credibility

to be attributed to their evidence. Second, there is no suggestion or hint in the record that they were partial witnesses who tailored their evidence to support the plaintiff's case.

43 In summary, I find that the testimonies of the witnesses to the 2012 Will demonstrate that the testator had the requisite testamentary capacity at the time of the execution of the 2012 Will.

The financial independence of the testator at the material time supports a finding that he had the requisite testamentary capacity at the time of the execution of the 2012 Will

44 Apart from the testimonies of the witnesses to the execution of the 2012 Will, the testator's independent way of living also supports the finding that he had testamentary capacity around the material time. The testator, at the material time, was living alone and he took care of his daily needs apart from going to the defendant's place frequently for his dinner. He also took care of his own personal affairs, *eg*, payment of the utilities bills, his banking transactions, *etc*.

45 In the assessment of whether the 2012 Will is valid, it is necessary to ascertain the mental state of the testator *at the time of the execution* of the 2012 Will. The events before and after the execution of the 2012 Will may shed some light as to the testamentary capacity of the testator at *that* time.

46 The independence of the testator, particularly his financial independence, around the material time of the execution of the 2012 Will, does suggest that the testator was of sound mind. This can be gleaned from the fact that the testator continued entering into financial transactions on his own accord

and drawing cheques within the period of January 2011–December 2012,[62] a period within which the 2012 Will was executed.

47 The defendant alleged under cross-examination that, with respect to the HSBC joint bank account held by the testator and herself, the transactions up to October 2012 were undertaken by the testator (save for pension payments made into the account by the Accountant–General).[63] Beyond October 2012, for transactions for the months of November and December 2012,[64] the defendant initially stated that she *thought* that the transactions were *all* undertaken by her.[65] However, when clarification was sought, the defendant conceded that she could not remember which of the transactions beyond October 2012 were done by her,[66] and that the testator could have made some payments as well.[67] When the defendant was asked to explain why she had initially given evidence that she had undertaken the transactions of the joint account from November 2012 onwards, the defendant averred that there were some amounts that seemed familiar to her.[68] Be that as it may, the defendant was unable to explain what one such transaction was for,[69] namely, a withdrawal of $3,000.00 that she herself had identified as an ostensibly familiar amount transacted by her.[70]

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62 AB at pp 962–986.

63 NE of 19 June 2024 at p 8 line 18 to p 11 line 19.

64 AB at pp 985–986.

65 NE of 19 June 2024 at p 13 lines 10–25.

66 NE of 19 June 2024 at p 14 lines 1–11.

67 NE of 19 June 2024 at p 14 line 8 to p 16 line 20.

68 NE of 19 June 2024 at p 44 lines 14–22.

69 NE of 19 June 2024 at p 44 line 23 to p 45 line 22.

70 AB at p 986 (see transaction dated 14 December 2012).

48 The defendant then claimed that she was only responsible for the transactions of large amounts after October 2012, and transactions of small amounts were made by the testator.[71] Even this new position remains unsupported by objective evidence as, save for the abovementioned withdrawal of $3,000.00, the bank account statements for November and December 2012 do not disclose any withdrawals of relatively large amounts.[72]

49 In any case, even on the defendant's final version, the testator continued to make some financial transactions from the joint bank account without any indication in her evidence that he was not of sound mind to do so. In fact, at least two such transactions in November and December 2012 appear to relate to the payment of the utilities bill for the testator's residence.[73]

50 I find that the defendant was clearly less than truthful when she was cross-examined on the transactions relating to the joint bank account with the testator. She initially alleged that *all* transactions on and before October 2012 were done by the testator and that she did all transactions from November 2012 onwards. That distinction is curious and arbitrary. When considered against the fact that the 2012 Will was executed by the testator on 24 November 2012, the clear inference to be drawn is that the defendant chose the cut-off month of October 2012 as she knew that the 2012 Will was made in November 2012. The defendant then conveniently tailored the events in her favour to cast doubt on the testator's testamentary capacity *right around the time* the 2012 Will was executed. When challenged on her evidence, she then vacillated and shifted her position and stated that she handled all big transactions from November 2012

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71 NE of 19 June 2024 at p 45 line 23 to p 46 line 21.

72 AB at pp 985–986.

73 AB at pp 985–986 read with AB at pp 791 and 987.

onwards while the testator only handled the small transactions in a belated attempt to shore up her credibility. I thus find this aspect of her testimony is self-servingly contrived and highly unreliable. In any event, even assuming what she said is true, *ie*, that the testator did all transactions in the joint account until October 2012, that would still serve to demonstrate that the testator was capable of managing his financial affairs and had a sound mind and understanding to do so around the material time of the execution of the 2012 Will. Indeed, when questioned by the court on this aspect of her testimony, the defendant insisted that a large withdrawal from the joint bank account in the amount of $55,871.43 in July 2012 was surely transacted by the testator and *not* by her.[74] The fact that, on her *own* evidence, the testator still had the mental capacity to make independent financial decisions of such importance in July 2012, around four to five months before the execution of the 2012 Will, is significant and probative. It shows on the balance of probabilities that the testator had the requisite testamentary capacity at the time the 2012 Will came to be executed. In fact, it is the defendant's own case that the testator lost his mental capacity from dementia and/or Alzheimer's disease on or around January 2012.[75]

The testator's first dictation of November 2011 suggests that the testator was of sound mind and thus had testamentary capacity at the material time of the execution of the 2012 Will

51 There is a significant and key event which indicates that the testator had the requisite testamentary capacity at the time of the execution of the 2012 Will.

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74 AB at p 981 (see transaction dated 11 July 2012); NE of 19 June 2024 at p 46 lines 13–21.

75 D&CC at para 4.

On 17 November 2011, the testator had dictated a draft will to the plaintiff,[76] which was recorded by the plaintiff and left in his possession under the instructions of the testator.[77] I shall refer to this as the "first dictation".

52 I make two key observations on the first dictation. First, the first dictation was made on 17 November 2011, slightly over a month after the execution of the 2011 Will. Given that the parties are in agreement that the testator had the requisite mental capacity to execute the 2011 Will, and there was no development to the contrary regarding the mental capacity of the testator from that date up to the date of the first dictation, it must be the case that the testator had the requisite testamentary capacity when he made the first dictation. Moreover, this is affirmed by the defendant's position that the testator's health only started deteriorating from *early 2012* onwards when he was "diagnosed with dementia and Alzheimer's disease from January 2012."[78]

53 Second, the terms of the first dictation are materially similar to the executed 2012 Will. In both instances, the testator gave his entire estate to the plaintiff only, to the exclusion of his other children.

54 Given these observations, the first dictation indicates that the testator had testamentary capacity at the time of the making of the 2012 Will which was similar in its contents to that of the first dictation. In other words, after the testator dictated the draft in the first dictation in November 2011, making the plaintiff the sole beneficiary, he maintained that position about a year later in the 2012 Will.

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76 AB at p 763.

77 AEIC of [XBO] dated 13 May 2022 ("AEIC [XBO]") at para 35.

78 AEIC of [XBP] dated 31 July 2022 ("AEIC [XBP]") at para 20.

55 It is significant to note that the defendant accepts that the testator made the 2012 Will but avers that he lacked testamentary capacity. During the cross-examination of the plaintiff, her counsel did question the plaintiff very briefly regarding the events of the first dictation.[79] However, the defendant's counsel did *not* put to the plaintiff that he was lying about the events of the first dictation or that the first dictation never took place, depriving the plaintiff of a chance to rebut that allegation in his testimony (see *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 ("*Sudha Natrajan*") at [48] and *Public Prosecutor v Miya Manik* [2020] SGHC 164 at [85], upheld on appeal in *Public Prosecutor v Miya Manik and another appeal and another matter* [2022] SGCA 73 at [38]). This suggests that the defendant does not challenge the first dictation. At trial, when the court sought her views as to why the testator had changed his mind about making her the sole beneficiary about a month after the 2011 Will was made, she stated as follows:[80]

COURT:	In October 2011, your father made a will in which you are the sole beneficiary.
A.	Yes.
COURT:	The following month in 2011 --
A.	Yes.
COURT:	-- he dictated a will which was not executed, where he changed the sole beneficiary from you to the plaintiff.
A.	Yes.
COURT:	So what do you have to say about that dictation?
A.	I just feel that it's not possible that he would have changed his mind for no reason unless I had made him very angry or had done something very wrong.
COURT:	You wouldn't know, right?

79 NE of 11 June 2024 at p 21 line 11 to p 25 line 17.

80 NE of 19 June 2024 at p 39 line 14 to p 40 line 13.

A. I wouldn't know.

COURT: So in other words, because your case is that your father didn't have the mental capacity because you say that he had Alzheimer's or dementia from January 2012.

A. Yes.

COURT: This dictation took place before January. So, in other words, he had the mental capacity to dictate that will which wasn't executed, right?

A. *Yes, in that way, yes.*

[emphasis added]

56 Hence, the defendant's position at trial was clear that she was *not in a position* to give evidence on whether the testator did or did not change his mind as to the terms of his desired will on or around November 2011. She would not know if the first dictation had or had not taken place.

57 However, when it came to closing submissions, the defendant took the position that the first dictation did *not* take place and the plaintiff's evidence on this should be rejected. The defendant submits that the plaintiff's testimony as to the first dictation is self-serving and uncorroborated; hence, little to no weight should be accorded to it.[81]

58 I do not agree with the defendant's submission regarding the first dictation. The defendant admitted that she was in no position to know whether the testator had changed his mind. She had no knowledge of the first dictation. She clearly accepted in her evidence that the testator "had the mental capacity to dictate that will which wasn't executed".[82]

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81 DCS at para 23.

82 NE of 19 June 2024 at p 40 lines 10–13.

59 In addition, the plaintiff's evidence as to the events of the first dictation cohere with other events in his evidence.[83] On the same date that the first dictation took place on the plaintiff's account (*viz*, 17 November 2011), the testator took the plaintiff to Maybank. There, they made a non-cash withdrawal of A$53,671.70 from an account in the joint names of the testator and the plaintiff,[84] then made a non-cash deposit of that sum into an account in the joint names of the defendant and the testator. The deposit took place on 17 November 2011 – the same date as the first dictation – as confirmed by the date indicated on the top right-hand corner of the copy of the fixed deposit placement slip in the record.[85]

60 The defendant has submitted, in relation to this non-cash deposit, that the plaintiff's evidence should be rejected.[86] This is because the plaintiff did not know where the moneys ended up,[87] and the defendant was unable to confirm whether she received the moneys in her evidence.[88] However, looking at the objective evidence in the record, the non-cash withdrawal slip states on its face that A$53,671.70 was being withdrawn from the stated account, with the names of both the testator and the plaintiff imprinted at the top left hand corner.[89] In other words, the moneys were being withdrawn from a joint account of the testator and the plaintiff. The transaction is indicated *ex facie* as "FCTDA Non-Cash Withdrawal (w/ Nostro)". In addition, a bank officer had initialled on the

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83 AEIC [XBO] at para 35.

84 AEIC [XBO] at para 37 and p 396; NE of 11 June 2024 at p 13 line 10 to p 14 line 5 and p 25 line 18 to p 26 line 19.

85 AEIC [XBO] at p 396; AB at p 764.

86 DRS at paras 7–12.

87 NE of 11 June 2024 at p 26 lines 11–19.

88 NE of 14 June 2024 at p 134 line 4 to p 136 line 23.

89 AB at p 764.

placement slip, suggesting that the transaction was executed.[90] That same slip contains the instructions: "Top Up to [account number ending in 9997]". A reference letter to the defendant from Maybank Singapore Limited dated 25 November 2021 confirms that that same time deposit account, with the same account number ending in "9997", is held in the joint names of the defendant and the testator "during the year [*sic*] 2011 to 2012", with a "Start date" indicated as 15 August 2011.[91] I therefore find, on the evidence, that on the day of the first dictation, the testator did take the plaintiff to Maybank to deposit the said sum from the joint account in the names of the testator and the plaintiff to the joint account in the names of the testator and the defendant.

61 Moreover, the plaintiff's evidence of the first dictation is to be assessed together with other evidence. It is noted that the contents of that draft are similar to that of the eventual 2012 Will.[92] M/s [F] and [G] had given credible evidence that the testator did freely execute the 2012 Will with full knowledge and understanding of its nature and consequences (see above at [36] and [41]–[43]). This lends further support for the plaintiff's version that the first dictation was made by the testator.

62 Accordingly, I accept the evidence of the plaintiff as to the events of the first dictation.

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90 AB at p 764; AEIC [XBO] at p 396.

91 AB at p 1762.

92 AB at p 763.

The evidence of the plaintiff on the second dictation of 18 November 2012 is corroborative that the testator had the requisite testamentary capacity when he made the 2012 Will

63 In addition to the first dictation of 17 November 2011, the plaintiff alleged in his evidence that the testator dictated a second draft of the 2012 Will to him on 18 November 2012. I shall refer to this as the "second dictation". I note that the defendant argues that the plaintiff's account of the events of 18 November 2012, and the interactions between him and the testator that day, are suspiciously self-serving and inconsistent with the fact that the testator was taken to CGH that day.[93]

64 The second dictation took place on 18 November 2012 and later that day the testator was brought to CGH by an ambulance. The plaintiff alleged that he was in the testator's house but was unaware that the testator called the ambulance which brought the testator to CGH. I find it difficult to accept that the plaintiff was unaware that the testator was brought to CGH by an ambulance when he was in the testator's house. This, however, does not mean that I should completely jettison the plaintiff's testimony, including his account of the second dictation. The Court of Appeal has stated on more than one occasion that a court is not required to reject a witness's evidence *in toto* merely because an aspect of their evidence is disbelieved (see *Abdul Rashid bin Mohamed and another v Public Prosecutor* [1993] 3 SLR(R) 656 at [45] and *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [59]), there being "no rule of law that the testimony of a witness must either be believed in its entirety or not at all": *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 at [72], relying on *Public Prosecutor v Datuk Haji Harun*

93 DCS at paras 23–27.

bin Haji Idris (No 2) [1977] 1 MLJ 15 (at 19). In any event, it is prudent for the court to treat the plaintiff's testimony with great caution.

65 Despite the foregoing, the second dictation is corroborative evidence to the making of the 2012 Will. The defendant is not challenging the making of the 2012 Will. She is challenging that the testator did not have the testamentary capacity when he made the 2012 Will. Thus, I accept that the testator did dictate to the plaintiff on 18 November 2012 albeit I find it difficult to accept that he was unaware that the testator was brought to CGH by an ambulance later that day.

The court should not draw an adverse inference against the defendant on the grounds of her alleged suppression or destruction of relevant documents belonging to the testator

66 The plaintiff has asked the court to draw an adverse inference against the defendant for her alleged suppression or destruction of relevant documents of the testator, such as banking transactions and other third-party dealings recorded by the testator,[94] during the relevant period of October 2011 to November 2012. He urges for an adverse inference to be drawn against her that the relevant documents contained information averse to her case, *ie*, they would have shown that the testator *did* have testamentary capacity when he executed the 2012 Will.

67 The drawing of an adverse inference does not arise inflexibly but as a matter of "plain common sense" considering all the circumstances of the case (see *Sudha Natrajan* at [19]–[20]). Hence, if the reason for the non-production of the witness or evidence at issue "can be explained to the satisfaction of the

94 AEIC [XBP] at para 8.

court, then no adverse inference may be drawn. If, on the other hand, a reasonable and credible explanation is given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or annulled" (see *Sudha Natrajan* at [20(d)]). This is so "where the failure to produce evidence is reasonably attributable to reasons other than the merits of the case or the issue in question" (see *Sudha Natrajan* at [21], relying on Jeffrey Pinsler SC, *Evidence and the Litigation Process* (LexisNexis, 5th Ed, 2015) at para 12.068).

68 I agree with the defendant that it was reasonable, under the circumstances, for her to have taken the view that there was nothing untoward about the disposal of such documents when she did so.[95] She was not aware of the existence of the 2012 Will and believed that she was the sole beneficiary of the Property under the 2011 Will. I note, for completeness, that the defendant has disputed the allegation of the disposal of documents and does not concede to having disposed of *all* documents relating to the relevant period.[96] She does concede to having thrown out at least some documents of the testator following his passing and shortly after she moved into the Property.[97]

69 The salient point in this case is that the defendant did not dispose of the documents with the intention to hide evidence that is averse to her case. At the time when the defendant disposed of some of the testator's documents, she was unaware of the making of the 2012 Will and did not know that there would be a civil suit against her. At that time, she only knew that there was the 2011 Will

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95 DCS at para 38.

96 NE of 13 June 2024 at p 122 line 2 to 125 line 7; NE of 18 June 2024 at p 119 line 1 to p 127 line 14.

97 NE of 18 June 2024 at p 126 line 10 to p 127 line 14.

which designated her as the sole beneficiary of the Property. Hence, under the circumstances, it is unsafe to infer that the defendant had disposed of the testator's documents because she believed that they contained evidence averse to her case.

70 Accordingly, I decline to draw the adverse inference against the defendant sought by the plaintiff.

The medical evidence relied on by the defendant does not show that the testator suffered a disease of the mind negating his testamentary capacity in or around the execution of the 2012 Will

71 I shall now assess the medical evidence proffered by the parties to establish their respective cases on the testator's mental capacity. Before doing so, I note that neither party sought to introduce medical evidence of the testator's mental capacity *at the time of the execution of* the 2012 Will. Instead, the parties, especially the defendant, relied primarily on the medical evidence of the testator's mental capacity ***around*** *the time of the execution* of the 2012 Will instead. It is necessary for the court to evaluate the factual and medical evidence to ascertain whether the testator had the testamentary capacity to make the 2012 Will (see above at [22]). In this case, in the absence of the direct evidence of a medical practitioner who had examined the testator or any expert opinion, the court has to be careful in interpreting the opinions of the doctors as expressed in the medical records that were tendered in court. As no medical personnel had testified, the court is deprived of the full context and explanations of the remarks made in various hospital records or medical documents relied on by the defendant. That is necessarily a factor that this court must be mindful of in attributing the appropriate weight to such remarks.

72 The defendant has argued, in her written submissions, that since the plaintiff bore the burden of proving the testator's testamentary capacity, the plaintiff's failure to call the medical professionals who authored these out-of-court statements to give evidence should work against his case and not the defendant's.[98] While the plaintiff bears the legal burden of proving the testator's testamentary capacity, the defendant relied heavily on the November 2012 Discharge Summaries to show that the testator did not have the testamentary capacity to make the 2012 Will. The court has to decide the weight to be attributed to the medical evidence when analysing the other evidence in this case. As the medical professionals who made the relevant out-of-court statements were not called to give evidence, the court has to be extremely cautious when evaluating the remarks in the medical documents, for the reasons given at [71] above.

73 I note that the defendant, in her pleadings, relied heavily on the November 2012 Discharge Summaries to show that the testator did not have the requisite mental capacity at the time of the execution of the 2012 Will. To recapitulate, the crux of the defendant's case is as follows (see above at [14]):[99]

> The Defendant avers that the [testator] at the time when the alleged [2012 Will] purports to have been executed was not of sound mind, memory and understanding. The [testator] had been diagnosed/was suffering from dementia and/or Alzheimer's disease from in or about January 2012.

74 In this regard, when the defendant was asked to state the full particulars of the basis for alleging that the testator "was not of sound mind, memory and understanding",[100] as alleged in her Defence and Counterclaim (Amendment

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98 DCS at para 41.

99 D&CC at para 4.

100 D&CC at para 4.

No 2), the defendant stated in her Further and Better Particulars ("FNBPs") (see above at [14]) that:[101]

> The basis for the Defendant's position is the [testator's] medical history as set out in the Discharge Summaries from Changi General Hospital mentions Alzheimer's Disease, vascular dementia and chronic microvascular ischemia.

75 In her FNBPs, the defendant specifically referred to the November 2012 Discharge Summaries.[102] Additionally, there is also a document containing a CT brain scan radiology report with the results of the CT brain scan performed on the testator by CGH dated 16 January 2012 ("the January 2012 Results") (see below at [93]–[94]),[103] which is in parties' Agreed Bundle dated 30 May 2024 (the "AB") and dovetails the defendant's pleading as to the alleged deterioration in the testator's mental condition from January 2012 onwards (see above at [73]). While the January 2012 Results are not expressly mentioned in the defendant's FNBPs, I, nevertheless, consider them as they are alluded to within the contents of the November 2012 Discharge Summaries (in the entry "CTB Chronic microvascular ischemia and age related changes 16/1/2012" under the heading "Main Complaints/History"),[104] which are mentioned in her FNBPs.[105]

76 The general rule is that parties are bound by their pleadings and the court is precluded from deciding on a matter which parties themselves have decided not to put into issue in their pleaded cases (see *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 at [128]; *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd*

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101 D's FNBPs at para 3(i).

102 D's FNBPs at para 3(ii).

103 AB at p 804.

104 AB at pp 948 and 953.

105 D's FNBPs at para 3(ii).

[2014] 3 SLR 524 at [94]; and *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [38]).

77 Accordingly, for the defendant to succeed on her case that the testator lost his mental capacity from January 2012 onwards, she would have to show, from the November 2012 Discharge Summaries and the January 2012 Results, that the testator "was not of sound mind, memory and understanding" at the material time of his executing the 2012 Will.[106]

78 With these considerations in mind, I shall proceed to analyse the November 2012 Discharge Summaries and the January 2012 Results, which the defendant relies on as the basis of her allegation that the testator did not have the requisite testamentary capacity at the material time.

Discharge Summary of 21 November 2012

79 I shall begin with the Discharge Summary of 21 November 2012. The main details of the Discharge Summary of 21 November 2012 which the defendant relies on are the remarks in the section entitled "Main Complaints / History",[107] which state, *inter alia*:[108]

> [Patient History]
>
> 1. Alzheimers [*sic*] Disease ?vascular dementia
>
> - F/U with GRM
>
> - CTB Chronic microvascular ischemia and age related changes 16/1/2012

106 D&CC at para 4.

107 NE of 13 June 2024 at p 46 line 25 to p 47 line 11.

108 AB at p 946.

- previously on plavix but stopped

80 It is unclear who made these remarks. Were they made by the doctor or nursing staff? Moreover, there was a question mark after the words "Alzheimers Disease". This suggests that the person who entered the words "Alzheimers Disease" was unsure if the testator had Alzheimer's disease when the testator was at the Accident and Emergency ("A&E") department of CGH on 21 November 2012. The testator was brought to the A&E department of CGH by an ambulance as he was experiencing occasional sharp pain from his left hernia. Therefore, the testator was not assessed at CGH on whether he had Alzheimer's disease and/or vascular dementia. That was not the testator's suspected medical condition at the time. Moreover, no medical personnel were called to assist the court or attest to the contents of this document. Hence, it is dangerous and inappropriate to conclude that the testator had Alzheimer's disease or vascular dementia when he was at CGH for experiencing pain in his left hernia based on these brief tentative remarks alone. There is no indication from the Discharge Summary of 21 November 2012 that the testator went to CGH for Alzheimer's disease or dementia, or that he had been diagnosed with such conditions. That document shows, however, that the testator had issues with his left hernia and that he was experiencing pain. The "FINAL DIAGNOSIS" was stated as "GIT -LEFT INGUINAL HERNIA - REDUCIBLE" with no "Additional Diagnosis" being made.[109] Therefore, the testator's visit to the hospital was *not* in relation to any mental illness but rather because of his left groin pain with swelling of the left inguinal area.[110] These remarks indicate that the focus of the attending doctor was not on any mental illness of the testator, but rather, the physical pain that the testator was

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109 AB at p 946.

110 AB at p 946.

experiencing. This physical infirmity would not have required the doctor to investigate the testator's mental capacity. I thus find that these remarks are highly equivocal and they cannot, on their own, support a finding, on the balance of probabilities, that the testator was suffering from Alzheimer's disease and/or vascular dementia at or around 21 November 2012.

81 Moreover, following the testator's physical examination at the time, he was noted to be "alert, conscious and rational" and with a steady gait.[111] These remarks do not accord with someone lacking in testamentary capacity at the material time. These remarks add to the ambiguity as to whether the Discharge Summary of 21 November 2012 can be said to prove that the testator was indeed suffering from Alzheimer's disease and/or vascular dementia at the time.

82 Thus, the Discharge Summary of 21 November 2012 does not support a finding that the testator was suffering from Alzheimer's disease and/or vascular dementia at the material time. Similarly, I do not find, on the balance of probabilities, that the Discharge Summary of 21 November 2012 supports the conclusion that the testator did not have the requisite testamentary capacity at the time of the execution of the 2012 Will.

Discharge Summary of 23 November 2012

83 The defendant also relies on the Discharge Summary of 23 November 2012 to support her case that the testator was suffering from Alzheimer's disease, vascular dementia, and chronic microvascular ischemia.[112]

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111 AB at p 946.

112 NE of 13 June 2024 at p 75 lines 2–7.

The defendant refers to the section entitled "Main Complaints / History" in the Discharge Summary of 23 November 2012, which states:[113]

> [Complained of]:
>
> 1. SWELLING OVER THE LEFT GROIN ?DURATION
>
> - *[PATIENT] CLAIMS HE CANNOT REMEMBER*
>
> - HAS ALSO PAIN OVER THE LEFT GROIN REGION UNSURE OF DURATION AS WELL
>
> …
>
> [emphasis added]

84 It is not clear what is being referred to when it is recorded that the testator "claims he cannot remember". Read in its context, it is more probable than not that the statement intended to convey that the testator claimed that he could not remember the duration of the swelling over the left groin area, given that the preceding sentence includes the word "?DURATION". However, similar to the Discharge Summary of 21 November 2012, the recorder of this discharge summary and/or the attending doctor who would have examined the testator was not called to give evidence in these proceedings. Hence, the true meaning of this statement cannot be definitively determined when the medical personnel who made it did not come to court to assist or give evidence on the circumstances surrounding the making of these remarks.

85 Hence, I do not find the statement "claims he cannot remember" to be sufficient proof that the testator was suffering from Alzheimer's disease, vascular dementia, and chronic microvascular ischemia. It is not uncommon for a patient to forget details of this kind, especially when one is in pain and cannot keep track of all the particulars of one's infirmity. It is normal for a patient to

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113 AB at p 950.

not commit to memory minor details of his or her physical condition which he or she may not appreciate to be important to a medical professional. It is unsafe to draw an inference that the failure to commit such a fact to memory must be attributable to some kind of mental disability.

86 The defendant also relies on the section entitled "Doctor's Notes" of the Discharge Summary of 23 November 2012, which states:[114]

> NOTED THAT PATIENT HAS BEEN CALLING THE AMBULANCES FOR A FEW TIMES ALREADY
> BUT CANNOT REMEMBER WHY HE CALLED THE AMBULANCE
> …

87 In her submissions,[115] the defendant relies on this fact to support her argument that the testator was suffering from the effects of Alzheimer's disease and/or dementia. In my view, this is not readily apparent from the remarks in this section. It was a fact that the testator had previously called for ambulance services over several days, *ie*, 18, 19, 21 and 23 November 2012, as he was in pain because of his left hernia.[116] Moreover, parties in their submissions agreed that the testator called for an ambulance multiple times on 23 November 2012 itself.[117] It is stated in this Discharge Summary of 23 November 2012 that the testator "cannot remember why he called the ambulance", despite the fact that he *had* called for ambulance services on these instances as he was experiencing pain due to his left hernia. However, the fact that the Discharge Summary of 23 November 2012 states that the testator "cannot remember why he called the ambulance" does not necessarily show that he was suffering from Alzheimer's

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114 AB at p 951.

115 DCS at para 17.

116 AB at pp 813–821.

117 PCS at para 55 and DCS at para 17.

disease and/or vascular dementia. There could be other reasons for the testator to say that he could not remember calling for the ambulance, *eg*, it could have been that he was embarrassed at having called for ambulance services so many times. The crucial point here is that, in 2012, the testator was not medically diagnosed for Alzheimer's disease and/or vascular dementia. Indeed, similar to the Discharge Summary of 21 November 2012, the Discharge Summary of 23 November 2012 states only a "Final Diagnosis" of "LT INGUINAL HERNIA, REDUCIBLE", with an "Additional Diagnos[is]" of "NIL".[118]

88 I also observe that, unlike the earlier Discharge Summary of 21 November 2012, the Discharge Summary of 23 November 2012 does not make any mention of Alzheimer's disease and/or vascular dementia. In fact, in the same section where these remarks had appeared in the Discharge Summary of 21 November 2012 (*viz*, the one entitled "Main Complaints / History"), it was instead recorded as: "NO PAST MEDICAL HISTORY".[119] In view of this, the uncertainty over whether the testator was in fact suffering from Alzheimer's disease and/or vascular dementia at that material time is magnified. This is especially so when these two Discharge Summaries were in relation to visits to the hospital that were a mere two days apart. It is pertinent to note that the testator was brought to CGH on 21 and 23 November 2012 because of pain to his left hernia and not on account of any suspected mental condition.

Discharge Summary of 25 November 2012

89 Finally, I shall consider the Discharge Summary of 25 November 2012. This document included the same remarks as the Discharge Summary of

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118 AB at p 950.

119 AB at p 950.

21 November 2012 (see above at [79]), namely, that the patient's history included "Alzheimers Disease ?vascular dementia".[120] The similarities between these two Discharge Summaries were also evident from the section on the diagnosis given. In the Discharge Summary of 25 November 2012, the final diagnosis was stated as "SMALL LEFT INGUINAL HERNIA" and no additional diagnosis was made, which was essentially the same as that in the Discharge Summary of 21 November 2012 and the Discharge Summary of 23 November 2012. That no additional diagnosis was made in this medical record, save for the hernia diagnosis, was a fact admitted by the defendant herself in cross-examination.[121] As these remarks of "Alzheimers Disease ?vascular dementia" are identical to that in the Discharge Summary of 21 November 2012,[122] my observations about the ambiguity of the meaning of the remarks made of the testator's mental capacity, in relation to the Discharge Summary of 21 November 2012, apply equally here (see above at [80]). Thus, these remarks cannot, on their own, support a finding on the balance of probabilities that the testator was suffering from Alzheimer's disease and/or vascular dementia at the material time.

90 As for the rest of the Discharge Summary of 25 November 2012, I also observe that the testator was noted to be "alert" under the section on physical examination.[123] Again, this does not accord with someone suffering from an impairment of his testamentary capacity at the material time.

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120 AB at p 953.

121 NE of 13 June 2024 at p 70 lines 6–11.

122 AB at p 948.

123 AB at p 953.

91 Therefore, similar to the Discharge Summary of 21 November 2012 and the Discharge Summary of 23 November 2012, I do not find that there is sufficient basis to establish, on the balance of probabilities, that the testator was suffering from Alzheimer's disease, vascular dementia, and chronic microvascular ischemia in 2012, based on the Discharge Summary of 25 November 2012.

92 I shall now consider the evidence adduced by the defendant purporting to show that the testator suffered from memory loss back in January 2012, in the form of the January 2012 Results (see above at [75]).

January 2012 Results

93 The defendant also relies on the remarks "Memory loss" observed in a CT brain scan result dated 16 January 2012 (*ie*, the January 2012 Results), which arises indirectly from her reliance on the "Referral For Continuation Of Treatment" dated 21 November 2012, which includes an entry, under the section entitled "Main Complaints / History", reading as: "CTB Chronic microvascular ischemia and age related changes 16/1/2012".[124] A similar entry is found in the Discharge Summary of 25 November 2012 as well.[125]

94 The CT brain scan radiology report (see above at [75]) states as follows:[126]

> Radiology Report
> Clinical Diagnosis :Memory loss
> CT Brain Non Contrast

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124 AB at p 946; NE of 13 June 2024 at p 103 lines 2–15.

125 AB at p 953.

126 AB at p 804

> Unenhanced axial CT of the brain performed. There are no comparable studies.
>
> There is no evidence of acute territorial infarct, haemorrhage or mass effect. Periventricular white matter hypodensities are suggestive of chronic microvascular ischemia. Age related involutional changes are present.
>
> …
>
> COMMENT:
>
> No acute intracranial haemorrhage or territorial infarct seen.
>
> Chronic microvascular ischemia and age related changes.
>
> Minor

95 I reiterate that no medical professional was called to give expert opinion evidence on the contents of the January 2012 Results, nor did the defendant call the CGH medical professional who created the January 2012 Results.[127] In the absence of such evidence, I must necessarily exercise great caution in deciding the weight to be given to the contents of the January 2012 Results.

96 These are my observations from my perusal of the January 2012 Results. While the January 2012 Results state a clinical diagnosis of "Memory loss", there is nothing on the face of the January 2012 Results to indicate the severity of such memory loss. The failure to indicate the severity of the testator's memory loss is very significant, given that the law is clear that the mere fact that a testator or testatrix has lapses in his or her memory is not enough *ipso facto* to show that he or she also lacks testamentary capacity (see *WHR v WHT* at [26]). Thus, a testator may have memory loss issues but still remains capable of knowing the nature and consequences of making a will or executing a given testamentary disposition. The position may be different if the defendant had adduced medical evidence to shed light on the impact of such "Memory loss"

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127 AB at p 804.

on the testator's capacity to understand what he was doing when he made the 2012 Will − however, she did not do so. As such, I had to determine this factual issue in light of the *totality* of the evidence, including the factual evidence militating in favour of the conclusion that the testator understood the nature and consequences of the 2012 Will at the time (see above at [36] and [41]–[43]).

97 Moreover, the "COMMENT" in the January 2012 Results appears to describe the "Chronic microvascular ischemia and age related changes" as "Minor". Further, neither the January 2012 Results nor the Referral for Continuation of Treatment dated 21 November 2012, which made brief reference to the January 2012 Results, mentioned that the testator was clinically diagnosed to be suffering from Alzheimer's disease and/or vascular dementia. Given the length of time that elapsed between the January 2012 Results and the date of the execution of the 2012 Will (*viz*, 24 November 2012), the Discharge Summaries of November 2012 take on greater significance. It is crucial that none of the Discharge Summaries of November 2012 made any final clinical diagnosis (under the sections for "Final Diagnosis" and "Additional Diagnosis") to the effect that the testator had Alzheimer's disease, vascular dementia, and/or chronic microvascular ischemia.

98 For these reasons, I do not agree that the January 2012 Results, whether considered alone or in conjunction with the November 2012 Discharge Summaries, indicate on the balance of probabilities that the testator lacked testamentary capacity at the time of his executing the 2012 Will.

The other evidence relied on by the defendant does not establish that the testator lacked mental capacity when executing the 2012 Will

99 Beyond the November 2012 Discharge Summaries and the January 2012 Results, the defendant sought to belatedly rely on several other events to

demonstrate that the testator did not have the requisite mental capacity at the material time. As I noted earlier (see above at [73]–[77]), these did not feature in the defendant's pleadings or in her FNBPs.[128] Thus, the defendant is not entitled to now rely on them to establish her case.

100 In her reply submissions, the defendant relied on the authority of *How Weng Fan* at [20] for the proposition that the court may consider unpleaded points "where there is no irreparable prejudice caused to the other party in the trial that cannot be compensated by costs or where it would be clearly unjust for the court not to do so".[129] In the present case, however, there would clearly be irreparable prejudice because the plaintiff was deprived of fair warning of the defendant's case *before* the trial began. That omission would affect the plaintiff's case preparation, including which witnesses he planned to call, what matters to include in his AEIC, and the questions he intended to ask of the defendant and her witnesses in cross-examination. It would be unfair to allow the defendant to run a case impugning the testator's testamentary capacity on grounds not pleaded by her. I am not persuaded that the prejudice to the plaintiff's case preparation is in any way outweighed by the injustice occasioned to the defendant if she is not permitted to rely on these unpleaded particulars (see *Liberty Sky Investments Ltd v Aesthetic Medical Partners Pte Ltd and other appeals and another matter* [2020] 1 SLR 606 at [14] and [17] and *Ma Hongjin v SCP Holdings Pte Ltd* [2021] 1 SLR 304 at [35]). Moreover, the defendant also relies on *How Weng Fan* at [29(b)] for the proposition that no prejudice may be occasioned where "both sides engaged with the issue at trial", to argue that there was no prejudice here as both sides engaged with the question of the

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128 D's FNBPs at paras 3(i)–3(iii) and 4(i).

129 DRS at para 23.

testator's testamentary capacity at trial.[130] I do not agree. The plaintiff having prior warning that the defendant intended to challenge the testator's testamentary capacity to make the 2012 Will is not the same as his having prior warning of the material particulars she intended to rely on to make out her case. That was what her FNBPs were for (see above at [75]). I, nevertheless, consider them here for the sake of completeness. I find that, in any event, none of these unpleaded particulars suffice for me to find that the testator lacked testamentary capacity when he executed the 2012 Will, for the reasons that follow.

The defendant's alleged conversations with the doctors who treated the testator are unsubstantiated and do not establish that the testator lacked mental capacity at the material time

101 I shall start with the alleged conversations that the defendant had with the doctors prior to and/or after the discharge of the testator from CGH, which corresponded with the medical examinations of the testator mentioned in the November 2012 Discharge Summaries. The defendant referred to these alleged conversations for the first time when she was under cross-examination.[131] However, she conceded that there was no evidence before the court in respect of what had transpired in those conversations.[132] She also admitted that she did not mention the alleged conversations with the doctors in her AEIC. She also did not call any of the doctors who attended to the testator to attest to the contents of these alleged conversations. Accordingly, these alleged conversations remain unsubstantiated and uncorroborated, and do not establish that the testator lacked mental capacity at the material time. The defendant was

130 DRS at para 23.

131 NE of 13 June 2024 at p 47 lines 9–24.

132 NE of 13 June 2024 at p 47 line 25 to p 49 line 3.

trying to belatedly embellish her case with new allegations. I, thus, accord little to no weight to that evidence, which I find to be mere afterthoughts on her part.

The alleged events at the dentist's clinic in June 2012 are unsubstantiated and do not establish that the testator lacked mental capacity at the material time

102 The defendant stated in her AEIC that:[133]

> In June 2012, I accompanied [the testator] to the dentist at Burlinson Dental Surgery to make a new set of dentures. He was continuously 'losing' his dentures and had difficulty eating normal food and of course his favourite *kuih kuih*s and cakes. The dentist noted at the conclusion of the entire process that [the testator] would not have been able to make independent requests or decisions throughout the process.
>
> [emphasis in original]

103 Similar to the alleged conversations with the testator's doctors, the events at the dentist's clinic in June 2012 are unsubstantiated and uncorroborated. The dentist who treated the testator was not called to give evidence. In fact, there was no record adduced of this very visit to Burlinson Dental Surgery. The defendant alleged that she mentioned the incident at the dentist's clinic to the testator's doctors during the hospital visits corresponding to the November 2012 Discharge Summaries. But the November 2012 Discharge Summaries did not mention the alleged incident at the dentist's clinic. The defendant initially claimed in cross-examination that she *did* inform CGH's doctors about the testator's conduct at the dentist's clinic.[134] When confronted with the fact that she never disclosed the details of such conversations in her FNBPs,[135] she changed her testimony and said that she did *not* inform CGH's

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133 AEIC [XBP] at para 23.

134 NE of 13 June 2024 at p 56 line 10 to p 57 line 9.

135 NE of 13 June 2024 at p 57 lines 10–14.

doctors about the incident at the dentist's clinic.[136] This change in position was clearly a belated attempt to save the credibility of her allegation when it was challenged. Hence, the incident at the dentist's clinic is simply an unproven allegation. The alleged incident at the dentist's clinic cannot support the proposition that the testator lacked testamentary capacity at the material time. Further, she shifted and vacillated in her testimony when convenient to serve her own purpose. Hence, I similarly accord little to no weight to the defendant's evidence on this aspect, as it is a self-serving bare assertion that is uncorroborated and unsubstantiated.

The testator's alleged conduct at the Birthday Celebration at Pinetree does not demonstrate that he lacked testamentary capacity to make the 2012 Will

104 I shall next consider the evidence regarding a surprise birthday party celebration thrown for the testator by his family held at Pinetree Club sometime in or around September 2012 (the "Birthday Celebration at Pinetree").[137] Both the defendant and the testator's nephew, Mr [D], gave AEIC evidence regarding the Birthday Celebration at Pinetree, alleging that the testator was confused at the event, having difficulty recognising some of the guests and believing he was attending a different kind of ceremony altogether (*viz*, a government award ceremony held in his honour). The plaintiff's evidence, however, included no such descriptions of the testator's alleged confusion at the Birthday Celebration at Pinetree.

105 I find that, even taking the evidence of the defendant and Mr [D] to be reliable, it failed to reliably establish that the alleged displays of confusion by

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136 NE of 13 June 2024 at p 58 lines 2–23.

137 AEIC [XBO] at paras 41–42; AEIC [XBP] at para 24; AEIC of [D] dated 31 July 2022 ("AEIC [D]") at para 12.

the testator were attributable to any mental disability, let alone being indicative of his lacking testamentary capacity at the time.

106 In relation to the defendant's evidence, she prevaricated on the issue of whether the defendant's confusion could be due to his having been kept in the dark about the nature of the event because it was intended as a *surprise* birthday party. In cross-examination, the defendant's evidence was that she was the one who organised the Birthday Celebration at Pinetree, along with her sister, for the testator.[138] She did not divulge the details of the event to the testator because she intended for it to be a surprise:[139]

> Q. That initially your father wanted to celebrate at his home because he's generally not a lavish person. Do you agree with that?
>
> A. Yes, he's not lavish.
>
> Q. So you agree he's not a lavish person?
>
> A. Right.
>
> Q. So would you agree he initially wanted to celebrate at home, at his home?
>
> A. *He didn't know* because all the parties are --
>
> Q. Organised by you?
>
> A. Yeah, and they are all at my home.
>
> Q. So you decide the venue?
>
> A. I decided on the venue, yes.
>
> Q. But you persuaded your father to go Pinetree Club to celebrate his birthday?
>
> A. *I didn't persuade him. I brought him there.*
>
> Q. Oh, you just brought him there?
>
> A. Yes.

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138 NE of 18 June 2024 at p 66 lines 5–23 and p 67 lines 7–18.

139 NE of 18 June 2024 at p 70 line 24 to p 72 line 4.

> Q. Okay, but he did not resist spending money to celebrate his 90th?
>
> A. He didn't spend his money. I spent the money. It was my money.
>
> Q. So he didn't mind you spending your money?
>
> A. *He didn't know that I was going to spend money or what it was. Yeah, I just dressed him up and I brought him.*
>
> Q. So he didn't -- it was a surprise birthday party, is it?
>
> A. You can say it was.
>
> Q. So you wanted to give him a big surprise?
>
> A. *Yes.*
>
> [emphasis added]

107 The clear picture that emerges from the above excerpt is that the defendant did not tell the testator about the event in order for it to be a surprise. In that context, it is understandable and to be expected that the testator would display signs of his having been confused or disorientated at the time, including about what the celebration was for and why it was being held at Pinetree Club instead of his own home. That would not be indicative of a mental disability or an absence of testamentary capacity on his part.

108 However, on further questioning by the court, the defendant changed her evidence. Initially, she confirmed her earlier evidence that she never told the testator about the Birthday Celebration at Pinetree beforehand.[140] She then tried to suggest, however, that "on the day when he asked me why he was suited up, why am I dressing him and where he was going, then I said to a party, and it's your birthday."[141] That would mean that it was no longer a surprise birthday

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140 NE of 19 June 2024 at p 40 lines 21–24.

141 NE of 19 June 2024 at p 41 lines 16–19.

party for the testator. This is clearly a change in the defendant's testimony, and accordingly, I place little to no weight on this aspect.

109 Given that the defendant did *not* divulge the Birthday Celebration at Pinetree to the testator beforehand, the confusion that he displayed at the event (if any) cannot be used to infer that he was labouring under a mental incapacity at the relevant time. Rather, his confusion (if any) was natural and to be expected as he was not told about the event beforehand in order for it to be a surprise birthday party.

110 As for the allegation that the testator could not recognise the relatives who attended the event, Mr [D] claimed in his AEIC evidence that the testator was not able to recognise Mr [D]'s wife and daughter.[142] He later supplemented that evidence in his oral testimony, during his cross-examination, when he claimed that the testator was unable to recognise Mr [D]'s "daughters" – *ie*, in the plural – at the event.[143] He also conceded, in cross-examination, that it was possible that the testator did not recognise his daughters because they were in their twenties at the time and their appearance might have changed since the prior occasions when the testator had last seen them.[144] He also conceded that the testator might not have recognised his wife because her appearance might also have changed.[145] However, the testator recognised his nephew, Mr [D].[146]

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142 AEIC [D] at para 12.

143 NE of 19 June 2024 at p 90 line 11 and p 92 lines 6–7.

144 NE of 19 June 2024 at p 95 lines 11–13.

145 NE of 19 June 2024 at p 95 lines 17–20.

146 NE of 19 June 2024 at p 95 lines 14–16 and 21–23.

He also recognised his daughter, the defendant, according to her own evidence.[147]

111 Thus, I find that the evidence of the defendant and Mr [D] failed to establish that any apparent confusion that might have been displayed by the testator at the Birthday Celebration at Pinetree was attributable to the testator having a mental disability or lacking testamentary capacity at the time.

The testimonies of the other witnesses called by the defendant are unreliable and they fail to establish that the testator lacked testamentary capacity at the material time

112 I shall consider the evidence of the witnesses called by the defendant to corroborate her allegations as to the testator's lack of testamentary capacity, namely, that of Mr [D], the testator's nephew, and Mr [H], a friend of the testator.

(1) Mr [D]'s evidence

113 I find Mr [D]'s evidence to be unreliable and lacking in impartiality. He vacillated on many instances during the course of his cross-examination when he was asked about important issues regarding the testamentary capacity of the testator. I shall refer to the instances that show Mr [D]'s tendency to shift and prevaricate in his testimony.

114 Mr [D]'s evidence in his AEIC was that, after the testator's Birthday Celebration at Pinetree, he displayed increasingly frequent incidents of memory loss thereafter.[148] In cross-examination, he was asked to specify or give

147 NE of 18 June 2024 at p 68 line 19 to p 69 line 4.

148 AEIC [D] at para 13.

examples of these incidents of memory loss. In response, Mr [D] gave a series of confused and contradictory replies.[149] He claimed that, sometime "from 2012 onwards", he fetched the testator for a Deepavali event at his own home and the testator was "undressed",[150] "really disorganised",[151] and "didn't know how to dress up himself."[152] This incident was not mentioned in his AEIC, even though it was an alleged instance of the testator's increased tendency to lose his memory.

115 When asked repeatedly why he did not state this incident in his AEIC, Mr [D] was unwilling or unable to give a straightforward, consistent answer to the question. He first claimed it was because "maybe I feel bad for myself",[153] then he claimed he "didn't know the necessity of adding all that in",[154] and that he only recalled the incident whilst he was giving his evidence orally in court.[155] He further added that he recalled the incident at the time he made his AEIC but made a conscious choice not to include it in order to keep the AEIC account brief because he "didn't want to say so many things".[156] When it was put to him that he raised the Deepavali incident for the first time in cross-examination and that that incident was not mentioned in his AEIC, he dodged and evaded the question. He tried to change the subject to the Birthday Celebration at

149 NE of 19 June 2024 at p 72 line 10 to p 79 line 24.

150 NE of 19 June 2024 at p 72 lines 21–25.

151 NE of 19 June 2024 at p 74 lines 23–25.

152 NE of 19 June 2024 at p 75 line 2.

153 NE of 19 June 2024 at p 76 lines 21–22.

154 NE of 19 June 2024 at p 77 line 15.

155 NE of 19 June 2024 at p 77 line 24 to p 78 line 6.

156 NE of 19 June 2024 at p 78 lines 13–15.

Pinetree,[157] and this required further repetitions of the put question.[158] Overall, Mr [D] was an evasive and prevaricating witness who gave shifting and avoidant answers whenever he was asked difficult questions in cross-examination that challenged his evidence.

116 Mr [D] displayed the same proclivity in many other aspects of his evidence. When it came to his evidence on the Birthday Celebration at Pinetree, he was unclear as to whether the testator came to accept that the event was a birthday celebration for him. Mr [D] at first conceded that it was a surprise event and that the testator did not know beforehand that it was a birthday celebration for him.[159] However, he vacillated in his evidence on whether the testator knew, afterwards, that the event was his birthday celebration after he was told that by the attendees. Mr [D] claimed that the testator maintained that it was an award ceremony even after being told by Mr [D] that it was his birthday party,[160] and "he was still not clear about his birthday".[161] However, at other junctures, Mr [D] denied that he suggested that the testator did not accept that it was a birthday celebration when told as such by the attendees.[162] When asked whether it was natural for the testator to be surprised that the attendees showed up for a surprise birthday celebration at the Birthday Celebration at Pinetree, he gave an affirmative answer,[163] followed by an answer in the negative.[164] Mr [D] then

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157 NE of 19 June 2024 at p 79 lines 8–15.

158 NE of 19 June 2024 at p 79 lines 18–23.

159 NE of 19 June 2024 at p 83 lines 10–23.

160 NE of 19 June 2024 at p 84 lines 7–13.

161 NE of 19 June 2024 at p 84 lines 21–24.

162 NE of 19 June 2024 at p 85 lines 4–6.

163 NE of 19 June 2024 at p 85 line 13.

164 NE of 19 June 2024 at p 85 line 16.

avoided the question altogether and attempted to change the subject.[165] When asked whether it was normal for the testator to ask the attendees whether it was a birthday celebration, Mr [D] first replied in the negative, claiming that the testator "was telling me different thing",[166] before shifting to claiming he "can't remember about that",[167] then answering in the affirmative.[168] This, again, demonstrated his general tendency to avoid questions in cross-examination and give a series of shifting replies and to take multiple inconsistent positions within the same subject area, whenever he was asked difficult questions that challenged his evidence.

117 Likewise, in his AEIC evidence, Mr [D] stated that, on some occasions, the testator would not remember that "someone had taken his items."[169] When he was asked repeatedly, in cross-examination, who this "someone" who had taken the testator's items was,[170] Mr [D] again dodged the question in a series of evasive and avoidant replies. He would repeatedly give non-responsive answers, attempting to change the subject,[171] switch topics to a different claim in his evidence about the testator saying "someone came to the house" (as opposed to the "someone" who had taken his items),[172] then claiming that the testator's grandson "[E]" was "outside in the garden",[173] then that "[E]" was the

165 NE of 19 June 2024 at p 85 lines 22–23.

166 NE of 19 June 2024 at p 86 line 12.

167 NE of 19 June 2024 at p 86 line 20.

168 NE of 19 June 2024 at p 86 line 21 to p 87 line 6.

169 AEIC [D] at para 13.

170 NE of 19 June 2024 at p 96 lines 11–14.

171 NE of 19 June 2024 at p 96 line 19.

172 NE of 19 June 2024 at p 96 lines 22 and 24–25.

173 NE of 19 June 2024 at p 97 lines 1–20.

one that the testator claimed to have taken the testator's items.[174] He vacillated between claiming that he could not recall when the testator accused "[E]" of taking his items,[175] to saying that there were "incidents" which took place both before and after the Birthday Celebration at Pinetree.[176] He attempted, again, to dodge the question and change the subject by meandering to state that the testator would "call very often" in late 2012,[177] before stating he "can't remember" when the testator said that this "[E]" allegedly took his items.[178]

118 Mr [D] was also questioned on his AEIC evidence that he said, to avoid misunderstandings with the testator, Mr [D] would stand outside the gate and would not enter the testator's house.[179] He claimed that this practice started after Deepavali from November and December 2012 onwards or the mid-November period.[180] He claimed that his reason for adopting that practice was because CCTV cameras had been installed on the property.[181] However, he later claimed – contradictorily – that he was ignorant of when the CCTV cameras were installed.[182] This is incongruent with his claim that he began to avoid entering the testator's home for the reason that there were CCTV cameras. Mr [D] could not have known when to start adopting the practice of not entering the testator's home for the purpose of avoiding the CCTV cameras, if he did not even know around when, even approximately, the CCTV cameras were installed. When

174 NE of 19 June 2024 at p 98 lines 4–9.

175 NE of 19 June 2024 at p 98 lines 15–16.

176 NE of 19 June 2024 at p 98 lines 18–19.

177 NE of 19 June 2024 at p 99 lines 17–19.

178 NE of 19 June 2024 at p 100 line 5.

179 AEIC [D] at para 14; NE of 19 June 2024 at p 103 lines 1–9.

180 NE of 19 June 2024 at p 103 line 15 to p 104 line 1.

181 NE of 19 June 2024 at p 104 line 18 to p 105 line 2.

182 NE of 19 June 2024 at p 105 lines 3–4.

confronted with the defendant's claim that she only installed the cameras in January 2013,[183] he replied both in the affirmative and negative.[184] Mr [D], incredibly, refused to concede that he might have mixed up the dates, despite his earlier evidence being that he avoided entering the home to avoid the CCTV cameras in November or December of 2012.[185] He shifted his evidence and said that the November and December 2012 period was when the testator claimed his items were missing.[186] But his earlier evidence had been that he had avoided entering the house during this period due to the installation of CCTV cameras on the premises. He then made several attempts to change the subject and avoided questions from the plaintiff's counsel. He shifted to discussing whether his accompanying workers could enter the testator's home (instead of when *he* started to avoid entering the home),[187] before changing his evidence, yet *again*, to state that he had only *assumed* there were CCTV cameras in the testator's home without knowing that for a fact.[188]

119 The final area in which Mr [D] demonstrated his tendency as a witness to vacillate in his evidence concerns the alleged discussions that he had with the testator as to his testamentary plans. He first claimed that he knew the 2012 Will's disposition of the estate solely to the plaintiff could not have been made knowingly by the testator, because "[i]f [the testator] have given the will to whole family, then it's a truth, but to him [the plaintiff], solely to him [the

183 NE of 19 June 2024 at p 105 lines 11–12.

184 NE of 19 June 2024 at p 105 line 18.

185 NE of 19 June 2024 at p 105 lines 22–24 and p 108 lines 9–12.

186 NE of 19 June 2024 at p 106 lines 8–9.

187 NE of 19 June 2024 at p 106 line 20 to p 107 line 22 and p 108 lines 14–22.

188 NE of 19 June 2024 at p 108 line 18 to p 109 line 21.

plaintiff], it is definitely it's a lie."[189] When Mr [D] sought to explain that evidence,[190] his purported 'explanation' was that the testator allegedly told him that he wanted to give the Property *solely* to the defendant because "he [the testator] used to told [*sic*], I think she's [the defendant] the only person can take care of the house."[191]

120 That was a plain contradiction in his evidence. The testator's alleged statement that he wanted to give the Property *solely* to the defendant clearly cannot be consistent with Mr [D]'s earlier evidence that it was his belief that the will would be "the truth", to his mind, only if it gave the testator's estate to *all* of his children.[192] He maintained that contradiction despite being confronted with his inconsistent evidence in cross-examination.[193] He even confirmed *expressly* that "the truth should be that it should be given equally to all the children, such that each of them get one-sixth", a put question which he answered in the affirmative.[194] He subsequently claimed that the testator had "told me straight himself, I will never, never give to anybody except [XBP]"[195] He then shifted his evidence to state that he was expressing his personal opinion as to what *ought* to happen with the testator's estate, which he and other relatives had expressed to the testator during his lifetime,[196] after Mr [D] dodged the question and avoided giving a direct answer multiple times.[197]

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189 NE of 19 June 2024 at p 118 lines 17–19.

190 NE of 19 June 2024 at p 119 line 13.

191 NE of 19 June 2024 at p 119 line 15 to p 120 line 22.

192 NE of 19 June 2024 at p 118 line 17 to p 119 line 11 and p 121 lines 5–24.

193 NE of 19 June 2024 at p 121 line 25 to p 123 line 20.

194 NE of 19 June 2024 at p 122 lines 16–21.

195 NE of 19 June 2024 at p 123 lines 4–6.

196 NE of 19 June 2024 at p 124 line 24 to p 125 line 18.

197 NE of 19 June 2024 at p 123 line 19 to p 124 line 23.

121 Then, Mr [D] made a belated attempt to buttress his evidence in his oral testimony by claiming to have seen a will made by the testator which gave the Property to the defendant.[198] While he claimed, at first, that he saw the will around "2009 or 2010",[199] he also contradictorily claimed that the will he claimed to have seen in 2009 or 2010 was the same one that was dated 19 September 2011 and is found in the AB (at p 673).[200] Despite that contradiction, he incredibly refused to concede that his recollection of having seen the will around 2009 or 2010 may have been inaccurate.[201] He then shifted his evidence only after further confrontation in cross-examination, eventually conceding that: "I could have forgot [*sic*] the dates, I mean the year."[202]

122 He was also confronted with his contradictions between what he *claimed* to have seen in this will's contents in 2009 or 2010 versus the actual contents of the draft will dated 19 September 2011 in the AB (at p 673). He claimed in cross-examination that the testator had said "the house shouldn't be taken down, you know, this house should be maintained as it is, you know? And, you know, house should be kept, kept the way I have kept it."[203] After confirming that this will he had seen was the same as the draft will dated 19 September 2011 in the AB (at p 673),[204] he was confronted with the fact that none of these conditions were present in the draft will at issue.[205] Yet, incredibly, he still maintained that

198 NE of 19 June 2024 at p 125 line 23 to p 126 line 13.

199 NE of 19 June 2024 at p 126 line 15.

200 AB at p 673; NE of 19 June 2024 at p 129 lines 5–13.

201 NE of 19 June 2024 at p 130 lines 2–7.

202 NE of 19 June 2024 at p 133 lines 10–11.

203 NE of 19 June 2024 at p 128 lines 17–21.

204 NE of 19 June 2024 at p 129 lines 5–13.

205 NE of 19 June 2024 at p 130 line 14 to p 131 line 2.

this was the same draft will he had given evidence on earlier,[206] before shifting to concede afterwards that he could have made a mistake in including non-existent terms into the draft will that he claimed to have remembered and given evidence on earlier.[207]

123 I also find that Mr [D] had a general proclivity to engage in some degree of guesswork in his evidence. This was despite the fact that I had consistently and sternly reminded him that the court was concerned exclusively with what was within his personal knowledge.[208] Despite that advisory, however, Mr [D] repeatedly engaged in attempts to introduce speculation into his evidence to bolster his version of events. For instance, he was confronted with the details in the testator's CGH records which appeared to cast some doubt on his AEIC evidence as to how regularly he would drive the testator to the defendant's house. At that, Mr [D] repeatedly attempted to adduce speculative evidence as to why the medical professional who authored the CGH reports might have omitted to ask the testator who fetched him or why the testator might not have mentioned it to the doctor.[209] This was despite the fact that such information would clearly not be within Mr [D]'s personal knowledge. Incredibly, Mr [D] even asserted that it was *not* speculative for him to throw out suggestions as to why such information was absent from the CGH reports which he neither authored nor witnessed the making thereof.[210]

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206 NE of 19 June 2024 at p 131 lines 6–7.

207 NE of 19 June 2024 at p 134 lines 3–7.

208 NE of 19 June 2024 at p 56 line 20 to p 57 line 5.

209 NE of 19 June 2024 at p 63 line 1 to p 66 line 20.

210 NE of 19 June 2024 at p 64 lines 8 and 25, p 65 line 7 and p 66 lines 2–5.

124 In the premises, I find Mr [D]'s testimony to be highly unreliable. It is apparent that he is not an objective and impartial witness. He is far from being a neutral witness testifying as to what actually occurred and trying his best to give an accurate account of events, without fear or favour. He is clearly a partisan witness who tailored his evidence in favour of his version of events to show that the testator lacked testamentary capacity at the time of his executing the 2012 Will. His partisanship and partiality were amply demonstrated by his conduct in the witness box from his aggressive and hostile bearing towards the plaintiff's counsel. He frequently dodged and avoided questions and he often failed to give direct, straightforward answers to questions in cross-examination. He constantly shifted positions and adopted inconsistent claims in his evidence. He frequently changed his version of events whenever challenged in cross-examination. It is highly unsafe to rely on Mr [D]'s evidence. It follows that Mr [D]'s evidence failed to establish, on the balance of probabilities, that the testator lacked testamentary capacity at the material time.

(2) Mr [H]'s evidence

125 As for the testimony of Mr [H], I also find that his evidence lacks reliability and objectivity. In Mr [H]'s AEIC, he stated with certainty as follow:[211]

> 7. However, in 2012, I started noticing some changes in [the testator]. He started being less coherent and at times he even had difficulty remember [*sic*] who I was despite the regularity of my visits.
>
> 8. … It was at this period sometime in early 2012 that [the defendant] informed me that [the testator] had been diagnosed with dementia.

[211] AEIC of [H] dated 31 July 2022 ("AEIC [H]") at paras 7–8.

126 When Mr [H] was asked to clarify when exactly he started noticing changes in the testator, he was uncertain and was only sure that this took place between the period of 2011–2012.[212] In fact, Mr [H] admitted that he did not actually recall that it was in early 2012 that the defendant had informed him that the testator had been diagnosed with dementia.[213] Ultimately, Mr [H] conceded that the period of time within which he had visited the testator at the Property was a long stretch of time. Thus, he could not remember when, within that period, he had first observed the testator to allegedly be incoherent.[214] Mr [H] stated as follows in response to the court's questions on this subject:[215]

COURT:	So you told us in your affidavit that you saw some -- where you saw the late [A] became a bit more incoherent --
A.	Yes.
COURT:	-- and kind of loss of memory --
A.	Yes, it is, sir.
…	
COURT:	So can you now tell us, during that period of seven years [from 2011 to 2018],[216] can you remember when did this take place? Do you understand what I mean, because it's a long period.
A.	Long period, yeah.
COURT:	My emphasis, can you specifically remember when did this take place?
A.	*No, I can't.*
COURT:	But during that seven-year period, yes, you noticed that -- that he was incoherent --

212 NE of 20 June 2024 at p 15 line 17 to p 19 line 19.

213 NE of 20 June 2024 at p 30 line 24 to p 31 line 18.

214 NE of 20 June 2024 at p 40 line 16 to p 42 line 16.

215 NE of 20 June 2024 at p 40 line 20 to p 42 line 16.

216 NE of 20 June 2024 at p 39 lines 1–8.

A. Definitely.

COURT: He lost some memory.

A. Yeah.

COURT: But, correct me if I am wrong, you cannot remember which part of this period you noticed that this took place; am I right?

A. Ah, it's a long period.

…

COURT: But I want to know the part where you noticed that he was incoherent. Can you specifically --

A. *I cannot.*

COURT: -- remember that?

A. *No, then I really can't.*

COURT: Okay.

A. *Specifically, I really cannot.*

COURT: Yes, but I need to know specifically.

A. *Yeah, I really cannot.*

[emphasis added]

127 It is undeniable from the above excerpt of his evidence that Mr [H] was unable to confirm the facts set out in his AEIC, particularly in relation to *when* the testator's alleged incoherence began. The timing of those events is crucial to determine the testator's mental capacity around the material time of the execution of the 2012 Will. Since this aspect of Mr [H]'s evidence was fraught with uncertainty, on his own admission, I do not find his evidence to be helpful in the present inquiry into the testator's testamentary capacity *at the time of* his executing the 2012 Will.

All remaining allegations relied on by the defendant to impugn the testamentary capacity of the testator hold no merit

128 The remaining bases for impugning the testamentary capacity of the testator, raised in the defendant's written submissions, will be dealt with below.

129 First of all, the fact that the testator was taken to CGH by ambulance on several occasions in November 2012, instead of "going there independently",[217] is neither here nor there. This is certainly not proof that the testator suffered from a mental disability that deprived him of his testamentary capacity.

130 The fact that, on the plaintiff's evidence, the testator dictated the contents of the 2012 Will to the plaintiff on 18 November 2012,[218] is also not indicative of his lacking testamentary capacity. I do not agree that the fact of the testator having dictated the 2012 Will's contents to the plaintiff on 18 November 2012 is inconsistent with the testator being "self-reliant, independent and having his own handwritten records."[219] The testator is in control of the will's contents whether he writes it himself or dictates its contents to another person who writes it at his direction. Even if the testator chooses to do the latter, it would not indicate an absence of testamentary capacity or even that the testator suffered from a declining mental state more generally.

131 The defendant invokes the fact that the 2012 Will was prepared by the plaintiff in consultation with a solicitor and executed by the testator without that solicitor being present. She also suggests that the testator executed the 2012

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217 DCS at para 16.

218 DCS at para 21.

219 DCS at para 22.

Will without waiting for the solicitor's reply to his queries.[220] She relies on this fact to argue that the plaintiff was in a rush to procure the 2012 Will's execution, adding to the suspicious circumstances of the same.[221] None of these facts are significant either. The alleged speed with which the testator executed the 2012 Will in a supposed "rush" is not a valid ground to dispute the 2012 Will. Executing a will *quickly* does not shed light on whether the testator has testamentary capacity.

132 The defendant invokes the fact that the plaintiff chose attesting witnesses to the 2012 Will's execution who were not better acquainted with the testator.[222] This is also not a valid ground to dispute the 2012 Will. It is not disputed that the testator had met M/s [F] and [G] in the past. The defendant's claim that they had met too infrequently to warrant the plaintiff choosing them to witness the 2012 Will's execution is highly speculative and subjective.

133 The defendant's reliance on Mr [F]'s evidence that he was told by the plaintiff that the 2012 Will was "drafted by a lawyer" to argue that its execution is suspicious is also misplaced.[223] While the 2012 Will was *not* drafted by a lawyer, the defendant does accept in her own submissions that it was prepared by the plaintiff "in consultation with a solicitor".[224] However, the "solicitor had never met or spoken to [the testator] before and accordingly had not advised him". It was only the plaintiff who communicated with him.[225] Therefore, the

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220 DCS at paras 30–31.

221 DRS at para 15.

222 DCS at para 32.

223 DCS at para 33.

224 DCS at para 30.

225 DRS at para 14.

fact that Mr [F] testified that the 2012 Will was drafted by a solicitor does not support the conclusion that the plaintiff deceived Mr [F] about how the 2012 Will was prepared. It could just as easily mean that Mr [F] misunderstood the plaintiff telling him that the 2012 Will was prepared in consultation with a solicitor or that the plaintiff described the situation using loose or imprecise language that led Mr [F] to believe the 2012 Will was drafted by a solicitor. In any event, this is not a material difference so as to amount to a weighty suspicious circumstance surrounding the execution of the 2012 Will.

134 The fact that the plaintiff never told the defendant about the 2012 Will having been executed is not a valid ground to invalidate the 2012 Will. [226] There is nothing that is inherently suspicious about an omission by one beneficiary to tell a former beneficiary about the making of a will.

135 Finally, the defendant's attacks on the alleged "rationality of the 2012 Will" are irrelevant,[227] as are her speculative claims that the testator, as a "principled man", would not have wanted to disinherit her after she had looked after him and taken care of his needs. The court is not here to inquire into the fairness or equity of the dispositions in the 2012 Will. It is trite law that there is "no legal fetter to the general principle of testamentary freedom by which a person may leave his or her assets as he or she sees fit": *Yeo Henry (executor and trustee of the estate of Ng Lay Hua, deceased) v Yeo Charles and others* [2016] SGHC 220 at [40], citing *Leow Li Yoon v Liu Jiu Chang* [2016] 1 SLR 595 at [28]. This is so even where the dispositions may be said to be "unexpected, inexplicable, unfair and even improper … or surprising, inconsistent with lifetime statements, vindictive or perverse … or hurtful,

226 DCS at para 34.

227 DCS at para 36.

ungrateful or unfair to those whose legitimate expectations of testamentary benefit are disappointed" (see *Vegetarian Society and another v Scott* [2013] EWHC 4097 (Ch) at [23]; see also *Gill v Woodall and others* [2011] Ch 380 at 390–391).

136 For all of the foregoing reasons, I reject the defendant's many arguments levelled to impugn the testator's testamentary capacity at the time that the 2012 Will was executed.

The 2012 Will is the last true will of the testator

The testator knew and approved of the contents of the 2012 Will

137 Having determined that the testator had the requisite testamentary capacity, a rebuttable presumption arises that the testator knew and approved of the contents of the 2012 Will at the time of execution: *Muriel Chee* at [46]. In ordinary circumstances, the evidential burden of proof would then shift to the defendant to rebut this presumption. However, this presumption does not arise in this case because of the apparently suspicious circumstances surrounding the execution of the 2012 Will, and in particular, the plaintiff's involvement in the preparation of the 2012 Will. It is an undisputed fact that the plaintiff had made arrangements for the execution of the 2012 Will. He also sought the assistance of an acquaintance, who is a lawyer, in typing out the contents of the 2012 Will and making the necessary amendments as well as arranging for the witnesses to the 2012 Will to be present on the date of its execution.[228] Further, the plaintiff is the sole beneficiary of the testator's estate. Hence, it remains the plaintiff's burden to prove that the testator knew and approved of the contents of the

[228] AEIC [XBO] at paras 48, 58–63, 65–69, 71–74.

2012 Will at the time of its execution (see above at [25]; see also *Muriel Chee* at [46] and [48]).

138 However, I find that the plaintiff has successfully discharged that burden of proof, on the balance of probabilities, on the totality of the evidence that I have analysed. These include the evidence of the attesting witnesses to the 2012 Will's execution, M/s [F] and [G] (see above at [42]–[43]), the testator's independent handling of his own finances at the time (see above at [46] and [49]–[50]), and the circumstances of the first dictation in November 2011 (see above at [54]), which together amount to "affirmative evidence of the testator's knowledge and approval of the contents of the will": *Muriel Chee* at [47]. Thus, I also find, on the balance of probabilities, that the testator knew and approved of the 2012 Will's contents, in addition to having had the mental *capacity* to do so.

The defendant does not allege that the 2012 Will was procured by the fraud or undue influence of the plaintiff

139 For completeness, the last condition for a will to be found valid requires that the testator be free from undue influence or the effects of fraud at the time of its execution (see above at [20]; see also *Muriel Chee* at [37]). While the defendant did initially allege that the 2012 Will was obtained under the undue influence of the plaintiff and/or his representatives,[229] this allegation has since been withdrawn.[230]

140 As it stands, there is no allegation of undue influence or fraud on the part of the plaintiff from the defendant's now-pleaded case.

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229 Defence and Counterclaim (Amendment No 1) dated 24 February 2020 at para 5.

230 D&CC at p 2 (see the struck through para 5).

Conclusion

141 In summary, I find that the testator did, on the balance of probabilities, have the requisite mental capacity at the time of his executing the 2012 Will. In addition, he knew and was aware of the contents of the 2012 Will. The testator was also free from undue influence and/or the effects of fraud at that time. Accordingly, the 2012 Will, and not the 2011 Will, is the last true will of the testator.[231] I grant the plaintiff's claim and pronounce in solemn form of law that the 2012 Will is the last true will of the testator.[232] Probate of the 2012 Will is granted to the plaintiff,[233] and the defendant's counterclaim is dismissed.[234]

142 Having read the parties' submissions on costs, I order that the parties are to bear their own costs in these proceedings. While the plaintiff seeks a costs award in his favour against the defendant,[235] it was reasonable for the defendant to question the validity of the 2012 Will, given the suspicious circumstances surrounding the making of the 2012 Will, as I identified above at [137]. In ordinary cases, costs should follow the event. However, costs in probate actions are often based on the justification or reasonableness of bringing such actions (see *WWI v WWJ* [2024] SGFC 22 at [239], relying on G Raman*, Probate and Administration Law in Singapore and Malaysia* (4th Ed, 2018, LexisNexis) at para 10.52). Even where a party unsuccessfully challenges the will or codicil, but with a reasonable case for inquiry, the court may, in its discretion, order costs to be awarded out of the estate to reimburse the unsuccessful opponent who has to pay the winning party (see *In the Matter of the Estate of Eusoff*

231 SOC at p 5 prayers (1)–(2).

232 SOC at p 5 prayer (1).

233 SOC at p 5 prayer (3).

234 D&CC at para 13.

235 SOC at p 5 prayer (4).

Mohamed Salleh Angullia, Deceased; Ahmad Mohamed Salleh Angullia & 2 Ors v Rahimaboo Binte Mohamed Salleh Angullia & Anor [1939] 8 MLJ 100 ("*Re Angullia*"), applying the rule pronounced in *Mitchell and Mitchell v Gard and Kingwell* (1863) 164 ER 1280 ("*Mitchell v Gard*") at 1281).

143 For completeness, I do not order the testator's estate to bear the costs of the defendant's action, as was done in *Re Angullia*, where Horne J ordered that "the costs of the defendant on the insanity issue as between party and party be taxed and paid out of the estate", despite the defendant there *losing* on that ground. That is because, as held in *Mitchell v Gard* at 1281, the rule pronounced there was that: "if the cause of litigation takes its origin in the *fault* of the testator or those interested in the residue, the costs may properly be paid out of the estate" [emphasis added].

144 Although the manner in which the 2012 Will was executed may be proper, the circumstances might appear suspicious and these gave the defendant reasonable cause to challenge its validity (see above at [137]). It does not appear that the testator in this case was at fault in his conduct which resulted in this suit, such that it would be fair to order the estate to pay costs to the plaintiff who, in a normal situation, is entitled to costs from the defendant, the losing party. Further, in this case, the sole beneficiary of the 2012 Will is the plaintiff. Hence, it does not make sense for the defendant's costs to be paid out of the estate bequeathed to the plaintiff, unless (per *Mitchell v Gard* at 1281) the present suit can be said to be attributable to *his* fault or misconduct. I do not find that to be so. While his acts may be said to have given rise to the suspicious circumstances I identified at [137] above, that is a far cry from saying that the plaintiff engaged in wrongful or improper conduct giving rise to the suit that would render such an effective costs penalty appropriate (*cf*, the circumstances in *Mitchell v Gard* at 1282).

145 In the circumstances, I find that the defendant had a reasonable case for inquiring into the validity of the 2012 Will and whether the testator had the requisite testamentary capacity at the time of its execution. Having regard to all the circumstances, it is fair for the court to order the parties to bear their own costs. For clarity, this means that I also reject the plaintiff's prayer for the defendant to bear the costs of several other related proceedings in addition to the costs of these proceedings.[236]

Tan Siong Thye
Senior Judge

Sam Hui Min Lisa (Lisa Cen Hui Min) (Lisa Sam & Company) for the plaintiff and defendant in counterclaim;
Sudhershen Hariram and Tan Shaofeng Donny (Chen Shaofeng Donny) (Tan Rajah & Cheah) for the defendant and plaintiff in counterclaim.

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[236] SOC at p 5 prayer (5).