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

[2023] SGHC 336

Originating Application No 510 of 2022

Between

DFS

… *Claimant*

And

NUHS Fund Limited

… *Defendant*

JUDGMENT

[Probate and Administration — Distribution of assets — Charitable gifts]
[Succession and Wills — Construction — Charitable gifts]
[Succession and Wills — Lapse — Charitable gifts]
[Charities — Charitable purposes — Dissolution]
[Charities — Charitable trusts]

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DFS
v
NUHS Fund Ltd

[2023] SGHC 336

General Division of the High Court — Originating Application No 510 of 2022
Kwek Mean Luck J
28 September, 1 November 2023

28 November 2023 Judgment reserved.

Kwek Mean Luck J:

Introduction

1 Where there is a gift in a will to an unincorporated charity, and that charity appears to have been altered in some way since the time of the will's execution, when can it be said that the charity has ceased to exist, and if that charity has ceased to exist prior to the disposition of the gift under the will, does the gift lapse? These are the questions that are raised in HC/OA 510/2022 ("OA 510"). As it raises novel issues that have not been ruled on in Singapore, I set out my judgment below, including a framework for analysing these issues.

2 The claimant in OA 510 is the sole surviving executrix (the "Executrix") named in a Last Will and Testament dated 2 November 2006 (the "Will"), and the sole surviving trustee of the estate (the "Estate"). The Executrix was the former daughter-in-law of the testator (the "Testator"). The defendant is NUHS

Fund Limited ("NUHSF"), a Singaporean company limited by guarantee that is registered as a charity under the Charities Act 1994 (2020 Rev Ed) (the "Charities Act") and as an Institution of a Public Character ("IPC") under the Charities (Institutions of A Public Character) Regulations (2008 Rev Ed).

3 In OA 510, the Executrix seeks the following orders:

(a) A declaration that the intended specific legatee of a gift in cl 3(f)(iii) of the Will did not exist at the time of the execution of the Will and/or at the date of death of the Testator.

(b) A declaration that, based on the construction of the Will, there is no general charitable purpose in the gift as described in cl 3(f)(iii) of the Will; and

(c) A declaration that the gift of a property in cl 3(f)(iii) of the Will (the "Property") has lapsed into the residue of the Estate, and that pursuant to s 20 of the Wills Act 1838 (2020 Rev Ed), the sale proceeds of the Property shall be distributed in accordance with the residuary device in cl 3(g) of the Will.

Background Facts

4 On 20 March 2018, the Testator passed away. He left behind his wife (the "Wife") and the Will. The Will named the Executrix and the Wife as the executrixes and trustees. They extracted the Grant of Probate on 26 November 2018.[1]

[1] Affidavit of DFS dated 2 September 2022 at para 4.

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5 Clauses 3(f) and (g) of the Will provide that:[2]

> 3. … I DEVISE, GIVE AND BEQUEATH the following:-
>
> …
>
> (f) I declare that:-
>
> (i) no sale shall be effected of [the Property] during the widowhood of my said wife;
>
> (ii) the Trustees should permit my said wife to occupy the same free of rent so long as she so desire;
>
> (iii) upon the demise of my said wife my Trustees shall vest the said property to the National University Hospital Endowment Fund;
>
> (iv) I direct that the National University Hospital Endowment Fund shall not disclose the name of the Donor of the gift but that the gift herein be placed "In Memory of LSK".
>
> (g) All my residuary estate of whatsoever and wheresoever to my said wife absolutely …

I shall refer to cl 3(f)(iii) as the "Gift Clause" and to the gift of the Property as the "Gift". To respect the Testator's wishes in cl 3(f)(iv) of the Will, I granted an application to seal identifying personal details on 22 November 2023.[3]

6 The Wife passed away intestate on 19 March 2020. Thereafter, in accordance with the Gift Clause, the Executrix contacted the National University Hospital System ("NUHS") to effect the Gift.[4] For context, NUHS (properly, National University Health System Pte Ltd) is the administrative body for the National University Hospital ("NUH"). The Executrix and NUHS

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2 Affidavit of DFS dated 2 September 2022 at 21–22.

3 HC/SUM 3563/2023.

4 Affidavit of DFS dated 2 September 2022 at paras 7–9.

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thereafter engaged in further correspondence, of which two are of particular importance.

7 First, in an email dated 11 March 2021, NUHS impressed upon the Executrix the need to seek independent advice on the Testator's intended Gift, because "this matter is not so straightforward as the name of the fund name in the testator's will is not exactly the same as our fund's name".[5]

8 Second, in a letter from NUHSF's solicitors dated 23 August 2021, the Executrix was informed that the fund named "National University Hospital Endowment Fund" (the name used in the Gift Clause) "*did not exist*" [emphasis added] as at 2 November 2006 (the date of the Will), "as it was renamed to NUH Patientcare Charity Fund". NUHSF nevertheless maintained that, for the reasons given in the letter, it was of the view that "it would be the Testator's intention for the Property to ultimately be bequeathed to NUHS Fund Limited (as the successor to NUH Patientcare Charity Fund) and to benefit the beneficiaries of the charity".[6] This must be read with a subsequent letter dated 25 January 2022, where NUHSF's solicitors explained that, as what happened was a renaming, as at 2 November 2006, "the charity which the testator had in view, *did exist* as NUH Patientcare Charity Fund" [emphasis added].[7]

9 I shall refer to the National University Hospital Endowment Fund as "NUHEF" and the NUH Patientcare Charity Fund as "NUHPCF". The timeline of the relevant events relating to NUHEF and the Will are as set out below:

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5 Affidavit of DFS dated 2 September 2022 at 24.

6 Affidavit of DFS dated 2 September 2022 at 32–33.

7 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 45.

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Date	Event
7 February 1986	NUHEF is established.[8]
28 August 1986	NUHEF is registered as a charity under the version of the Charities Act then in force.
20 July 2006	Resolution by circulation of the "National University Hospital Endowment Fund Board of Trustees" (the "NUHEF Board of Trustees") for the purposes of changing the name of the fund to "NUH Patientcare Charity Fund" (*ie*, NUHPCF), dated 20 July 2006.[9]
29 August 2006	The NUHEF Board of Trustees writes to the Ministry of Health ("MOH") seeking approval for the change of the fund name to NUHPCF, copying the Commissioner for Charities (the "Commissioner") and the Inland Revenue Authority of Singapore.[10]
6 September 2006	MOH instructs the NUHEF Board of Trustees to ensure that the "Rules for the Operation of the NUH Endowment Fund" (the "NUHEF Rules of Operation") has objectives related only to patient care, before MOH approval for the name change will be granted.[11]
27 September 2006	Resolution by circulation of the NUHEF Board of Trustees for the purposes of amending the NUHEF Rules of Operation, dated 27 September 2006.[12]

8 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at paras 15–18, and 30.

9 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at para 22, and pp 83–90.

10 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 94.

11 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 95.

12 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at para 26, and pp 97–104.

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11 October 2006	The NUHEF Board of Trustees informs MOH that the required amendments to the "Rules for the Operation of the NUH Endowment Fund" have been made, and seeks approval for the change of the fund name to NUHPCF.[13]
19 October 2006	MOH approves of the name change.[14] NUHEF is thereafter officially known as NUHPCF. This is also reflected in contemporaneous audit reports.[15]
25 October 2006	MOH approves the "Rules for the Operation of the NUH Patientcare Charity Fund" (the "NUHPCF Rules of Operation").[16]
2 November 2006	The Will is executed by the Testator. It names NUHEF as the beneficiary of the Gift Clause.
10 October 2011	The NUHS Board of Directors, at a Board meeting on 10 October 2011, approves the paper dated the same day titled "Establishment of the NUHS Endowment Fund Limited as a Company Limited by Guarantee" (the "10 October 2011 Board Paper").[17]
8 February 2012	By way of a NUHS Board of Directors' Resolutions in Writing dated 8 February 2012, the approval granted for the 10 October 2011 Board Paper is effected, save that the name of the company is to be "NUHS Fund Limited" (*ie*, NUHSF) instead of the earlier proposed name.[18]

13 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 96.

14 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 112.

15 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 132.

16 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at para 31 and pp 122–130.

17 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 179–210, and 212.

18 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 212–224.

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14 February 2012	NUHSF is incorporated.[19]
14 May 2012	NUHSF is registered as a charity and approved as an IPC.[20]
4 June 2012	Resolution by circulation of the "NUH Patientcare Charity Fund Board of Trustees" (the "NUHPCF Board of Trustees") for the purposes of, *inter alia*, "the dissolution of NUH Patientcare Charity Fund (PCF) and to transfer its fund balances to NUHS Fund Limited. Funds transferred from the NUH PCF will be ringfenced in NUHS Fund Limited to continue to meet the objectives as set out in NUH PCF", dated 4 June 2012 (the "4 June 2012 Resolution").[21] This resolution is passed.[22]
15 August 2012	NUHPCF transfers all its assets and obligations to NUHSF.[23]
6 December 2012	NUHPCF is de-registered as a charity.[24]
20 March 2018	The Testator passes away.
19 March 2020	The Wife passes away.

19 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at para 41.

20 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 290.

21 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 293–294.

22 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 295–302.

23 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 325.

24 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 313.

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10 In sum, on the date the Will was executed, NUHEF had been renamed to NUHPCF. By the time of the Testator's death, and by the time the gift was to vest upon the death of the Wife, NUHPCF had been de-registered as a charity.

11 It is undisputed that NUHEF, NUHPCF, and NUHSF are charities that carry out (or carried out) charitable purposes. NUHSF refers to NUHEF/NUHPCF as an "unincorporated entity", being "either a charitable trust and/or an unincorporated association".[25] NUHSF informed me that it does not have a record of explicit discussions on the precise legal form of NUHEF/NUHPCF, and NUHSF was not able to identify or produce a trust deed. However, both parties agree that there are indications of NUHPCF being a charitable trust, and the Executrix takes the position that NUHPCF was a charitable trust and that NUHSF has not shown how NUHSF could be an unincorporated association.[26] Both parties also agreed that the absence of a written trust deed does not mean that there could be no charitable trust.

Parties' cases

12 The Executrix's position is that the Gift has lapsed, and therefore falls to be distributed in accordance with the residuary clause, cl 3(g) of the Will. NUHSF's position is that the Gift has not lapsed, and vests in NUHSF.

NUHSF's case

13 NUHSF's case is that NUHEF, the charity named in the Gift Clause, continues in the form of NUHSF carrying out the charitable purposes of NUHEF/NUHPCF, with NUHSF as the successor of NUHEF/NUHPCF.

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[25] Defendant's Supplemental Written Submissions dated 19 October 2023 at para 9.

[26] NE, 28 September 2023, at 2.

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NUHSF is therefore entitled to the Gift.[27] NUHSF submits that, as a matter of general principle, the court should lean in favour of upholding charitable gifts.[28]

14 NUHEF was established as an unincorporated charity. Notwithstanding the name change from NUHEF to NUHPCF on 19 October 2006, this was only to reflect its status as an IPC. There were no substantive changes to its purposes, save for *clarifying* in the NUHEF Rules of Operation the non-exhaustive list of programmes and services that NUHEF/NUHPCF was entitled to carry out to fulfil its charitable purpose. Therefore, notwithstanding the clarifying amendments made to the NUHEF Rules of Operation and the change of name, at the time the Will was executed on 2 November 2006, NUHEF was known as and was *the same charity* as NUHPCF.[29] It was dedicated to the same charitable purposes.

15 NUHSF makes two main legal submissions.

16 First, NUHSF relies on a line of English cases, namely *In re Vernon's Will Trusts (Lloyds Bank Ltd v Group 20 Hospital Management Committee (Coventry) and others)* [1971] 3 WLR 786 ("*Re Vernon's Will*") and *In re Finger's Will Trusts (Turner and another v Ministry of Health and others)* [1972] 1 Ch 286 ("*Re Finger's Will*"), which make a distinction between charitable gifts to an unincorporated entity and charitable gifts to an incorporated entity. They reason that, because an unincorporated entity does not have a separate legal personality able to take the gift beneficially in its own

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27 Defendant's Written Submissions dated 7 September 2023 at paras 4 and 33; Defendant's Supplemental Written Submissions dated 19 October 2023 at paras 3, 34, and 43.

28 Defendant's Written Submissions dated 7 September 2023 at paras 11–13.

29 Defendant's Written Submissions dated 7 September 2023 at paras 35–40.

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right, a gift to an unincorporated charity without more *must* be a *gift for the charitable purposes* of that unincorporated charity rather than to the institution itself. Such a charitable gift does not lapse so long as the charitable purpose of the unincorporated charity can still be fulfilled.[30] This can be contrasted with charitable gifts to an incorporated charity, which takes effect as a *gift to the company* beneficially, unless there are circumstances that show that the company is to take the gift as a trustee. NUHSF submits that this distinction ought to be recognised and applied in Singapore, with the effect that the Gift will not lapse, or that alternatively, the presumption should be that all gifts to charities should be construed as gifts for charitable purposes.[31]

17 Second, NUHSF relies on another series of English cases, namely *In re Faraker (Faraker v Durell)* [1912] 2 Ch 488 ("*Re Faraker*"), *In re Lucas (Sheard v Mellor)* [1948] 1 Ch 424 ("*Re Lucas*"), and *In re Bagshaw (Deceased) (Westminster Bank Ld v Taylor and others)* [1954] 1 WLR 238 ("*Re Bagshaw*"). They held that so long as there are funds held in trust for the purposes of a charity, the charitable purposes continue in existence and survive the end of a particular charitable institution. The charity is not destroyed by any alteration in name, constitution or machinery, or its objects made in accordance with law. The charitable gift will not lapse, but vest in the charity so surviving or altered, or in a successor institution. A simple dissolution and reincorporation may not result in the charity ceasing to exist.[32] The charity will only cease to exist if there has been an exhaustion of assets and a cessation of activities.[33]

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30 Defendant's Written Submissions dated 7 September 2023 at para 15.

31 Defendant's Supplemental Written Submissions dated 19 October 2023 at paras 20–26.

32 Defendant's Written Submissions dated 7 September 2023 at paras 16–30; Defendant's Supplemental Written Submissions dated 19 October 2023 at paras 38–39.

33 Defendant's Supplemental Written Submissions dated 19 October 2023 at para 31.

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18 NUHSF submits that, on the facts, the funds that were held in NUHEF/NUHPCF continue to be held for and applied towards the same charitable purpose by NUHSF, such that the Gift did not lapse.

19 NUHSF explains that, sometime around 2011 to 2012, the various public healthcare clusters in Singapore decided to each incorporate a company limited by guarantee for healthcare-related charitable activities for the benefit of patients and the community at large. NUHSF was consequently formed and registered as a charity. As seen from the 4 June 2012 Resolution, the funds in NUHPCF were transferred to NUHSF to continue the objectives of NUHEF/NUHPCF and were ring-fenced for this purpose. NUHSF submits that the objects of NUHEF/NUHPCF are in substance included as part of the statement of NUHSF's objects in its corporate constitution and are clearly being carried on in NUHSF. Therefore, the funds of NUHPCF continue to be held on trust for its purposes and have not been destroyed by any alteration in the machinery or objects of NUHSF. In addition, the assets from NUHPCF were distinctly ring-fenced in NUHSF. They were restricted for application to only four programmes, which were the same as those that had been carried out by NUHPCF.[34] The four programmes are described in identical terms in both NUHPCF's audited financial statements, and NUHSF's audited financial statements.[35] NUHSF's audited financial statements for the period from 14 February 2012 (the date of incorporation) to 31 March 2013 also show that the amount of funds that were recorded as being transferred to NUHSF "pursuant to a restructuring exercise" was essentially the same as the total funds

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34 Defendant's Written Submissions dated 7 September 2023 at paras 45–53; Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at paras 38–48.

35 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 154 and 329.

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of NUHPCF.[36] Therefore, while there had been a *transfer* of the funds and dissolution of the *institutional form* of NUHPCF, the funds were *not exhausted or disposed of* and the *charitable purposes continued* to be carried out by NUHSF, as the legitimate successor of NUHEF/NUHPCF.[37]

20 NUHSF is thus the charity which administers the same charitable purposes which used to be carried out by NUHEF, notwithstanding any subsequent alteration to the name or the legal machinery used. NUHSF is therefore entitled to the Gift.

The Executrix's case

21 The Executrix's position is that it is clear from the ordinary and natural meaning of the Gift Clause that the Testator expressly intended to gift the Property as a specific bequest to NUHEF *simpliciter*. There is no express statement on the *purpose* of the Gift contained in the Gift Clause. Objectively ascertained, the Gift is neither a purpose gift nor a *charitable* purpose gift and should not be construed as such. The Gift was to NUHEF *only*, not any other party, and the court should not venture to discern a purpose where none is stated. It is contrary to the general rules applicable to the construction of wills set out by the Court of Appeal in *Low Ah Cheow and others v Ng Hock Guan* [2009] SGCA 25 ("*Low Ah Cheow*"), to read beyond the ordinary meaning of the *express* words of a will in the absence of ambiguity.[38] In *In re Spence (Deceased) (Ogden v Shackleton and others)* [1979] 1 Ch 483 ("*Re Spence*"),

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36 Defendant's Supplemental Written Submissions dated 19 October 2023 at para 39; Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at para 49, and p 323.

37 Defendant's Second Supplemental Written Submissions dated 25 October 2023 at paras 6–11.

38 Claimant's Written Submissions dated 7 September 2023 at paras 13–28 and 37–40; Claimant's Further Written Submissions dated 19 October 2023 at paras 4–9.

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the court held (at 493A–493C) that where "a particular institution or purpose is specified, then it is that institution or purpose, and no other, that is to be the object of benefaction". In short, the "specific displaces the general". Citing *In re Rymer (Rymer v Stanfield)* [1895] 1 Ch 19 ("*Re Rymer*") and *In re Harwood (Coleman v Innes)* [1936] 1 Ch 285 ("*Re Harwood*"), counsel for the Executrix submits that it ought to be difficult to find a general charitable intention if a testator has selected a particular charitable institution and has taken care to identify it as the beneficiary of the gift, but that charitable institution ceased to exist before the date of the testator's demise.[39] As observed by Wilberforce J in *In re Roberts (Deceased) (Stenton and another v Hardy and others)* [1963] 1 WLR 406 ("*Re Roberts*") at 414:[40]

> The mere fact that there is a gift to an unincorporated charity does not seem to me to be enough to enable me to come to the conclusion that it is a gift for charitable purposes …

22 NUHEF/NUHPCF was voluntarily dissolved in 2012. As NUHEF had ceased to exist prior to the date of the Testator's demise, the Gift has lapsed as the Gift Clause cannot be performed. The rule is that if a testator intended to benefit a *specific* charitable institution, which has ceased to exist prior to the testator's death, the gift will lapse in the absence of a general charitable intention, citing *Re Rymer*. Counsel for the Executrix highlights that: (a) NUHPCF was dissolved following the 4 June 2012 Resolution under the NUHPCF Rules of Operation; and (b) its funds were thereafter transferred to a wholly separate corporate entity, NUHSF. Referring to *In re Stemson's Will Trusts (Carpenter v Treasury Solicitor and another)* [1969] 3 WLR 21 ("*Re Stemson's Will*"), counsel for the Executrix submits that there are "clear

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39 Claimant's Written Submissions dated 7 September 2023 at paras 43–45.

40 Claimant's Written Submissions dated 7 September 2023 at para 41.

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parallels" to be drawn to the present factual matrix and that the Gift must therefore have lapsed.[41]

23 Even if NUHEF existed at the time of the Will, the Testator could have gifted the Property to NUHEF for any number of personal reasons. It was not necessarily the case that the Testator had a general charitable intent. There is no evidence of his intentions, extrinsic or expressed on the face of the Will. It would be presumptuous to declare that he had given the Gift for charitable purposes, simply because NUHEF was a charity. As the Gift Clause is clear and unambiguous, counsel for the Executrix submits that the Gift was to benefit NUHEF *only*.[42] There is no ambiguity as to the identity of the specific legatee of the Gift and the Gift Clause could have been carried out but for the dissolution of NUHEF/NUHPCF.[43] As NUHEF had ceased to exist by the time of the Testator's death, the Gift must therefore lapse. The Testator had provided for how lapsed gifts are to be dealt with in cl 3(g) of the Will, and the Property ought to be distributed accordingly.[44]

24 Counsel for the Executrix submits that *Re Vernon's Will* requires a construction of the will to determine what the testator's true intentions were. If the construction of the will reveals that the testator's true intention was for a specific charitable institution as such, the gift will fail if that specific charitable institution did not exist at the time of the testator's death as the continued existence of that specific charitable institution is a critical aspect of the gift. Applying the principles in *Low Ah Cheow* (see [21] above), the Testator's

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41 Claimant's Written Submissions dated 7 September 2023 at paras 30–36 and 46–48.

42 Claimant's Written Submissions dated 7 September 2023 at paras 41–42.

43 Claimant's Written Submissions dated 7 September 2023 at para 51.

44 Claimant's Written Submissions dated 7 September 2023 at para 25; Claimant's Further Written Submissions dated 19 October 2023 at para 54.

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expressed intent is for the Gift to be to a specified institution, NUHEF. There is no ambiguity on the face of the Will and no extrinsic evidence available to determine any other intention.[45] Counsel for the Executrix also submits that the distinction drawn between gifts to incorporated charities and unincorporated charities is unjustifiable in principle, as the reality is that when a lay testator makes a testamentary gift to a charitable entity, they do not typically address their mind to whether the entity is incorporated or unincorporated. Therefore, such a distinction should not be followed.[46]

25 Counsel for the Executrix also seeks to distinguish *Re Faraker*, *Re Lucas* and *Re Vernon* from the facts of the current case. All three cases involved external intervention through some act based on the powers given to charity commissioners or some legislation, such as the National Health Service Act 1946 (9 & 10 Geo 6 c 81) (UK) ("NHSA"). But for this external intervention, the charities in *Re Faraker*, *Re Lucas* and *Re Vernon* would not have ceased to exist. Counsel for the Executrix submits that the court in those cases was trying to rescue those charities from termination that arose through no fault of their own, so that the gifts made to them would not lapse. In *Re Faraker* and *Re Lucas*, the charity commissioners had no power to, and could not have intended to, destroy those charities, as the charities were founded as a perpetual charity with no ability to self-terminate. The present case was more analogous to *Re Stemson's Will*, where the court held that both *Re Faraker* and *Re Lucas* have limited applicability where the charity has the power to wind itself up, and did indeed terminate itself and transfer its assets. If the charity was terminated by

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45 Claimant's Further Written Submissions dated 19 October 2023 at paras 11–15, 23, 43, and 49.

46 Claimant's Further Written Submissions dated 19 October 2023 at paras 16–19, and 29.

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its own rules, there is nothing to prevent the gift from lapsing. In the present case, NUHEF/NUHPCF was voluntarily dissolved and its assets were then transferred to a third party, NUHSF. As such, the Gift must lapse.[47]

The Law

26 I will first set out the general principles on the construction of wills and gifts to charities, before considering the specific principles relevant to this case.

27 Effect should be given, if possible, to the *expressed* intention of the testator as declared in the will. It has been said that such intent was to be collected from the words of the will and nothing else (see *Bermuda Trust (Singapore) Ltd v Wee Richard and others* [1998] 3 SLR(R) 938 at [7]). In *Low Ah Cheow*, the Court of Appeal quoted (at [19]) from *Williams on Wills* (Francis Barlow *et al* eds) (LexisNexis Butterworths, 9th Ed, 2008), a passage that states that the first rule in construction is that effect must be given to the intention of the testator at the time they made their will, as *declared and apparent* in the will, rather than their actual mental intention. The Court of Appeal also clarified that extrinsic evidence *can* and will be admissible to aid in the construction of a will where the expressed intention is ambiguous (at [20]). I note that it has also been held that where a strict literal construction would be regarded as out of sync with the general intention of the testator as derived from the will as a whole, such a reading should give way to a more purposive interpretation (*Foo Jee Seng and others v Foo Jhee Tuang and another* [2012] 4 SLR 339 at [17]).

28 The above cases did not involve a gift to a charity. In *Re Will of Samuel Emily, deceased* [2001] 3 SLR(R) 335, a case which did involve gifts to

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47 Claimant's Written Submissions dated 7 September 2023 at paras 59–64.

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charities, Tay Yong Kwang JC (as he then was) cited with approval (at [28]) the following passage from Hubert Picarda, *The Law and Practice Relating to Charities* (Butterworths, 2nd Ed, 1995) at p 226–228, which states that a benignant construction will be accorded to charitable gifts, although the court must not strain the will for the charity:

> *General principle: benignant construction*
>
> There is a well-established maxim that *the court leans in favour of charity when construing charitable gifts*. Charity is always favoured by equity.
>
> In the words of Lord Lorebun, 'there is no better rule than that a benignant construction will be placed upon charitable bequests'. Thus *where a gift is capable of two constructions, one which would make it void and the other which would render it effectual, the latter must be adopted*. It is better to effectuate than to destroy the intention …
>
> The court *must not on the other hand strain the will to gain money for the charity*. For in doing so it will cheat the residuary legatees or next of kin …
>
> [emphasis added]

29 In *Koh Lau Keow and others v Attorney-General* [2014] 2 SLR 1165 ("*Koh Lau Keow*"), the Court of Appeal endorsed the same general principles (at [21]):

> *It is trite that the principle of benignant construction applies to charitable gifts* – in other words, *where a bequest is capable of two constructions, one of which would make it void, and the other would make it effectual, the latter should be adopted*: *Tudor on Charities* (Sweet & Maxwell, 9th Ed, 2003) ("*Tudor*") at para 4-002. On the other hand, *the court must not strain the will to gain money for charity*: *Picarda* at p 354.
>
> [emphasis added]

Charitable gifts to incorporated and unincorporated charities

30 Of specific relevance to this case is the line of English cases which make a distinction between gifts to an unincorporated charity and gifts to an

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incorporated charity, including *Re Vernon's Will* and *Re Finger's Will* cited by NUHSF (above at [16]). However, there has not been any prior Singapore authority which has expressly considered the applicability of *Re Vernon's Will* on this point, although it was cited by the Court of Appeal in *Khoo Jeffrey and others v Life Bible-Presbyterian Church and others* [2011] 3 SLR 500 ("*Khoo Jeffrey*"), in the following terms (at [33]):

> A distinction must be drawn between a charitable purpose and the institutional form (be it an unincorporated association, individuals, or a company) through which the charitable purpose is effected or administered. *The dissolution of the institutional form does not terminate the charitable purpose as long as that purpose is still capable of being carried out*: *Re Vernon's Will Trusts* [1972] 1 Ch 300 …

31 I therefore consider the relevant English, Australian, and Canadian authorities and examine how this distinction has been dealt with.

English cases

32 Graham Virgo KC, *The Principles of Equity and Trusts* (Oxford University Press, 5th Ed, 2023) ("*Principles of Equity and Trusts*") states (at p 202) that where a testamentary disposition is intended to be for a *particular charitable institution as such*, rather than for that institution's charitable purpose, and that institution ceases to exist before the testator's death, there will be an initial failure of the gift (*ie*, the gift will lapse). It cites *Re Rymer* and *Re Stemson's Will* in support of this proposition. *Principles of Equity and Trusts* goes on to note that whether or not a gift is regarded as one for the charitable institution as such or one for the purposes of the charitable institution is influenced by whether the intended recipient of the gift is incorporated or unincorporated. Referring to *Re Vernon's Will* and *Re Finger's Will*, *Principles of Equity and Trusts* summarises (at pp 202–203) that a gift to an unincorporated charity must be a gift for a charitable purpose as such a charity does not have a

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separate legal personality able to take the gift beneficially (see above at [16]), and that if the charitable purpose can still be fulfilled, the gift will not fail *unless the continued existence of the institution was essential to the gift*. This proposition is also set out in *Theobald on Wills* (Sweet & Maxwell, 19th Ed, 2021), which states (at p 500) that a gift to an incorporated charity that has dissolved before the date of death will lapse (unless the corporation was to take the gift as a trustee or unless the will discloses a general charitable intention), but a gift to an unincorporated charity is regarded as a gift for charitable purposes, and the continued existence of the unincorporated charity is unnecessary *unless the will requires otherwise* (see also *Williams on Wills* (LexisNexis, 11th Ed, 2021) at paras [103.4]–[103.5] and *Snell's Equity* (Sweet & Maxwell, 34th Ed, 2022) at para 23-054).

33 In *Re Vernon's Will*, Buckley J stated (at 789):

> *Every bequest to an unincorporated charity by name* ***without more*** *must take effect as a gift for a charitable purpose.* No individual or aggregate of individuals could claim to take such a bequest beneficially. If the gift is to be permitted to take effect at all, it must be as a bequest for a purpose, viz., that charitable purpose which the named charity exists to serve … A bequest to a named unicorporated [*sic*] charity, however, *may on its true interpretation show that the testator's intention to make the gift at all was* ***dependent*** *upon the named charitable organisation being available at the time when the gift takes effect* to serve as the instrument for applying the subject matter of the gift to the charitable purpose for which it is by inference given. *If so and the named charity ceases to exist in the lifetime of the testator, the gift fails …*
>
> [emphasis added]

In short, a gift to a named unincorporated charity, without more, is a gift for charitable purposes, *unless* the gift depended on the continued existence of the specific charitable institution, in which case the gift will lapse if the specific

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charitable institution ceases to exist prior to the disposition taking effect. As for the position in relation to incorporated charities, Buckley J held (at 789):

> A bequest to a corporate body, on the other hand, takes effect simply as *a gift to that body beneficially*, *unless there are circumstances which show that the recipient is to take the gift as a trustee* … the natural construction is that the bequest is made to the corporate body as part of its general funds, that is to say, *beneficially and without the imposition of any trust.* That the testator's motive in making the bequest may have undoubtedly been to assist the work of the incorporated body would be insufficient to create a trust.
>
> [emphasis added]

Gifts to an incorporated charity therefore presume the opposite and are *not* considered gifts for charitable purposes, but rather gifts to the charitable institution *as such*, *unless* the will shows otherwise.

34 I turn to *Re Finger's Will*, where the distinction in *Re Vernon's Will* was also regarded as significant. There, the testatrix left large residuary gifts to eleven charitable institutions and funds, two of which had ceased to exist prior to the date of her death. One of these, by the reference to the "National Radium Commission" in the will was held to refer to an unincorporated charity known as the "Radium Commission" (at 293G), whereas the other was an incorporated charity, the "National Council for Maternity and Child Welfare" (at 292E). It was undisputed that both had completely ceased to exist. While Goff J considered that the distinction between gifts to incorporated and unincorporated charities would produce "anomalous results", he accepted that the distinction was "well established" (at 294E–F). The position is that a gift to an unincorporated charity will not lapse if its charitable purposes are still being carried on, "unless there is something positive to show that the continued existence of the donee was essential to the gift" (at 295G). As the will had "no context whatever" to make the National Radium Commission of essence to the

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gift, that gift did not lapse and was a gift for its purposes (at 297F–H and 298E–F). On the other hand, applying the distinction in *Re Vernon's Will*, the same absence of context meant that the gift to the National Council for Maternity and Child Welfare, an incorporated charity, lapsed (at 298F–299B).

35 The principle in *Re Vernon's Will* has been applied in more recent English decisions. In *In re Koeppler Will Trusts (Barclays Bank Trust Co Ltd v Slack and others)* [1985] 3 WLR 765 ("*Re Koeppler*"), Slade LJ in delivering the judgment of the English Court of Appeal held (at p 773) that "[i]t is by no means unusual for a testamentary gift expressed as a gift to an unincorporated body to be construed as *a gift for the furtherance of the work of the body in question*" [emphasis added], citing *Re Vernon's Will* and *Re Finger's Will*. In *Kings (personal representative of Schroder (deceased) v Bultitude and another* [2010] EWHC 1795 (Ch) ("*Kings*"), Proudman J held (at [23]) that "a gift for the purposes of the church (an unincorporated association) can take effect under a scheme even if the institution was not in existence at the death, provided that (a) the testatrix did not intend to make the gift dependent on the named institution remaining in existence and that (b) the work of the institution is still being carried on as a matter of fact". Both *Re Vernon's Will* and *Re Finger's Will* were cited as good authority. *Re Vernon's Will* was followed in *Macintyre & Anor v Oliver & Ors* [2018] EWHC 3094 (Ch) ("*Macintyre*"), for the proposition that "a gift made to an unincorporated association is for the purposes of the unincorporated association, unless it is a condition of the gift that the association is in existence when the gift takes effect" (at [44]–[49]).

Australian cases

36 Australian and Canadian authorities are consistent with the English position, but only in so far as they adopt a presumptive position of construing a

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gift to an unincorporated charity as being for the charitable purposes of that charity. They *do not* adopt the distinction made in *Re Vernon's Will* between gifts to incorporated and unincorporated charities, and instead apply the presumption that all gifts to charities are gifts for charitable purposes.

37 The Australian courts generally lean in favour of upholding charitable gifts, as can be seen in the decision of the Supreme Court of New South Wales in *Maxwell James Anthony Connery v Williams Business College Limited & Anor* [2014] NSWSC 154. There, the court observed (at [55]) that:

> Little is required to establish a general charitable purpose. As a general principle, Courts will lean in favour of charity, and upon the failure of a specific gift, Courts will be ready to infer a general intention on the part of the will maker to provide a gift to charity; 'little is required in the language of the will for a court to treat a wider purpose as the object of trust' …

38 In the decision of the Supreme Court of South Australia in *Australian Executor Trustees Ltd v Ceduna District Health Services Inc & Ors* [2006] SASC 286 ("*Ceduna*"), Vanstone J held that, in principle, gifts to a charitable institution that ceases to exist prior to the testator's death will lapse (at [8]). However, Vanstone J also held that (at [23]):

> As a starting point, it should be noted that *a gift by will to a particular charitable institution is generally construed as being a gift on trust for the charitable purposes of that institution*: *Tyrie* at 177. Although some English authorities appear to limit this principle to unincorporated charities (for example, *Re Vernon's Will Trusts* [1972] Ch 300), no such distinction applies in Australia.
>
> [emphasis added]

39 In other words, *all* gifts to charitable institutions are regarded as gifts for charitable purposes, rather than gifts to the institution as such, regardless of whether it is incorporated or unincorporated (see also *Harmony - The Dombroski Foundation Ltd v Attorney General in and for the State of New South*

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Wales [2020] NSWSC 1276 at [66]). Vanstone J referred to the Supreme Court of Victoria decision in *Re Tyrie (deceased) (No 1)* [1972] VR 168 ("*Re Tyrie*"). In *Re Tyrie*, Newton J summarised the relevant principles and stated (at p 177) that "[a] gift by will to a particular charitable institution *simpliciter* must be treated as a gift for the advancement of the charitable work or purposes of that institution", but that "a gift by will to a particular charitable institution … which at some time existed, but had ceased to do so in the testator's lifetime, whether before or after the date of his will, ordinarily lapses", referring to this second proposition as the "lapse rule". Newton J then set out three exceptions to the "lapse rule".

40 In *Ceduna*, Vanstone J summarised these three exceptions to the "lapse rule" as follows (at [10]):

> (A) Where, at the testator's death, there is another institution which has *taken over the work previously carried on by the named institution* and which *can properly be regarded as its successor*, and where the dominant charitable intention of the testator was wide enough to allow the gift to take effect in favour of that successor;
>
> (B) Where the testator intended that the gift should operate as an *accretion to the assets of the named institution* and thereby became subject to other charitable trusts; and
>
> (C) Where, in cases outside (A) and (B), the testator is found to have had a *dominant intention* to benefit work or purposes of the kind which the named institution carried out, and it is practicable to apply the gift to work or purposes of that kind, in which case the gift will be applied by means of a *cy-près* scheme.
>
> [emphasis added]

Canadian cases

41 There is also Canadian authority that adopts the principle in *Re Vernon's Will*, without limiting it to unincorporated charities. In *Re Winding-up of the Christian Brothers of Ireland in Canada* 3 ITELR 34 ("*Christian Brothers*"),

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the Ontario Court of Appeal held (at [71]) that the courts maintain a supervisory power to ensure that gifts with charitable intent will not fail "even if the object of the gift is unclear or uncertain, or if the gift is directed to a charitable corporation which is misnamed or the corporation no longer exists", citing *Re Vernon's Will* and *Re Finger's Trust*. The court referred (at [72]) to Buckley J's proposition (quoted above at [33]), but then went further, stating (at [74]) that the "public policy which the courts wish to implement is to save charitable gifts and to apply them as far as possible to the purposes intended by the donor … To do that, *the court can determine that a gift was intended as a trust, even though left to a corporate charity*, in order to save the gift where the particular corporate charity is no longer available to receive the gift" [emphasis added].

Charitable gifts to altered charities

42 Besides *Re Vernon's Will* and *Re Finger's Will*, there is another line of English cases which are of relevance of this case, including *Re Faraker*, *Re Lucas* and *Re Bagshaw* cited by NUHSF (above at [17]). They held that so long as there are funds held in trust for the purposes of a charity, the charitable purposes continue in existence and survive the end of a particular charitable institution. The charity is not destroyed by any alteration in name, constitution or machinery, or its objects made in accordance with law. The charitable gift simply vests in the charity so surviving or altered, or in a successor institution.

Re Faraker, Re Lucas, *and* Re Bagshaw

43 The first in this line of cases is *Re Faraker*. The testatrix in *Re Faraker* died in 1911 and bequeathed a legacy of £200 to a charity by the name of "Mrs Bailey's Charity, Rotherhithe". However, there was no known charity by that name. Instead, there was a charity known as "Hannah Bayly's Charity" located at Rotherhithe (it was admitted that "Bailey" was a misspelling and Hannah

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Bayly's Charity was intended by the testatrix). It was founded in 1756 by a testamentary disposition in the will of one Mrs Bayly, who created a charitable trust for the benefit of poor widows resident in, and parishioners of, St Mary Rotherhithe. In 1905, the charity commissioners sealed a scheme that consolidated Hannah Bayly's Charity with thirteen other charities located in Rotherhithe, whereby the endowments of all the consolidated charities were applied for the benefit of "poor persons of good character resident in the parish of Rotherhithe" (at 491). There was no specific mention of widows in the scheme of consolidated charities, which benefited a wider group of persons, but pensions paid out to widows under Hannah Bayly's Charity continued under the scheme and was indeed increased in amount (at 491). The testatrix's executors took out an application to determine whether the legacy had lapsed. The judge at first instance decided that Hannah Bayly's Charity had ceased to exist on account of the alteration of its constitution and because its objects had entirely changed, and accordingly held that the legacy had lapsed. However, this was reversed on appeal. The English Court of Appeal held that Hannah Bayly's Charity was an endowed charity and *could not be destroyed*, notwithstanding the change to its objects in accordance with law. The consolidated charities were held to be entitled to the legacy. Cozens-Hardy MR held (at 493–494) that:

> *Hannah Bayly's Charity is not extinct, it is not dead … it cannot die*. Its objects may be changed, though not otherwise than in accordance with law: they may be changed either by the Court … in its own jurisdiction over charities or by schemes formed by the Charity Commissioners, to whom Parliament has entrusted that particular duty. Subject to that lawful alteration by competent authority of the objects, Hannah Bayly's Charity is not extinct … Now it is to be remembered … that this legacy *was not given to Mrs. Bayly's Charity for widows*; *it was simply given to a charity which is identified by name*. It was given to an ancient endowed charity, and in my opinion a gift of that kind carries with it the application of it according to the lawful objects of the charity funds for the time being …
>
> [emphasis added]

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Farwell LJ similarly held (at 495):

> … in the scheme which [the charity commissioners] have issued dealing with the amalgamation of the several charities the objects are stated to be poor persons of good character resident in Rotherhithe, not mentioning widows in particular … But to say that this omission has incidentally destroyed the Bayly Trust is a very strained construction of the language and one that entirely fails, because the Charity Commissioners had no jurisdiction whatever to destroy the charity … In all these cases one has to consider not so much the means to the end as the charitable end which is in view, and *so long as that charitable end is well established the means are only machinery, and no alteration of the machinery can destroy the charitable trust for the benefit of which the machinery is provided.*
>
> [emphasis added]

44 The principle in *Re Faraker* was applied in *Re Lucas*. There, the testatrix bequeathed a £500 legacy to "the Crippled Children's Home, Lindley Moore, Huddersfield" and a share of the residuary estate to "the Crippled Children's Home". Although there had been a home called "the Huddersfield Home for Crippled Children" located at Lindley Moor since 1916, which had as its primary (though not its sole) object the maintenance and operation of such a home (but not necessarily at that address) for the benefit of poor crippled children living within the Huddersfield district, it had been closed down in 1941, before the date of the will. The charity commissioners had applied its assets under a scheme to establish a new charity known the "The Huddersfield Charity for Crippled Children", which had the object of sending poor crippled children to holiday or convalescent homes. There was therefore no longer any premises used as a home for crippled children at Lindley Moor. The judge at first instance held that the bequests had lapsed. On appeal, the English Court of Appeal held that the "essential primary purpose" of the charity survived and was preserved by the scheme "although the means originally prescribed of carrying out that purpose were altered to suit the altered circumstances" (at 426). The main question was whether the legacy took effect as a gift to "The Huddersfield

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Charity for Crippled Children" or lapsed upon the closing of the home at Lindley Moor (at 426). Lord Greene MR, delivering the judgment of the court, held that (at 426–427):

> It is settled by authority binding upon this court that *so long as there are funds held in trust for the purposes of a charity the charity continues in existence and is not destroyed by any alteration in its constitution or objects* made by a scheme under the Charitable Trusts Act: see *In re Faraker* … Accordingly, if the gifts made by the testatrix were upon their true construction *gifts to the charity … for the objects of the Huddersfield Home for Crippled Children* as defined by the deed, they took effect as gifts to that same charity in the reconstituted form in which it was continued under the scheme, that is to say as gifts in augmentation of the funds held by the trustees appointed by the scheme for the modified objects thereby prescribed.
>
> On the other hand, it is equally well settled that (in the absence of general charitable intention which is not in question here) a gift for a particular charitable purpose which has *wholly failed* is subject to the ordinary doctrine of lapse: see *In re Rymer* Accordingly if the testatrix's gifts were on their true construction *gifts for the upkeep of the premises at Lindley Moor as a home for crippled children and for no other purpose, they lapsed* …
>
> [emphasis added]

The English Court of Appeal then held that had the testatrix had intended for the legacy to be limited to the upkeep of the particular home, she would not simply have named "the Crippled Children's Home" without adding "some specific reference to its upkeep or maintenance", and added (at 428):

> The mere fact that the testatrix when she made her will was under the impression that the particular home was still being carried on in the premises at Lindley Moor (and this is we think a legitimate inference from the terms of the gift) is clearly *no indication that she intended to benefit only and exclusively the particular home as distinct from the charity carrying it on.*
>
> [emphasis added]

In sum, the English Court of Appeal held that in "the absence of any words in the will to indicate that the gifts were to be held for *some special or restricted*

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purpose as distinct from the general purposes of the charity", the gift was for the purposes of the charity and the legacy was valid notwithstanding the fact that the charity had ceased to exist at the date of the will (at 429). I note that the reasoning in *Re Lucas* was that the gift operated as an accretion to the assets of a named institution, being exception (B) identified by Vanstone J in *Ceduna* (above at [40]).

45 *Re Faraker* and *Re Lucas* were then followed in *Re Bagshaw*. The testatrix in that case had bequeathed her entire estate to a charitable institution known as "Bakewell and District War Memorial Cottage Hospital" by her will dated 1942. This hospital was founded in 1921 as an unincorporated charity governed by certain rules, and its funds were held by trustees pursuant to a trust deed. The object of the institution was the provision of accommodation and facilities for poor residents within a five mile radius from Memorial Cross in Bakewell who were suffering from disease or bodily injury. By resolutions passed in 1946 and 1947, after the will was executed, the governing body of the charity, pursuant to and in accordance with powers contained in its rules and the trust deed, altered: (a) the name of the institution to the "Bakewell and District 1914-18 War Memorial Charity"; and (b) the objects of the institution to include charitable purposes other than the cottage hospital, namely the provision of hospital and medical benefits to residents of the parish of Bakewell, and surrounding parishes within a five mile radius from Memorial Cross in Bakewell, as well as relief for ex-soldiers who had served in World War I and II. In other words, the objects of the charity ceased to be for the purpose of providing a hospital for poor people suffering from disease or bodily injury within the limited district prescribed under the original trust and expanded to provide more general hospital and medical benefits. In 1948, the NHSA came into force and, consequently, the charity and its assets vested in the government.

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Thereafter, a hospital carried on in the same building under the new name. However, certain funds of the original institution were not taken under the NHSA, and in 1949 a new set of rules were adopted for the institution with its new name and new objects. The testatrix died in 1951 without having altered her will. The bequest was claimed by the charity under its new name, as well as the next-of-kin. The court held that the claim of the next-of-kin must fail at the outset, since the bequest could only be either a gift for the charity which still existed, or for the purpose designated by the description in the will. The court noted that, in *Re Faraker* and *Re Lucas*, the charity's objects and name were altered by a scheme established either by the court of the charity commissioners. It was "well established" that "a charity founded as a perpetual charity can never come to an end, even though its objects and its name may be altered according to due process of law". Accordingly, the court held that there is *no distinction* in principle between, on one hand, the alteration of the objects and name of a charity by a scheme established by an "outside body" such as the courts or the charity commissioners, and, on the other, alteration through the provisions of the trust deed. In either case, the charity remained the same charity, although its name and its objects have been altered. The gift was a gift for the general purposes of the Bakewell and District War Memorial Cottage Hospital, and was thus payable to the trustees of the Bakewell and District 1914-18 War Memorial Charity (at 241).

46 In *Re Vernon's Will*, Buckley J did not consider the applicability of the principles in the *Re Faraker* lines of cases to depend on whether the charity was unincorporated or incorporated. He held (at 789–790):

> … a charity, considered as a charity and *apart from the mechanism provided* for the time being and from time to time for holding its property and managing its affairs, *could never cease to exist except by exhaustion of all its assets and cessation of its activities. A change merely in its mechanical aspect could*

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> *not involve the charity ceasing to exist*. The principle of the decisions in *In re Faraker* [1912] 2 Ch. 488 and *In re Lucas* [1948] Ch. 424 is, in my judgment, equally applicable to an incorporated charity of this kind as to a charity constituted by means of a trust. In such cases *the law regards the charity, an abstract conception distinct from the institutional mechanism provided for holding and administering the fund of the charity*, as the legatee, and *so long as the charity as so conceived continues in existence the bequest will not lapse* …
>
> [emphasis added]

Re Stemson's Will

47 As counsel for the Executrix submits that *Re Faraker*, *Re Lucas* and *Re Bagshaw* had been distinguished in *Re Stemson's Will* on the basis that they did not deal with the situation "where the charity is a limited company and is therefore liable to dissolution by the inherent nature of its constitution" (see *Re Stemson's Will* at 24),[48] *Re Stemson's Will* also deserves consideration.

48 In *Re Stemson's Will*, the testator intended to bequeath the residue of his estate to an incorporated charity, the "Rationalist Endowment Fund Ltd" (the "REF"), by way of a will dated 1950. REF had been incorporated in 1938 for the purposes of receiving charitable donations on behalf of the Rationalist movement. It was undisputed that REF was a charity for the advancement of education (in particular, the study of Rationalist philosophy and ethics) and the relief of poverty. The testator passed in 1966. REF, however, had been dissolved by special resolution in 1965, after the execution of the will and during the testator's lifetime. REF's assets had been transferred to an incorporated charity, the Rationalist Press Association Ltd (the "RPA"), pursuant to cl 7 of REF's memorandum of association, which provided:

> If upon the winding-up or dissolution of the fund there remains … any property whatsoever, the same shall not be paid to or

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[48] Claimant's Written Submissions dated 7 September 2023 at para 61.

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> distributed among the members of the fund, but shall be given or transferred to some *other* institution or institutions having objects similar to the objects of the fund … such institution or institutions to be determined by the members of the fund at or before the time of dissolution … and if and so far as effect cannot be given to the aforesaid provision, then to some charitable object …
>
> [emphasis added]

RPA was registered as a charity in 1963. In contrast to REF, the RPA did not have as an object the relief of poverty, but was focused only on the advancement of education (in particular, the study of Rationalist philosophy and ethics). Nevertheless, the functions that were previously performed by REF were, after REF's dissolution, performed by RPA.

49 Notably, it was conceded in *Re Stemson's Will* that the testator's gift was "a *gift to a charitable corporation as such* and is *not* a gift for charitable purposes" [emphasis added] (at 24D). Plowman J also held that the will disclosed no general charitable intention, as cl 5 of the will showed that the testator was particularly relying on REF to carry out his wishes (at 24E). It is helpful, as an illustration, to reproduce the degree of detail and specificity with which cl 5 of the will was drafted:

> I give devise and bequeath all the rest residue and remainder of my estate … unto the Rationalist Endowment Fund Ltd. (hereinafter called 'the association') absolutely … and I request that *the said association shall … apply the residue for the purpose of founding a hostel for the benefit of rationalists in reduced circumstances especially as this appears to be one of the objects in the memorandum of the association* and also in view of the fact that *the association are aware of my wishes in this respect* but I declare that such request shall not create any trust … or make any obligation … but I declare that when the association shall apply the residue in accordance with my wishes they shall if possible inform and consult my executor.
>
> [emphasis added]

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50 Plowman J recognised (at 24F–G) that the principle in *Re Faraker*, *Re Lucas*, and *Re Bagshaw* was "well settled", that "so long as there are funds held in trust for the purposes of a charity, the charity does not cease to exist but continues in existence and is not destroyed by an alteration in its constitution or objects made in accordance with law", but noted (at 24H) that those cases did not deal with an incorporated charity liable to voluntary dissolution, but rather to "a charity founded as a perpetual charity". Plowman J went on to consider *Re Roberts*, concluding that the principle in *Re Faraker* was not regarded as being applicable to the case of an incorporated charity liable to voluntary dissolution (at 27E–F). After considering *Re Vernon's Will*, he then held that (at 28H–29A):

> … a charitable trust, which no one has power to terminate, retains its existence despite such vicissitudes as schemes, amalgamations and change of name so long as it has any funds … where funds come to the hands of a charitable organisation such as R.E.F., which is founded, not as a perpetual charity but one liable to termination, and its constitution provides for the disposal of its funds in that event, then if the organisation ceases to exist and its funds are disposed of, the charity or charitable trust itself ceases to exist and there is nothing to prevent the operation of the doctrine of lapse.

Therefore, per *Re Stemson's Will*, whether a gift to a charity that has ceased to exist will lapse, depends on whether it was terminated voluntarily.

Decision

Analytical framework

51 I have adopted the following framework for my analysis, drawing on the authorities in Singapore, England, Australia, and Canada, as set out above.

(a) Where there is a gift by will to a named charity, has the named charity ceased to exist in the lifetime of the testator, whether before or after the date of the will?

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(i) In examining whether the gift is to a particular named charity, a benignant interpretation is to be accorded (above at [28]–[29]). A mere misnaming will not vitiate the gift. For example, the gift *need not* state the precise legal or registered name of a charity before the gift can be construed as a gift to a charity of matching description.

(ii) In examining whether the named charity has ceased to exist, there should be consideration of whether the charity existed in substance in the form of a charitable trust. If the charity or its governing body has ceased to operate as an institution, but the underlying charitable trust has not been dissolved and continues to exist (for example, where the trust fund has not been exhausted or dissipated), the gift has not lapsed and will accrue in favour of the charitable trust.

(iii) In examining whether the named charity has ceased to exist, the focus should be on substance over form. A mere change in name or an alteration in objects will not mean that a charity has ceased to exist (above at [42]).

(b) If the named charity (*regardless* of whether it is incorporated or unincorporated) has ceased to exist, (1) can the gift be construed as a gift for the purposes of the named charity on a benignant construction of the will, or (2) can the gift *only* be construed as being intended for the particular named charitable institution *per se*, in the sense that the continued existence of the named institution is *essential* to the gift (above at [32]–[35], [40], [44])?

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(i) In construing the gift, a gift to a named charity *without more* raises the inference that the gift is to the purposes of the named charity (see also, the discussion below at [87]–[90]).

(ii) In applying a benignant construction, the court will generally find that the gift is for charitable purposes. However, the court will not strain the will (above at [28]–[29]). For example, if the gift contains detailed provisos that express a clear intention that the gift is *exclusively* intended to be restricted *only* to specific persons, particular structures, or a specific locality, the limited character of the gift should not be ignored.

(c) If the gift can be construed as being for the purpose of the named charity, the gift will not lapse if: (1) substantially the same purpose of that named charity was continued on, as a matter of fact, (2) by what can properly and reasonably be regarded as a successor of that named charity. The dissolution of the institutional form does not terminate the charitable purpose so long as that purpose is still capable of being carried out. The gift will accrue in favour of the successor (above at [35], [40] and [44]–[46]).

(i) Whether or not the same charitable purpose continues to be carried out, and whether or not there exists a successor, is again a matter of substance over form. The same purpose may continue to be carried out as a matter of fact, even if the objects of the successor are broader than that of the original named charity. Successors include, but are not limited to, amalgamated or consolidated charities.

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(ii) If no such successor exists, the gift will not lapse if the gift can be construed as an accretion to or augmentation of the assets of the named charity, which continue to be applied for charitable purposes. The gift will accrue in favour of the charity presently administering those funds.

(iii) If no such successor exists, the gift will not lapse if the testator expressed a general charitable intent. The gift may be applied *cy-près*.

(d) If the gift is *only* to be construed as being intended for the particular named charitable institution *per se*, and for no other purpose, the gift will lapse.

52 I now set out my analysis in greater depth.

53 It was held by the Court of Appeal in *Low Ah Cheow* (at [19]–[20]) that "effect must be given to the intention of the testator at the time he made his will, as *declared and apparent* in the will". However, extrinsic evidence will be admissible to aid in the construction of the will where the intention is ambiguous. In particular, where a charitable gift is in issue, it has been held by the Court of Appeal in *Koh Lau Keow* (at [21]), that "where a bequest is capable of two constructions, one of which would make it void, and the other would make it effectual, the latter should be adopted … On the other hand, the court must not strain the will to gain money for charity". This is the principle of benignant construction.

54 As the analysis of the Testator's intention proceeds from the words of the Gift Clause, I restate them for convenience:

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> upon the demise of my said wife my Trustees shall vest the said property to the National University Hospital Endowment Fund

55 Notably, the intention of the Testator here was to vest the Property in "the National University Hospital Endowment Fund" (*ie*, NUHEF). What is apparent from the Gift Clause, is that the Gift is not a gift to an institution operating at any particular place or to a charity delimited by some specified locality, but a gift to what is indisputably a charitable *fund*, namely the NUHEF.

Whether the charity has ceased to exist

56 The first question is whether the named charity, NUHEF, has in substance ceased to exist. In my view, NUHEF and NUHPCF are undoubtedly the same charity, merely renamed.

57 Counsel for the Executrix contends that, on the available evidence, NUHEF/NUHPCF was not an unincorporated association, but a charitable trust. NUHSF submitted that the NUHEF/NUHPCF Board of Trustees as a "group of individuals" was an unincorporated association,[49] but agreed that there are indications of NUHEF/NUHPCF being a charitable trust (above at [11]). I accept that the requirements of an underlying charitable trust for NUHEF/NUHPCF are fulfilled. The evidence as set out in the governance documents and the audited financial statements of NUHEF/NUHPCF *consistently* identifies National University Hospital (Singapore) Pte Ltd (*ie*, NUH) as the "trustee" of NUHEF/NUHPCF, that holds "bequests, demises, cash and other donations received or to be received" by NUHEF/NUHPCF.[50]

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[49] Defendant's Supplemental Written Submissions dated 19 October 2023 at paras 11–15.

[50] Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 58 (rule 6.1), 78, 107 (rule 6.1), 123 (rule 3.2.1), 138, 149, and 163.

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There is certainty of intention, certainty of subject matter, and it is undisputed that NUHEF/NUHPCF's purposes were charitable (see generally, *Koh Lau Keow* at [18], referring to *The Commissioners for Special Purposes of the Income Tax v John Frederick Pemsel* [1891] AC 531 at 583). The question is whether the charitable trust was dissolved on the facts.

58 Counsel for the Executrix relies on the 4 June 2012 Resolution to submit that the trust had been dissolved pursuant to a resolution passed by the NUHPCF Board of Trustees, which appears to approve "the dissolution of NUH Patientcare Charity Fund (PCF) and to transfer its fund balances to NUHS Funds Limited. Funds transferred from the NUH PCF will be ringfenced in the NUH Funds Limited to continue to meet the objectives as set out in NUH PCF" (above at [22]).

59 Did the NUHPCF Board of Trustees in fact operate as trustees of the underlying charitable trust and have the power to dissolve the charitable trust by way of the 4 June 2012 Resolution? This question requires a closer examination of the history of NUHEF/NUHPCF and the role of the NUHEF/NUHPCF Board of Trustees, as set out in its governance documents.

60 NUHEF was established around 7 February 1986. There is evidence that as late as 7 April 2005, stewardship of NUHEF was provided by a "Management Committee", and not a "Board of Trustees".[51] The term "Board of Trustees" appears in the NUHEF Rules of Operation, in the version revised as of 14 April 2005 (the "Rules of Operation 2005") at rule 6. Rules 6.2 and 6.3 state that the NUHEF Board of Trustees are to be appointed by the Board of Directors of NUH (the "NUH Board of Directors") and that the Chairman of the NUHEF

[51] Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 49–55.

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Board of Trustees is to be appointed by Chairman of the National Healthcare Group or by the NUH Board of Directors.[52] In short, the appointment powers are broadly in the hands of the NUH Board of Directors.

61 Rules 6.2 and 6.5 of the Rules of Operation 2005 then state that the NUHEF Board of Trustees shall exercise stewardship over NUHEF "within the stated purpose and in accordance with the particular items and conditions, if any, attached to specific donations". Rule 6.6 provides that the NUHEF Board of Trustees shall have power exercisable from time to time as they may in their absolute discretion think fit: (a) to champion the cause of NUHEF; (b) to assist in fundraising; (c) to appoint or set-up committee(s) or officers for the purpose of fund raising and keeping the appointed "Endowment Fund Administrator(s)" informed. In relation to the disbursement of the moneys for grants, rule 8 of the Rules of Operation 2005 sets out the approval authority structure. Disbursements above $500,000 require the approval of the NUH Board of Directors. Disbursements exceeding $50,000 but not more than $500,000, require the approval of any two of the following: (1) the Chairman of the NUHEF Board of Trustees; (2) the CEO of NUH; and (3) the Chairman of the Medical Board of NUH. All disbursements below $50,000 can be approved by the CEO of NUH or the Chairman of the Medical Board of NUH alone. Certain staff of NUH may approve disbursements below $10,000 in capital expenditure.[53]

62 As seen from this, the NUHEF Board of Trustees' mandate was largely in relation to stewardship and fundraising. It had almost no involvement in the disbursements of the fund's moneys. Only the Chairman of the NUHEF Board

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52 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 58.

53 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 59.

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of Trustees could be involved where disbursements exceeded $50,000 but were below $500,000. Even then, his approval was not necessary where the CEO of NUH and the Chairman of the Medical Board of NUH provide their approval. The NUHEF Board of Trustees hence did not have the usual responsibilities of trustees in managing the use of the trust funds. Importantly, rule 6.1 of the Rules of Operation 2005 identifies NUH as the "Trustee of the Fund".[54] Additionally, rule 15 of the Rules of Operation 2005 states that NUHEF shall not be dissolved unless approved by the NUH Board of Directors.[55] Hence, the NUHEF Board of Trustees *did not* have any power to dissolve NUHEF under the Rules of Operation 2005.

63 The next set of Rules of Operation that are in evidence, are the NUHPCF Rules of Operation, in the version revised as of August 2007 (the "Rules of Operation 2007"). The Rules of Operation 2007 similarly sets out a similarly narrow scope of powers for the NUHPCF Board of Trustees in rules 3.2.5 and 3.2.6.[56] Pursuant to rule 3.6, the NUHPCF Board of Trustees continues to have little involvement in grants and disbursements.[57] The power of appointment of the Chairman of the NUHPCF Board of Trustees continues to be in the hands of the NUH Board of Directors.[58] There is some difference in the dissolution clause. Per rule 4 of the Rules of Operation 2007, the dissolution of NUHPCF requires the *joint* approval of the NUHPCF Board of Trustees and the NUH

54 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 58.

55 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 62.

56 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 124.

57 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 127.

58 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 124.

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Board of Directors.[59] Importantly, rule 3.2.1 of the Rules of Operation 2007 continues to clearly state that "The Trustee of the Fund is NUH".[60]

64 The documents therefore indicate that at the time that the NUHEF was created in February 1986, the "Board of Trustees" were not the trustees of the charitable trust. Up to 2005, they were a "Management Committee". Even after they were called a "Board of Trustees" in around 2005, they did not have powers and responsibilities resembling those of trustees of a trust. Instead, the role of the Board of Trustees was mainly in relation to stewardship and fundraising. In fact, NUH was consistently referred to as the trustee of the charitable trust. NUH is also identified as such in the various audited financial statements.[61]

65 This means that the NUHPCF Board of Trustees *did not* have the power to dissolve the charitable trust underlying NUHPCF by way of the 4 June 2012 Resolution. The mere passing of this resolution, could not, in itself, have been able to dissolve the charitable trust. Counsel for the Executrix accepted that this would appear to be the position based on the Rules of Operation.[62] Without external intervention, a charitable trust can only be dissolved by the terms of its trust deed, or where there has been a cessation of its activities and all its assets have been exhausted (see *Re Broadbent (deceased) (Imperial Cancer Research Fund and others v Bradley and another)* [2001] EWCA Civ 714 ("*Re Broadbent*") at [50]).

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59 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 130.

60 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 123.

61 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 78, 138, 149, and 163.

62 NE, 1 November 2023, at 4.

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66 In my judgment, from the governance structure set out in the Rules of Operation 2005 and Rules of Operation 2007, it was the NUH Board of Directors that was operating as the trustee of the charitable trust (as the decision-making organ of NUH), rather than the NUHEF/NUHPCF Board of Trustees.

67 It is therefore relevant how the NUH Board of Directors approached the matter of the purported dissolution of NUHPCF in 2012.

68 The 10 October 2011 Board Paper on the issue of the incorporation of a company limited by guarantee (*ie*, NUHSF) was surfaced for the approval of the NUHS Board of Directors.[63] The NUHS had been created in January 2008 as one of the three public healthcare clusters in Singapore, with NUH being one of the hospitals in this cluster. As mentioned, NUHS is the administrative body for NUH. Both parties accept that the NUHS Board of Directors effectively served as the NUH Board of Directors for the purposes of the Rules of Operation.[64]

69 The 10 October 2011 Board Paper states that NUH is the trustee of the NUHPCF.[65] The purpose of the paper was to obtain the approval of the NUHS Board of Directors to "place the NUH PCF under an umbrella Fund" (along with another charitable fund, the "NUH Health Research Endowment Fund" (the "NUH HREF")), that would take the form of a company limited by guarantee (*ie*, NUHSF). The 10 October 2011 Board Paper highlighted the distinct advantages that would be brought by this corporate structure, such as enhanced corporate governance, limited liability cover, and more stringent

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63 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 179–210.

64 NE, 1 November 2023, at 3.

65 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 180.

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regulatory compliance, which were not available to NUHPCF. As a company limited by guarantee, there would be a need for only one Board of Directors to oversee both NUHPCF and NUH HREF, whereas there were prior to that point separate boards for NUHPCF and NUH HREF. The 10 October 2011 Board Paper stated that the plan was to incorporate NUHPCF as a sub-fund within the umbrella fund.[66]

70 The 10 October 2011 Board Paper, which was approved by the NUHS Board of Directors, indicates that the NUHS Board of Directors had no intention to *dissolve* the charitable trust of NUHPCF. Instead, the aim was to *incorporate* NUHPCF under an umbrella fund, NUHSF, for the purposes of taking advantage of the benefits provided by the corporate structure. NUHSF was incorporated for this purpose on 14 February 2012. The manner in which the funds of NUHPCF were thereafter treated is entirely consistent with the objectives set out in the 10 October 2011 Board Paper and show that the intention of the restructuring exercise was *not* to dissolve the charitable trust of NUHPCF. In the audited financial statements for NUHPCF for the year ended 31 March 2012 and in the audited financial statements for the period until 15 August 2012 (the date when NUHPCF's funds were transferred), it was recorded that NUHPCF intended to transfer its assets to NUHSF. The total funds were in the amount of $22,284,900.[67] In NUHSF's audited financial statements for the corresponding period, NUHPCF's funds were said to have been transferred to NUHSF "pursuant to a restructuring exercise" on 15 August 2012. The transferred amount was similar, in the amount of $22,284,908.[68] Counsel for the Executrix accepted that the documentary evidence shows that the manner

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66 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 181 and 209.

67 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 149 and 163.

68 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 323, 325, and 331–332.

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of transfer was such that NUHPCF's funds were simply transferred to NUHSF, and were ring-fenced and used for the same objectives of NUHPCF.[69]

71 In my judgment, the charity that is NUHEF/NUHPCF never ceased to exist. The underlying charitable trust continues to exist. There is no indication that the trust fund had been exhausted. The trust funds that were transferred from NUHPCF continued to be held on trust by NUHSF for the charitable purposes of NUHEF/NUHPCF. The trust funds were ring-fenced and dedicated for those purposes. It is clear from the documentary evidence that the NUHPCF Board of Trustees was not the trustees of the underlying charitable trust and did not have any power to dissolve it via the 4 June 2012 Resolution. The true trustee of NUHPCF, NUH, showed no intention (through the NUHS Board of Directors) of dissolving the underlying charitable trust when it approved of the transfer of funds to NUHSF. The de-registration of NUHPCF as a charity on 6 December 2012 pertains to its *registration status*, and does not detract from the continued existence of the underlying charitable trust.

72 For completeness, I briefly address two further points raised by counsel for the Executrix. First, they refer to a letter from NUHS addressed to a "Valued Partner" dated 18 June 2012, where NUHS informed the addressee of the incorporation of NUHSF, and that NUHPCF would thereafter be "dissolve[d]", with its funds ring-fenced in NUHSF "to continue to be used in accordance with the original intent of donors of NUH PCF".[70] In my view, this letter was merely a public communication by NUHS of what would happen *in practical terms* and was not intended to be relied upon as a statement of the legal position in respect of the underlying charitable trust. The letter mainly informed the addressee of

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69 NE, 1 November 2023, at 5.

70 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 308.

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the need to bill new activities to NUHSF, and to ensure that outstanding invoices for NUHPCF were submitted before the cut-off date of 20 July 2012.[71] In the totality of the evidence considered at [67]–[71] above, this letter is entirely consistent with NUHPCF simply being subsumed as a sub-fund under the NUHSF umbrella fund.

73 Second, counsel for the Executrix submits that the financial accounts provided by NUHS do not expressly state that the transferred funds were ring-fenced. However, it is trite that the absence of segregation does not render funds that are subject to a trust, any less a trust (see *Hinckley Singapore Trading Pte Ltd v Sogo Department Stores (S) Pte Ltd (under judicial management)* [2001] 3 SLR(R) 119 at [39], citing the well-established authority of *Re Kayford Ltd* [1975] 1 WLR 279). In any event, I am also satisfied that on the evidence, the funds transferred were intended to be ring-fenced, given that this was consistently stated in multiple sources, such as the 4 June 2012 Resolution, in NUHS' external communications, and in NUHSF's audited financial statements, which referred to the funds as "restricted funds" that could only be applied towards charitable purposes that were in substance the same as those of NUHPCF. They were restricted for application to only four programmes, which were the same as those that had been carried out by NUHPCF.[72] This is clear evidence of the intention to continue to hold the funds on trust.

74 The Gift therefore did not lapse as the charitable trust underlying NUHEF/NUHPCF continues to exist. The sale proceeds of the Property are therefore to go to NUHSF.

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71 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at 309.

72 Affidavit of Geraldine Goh Ai Ling dated 3 March 2023 at paras 38–48.

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Even if the charity had ceased to exist, whether the Gift was for charitable purposes or was for a particular named institution

75 I would add that *even if* the charitable trust underlying NUHPCF could have been dissolved by the 4 June 2012 Resolution, that does not necessarily mean that the Gift had lapsed.

76 The question that arises, where a named charity has ceased to exist, is whether the testator intended to gift to the charitable institution *as such* or to its charitable purposes. On the facts, the question is whether the Testator intended to gift the Gift to NUHEF *per se*, or to gift the Gift to the charitable purposes of NUHEF. As mentioned, it is undisputed that NUHEF/NUHPCF was never an incorporated charity.

Gifts to incorporated and unincorporated charities

77 As canvassed above (at [30]–[35]), the approach in the English authorities to this question follows *Re Vernon's Will*. The position is that every gift to a named unincorporated charity without more, must take effect as a gift for its charitable purposes, unless the continued existence of the named institution was *essential* to the gift. The Gift Clause provides for a gift to NUHEF *without more*. It discloses no details save for the beneficiary. Following *Re Vernon's Will*, the Gift is for the charitable purposes of NUHEF.

78 Counsel for the Executrix refers to the *obiter dictum* of Wilberforce J in *Re Roberts* (above at [21]), which appears to doubt that a gift to an unincorporated charity without more must take effect as a gift for charitable purposes. In my view, the *dictum* in *Re Roberts* does not go so far as to doubt the position in *Re Vernon's Will*.

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79 In *Re Roberts*, the testatrix gifted the residue of her estate to six named charities, one of which was "the Sheffield Boys Working Home (Western Bank, Sheffield)", by a will executed in 1930. The gift clause was bare, stating no more than the names of the six charities. The premises at Western Bank had been acquired in 1889 under a trust deed dated 19 October 1889. Clause 1 of the trust deed stated that the premises would be used for the "Sheffield Boys Working Home", described as an institution for the benefit of orphan or destitute boys. Clauses 17 and 18 empowered the trustees to deal with the premises, and provided that the proceeds of any such sale were to be "added to the general funds of the charity". Clause 19 provided that if the governors of the Sheffield Boys Working Home found that it cannot be efficiently kept up or ought to be discontinued, the premises could be sold by the trustees, with the proceeds to be paid to other "charitable institutions of the town of Sheffield" or for "for such other purposes for the benefit of the poor inhabitants of Sheffield". In 1945, after the date of the testatrix's will, the Sheffield Boys Working Home closed and the premises were sold. The assets were then transferred to the "Sheffield Town Trust", a trust which concerned a wide variety of purposes connected with Sheffield. The testatrix passed in 1961 without changing her will. Referring first to the "well-known cases" of *Re Faraker*, *Re Lucas* and *Re Bagshaw*, Wilberforce J considered that the principle in those cases *did not necessarily* apply to a case where the trustees of a charity had express powers to terminate the charity. Wilberforce J then said (at 414):

> *Is this a gift to a particular institution at a particular place, or should it be treated as a gift for charitable purposes, the purposes for which the home was originally established?* That is a question of construction as was stated by the Court of Appeal in *In re Lucas*, and, apparently, of course, a question of what in fact the trusts of the charity are. The mere fact that there is a gift to an unincorporated charity does not seem to me to be enough to enable me to come to the conclusion that it is a gift for charitable purposes …

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[emphasis added]

80 The specific *dictum* that is relied upon by counsel for the Executrix (above at [21]) had been analysed by Goff J in *Re Finger's Will* (at 296E–297C). Goff J did not find that *Re Roberts* doubted *Re Vernon's Will* and held that there was nothing in *Re Roberts* that seriously conflicted with *Re Vernon's Will*. Goff J explained that the *dictum* of Wilberforce J in *Re Roberts* must be taken in the context of the question which Wilberforce J had previously posed for himself (emphasised above in italics). Goff J highlighted that the gift in *Re Roberts* was *not* a gift to a named unincorporated charity generally, but a gift specifically to a "home" (the Sheffield Boys Working Home), "which describes something having a physical existence" (at 296H). Wilberforce J was therefore not concerned with whether the gift was a purpose gift. Wilberforce J assumed that it was. In Goff J's view, Wilberforce J was not considering in *Re Roberts* any distinction between gifts to corporate and unincorporated bodies. The most that could be said of the *dictum* was that Wilberforce J was looking for some positive indication that the purposes of the gift were general and not tied to the particular body and Wilberforce J indeed concluded that it was general, as Goff J observed, "without any real context affirmatively to show that" (*Re Finger's Will* at 297A).

81 Moreover, I observe further that, as can be seen from the extract of *Re Roberts* above, Wilberforce J expressly followed *Re Lucas*. As I have canvassed, the question in *Re Lucas* was whether a gift to the "Crippled Children's Home, Lindley Moore, Huddersfield" was either (a) a gift for the purposes of upkeeping the premises at Lindley Moor as a home for crippled children as distinct from the charity carrying it on, and for no other purpose; or (b) a gift for the general purposes of the charity. The English Court of Appeal concluded that unless there were clear and specific words that indicated that the

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gifts were for "some special or restricted purpose as distinct from the general purposes of the charity", the gift was for the charity's general purposes (above at [44]). This analysis was evidently followed by Wilberforce J in *Re Roberts*, as he ultimately held that although the gift was to "Sheffield Boys Working Home" without more, the gift of the testatrix in her will was for the *purposes* of an institution. It "was not so *exclusively* tied up with a *particular home physically located on the premises*" such that Wilberforce J would have to find that when the physical home at Western Bank ceased to exist, the charity ended (*Re Roberts* at 415). Wilberforce J accordingly distinguished both *Re Rymer*, a case which he noted had "not received much favour in the courts", and *Re Harwood*, with the former being a case where the gift was "of a particularly local character by reason not only of the gift itself but by reason of the other context in the will" and the latter concerning "a gift to a very particular society for a very special purpose" (at 415–416). Both are cases relied on by counsel for the Executrix for the proposition that a general charitable intention should be difficult to find if a particular charitable institution has been selected and care has been taken to identify it as the beneficiary of the gift, but that charitable institution ceased to exist before the date of the testator's demise (above at [21]). In Wilberforce J's view, the antecedent question is necessarily that of whether the charity had *in fact* ceased to exist, taking into account the circumstance of the charity and the available information (*Re Roberts* at 416).

82 In addition, Wilberforce J considered whether cl 19 of the trust deed (above at [79]) meant that the trustees had the power to terminate the charity. He held that, on the facts, the trustees did not have such power. To answer this question, Wilberforce J first identified "what really was the charity", and concluded that it had two elements: first, the premises at Western Bank, and second, some other funds. This was sufficient for Wilberforce J to conclude that

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the trust deed dated 19 October 1889 did not *also* govern the charitable trusts relating to those funds (*Re Roberts* at 415). If the purposes of the charitable trusts relating to the funds could still be carried out, they must remain the subject of charitable trusts. Accordingly, by cl 19 of the trust deed, the trustees *could not* terminate the *entire charity*, but were only given the power to decide that the particular machinery of the home at Western Bank could not be carried on at particular premises which no longer existed. He therefore found that the charitable purposes of the charity could not be and was not put to an end, citing *Re Faraker* (*Re Roberts* at 416).

83 From the above examination of the decision in *Re Roberts* and Goff J's analysis of the specific *dictum* in *Re Finger's Will*, I do not think it can be said that Wilberforce J was doubting the proposition in *Re Vernon's Will*. Rather, *Re Roberts* illustrates the approach of favouring upholding charitable gifts and shows that a great degree of specificity is required before a gift will be construed to be of a limited character.

84 Furthermore, I note that in England, the courts have continued to endorse the principle in *Re Vernon's Will*, for example in *Re Koeppler*, *Kings*, and *Macintyre* (above at [35]).

85 While the Australian and Canadian authorities adopt a similar approach to unincorporated charities, they do not adopt the distinction made in *Re Vernon's Will* between incorporated and unincorporated charities (above at [36]–[41]).

86 There is therefore, minimally, a common thread running through the authorities in England, Australia and Canada, which is that the courts will

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generally apply a presumption that gifts to named unincorporated charities are gifts to the charitable purposes of that charity.

87 As the Gift here does not involve an incorporated charity as the intended beneficiary, the issue of whether this approach should also apply to incorporated charities (per the Australian and Canadian approach) or if a distinction should be made between incorporated and unincorporated charities (per the English approach following *Re Vernon's Will*), does not strictly arise.

88 However, I would observe, that taking a testator's expressed intention as set out in a will as the starting point of analysis, it will not usually be apparent that a testator would have considered the corporate or unincorporated form of a charity when making the testamentary disposition. I accept the force of counsel for the Executrix's submission that lay testators would not typically address their mind to this distinction. Following such a distinction could lead to what Goff J described as "anomalous results" in *Re Finger's Will*. It could certainly result in arbitrary outcomes that are at variance with the testator's actual intentions, especially as the specific machinery chosen by a charity and whether or not such a charity might cease to exist prior to the date of the testator's death are in the usual case matters outside of their knowledge and control. Neither has there been any distinction made between gifts to unincorporated charities and incorporated charities in our local jurisprudence.

89 The principle of benignant construction of charitable gifts as set out in *Koh Lau Keow* was made without such distinction. It applies to gifts to both unincorporated charities and incorporated charities. The Court of Appeal in *Khoo Jeffrey* also did not draw a distinction between unincorporated and incorporated forms when it held (at [33]) that a "distinction must be drawn between a charitable purpose and the institutional form (*be it an unincorporated*

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association, individuals, or a company) through which the charitable purpose is effected or administered" [emphasis added].

90 In my view, there is much to commend the certainty and predictability brought about by the Australian approach, which does not follow the distinction stated in *Re Vernon's Will*. Nevertheless, I leave that issue to be determined in an appropriate case.

The Gift was for charitable purposes

91 Following the benignant construction accorded to charitable gifts as set out in *Koh Lau Keow* and bearing in mind the authorities in England, Australia and Canada as set out above, I consider that even if NUHPCF had ceased to exist, the Gift does not necessarily lapse, as the Gift was a gift for the charitable purposes of NUHEF. The Gift is not one that can *only* be construed as being intended for NUHEF *per se*, in the sense that the continued existence of NUHEF in a wholly unaltered form is *essential* to the gift.

92 In my view, such a reading does not strain the Gift Clause or the Will. I reiterate that it is undisputed that the Gift Clause was bare as to any detailed or specific purpose. It was a gift to NUHEF *without more*. There is nothing in the language of the Gift Clause which indicates a particular intention to gift an institution *per se*, or to a particular building or locality, where there might arguably be a stronger case that construing the Gift as a gift for charitable purposes would strain the Will. Unlike a gift that is specific to a particular building or particular locality, as in *Re Spence* ("The Blind Home Scott Street Keighley and the Old Folks Home at Hillworth Lodge Keighley for the benefit of the patients"), or in *Re Rymer* ("to the rector for the time being of St. Thomas' Seminary for the education of priests in the diocese of Westminster for the

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purposes of such seminary"), the Gift in this case was to an "Endowment Fund", NUHEF, which cannot be tied to any particular locality, and can only be applied for purposes. A charitable fund is a pool of money applied for charitable purposes. It likewise cannot be contended that the Gift was for the upkeep of a particular building or premises (see *Re Broadbent* at [36] and [44]). However, I should note that even in in *Re Roberts*, Wilberforce J found that the gift to "Sheffield Boys Working Home" was for charitable purposes (see [80]–[81] above). Indeed, this was the case in *Re Faraker*, *Re Lucas* and *Re Bagshaw*, where the gifts were all expressed in relation to some structure ("Mrs Bailey's Charity, Rotherhithe", "the Crippled Children's Home, Lindley Moore, Huddersfield", and "Bakewell and District War Memorial Cottage Hospital"), but the real question was whether the charitable purposes continued to exist, as a matter of fact. Finally, the Gift Clause does not set out rich details that are specific to the named charitable institution, that could suggest that it is exclusively intended to be limited to some special application. It is quite unlike the gift in *Re Stemson's Will* (above at [49]) or in *Re Rymer* (see *Re Rymer* at 28–29).

93 In my judgment, there is nothing in the language of the Gift Clause which indicates a particular intention to gift to NUHEF as a "charitable institution" *per se*, rather than to the charitable purposes of NUHEF. It is in fact difficult to describe a fund (such as NUHEF) as a "charitable institution" in any way that is meaningfully distinct from its existence as a pool of money to be applied for charitable purposes. It cannot be conceptualised otherwise. The name of the fund, "National University Hospital Endowment Fund", *ie*, a fund for the purposes of the hospital, is on its face suggestive that the fund is for charitable purposes. The raison d'être of NUHEF/NUHPCF is to apply funds for charitable purposes. The Gift, being a gift to a fund, is a gift for the charitable

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purposes of NUHEF/NUHPCF. This finding does not require straining the Gift Clause or the Will.

94 Continuing with the assumption that NUHPCF has ceased to exist, the question which follows is whether substantially the same charitable purposes of NUHEF/NUHPCF continued through NUHSF, as its successor. This in turn raises two sub-issues: (a) whether it could be said that substantially the same charitable purposes of NUHEF/NUHPCF continued on, as a matter of fact, through NUHSF; and (b) whether NUHSF could properly and reasonably be regarded as the successor of NUHEF/NUHPCF.

The same charitable purposes continued

95 Counsel for the Executrix submits that where a charity has the power to voluntarily terminate itself, and does so, that charity ceases to exist and there is nothing to prevent the gift from lapsing, citing *Re Stemson's Will* for the proposition that the principle in *Re Faraker*, *Re Lucas* and *Re Bagshaw* does not apply. This submission depends on a prior finding that the Gift was a gift to NUHEF as a charitable institution *per se*, rather than a gift to its charitable purposes.[73] As I have explained, *Re Stemson's Will* was a case where the gift was made to the charitable corporation *as such*, and was not concerned with gifts for charitable purposes (above at [49]). I have already found that the Gift was a gift for charitable purposes. Furthermore, *Re Stemson's Will* was a case where it was undisputed that the charity in question, REF, had completely ceased to exist, and RPA was an entirely different charitable institution, rather than a successor.

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[73] Claimant's Written Submissions dated 7 September 2023 at para 62; Claimant's Further Written Submissions dated 19 October 2023 at para 23.

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96 While I agree that whether a charity has the power to voluntarily terminate itself might be a relevant consideration, in my respectful view, that cannot be the end of the enquiry. There is no principled basis not to consider whether the same charitable purposes continued to be carried out, even after an apparent voluntary dissolution. In *Re Vernon's Will*, Buckley J did not consider a change to the mechanical aspect through which the charity held property and managed its affairs would mean that the charity, as distinct from the institutional mechanism it employed, would cease to exist (above at [46]). As was held by the Court of Appeal in *Khoo Jeffrey* (at [33]), there is a distinction between the charitable purpose and the institutional form. The "dissolution of the institutional form *does not terminate the charitable purpose* as long as that purpose is still capable of being carried out". Hence, even where there is a voluntary dissolution of a charity, the facts of each individual case must be considered to assess if the same charitable purposes continue.

97 On the evidence, I find that NUHSF was pursuing and continuing the same charitable purposes as NUHPCF. I accept NUHSF's submissions, and the evidence of Ms Geraldine Goh, an officer of NUHSF, that there was no substantive change to the charitable purposes of NUHEF/NUHPCF. Any amendments that had been made were clarificatory in nature (above at [14] and [19]). Counsel for the Executrix did not contend otherwise. I am also satisfied that the objects of NUHEF/NUHPCF are included in the objects of NUHSF, and that NUHSF continues to hold the funds for the same charitable purposes as NUHEF/NUHPCF.

NUHSF was the successor of NUHPCF

98 In relation to the second sub-issue, *ie*, whether NUHSF can properly and reasonably be regarded as the successor of NUHEF/NUHPCF, I find that the

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evidence shows that NUHSF took custody of the funds of NUHPCF and was its successor. There are several factors pointing to this conclusion:

(a) The documentary evidence confirms that the funds of NUHPCF were directly transferred to NUHSF (above at [70]);

(b) It is undisputed that NUHSF was planned to take over the functions and purposes previously carried out by NUHPCF, and the purported dissolution of NUHPCF was directly brought about as a consequence of the incorporation of NUHSF as its replacement;

(c) NUHSF was held out to third-parties as the successor of NUHPCF;

(d) It was expressly intended, and NUHSF did in fact carry out and pursue the same charitable purposes as NUHPCF; and

(e) The same funds were applied to the same four programs in NUHSF as they had been in NUHPCF.

99 Following from the above, even if NUHEF had ceased to exist, I find that on a benignant construction of the Gift Clause, without straining the Will, the Gift was to the charitable purposes of NUHEF, and that the same charitable purposes continued through NUHSF, which was its successor. Accordingly, the Gift did not lapse and the sale proceeds of the Property are therefore to go to NUHSF as the successor of NUHEF/NUHPCF.

Conclusion

100 In view of the above, I find that the Property should vest in NUHSF, pursuant to the Gift Clause.

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101 As NUHSF has succeeded, they are entitled to costs. NUHSF submits for the quantum of $30,000 in costs plus reasonable disbursements, in the event that they succeed. The Executrix agreed that this was fair. I consider the quantum sought by NUHSF to be reasonable and award NUHSF costs in the amount of $30,000 plus reasonable disbursements.

102 The parties agree that in the event the court interprets the Gift Clause in favour of NUHSF, NUHSF's party-and-party costs, as well as legal expenses incurred in defending OA 510, shall be paid out from the Estate. I so order.

103 I wish to record my gratitude for the able assistance provided by counsels, Mr Kenneth Tan SC, Mr Christopher Yong, and Professor Tang Hang Wu, who provided thoughtful responses to the court's queries and assisted with further research on the applicable positions in England, Australia, and Canada at my request.

Kwek Mean Luck
Judge of the High Court

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