

**THE GENERAL DIVISION OF  
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2022] SGHC 273**

Suit No 513 of 2021

Between

Thamby Kannu Parvathi

*... Plaintiff*

And

- (1) S Geetha d/o Subramaniam  
(administratrix of the estate of  
Subramaniam Govindasamy,  
deceased)
- (2) S Mogan  
(administrator of the estate of  
Subramaniam Govindasamy,  
deceased)

*... Defendants*

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**JUDGMENT**

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[Probate and Administration — Distribution of assets — Appropriation]

## TABLE OF CONTENTS

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<b>INTRODUCTION.....</b>	<b>1</b>
THE PLEADINGS.....	11
THE EVIDENCE .....	15
<i>(i) The Plaintiff's case .....</i>	<i>15</i>
<i>(ii) The defendants' case .....</i>	<i>18</i>
THE ISSUES.....	25
THE FINDINGS .....	26
<b>THE DECISION.....</b>	<b>34</b>
<b>COSTS.....</b>	<b>37</b>

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**Thamby Kannu Parvathi**

**v**

**S Geetha d/o Subramaniam (administratrix of the estate of  
Subramaniam Govindasamy, deceased) and another**

**[2022] SGHC 273**

General Division of the High Court — Suit No 513 of 2021

Lai Siu Chiu SJ

19–22, 26 April, 6, 20 June 2022

31 October 2022

Judgment reserved

**Lai Siu Chiu SJ:**

### **Introduction**

1 This was an unfortunate case where a widow Thamby Kannu Parvathi (“the Plaintiff”) sued two of her three children, namely, her younger daughter S Geetha d/o Subramaniam (“Geetha”) and her only son S Mogan (“Mogan”) (who are the first and second defendants respectively) for depriving her of her share in a property belonging to her late husband Subramaniam Govindasamy (“the Deceased”). The facts set out below are extracted from either the affidavit of evidence in chief (“the AEIC”) of the Plaintiff or the joint AEIC of the defendants.

2 The Plaintiff was born in 1938. She is currently 84 years of age and has been blind since 1975<sup>1</sup>. She married the Deceased in 1956. The Deceased passed away in 2013. Prior to his demise, the Deceased and the Plaintiff lived first at No 118 Race Course Road and from 1997 onwards at No 31 Martaban Road (“the Martaban Road property”). Currently, the Plaintiff still lives at the Martaban Road property with Leena, who is the daughter of her estranged eldest daughter Prasanakumari (“Kumari”), while Geetha lives at No 27 Martaban Road and Mogan lives at No 35 Martaban Road. Leena moved into the Martaban Road property one day before the demise of the Deceased on 10 January 2013. Kumari used to live at No 29 Martaban Road but she moved out in August 2013. Henceforth, the properties at Nos 27, 29, 31 and 33 will be referred to collectively as “the four Martaban properties”<sup>2</sup>.

3 The Deceased left a Will dated 14 November 2012 (“the Will”) in which he left a number of immoveable properties (“the Estate”) to the Plaintiff and to Geetha, to whom he was particularly close. One of the Deceased’s properties was No 11 Dunlop Street (“the Dunlop Street property”), which was not mentioned in the Will. Although the Dunlop Street property formed part of the Deceased’s estate, since it was not covered by the Will, it had to be distributed in accordance with the laws of intestacy. Under the Intestate Succession Act 1967<sup>3</sup>, the Plaintiff is entitled to one half share of the Dunlop Street property while her three children are entitled to the other half share. It should be noted from the outset that Geetha drafted the Will<sup>4</sup>. Her husband, Harun Al Rasheed,

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<sup>1</sup> See transcripts on 26 April 2022 at p 482 – cross-examination of William Pang.

<sup>2</sup> See AEIC of the Plaintiff at pp 1–3.

<sup>3</sup> Section 7 Rule 2.

<sup>4</sup> See transcripts on 21 April 2022 at p 199 line 17 – Geetha’s testimony.

was a witness while Mogan’s wife, G Rajeswari, was the other witness, to the execution of the Will by the Deceased.

4 Geetha was the administrator of the estate of the Deceased and obtained a First Grant of Letters of Administration with Will annexed dated 12 August 2013 and issued on 5 November 2013 (“the First Grant”)<sup>5</sup>. She, Mogan and Kumari as co-administrators obtained a Second Grant of Letters of Administration dated 4 September 2015 and issued on 27 October 2015 (“the Second Grant”)<sup>6</sup>. The reason for extracting two grants of letters of administration with Will annexed emerged during Geetha’s testimony<sup>7</sup>. It was due to her oversight in not including the Dunlop Street property in the first grant. Henceforth, Geetha and Mogan will be referred to collectively as “the Administrators” in regard to the Estate. In any other context, they will be referred to collectively as “the defendants”.

5 Geetha informed the Plaintiff in or around 2016 to 2017 that the Dunlop Street property would be sold and the sale proceeds would be divided amongst the children of the Deceased and the Plaintiff<sup>8</sup>.

6 The Dunlop Street property was indeed sold by an Option to Purchase dated 7 November 2016 (“the Option”) for \$2,625,000<sup>9</sup> (“the sale proceeds”). Completion of the sale took place on 7 April 2017<sup>10</sup>. The Plaintiff should have

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<sup>5</sup> See 1AB15-16.

<sup>6</sup> See 1AB30.

<sup>7</sup> See transcripts on 21 April 2022 at p 205.

<sup>8</sup> See AEIC of the Plaintiff at para 12.

<sup>9</sup> See 1AB62-63.

<sup>10</sup> See completion account at 1AB74.

received half of the sale proceeds plus rental income amounting to \$1,366,377.62 (“the Plaintiff’s share”) but she did not<sup>11</sup>. Geetha and Mogan claimed she made a gift to them of \$1.36m (which the Plaintiff denied) and they only paid her the difference of \$6,377.62<sup>12</sup>.

7 When she did not receive the Plaintiff’s share after waiting for some time, the Plaintiff inquired of Geetha in 2018 or 2019. Geetha told the Plaintiff she did not have a share in the sale proceeds. The Plaintiff then asked Kumari in or around 2019. Kumari told the Plaintiff she should have received the Plaintiff’s share. Kumari brought the Plaintiff to see a lawyer who advised her she is entitled to a half share of the sale proceeds. The Plaintiff then consulted her current lawyers who gave her the same advice<sup>13</sup>.

8 It was the defendants’ case that the Plaintiff was fully aware of the sale of the Dunlop Street property, the sale price and when the sale was completed. They claimed she had in fact proposed that the Administrators sell the Dunlop Street property and had also signed the Option together with the Administrators<sup>14</sup>.

9 The defendants asserted that although the Plaintiff was aware that the Dunlop Street property sale was completed in April 2017, she did not for more than two years (between April 2017 and October 2019) once ask for the Plaintiff’s share. Neither did she send any lawyer’s letter to them or initiate any

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<sup>11</sup> See AEIC of the Plaintiff at para 13.

<sup>12</sup> See AEIC of the defendants at para 38.

<sup>13</sup> See AEIC of the Plaintiff at pp 3-4.

<sup>14</sup> See AEIC of the defendants at para 17.

action for the Plaintiff's share. They contended it was because she had made a gift to them of \$1.36m ("the gift amount") from the Plaintiff's share<sup>15</sup>.

10 According to the Administrators, the family held discussions some time before Deepavali in October 2016 while holding a prayer session for the Deceased's death anniversary. Discussion turned to servicing the debts of the Estate as well those of the estate of the siblings' great-grandfather Ponnasamy Rattanam ("PR's estate"). The defendants claimed that was when the Plaintiff made her suggestion of selling the Dunlop Street property<sup>16</sup>.

11 PR's estate also owned numerous properties. During his lifetime the Deceased was the trustee of PR's estate. After the demise of the Deceased, the responsibility passed to Geetha. She became the Administrator of PR's estate by a Grant of Letters of Administration with Will annexed dated 1 December 2014 and issued on 12 March 2018<sup>17</sup>.

12 Geetha took charge of the properties belonging to the Estate as well as those of PR's estate. The properties of both estates were old shophouses which needed maintenance, renovations and repairs. To fund the costs for both estates, Geetha took a bank loan from UOB in the name of a family company called GSM Management Pte Ltd ("GSM") which was incorporated in 2007<sup>18</sup>. Currently, the defendants are the only shareholders of GSM.

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<sup>15</sup> See AEIC of the defendants at para 18.

<sup>16</sup> *Ibid* para 24.

<sup>17</sup> *Ibid* p 40.

<sup>18</sup> *Ibid* para 23.

13 Prior to the demise of the Deceased, UOB had offered banking facilities to GSM of \$1.1m by its letter dated 25 March 2008<sup>19</sup> (“UOB’s first facility letter”) guaranteed by Geetha, Mogan and Kumari. UOB’s first facility letter was varied and subsequently superseded by, a second facility letter dated 23 February 2012<sup>20</sup> and then a third facility letter dated 2 October 2012<sup>21</sup>. In the first and second facility letters, the loans from UOB (which limits increased in the second and third facility letters), Geetha, Mogan and Kumari were the guarantors. After the demise of the Deceased, UOB’s third facility letter was again revised by its letter dated 22 April 2015<sup>22</sup> wherein the credit limit was increased to \$5,824,000. For UOB’s third and fourth facility letters, the guarantors were/are Geetha and Mogan.

14 No 118 Race Course Road was the collateral provided to UOB under all four facility letters. This property is jointly owned by Geetha and Mogan<sup>23</sup>.

15 According to Geetha, it was in the context of discussing the heavy financial burden of servicing the UOB loans that the Plaintiff suggested selling off the Dunlop Street property. She said that would lighten the load on the Administrators as regards managing both estates. Another reason to sell the Dunlop Street property as Geetha understood from the Plaintiff was the fact that Kumari would get a share. The Deceased had left Kumari out of his Will. Apparently, during his lifetime, the Deceased had a problematic relationship with Kumari to the extent that he had once taken out a personal protection order

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<sup>19</sup> See 1AB84-91.

<sup>20</sup> See 1AB94-105.

<sup>21</sup> See 1AB108-117.

<sup>22</sup> See 1AB120-135.

<sup>23</sup> See transcripts on 21 April 2022 at p 221 – cross-examination of Geetha.



against her. The Plaintiff thought it prudent to sell the Dunlop Street property and give Kumari her share to avoid further problems with Kumari<sup>24</sup>.

16 Apparently, the Plaintiff told Geetha and Mogan to take the gift amount from the sale proceeds directly. However, as it was a substantial sum, the Administrators decided that to avoid problems with the Inland Revenue Authority and other government authorities in future, it would be prudent to record the gift in writing<sup>25</sup>.

17 Consequently, Geetha typed out a document<sup>26</sup> which was dated 12 April 2017 (“the Gift Document”) and which stated as follows:

I, Thamby Kannu Parvathi of NRIC No SXXXX232 residing at No.31, Martaban Road S (328653), has received a sum of S\$1,366,377.62 being my 50% share from the sale of a property at No 11 Dunlop Street S(209341) which belongs to my Late husband Mr. Subramanian Govindasamy on 7 April 2017.

I am giving my share of \$1,360,000.00 as gift to my children namely S.Geetha d/o Subramaniam of NRIC No.SXXXX740 residing at No.27 Martaban Road S (328651) and S.Mogan of NRIC No. SXXXX585 residing at No 35 Martaban Road S (328657) since they have been taking care of me after my husband’s death.

It is a gift and does not require repayment.

Signed \_\_\_\_\_  
Thamby Kannu Parvathi  
NRIC No SXXXX232

Acknowledged by:

\_\_\_\_\_  
S.Geetha d/o Subramanian

\_\_\_\_\_  
S.Mogan

<sup>24</sup> See AEIC of the defendants at paras 24-26; see transcripts on 21 April 2022 at pp 207-208.

<sup>25</sup> See AEIC of the defendants at para 28.

<sup>26</sup> See 1DB3.

NRIC No SXXXXX740

NRIC No SXXXXX585

18 Geetha arranged for a third party to witness the Plaintiff’s signing of the Gift Document. That person was Siva Kumar s/o Siva (“Siva”) who was the agent from Savills who handled the sale of the Dunlop Street property. In fact, it was Geetha’s testimony that Siva had always acted as the agent in renting out the family properties<sup>27</sup>. He is also Mogan’s as well as a family friend. Geetha arranged for a meeting with Siva which took place on 12 April 2017 in the late afternoon or early evening<sup>28</sup>.

19 Before the Plaintiff signed the Gift Document, Geetha said she went through it with the Plaintiff line by line translating it from English into Tamil, in the presence of Siva and Mogan. Siva also asked the Plaintiff if she understood what she was signing. The Plaintiff confirmed she did in the presence of all three persons. Geetha then showed the Plaintiff the signature line, the Plaintiff put her finger there and appended her signature<sup>29</sup>.

20 The defendants deposed that they then paid the Plaintiff in cash the difference of \$6,377.62 (\$1,366,377.62 -\$1,360,000) but due to the passage of time, they are unable to recollect the exact circumstances or details of the payment<sup>30</sup>.

21 On her part, the Plaintiff denied she had agreed to give away the Plaintiff’s share let alone that she signed any document to that effect. The

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<sup>27</sup> See transcripts on 21 April 2022 at pp 199-200.

<sup>28</sup> See AEIC of Siva at para 5.

<sup>29</sup> See AEIC of the defendants at p 15.

<sup>30</sup> *Ibid* para 38.

Plaintiff further denied the contents of any document were read to her. She further disagreed that the defendants had been looking after her since the passing of the Deceased. She deposed she does not have a good relationship with Mogan for a long time as he is disrespectful and rude to her. As for Geetha, she would occasionally buy groceries for the Plaintiff but would ask to be reimbursed which the Plaintiff always did. The Plaintiff accused the defendants of exploiting her visual disability, her elderly age and enriching themselves at her expense<sup>31</sup>.

22 The defendants however claimed the Plaintiff had a change of heart after her signing of the Gift Document and is now trying to renege on her gift. They surmised that the Plaintiff's change of heart is motivated by her desire to make provision for Leena after her passing<sup>32</sup>.

23 Apparently, the Plaintiff had confided in Geetha previously that she was worried that after her passing, there would be no one to look after Leena who is 34 years of age, unmarried, has no boyfriend and is overweight. The defendants opined that the Plaintiff is extremely protective of Leena and she took offence when Mogan once suggested that Leena should exercise and control her weight<sup>33</sup>.

24 It did not help matters that Leena's arranged marriage in 2018 was called off (by Leena herself) after all the requisite arrangements had been made (including booking of the wedding venue and appointment at the Registry of Marriages). The defendants had credited \$50,000 into the Plaintiff's bank

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<sup>31</sup> See AEIC of the Plaintiff at pp 4-6.

<sup>32</sup> See AEIC of the defendants at paras 36 and 47.

<sup>33</sup> *Ibid* paras 50-51.

account for the wedding expenses. They asserted that the cancellation of Leena's wedding only made the Plaintiff more worried and protective of Leena<sup>34</sup>.

25 To counter the Plaintiff's denial that she did not sign the Gift Document, the defendants engaged a handwriting expert to verify the Plaintiff's signature. The expert Pang Chan Kok William ("Pang") concluded that it is very likely the Plaintiff did sign the Gift Document<sup>35</sup>.

26 Geetha deposed that she utilised \$800,000 from the gift to reduce UOB's loans<sup>36</sup>. She was surprised to receive without warning, the Plaintiff's solicitors' letter of demand dated 18 October 2019 as she did not have a falling out with the Plaintiff prior thereto. Indeed, just before that, the defendants had renovated the Plaintiff's house. In fact, she had visited the Plaintiff a day earlier on 17 October 2019 and they spent a pleasant time together<sup>37</sup>.

27 The defendants disclosed that the Plaintiff sued them as well as Kumari in the Family Courts on the same claim<sup>38</sup>. They filed their defence contending that the Family Courts had no jurisdiction. Eventually the Plaintiff withdrew that claim and subsequently commenced this action.

28 The defendants also understood from Kumari that the Plaintiff and Leena had both cut off ties with her since 2019. This factor reinforced the

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<sup>34</sup> See AEIC of the defendants at paras 52-53.

<sup>35</sup> See AEIC of William Pang at para 5.

<sup>36</sup> See transcripts on 22 April 2022 at p 350.

<sup>37</sup> See AEIC of the defendants at para 42.

<sup>38</sup> *Ibid* para 43.

defendants’ belief that the Plaintiff wants to garner as much money and assets as possible for Leena before her passing. In this regard, the Plaintiff went to the extent of demanding (in October 2019 through her solicitors) that her joint tenancies with Geetha in properties bequeathed to them by the Deceased be severed into tenancies-in-common<sup>39</sup>.

29 The defendants deposed that after a long and complicated process, the severance exercise requested by the Plaintiff was carried out. The joint tenancies at the four Martaban Road properties have all been severed. Nos 31 and 33 now are solely owned by the Plaintiff whilst Nos 27 and 29 are solely owned by Geetha. The joint tenancy of No 35 (and its adjoining vacant plot of land) cannot be severed yet because the property has an existing mortgage with Sing Investments & Finance Limited (“Sing Investment”)<sup>40</sup>.

### ***The pleadings***

30 In her statement of claim (“SOC”), the Plaintiff narrated her version of the facts that lead to the sale of the Dunlop Street property as well as what transpired thereafter. She alleged that the defendants are in breach of their fiduciary duties to her as a beneficiary of the Estate in that as the Administrators, they misappropriated the Plaintiff’s share. In her reliefs, the Plaintiff prayed for a declaration to that effect and requested that the Administrators return her the Plaintiff’s share.

31 In the joint defence (“the Defence”) that they filed, the defendants essentially repeated the facts that were set out in their joint AEIC. What was

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<sup>39</sup> See AEIC of the defendants at p 24.

<sup>40</sup> *Ibid* para 58.

surprising was the fact that they put the Plaintiff to strict proof that she has been blind since the 1970s<sup>41</sup>. They further required strict proof of their fiduciary duties to her as the Administrators of the Estate (on which the court queried their counsel<sup>42</sup>).

32 The defendants pleaded that in return for their having taken care of their late father and the Plaintiff while the Deceased was alive, the Plaintiff gave them the Plaintiff's share as a gift. They relied on the Gift Document as evidence. The defendants added that they had paid the Plaintiff the balance of \$6,377.62 and therefore nothing was owed to her from her share of the Dunlop Street property<sup>43</sup>.

33 In the alternative, the defendants averred that there was a presumption of a gift to them as children from the Plaintiff as their mother. In the further alternative, the defendants raised the defence of estoppel, relying on the Gift Document<sup>44</sup>.

34 The defendants denied the Plaintiff had suffered any loss at all.

35 The Plaintiff filed a Reply in response to the Defence. She *inter alia* denied making a gift to the defendants of \$1.36m or receiving \$6,377.62 from them. She further denied signing the Gift Document, that the presumption of a gift applied or that she was estopped in claiming her entitlement. She alleged

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<sup>41</sup> See Defence at para 2.

<sup>42</sup> See transcripts on 19 April 2022 at p 5.

<sup>43</sup> See Defence at paras 11-13.

<sup>44</sup> *Ibid* paras 14-15.

that the defendants committed equitable fraud in depriving her of the Plaintiff's share under the guise of a gift<sup>45</sup>.

36 The Plaintiff added that as she did not receive the sale proceeds, she did not have an equitable or legal interest over the sale proceeds and could not have gifted it or any part thereof to the defendants. In the alternative, she averred that even if she had obtained an equitable interest, the defendants retained the legal interest in the sale proceeds and hence, remained as trustees owing her fiduciary duties in her capacity as a beneficiary<sup>46</sup>.

37 The Plaintiff contended that the defendants acted in conflict of their duties owed to her as a beneficiary when they received the alleged gift of \$1.36m and/or when they procured the Gift Document. Hence, the gift, even if there was one, is invalid<sup>47</sup>.

38 The Plaintiff alleged that the alleged gift is tainted by undue influence and is voidable. Further, the alleged gift is subject to the doctrine of unconscionability. The Plaintiff relies on the fact that the defendants exploited her blindness, her advanced age and her lack of proficiency in the English language as the basis for invoking the doctrine<sup>48</sup>.

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<sup>45</sup> See Reply at paras 4, 7, 10-11 and 20.

<sup>46</sup> *Ibid* paras 14-15.

<sup>47</sup> *Ibid* paras 16.

<sup>48</sup> *Ibid* paras 18-19.

39 Finally, the Plaintiff pleaded the principle of *non est factum*. She seeks a declaration from the court that the alleged gift and the Gift Document are null and void<sup>49</sup>.

40 In the defendants’ closing submissions<sup>50</sup>, they criticised the Plaintiff for being inconsistent in her pleadings. They pointed out that at para 7 of her Reply, she denied that she signed the Gift Document. Yet, at paras 16 to 19 of the Reply, the Plaintiff asserted that the gift is invalid, tainted by undue influence and subject to unconscionability, which are all premised on the Plaintiff having signed the Gift Document. Such inconsistency the defendants submit, offends common sense and justice (citing *Ng Chee Weng v Lim Jit Ming Bryan and another* [2012] 1 SLR 457 (“*Ng Chee Weng*”).

41 In her reply submissions<sup>51</sup>, the Plaintiff submitted that the facts in *Ng Chee Weng* are different from the facts here. In fact, at holdings 3 to 5 in that case, the Court of Appeal held that a party could plead inconsistent rights in the alternative, if the inconsistency did not offend common sense. The Plaintiff argued that her primary case is that she did not make any gift to the defendants. Her alternative claim is that, if the court finds she made a gift to the defendants, then the equitable defences of undue influence and unconscionability are available to her which defences would make the gift voidable.

42 The Plaintiff argued she is not running two contrary versions of facts, *ie*, that she did not make a gift and that she made the gift. Her primary claim is that she did not make a gift. The defendants contend that she did. Her alternative

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<sup>49</sup> See Reply at para 21.

<sup>50</sup> At para 2.

<sup>51</sup> At paras 4–8.



case based on the defences of undue influence and unconscionability would only come into operation if the court finds in favour of the defendants on their case that they did receive a gift from her.

43 The court accepts the Plaintiff's argument that she is entitled to plead the two alternatives as defences should the court find she did make a gift in favour of the defendants.

***The evidence***

44 The Plaintiff and Leena testified for her case while the defendants had four witnesses namely, themselves, Siva and Pang.

***(i) The Plaintiff's case***

45 The court has already set out the facts in the Plaintiff's AEIC<sup>52</sup>. During her cross-examination, the Plaintiff was adamant that Geetha did not update her on the completion of the sale of the Dunlop Street property.

46 In cross-examination, the Plaintiff revealed that the parties were not on speaking terms and only reconciled recently when the Plaintiff was invited, first to Geetha's son's wedding in February 2021 and later to Mogan's daughter's wedding in April 2021<sup>53</sup>.

47 Counsel for the defendants Mr Sarbrinder attempted to show to the Plaintiff that notwithstanding she has sued them, the defendants still care for

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<sup>52</sup> At [2] to [7].

<sup>53</sup> See transcripts on 19 April 2022 at p 26.

her<sup>54</sup>. In fact, Geetha prepares the Plaintiff's tax returns for her and when the Plaintiff visits polyclinics, Geetha's husband would drive her there. The Plaintiff agreed prior to 2019, Geetha prepared her tax returns; Leena has since taken over. The Plaintiff pointed out Geetha accompanied her for medical appointments prior to the demise of the Deceased. She denied Mogan would also drive her to the polyclinics and further denied Geetha paid her medical bills. She asserted that she gave money to Geetha to pay those bills.

48 The Plaintiff testified that only Geetha, not Mogan took care of her. Mogan would only take her out on her birthdays. Throughout her cross-examination, the Plaintiff did not have a good word to say about Mogan. She would not acknowledge that through his then contractor's business, Mogan had renovated No 35 Martaban Road at his own cost before he shifted there in 2009. She complained that Mogan made use of the vacant plot of land as his office and used the electricity supply from the Martaban property between 2013 and 2020 at her expense until she/Leena told the electricity vendor in 2021 to disconnect the electricity supplied to him. Mr Sarbrinder refuted her claim pointing out that GSM paid her utilities bills. The Plaintiff was also unaware that Mogan had been servicing the mortgage of Sing Investment<sup>55</sup> which had been in existence before the demise of the Deceased.

49 The Plaintiff acknowledged she knows Siva from her visits to a Hindu temple where she would see him<sup>56</sup>. He had also attended the funeral of the Deceased. However, the Plaintiff denied he had asked her in Tamil on 12 April

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<sup>54</sup> See transcripts on 19 April 2022 at pp 32-35.

<sup>55</sup> See their statements at 3AB158-161.

<sup>56</sup> See transcripts on 19 April 2022 at pp 49-50.

2017 whether she knew what she was signing and she had confirmed she did. She alleged that Siva listens to Mogan.

50 It was pointed out to the Plaintiff during cross-examination that besides the Gift Document, the Plaintiff had signed legal documents such as the Renunciation<sup>57</sup> and Consent<sup>58</sup> forms for administration of the Estate on 6 August 2015 and 2 September 2013 respectively, the Deed of Partition dated 16 September 2021<sup>59</sup> relating to severance of the joint tenancies for the properties in [29] as well as the Acceptance portion of the loan facilities letter dated 17 June 2019<sup>60</sup> from Orix Leasing Singapore Limited (“Orix”) secured by mortgages over the four Martaban Road properties in [29]. All her signatures were in English, including the one on the Option.

51 Notwithstanding her blindness, it was Leena’s testimony<sup>61</sup> that the Plaintiff is amazingly independent in her activities of daily living. The Plaintiff is familiar with the Martaban Road property and relying on her memory, she is able to move around, bathe, cook, clean and do everything on her own. It is only when she has to venture out from her house that Leena has to accompany her and guide her either to the polyclinics or temples.

52 Nothing much turns on Leena’s cross-examination. Contrary to the defendants’ case that the Plaintiff reneged on the Gift Document because she wanted to provide for her after the Plaintiff’s passing, in Leena’s re-

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<sup>57</sup> See 2AB40.

<sup>58</sup> See 2AB28-29.

<sup>59</sup> See 2AB133-136.

<sup>60</sup> See 2AB93-104.

<sup>61</sup> See transcripts on 20 April 202 at p 147.

examination, she explained<sup>62</sup> that the Plaintiff wanted to provide for her grandchildren. It was also Leena's testimony that she called off the wedding on 23 June 2018 and hence, it did not make sense for the defendants (as they claimed) to have given her \$50,000 in August 2018 for her to buy jewellery for her wedding in December 2018. Leena could remember the date clearly because her engagement was on the birthday of her younger sister Priya<sup>63</sup>.

53 The court would also add that contrary to the defendants' position that Leena lives off the Plaintiff staying with her at the Martaban Road property, Leena testified<sup>64</sup> that she shares the cost of groceries with the Plaintiff and has been paying for the utilities since 2020.

*(ii) The defendants' case*

54 Geetha was the defendants' first witness. Counsel for the Plaintiff refuted the defendants' AEIC where they claimed the Plaintiff was the one who first mooted the sale of the Dunlop Street property. Geetha's attention was drawn to the defendants' execution of an exclusive agency agreement in favour of Savills dated 1 October 2016<sup>65</sup>, which was well before the Deepavali discussion referred to earlier at [10]. Indeed, the agreement to sell was reached as early as July 2016. This can be seen from the correspondence exchanged between the solicitors for the defendants/Plaintiff and Kumari (Trident Law Corporation). There was a letter dated 12 July 2016 from Kertar Law LLC, the Administrators' solicitors, to Trident Law Corporation stating the

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<sup>62</sup> See transcripts on 21 April 2022 at p 192.

<sup>63</sup> *Ibid* p 191.

<sup>64</sup> *Ibid* pp 160-161.

<sup>65</sup> See 1AB56-60.

Administrators had received an offer to purchase the Dunlop Street property at \$2.6m<sup>66</sup>. In Trident Law’s letter dated 2 August 2016<sup>67</sup>, they stated that Kumari was agreeable to the sale of the Dunlop Street property at \$2.6m. Prior thereto, in a letter dated 16 March 2016, the then Estate’s solicitors Bernard & Rada LLC had indicated a valuation of \$3m-\$3.1m for the property as at 5 February 2016<sup>68</sup>.

55 Geetha’s cross-examination revealed her difficulty in recollection and in producing relevant documents. She repeatedly said she could not remember dates of various events including when she signed the Savills agency agreement in [54]<sup>69</sup>. Although Siva had dated it 1 October 2016, she did not think that was the date she actually signed the document but she could not provide alternative dates.

56 Under a clause in the Will, the Administrators were to have transferred the sums in a time deposit and saving account with Standard Chartered Bank (“SCB”) to the Estate’s beneficiaries. According to the Schedule of Assets of the Estate<sup>70</sup>, the monies in the two SCB accounts totalled \$75,845.41 of which half or \$37,922.71 should have been given to the Plaintiff. In cross-examination, Geetha testified she did give that amount in cash to the Plaintiff. However, when questioned by counsel for the Plaintiff<sup>71</sup>, Geetha confirmed she had no supporting documents to prove she paid the Plaintiff.

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<sup>66</sup> See 4AB8-9.

<sup>67</sup> See 1AB268.

<sup>68</sup> See 4AB11.

<sup>69</sup> See transcripts on 21 April 2022 at p 211.

<sup>70</sup> See 1AB17.

<sup>71</sup> See transcripts on 21 April 2022 at p 243.

57 As for the \$50,000 the defendants claimed<sup>72</sup> they gave the Plaintiff for Leena's wedding expenses in December 2018, the UOB cheque for the sum<sup>73</sup> showed the cheque was dated 1 August 2018 and the Plaintiff's Maybank passbook<sup>74</sup> showed a corresponding deposit into her account on 2 August 2018. The two dates do not support the Defendants' claim. Moreover, Leena had testified she had called off the wedding in early June 2018<sup>75</sup>. Why would the defendants still pay for Leena's wedding expenses after that date?

58 It was also Geetha's testimony<sup>76</sup> that apart from herself and Mogan, only the Plaintiff was aware of the Gift Document. She did not disclose it to the Estate's then lawyers, Subra TT Law LLC, or to Kumari, because (according to Geetha) the Plaintiff did not want it to be known by other people.

59 Geetha explained that because they are family, mother and daughter and she is a favourite child of the Plaintiff, as well as the fact that they are neighbours, they had many discussions whenever they met. It was not possible for her to put everything into her AEIC nor in writing. Geetha explained that<sup>77</sup> she kept the rent paid in cash by the Plaintiff's tenant for four years and handed it to the Plaintiff to save the Plaintiff the trouble of going to the bank to make withdrawals.

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<sup>72</sup> At [24] *supra*.

<sup>73</sup> See 1AB138.

<sup>74</sup> See 1AB473.

<sup>75</sup> See transcripts on 21 April 2022 at p 191.

<sup>76</sup> See transcripts on 21 April 2022 at p 253.

<sup>77</sup> See transcripts on 21 April 2022 at p 243-244.

60 Contrary to the defendants’ assertion that the Plaintiff turned against them and demanded severance of the joint tenancies of the four Martaban Road properties because of Leena, counsel for the Plaintiff (Mr Sundararaj) drew Geetha’s attention to a letter dated 18 October 2019 from his firm<sup>78</sup> to her wherein the Plaintiff *inter alia* requested for details of the mortgages on the four Martaban Road properties. Mr Sundararaj alleged the Plaintiff was concerned as GSM had defaulted on the loan facilities from Orix of which the Plaintiff was a guarantor. Geetha did not deny the Plaintiff’s allegation but asserted<sup>79</sup> that the Plaintiff was never asked to nor did she, bear any liability on her guarantee to Orix.

61 In fact, there was a settlement agreement signed on or about 28 April 2021<sup>80</sup> between Orix, GSM, the defendants and the Plaintiff. The defendants agreed thereunder *inter alia* to pay by monthly instalments the outstanding sum due to Orix. GSM undertook to refinance the four Martaban Road properties to redeem all their outstanding mortgages. Geetha agreed to provide security to Orix over Nos 27 and No 29 Martaban Road once their joint tenancies were severed and those properties were registered in her sole name while Nos 31 and 33 (belonging to the Plaintiff) would be encumbrance-free.

62 The figure stated as the Plaintiff’s share in the Gift Document is also factually incorrect. Under cross-examination<sup>81</sup>, Geetha admitted that the figure

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<sup>78</sup> See 3AB275-276.

<sup>79</sup> See transcripts on 21 April 2022 at p 278.

<sup>80</sup> See 3AB99-107.

<sup>81</sup> See transcripts on 21 April 2022 at p 260.

of \$1,366,377.62 included the Plaintiff's entitlement to the rent collected from the Dunlop Street property.

63 Mogan's testimony essentially corroborated Geetha's. It was obvious from his answers during cross-examination that Mogan is totally dependent on Geetha to collect rent, prepare the accounts and documents and manage/administer the Estate as well as PR's estate. Mogan testified he even relies on Geetha to do his tax returns<sup>82</sup> because he is a layman. He seemed to be clueless about the affairs of the Estate including the rental income notwithstanding the fact that he is a co-administrator.

64 Mogan considered the Estate's properties a 'financial burden' as the properties were rundown, some needed maintenance and renovations and there were liabilities for taxes and property tax<sup>83</sup>. There was also the outstanding Sing Investment loan. Cross-examined, he did not know why that loan was not repaid after the demise of the Deceased. He requested that the question be directed to his sister<sup>84</sup>.

65 Mogan claimed he gave \$4,500 every month to Geetha to service the Sing Investment loan. However, the court pointed out that those payments of his were not reflected in the statements of account of Sing Investment for the months October and November 2019 and January 2020<sup>85</sup>. Mogan admitted he did not know what Geetha did with the money he gave to her<sup>86</sup>.

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<sup>82</sup> See transcripts on 22 April 2022 at pp 318 and 357.

<sup>83</sup> See transcripts on 22 April 2022 at p 347.

<sup>84</sup> *Ibid* pp 350-351.

<sup>85</sup> See 3AB 158-161.

<sup>86</sup> See transcripts on 22 April 2022 at p 353.



66 It was adduced during cross-examination that Mogan obtained a loan in the name of GSM from UOB of \$2.2m to buy out Kumari’s share in No 118 Race Course Road which he jointly owns with Geetha<sup>87</sup>. That loan therefore only benefited him.

67 Mogan (and for that matter Geetha) did not seem to realise that the Plaintiff needed a lawyer and/or a financial adviser to render her advice on her decision to give away her inheritance. Mogan described her as “a very strong and determined person”<sup>88</sup> whose decisions he would obey as otherwise she would get angry. He claimed he and Geetha would always listen to her and follow her instructions.

68 Not much turns on Siva’s evidence. In his AEIC<sup>89</sup>, Siva had described himself as a family friend of both the Plaintiff and the defendants and he had met the Plaintiff on many occasions<sup>90</sup> at a Serangoon Road Hindu temple. His testimony under cross-examination shows that statement to be incorrect. He had only met the Plaintiff once or twice since first making her acquaintance in August 2012 at a Temple function<sup>91</sup>. They then met at the funeral of the Deceased in 2013 and at a wedding in December 2019.

69 It was clear from Siva’s evidence during cross-examination<sup>92</sup> that he did not question why the Plaintiff was making a gift to the defendants. He

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<sup>87</sup> See transcripts on 22 April 2022 at pp 381-384.

<sup>88</sup> See transcripts on 22 April 2022 at p 377-378 – Mogan’s testimony.

<sup>89</sup> At para 4.

<sup>90</sup> See AEIC of Siva at para 6.

<sup>91</sup> See transcripts on 26 April 2022 at pp 424-430.

<sup>92</sup> *Ibid* p 461.

understood from one or both of the defendants that the Plaintiff wanted to give her children the Plaintiff's share. Being a close-knit family living together, Siva testified he did not sense that anything was amiss because all of them looked comfortable at the signing. The Plaintiff did not ask what she was signing. When he inquired if she had read the document, the Plaintiff answered "Yes I know". He did not ask the Plaintiff whether she was comfortable with him being a witness to the Gift Document. To his mind, although the Plaintiff's share is a big sum to him, it may not be so to the Plaintiff's family in view of the properties they have and what they own<sup>93</sup>.

70 Pang, the defendants' expert was their last witness. The court does not doubt his expertise nor the conclusion in his report<sup>94</sup> – that based on his analysis, there is very strong support that the writer of the many specimen signatures he received wrote the Plaintiff's signature on the Gift Document. The specimen signatures that Pang used in his analysis included *inter alia* those in the Plaintiff's passport, the Renunciation and Consent forms for the grant of letters of administration with Will annexed, the Deed of Partition<sup>95</sup> and the Acceptance portions of the facility letters of Orix.

71 At Appendix C of his report, under the heading Levels of Conclusions, Pang had given various qualitative scales to describe the strength of the evidence based on the materials he was provided. In relation to the phrase "very strong support", he said that it "occurs when there is some limiting factor, often

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<sup>93</sup> See transcripts on 26 April 2022 at pp 462-463.

<sup>94</sup> At para 7.

<sup>95</sup> See [50] *supra*.

due to some critical feature or quality missing, often the reproduction processes, has reduced the level of certainty attainable”<sup>96</sup>.

72 In cross-examination, Pang acknowledged that he was not told the signatory of the specimen signatures he received is blind and elderly. However, because of his experience and his observation of what he termed “pen wandering” which is a certain amount of tremors and irregularities and lack of smooth writing, he knew that the signatures belonged to somebody who may have some physical problems or may be elderly. Hence, he questioned and was told that the lady is unable to see and is of advanced age<sup>97</sup>. It was also recorded in his report<sup>98</sup>.

### ***The issues***

73 The main issues that arise in this case for the court’s determination are:

- (a) Did the Plaintiff ask the defendants to sell the Dunlop Street property?
- (b) Did the Plaintiff inform the defendants she would give her share of the sale proceeds to lighten their financial burden in managing the Estate as well as PR’s estate?
- (c) Did the Plaintiff sign the Gift Document?
- (d) If she did, was she aware of what she was signing?

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<sup>96</sup> See p 17 of Pang’s report.

<sup>97</sup> See transcripts on 26 April 2022 at p 481.

<sup>98</sup> At para 5.3.

***The findings***

74 In the course of Geetha’s testimony, the court had commented it was “very unwise”<sup>99</sup> of Geetha to have prepared the Gift Document. The court having reviewed the evidence would say it was more than unwise of the defendants to have relied on a Do It Yourself (“DIY”) document and to come to court to defend the gift to themselves of the Plaintiff’s share.

75 The court is even more amazed that the Will upon which the Plaintiff’s claim hinges is also a DIY document prepared by Geetha particularly when she admitted she is not a lawyer<sup>100</sup>. An exchange took place between the court and Geetha on why the Gift Document was not prepared by a lawyer<sup>101</sup>. Geetha’s explanation that the Plaintiff insisted there was no need for lawyers to be involved is a lame excuse. It bears noting that three sets of lawyers were involved in representing the Estate at various times and the defendants’ current lawyers in this suit are the fourth set of lawyers that they have appointed. As the court pointed out to Geetha<sup>102</sup> (who agreed), as she had taken the Plaintiff to see lawyers many times, one more trip to the lawyers would not have “killed” either Geetha or the Plaintiff.

76 The court had further pointed out to Geetha that had a lawyer been consulted, the parties would not be before the court as lawyers would ensure that the purported gift is valid.

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<sup>99</sup> See transcripts on 21 April 2022 at p 260.

<sup>100</sup> *Ibid* p 260 line 20.

<sup>101</sup> *Ibid* pp 261-263.

<sup>102</sup> See transcripts on 21 April 2022 at p 262.

77 Geetha had also attempted to explain that she prepared the Will at the Deceased's insistence. She added that her parents were/are very conservative<sup>103</sup>. The court cannot see any correlation between a DIY Will and the conservativeness of her parents in this regard.

78 The court had also pointed out to Geetha that at law the Plaintiff is a vulnerable person due to her age and blindness<sup>104</sup>, a point that counsel for the Plaintiff repeatedly emphasised to Mogan and Siva both of whom (like Geetha) seemed to be oblivious to such an important fact.

79 In the defendants' closing submissions, the entire focus of their arguments was on the fact that the Plaintiff had signed a number of documents in English prior to 12 April 2017<sup>105</sup>. The short answer to this argument is that for all those documents, the Plaintiff appeared before solicitors to append her signatures to legal documents which were translated to her, save for the Orix letters of offer. Here, she purportedly signed a legal document before two persons who would benefit personally thereunder and before a third person who was a friend of one of the two beneficiaries.

80 The defendants argued the Plaintiff was told the contents of the Gift Document, she signed it voluntarily, she knew what she was signing and is therefore bound by what she signed. With respect, the court rejects this argument.

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<sup>103</sup> See transcripts on 21 April 2022 at p 261 line 27.

<sup>104</sup> *Ibid* pp 266-267.

<sup>105</sup> See [50] *supra*.

81 The defendants also argued<sup>106</sup> that after signing the Gift Document, the Plaintiff did nothing for over two years and that was because she knew she had given away \$1.36m of her share to the defendants. It was only after she had had a change of heart that the Plaintiff decided to claw back her gift. This argument flies in the face of the evidence<sup>107</sup> adduced before the court. The Plaintiff had testified<sup>108</sup> that in 2017 itself, she asked Geetha for her share of the sale proceeds. When she was told by Geetha she did not have a share, she asked Kumari and when she was told she did have a share, she needed Kumari to bring her to see a lawyer to ascertain the correct position before she could take the necessary legal action.

82 The defendants' above argument completely overlooks the fact that the Plaintiff is blind. She may be very independent in her home environment despite her infirmity but as Leena had testified<sup>109</sup>, the Plaintiff needs help once she ventures out of the Martaban Road property. Moreover, the Plaintiff is unlikely to know lawyers offhand. Someone needs to recommend lawyers to her and then bring her to see them, all of which takes time.

83 Earlier at [4], the court had commented on Geetha's oversight in omitting the Dunlop Street property from the First Grant that necessitated the application for the Second Grant. In the defendants' AEIC<sup>110</sup>, they claimed they were unaware that the Dunlop Street property is part of the Estate. That cannot

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<sup>106</sup> At para 12 of their closing submissions.

<sup>107</sup> See [7] *supra*.

<sup>108</sup> See transcripts on 20 April 2022 at p 82.

<sup>109</sup> See [51] *supra*.

<sup>110</sup> At para 12.

be true. During cross-examination<sup>111</sup>, the Plaintiff’s counsel had drawn Geetha’s attention to a tenancy agreement dated 18 March 2013<sup>112</sup> that she had signed for the Dunlop Street property witnessed by no less than Mogan and Siva.

84 Another instance the Plaintiff cited of the defendants’ false testimony related to when the sale of the Dunlop Street property was first mooted. Their AEIC<sup>113</sup> claimed it was in October 2016 about a week before Deepavali which fell on 29 October 2016. Their evidence is contradicted by the agency agreement dated 1 October 2016 they signed with Savills<sup>114</sup>. Indeed based on correspondence produced before the court<sup>115</sup>, the defendants and Kumari had raised the subject of selling the Dunlop Street property as early as February 2016<sup>116</sup>.

85 In the Plaintiff’s closing submissions<sup>117</sup>, the above incidents were cited as examples of how untruthful the defendants were in their testimony. Indeed, the Plaintiff’s closing submissions were highly critical of the defendants’ evidence, submitting “it was not worthy of belief”<sup>118</sup>, and the way in which they had procured the Plaintiff’s signature on the Gift Document.

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<sup>111</sup>See transcripts on 21 April 2022 at p 202.

<sup>112</sup> See 1AB403 and 428.

<sup>113</sup> At paras 19 and 24.

<sup>114</sup> See 1AB56-60.

<sup>115</sup> See 4AB3-26.

<sup>116</sup> See [54] *supra*.

<sup>117</sup> At paras 82-83.

<sup>118</sup> At para 126.

86 Whether the inconsistencies in their evidence are due to confusion or poor recollection (Geetha’s excuse) or taking liberties with the truth (as the Plaintiff’s counsel alleged), the fact remains that the court finds the defendants’ testimony to be wholly unreliable.

87 The Plaintiff’s closing submissions<sup>119</sup> pointed out that Geetha’s repeated refrain that the Plaintiff did not want lawyers to be involved in the gift was not put to the Plaintiff nor did it appear in the defendants’ AEIC. The court had also commented when questioning Geetha<sup>120</sup> that the Plaintiff never said in her testimony that she did not want to consult lawyers.

88 It is also highly unlikely that the Plaintiff was given a copy of the Gift Document, the day after she signed it as Mogan claimed<sup>121</sup>. Had that been the case, the Plaintiff would most certainly have shown the document to Leena and the document would have come to light sooner. Nothing was said by the defendants in their AEIC about giving a copy of the original document to the Plaintiff. Consequently, the court also rejects the defendants’ evidence in this regard.

89 It bears noting at this juncture that the contents of the Gift Document are incorrect and/or false. Prior to 10 January 2013, the Deceased took care of the Plaintiff. Leena moved into the Martaban Road property one day before her grandfather’s passing. Leena has been the primary caregiver of the Plaintiff since 9 January 2013 until to-date<sup>122</sup>. It is also untrue that Geetha and Mogan

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<sup>119</sup> At para 119.

<sup>120</sup> See transcripts on 21 April 2022 at p 263.

<sup>121</sup> See transcripts on 22 April 2022 at p 374.

<sup>122</sup> See transcripts on 20 April 2022 at p 98 lines 30-32.



took care of the couple before the demise of the Deceased. No evidence was produced in that regard. Even if the defendants and Geetha in particular took care of the Deceased while he was alive, why should the Plaintiff have to thank them on his behalf by foregoing her inheritance? The defendants seem to have put a very substantial price on their filial piety to their late father and to their surviving mother.

90 It also bears remembering that apart from half the rental income she receives from No 33 Martaban Road (she gives the other half to Geetha), the Plaintiff does not have a regular source of income<sup>123</sup>. The current rent is \$3,000 per month<sup>124</sup> so half would be \$1,500, not a substantial sum. Why would the Plaintiff give away her entire inheritance from her late husband to two of her children who are better off than her? It is pointless for the defendants' counsel to put to the Plaintiff<sup>125</sup> that by virtue of her sole ownership of Nos 31 and 33 Martaban Road, she has assets worth about \$6m. One property is her residence and the other only yields her rental income of \$1,500 per month. She can hardly be expected to live off her two fixed assets.

91 It is telling that the Plaintiff [see [21] above] did not have kind words for Mogan nor for Geetha. She had also denied that they took care of her after the demise of the Deceased.

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<sup>123</sup> See transcripts on 20 April 2022 at p 147 – Leena's testimony.

<sup>124</sup> See transcripts on 20 April 2022 at p 122 – the Plaintiff's testimony.

<sup>125</sup> See transcripts on 20 April 2022 at p 93.

92 As for Siva, in the defendants’ AEIC<sup>126</sup>, they had given four reasons why it was appropriate for him to witness the Plaintiff’s execution of the Gift Document. These are:

- (a) he was the property agent who handled the sale of the Dunlop Street property;
- (b) he is a family friend;
- (c) he is effectively bilingual in Tamil and English; and
- (d) he had witnessed the Deceased’s Will.

In the court’s view, all four factors are reasons why Siva should *not* have witnessed the Plaintiff’s signature to the Gift Document. It did not cross Siva’s mind to ask the Plaintiff to seek legal or financial advice. He is not an independent third party who can be expected to be objective. He is Mogan’s friend and fellow soccer player since the 1990s<sup>127</sup> and he was aware from the time he first made her acquaintance that the Plaintiff is blind<sup>128</sup>.

93 Siva’s testimony in cross-examination confirmed he did not read or know the contents of the Gift Document as he relied on Geetha’s interpretation to the Plaintiff in Tamil as evidence the latter knew and understood the contents<sup>129</sup>. He was present just to witness the Plaintiff’s signature. It appears to

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<sup>126</sup> At para 30.

<sup>127</sup> See transcripts on 26 April 2022 at p 421 – Siva’s testimony.

<sup>128</sup> *Ibid* p 423.

<sup>129</sup> *Ibid* pp 461-462.

the court that Siva did not even pay attention to what Geetha was saying to the Plaintiff when he witnessed the latter's signing of the Gift Document.

94 The court had earlier indicated at [70] that it accepts Pang's testimony that the Plaintiff likely signed the Gift Document. Pang's conclusion however does not advance the defendants' case very far in the light of the court's findings below and her plea of *non est factum*.

95 Notwithstanding her denial that she did not sign the Gift Document, the Plaintiff did not come across as an untruthful witness or one lacking in credibility. The Plaintiff's denial of her signature in the Gift Document must be viewed in the light of the fact that the court has no independent corroborative evidence of what Geetha allegedly told the Plaintiff were the contents of the document. What if the Plaintiff was told it was part of the sale documents for the Dunlop Street property? She would willingly sign such a document because it was her evidence that she had agreed to its sale.

96 The Plaintiff was not confused (unlike Geetha) in her testimony; she remembered dates and events well. She was steadfast and there was neither hesitation nor prevarication on her part.

97 The court makes the same observation on Leena's testimony. Leena was forthright and candid in her evidence. The court does not doubt that her affection and care for the Plaintiff is genuine and without any ulterior motives, unlike what the defendants seemed to suggest. Although the Plaintiff is Leena's paternal grandmother, it was evident to the court that it was more like a mother-daughter relationship between them. The Plaintiff took care of Leena in her

growing up years, they lived together for many years and still do, and Leena is far closer to the Plaintiff than to her own mother Kumari.

### **The decision**

98 Having reviewed the evidence, the court answers the issues posed in [73] as follows:

- (a) the Plaintiff did not ask but agreed to the defendants selling the Dunlop Street property;
- (b) the Plaintiff did not inform the defendants she would give to them her share of the sale proceeds to lighten their financial burden in managing the Estate as well as PR's estate;
- (c) the Plaintiff did sign the Gift Document but;
- (d) she was not aware of what she was signing.

99 In regard to the Plaintiff's plea of *non est factum* in her Reply, the court is of the view that a lawyer should have been engaged to draft and then interpret the Gift Document to the Plaintiff. This crucial step not having been taken coupled with the court's reservations on the reliability of the testimony of Geetha and/or Mogan as noted earlier<sup>130</sup>, the court finds that the Plaintiff signed the Gift Document without appreciating that she had given away the Plaintiff's share as well as her rent entitlement.

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<sup>130</sup> See [83], [84] and [86].

100 The defendants as the administrators of the Estate owe fiduciary duties to the Plaintiff as a beneficiary. Their defence<sup>131</sup> to put the Plaintiff to strict proof of such fiduciary duties is absurd as the court had pointed out to their counsel<sup>132</sup>. They are duty-bound at law to discharge such fiduciary duties.

101 In breach of their fiduciary duties as administrators of the Estate, the defendants attempted by the Gift Document to benefit themselves personally by depriving the Plaintiff of her inheritance from the Estate.

102 If *arguendo*, the court’s finding is wrong and the Plaintiff knew the contents of the Gift Document and it is therefore valid, the court will go on to consider the plea of unconscionability raised in the Plaintiff’s Reply. The Plaintiff’s closing submissions<sup>133</sup> had cited in this connection the case of *BOM v BOK and another appeal* [2019] 1 SLR 349 (“*BOM v BOK*”). The court turns to the case.

103 There, the appellate court held<sup>134</sup> that in Singapore the narrow doctrine of unconscionability applies, as embodied in UK cases such as *Fry v Lane* (1888) 40 Ch D 312 and *Cresswell v Potter* [1978] 1 WLR 255. The appellate court held that in order to invoke the narrow doctrine, the Plaintiff had to show that he was suffering from an infirmity that the other party had exploited in procuring the transaction. Upon the satisfaction of this requirement, the burden was on the defendant to demonstrate that the transaction was fair, just and reasonable. And in addition to considering whether or not the Plaintiff was poor

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<sup>131</sup> See [31] *supra*.

<sup>132</sup> See transcripts on 19 April 2022 at p 5.

<sup>133</sup> At para 155.

<sup>134</sup> See holding no 9 and [142].

and ignorant, the court would also include situations where the Plaintiff was suffering from other forms of infirmities, whether physical, mental and/or emotional in nature. But not every infirmity would *ipso facto* be sufficient to invoke the narrow doctrine of unconscionability. It must have been of sufficient gravity as to have acutely affected the Plaintiff's ability to conserve his interests, and must also have been or ought to have been, evident to the other party procuring the transaction.

104 Applying the requirements set down by the Court of Appeal to this case, there is little doubt that the Plaintiff has fulfilled the requirements for the doctrine of unconscionability in its narrow sense to apply. The defendants had exploited the Plaintiff's blindness and her advanced age. Their reprehensible conduct in procuring her signature to the Gift Document, the existence of which no one else knew save for Siva, is enough ground to invoke the doctrine.

105 In the light of the court's findings, it would not be necessary to deal with the defences of presumption of a gift and/or estoppel raised by the defendants.

106 Consequently, the court declares that the Gift Document is invalid and is hereby set aside. The defendants jointly and severally are to pay the Plaintiff the sum of \$1,366,377.62 since they are unable to prove they paid her \$6,377.62 and only took as their "gift" from her, \$1,360,000.

107 In the Plaintiff's closing submissions<sup>135</sup> she argued that she should be awarded interest on her claim from 10 April 2017, that being the date when according to Mogan's evidence<sup>136</sup>, he collected the cheques for the completion

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<sup>135</sup> At para 212.

<sup>136</sup> See transcripts on 22 April 2022 at p 336.

account from the conveyancing lawyers' firm. The Plaintiff relied on the Court of Appeal decision in *Grains and Industrial Products Trading Pte Ltd v Bank of India and Anor* [2016] 3 SLR 1308 to support her argument for pre-judgment interest. The appellate court, citing its earlier decision in *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd* [2008] 2 SLR(R) 623, had held<sup>137</sup> that as a general rule, damages should commence from the date of accrual of loss.

108 The award of interest is entirely within the court's discretion. Due to the Administrators' breach of their fiduciary duties to the Plaintiff as a beneficiary of the Estate and no fault on her part, the Plaintiff has been kept out of her money since 10 April 2017. The court accepts the Plaintiff's argument and awards her interest on \$1,366,377.62 from 10 April 2017 at the statutory rate of 5.33% until payment.

### **Costs**

109 The parties filed their respective Costs Schedule. The Plaintiff's Costs Schedule estimated costs on a solicitors-and-client or indemnity basis as \$265,000 with disbursements of another \$36,091.07 to arrive at a global figure of \$319,884.19. The Plaintiff submitted<sup>138</sup> she should be entitled to indemnity costs to be paid by the defendants personally and not by the Estate in view of their having acted dishonestly, irresponsibly and unreasonably.

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<sup>137</sup> At [138].

<sup>138</sup> See the Plaintiff's closing submissions at para 211.

110 In the defendants' Costs Schedule, they estimated party-and-party or standard basis costs as \$107,000 with disbursements of another \$8,500 to make a grand total of \$115,500.

111 It would be a travesty of justice to order the Estate to bear the costs of these proceedings in view of the defendants' breach of their administrators' duties. The defendants are to bear jointly and severally in their personal capacities, the Plaintiff's costs of \$195,000 which are awarded on a standard not indemnity basis. She is further awarded disbursements of another \$32,000 (which includes hearing fees and transcription fees). The total sum awarded to the Plaintiff for her costs is therefore \$227,000.

Lai Siu Chiu  
Senior Judge

Palaniappan Sundararaj, Lim Min and Ranita Yogeeswaran (K&L  
Gates Straits Law LLC) for the plaintiff;  
Sarbrinder Singh s/o Naranjan Singh and Tay Yu E (Sanders Law  
LLC) for the defendants.

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