

**IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF
SINGAPORE
[2025] SGFC 121**

OSM 218/2024

HCF/DCA 104/2025

Between

XUD

... Plaintiff

And

XUE

... Defendant

GROUNDS OF DECISION

[Family Law – Mental Capacity Act – Revocation of Lasting Power of Attorney]

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XUD

v

XUE

[2025] SGFC 121

Family Justice Courts — FC/OSM 218/2024

District Judge Shobha Nair

13 March, 6 May, 18 July, 18 August, 16 September 2025

1 December 2025

District Judge Shobha Nair

Introduction

1. The plaintiff and defendant are sisters. The plaintiff lives in the United Kingdom (UK) while the defendant lives in Singapore. The parties' eldest sister (P) lived in the UK with her husband for many decades. She now lives in Singapore. The couple do not have children. In 2019, the defendant went to the UK to visit P as P was not in the best of health. During that visit, P's health concerns appeared to pose challenges for her continued stay and care in the UK. It was decided that P was to move to

Singapore and be in the care of the defendant. On 10 January 2022, a Lasting Power of Attorney (LPA) was executed by P naming the defendant as her donee of power in the event P were to lose mental capacity to manage her personal welfare, property and affairs. Prior to the issuance of this LPA, P had executed another on 2 August 2021. This was rejected by the Office of the Public Guardian (OPG) due to what the OPG felt was an irregularity with the signature of P found on the LPA. The plaintiff challenged the validity of the creation/execution of the LPA on several grounds. Having heard the evidence, I dismissed the application and the plaintiff appeals against this.

Factual Background

2. P lived largely in the UK from the 1970s. She left for the UK to pursue her interest in hairdressing after completing her ‘O’ level examinations in Singapore. A short period was spent in the US to undertake theological studies before returning to Singapore to be with her parents, during which time she set up a hairdressing salon. With the plaintiff’s own move to the UK for further studies, P decided to return to be of help to her sister. P was married in 1987 to a man who was the landlord of a property P stayed in when she first moved to the UK and who provided accommodation to the plaintiff too when she arrived in the UK. With P’s marriage, she

continued to live in the UK until her return to Singapore in June 2019. Her husband remained in the UK till his passing in March 2021.

3. P has significant assets in the UK and Singapore. Her Singapore assets included an apartment in the Queenstown area (Queenstown apartment) which she resided at upon her return and continues to do so. P had a property in Jurong which was sold to purchase the Queenstown property. She was able to do so as she retained her Singapore citizenship. This apartment was purchased with the intention of providing a home to her parents. For both purchases, the defendant was given a Power of Attorney (POA) to act for P given that P was living in the UK at the time.¹ Additionally, the defendant had a licence to practice as an estate agent in Singapore and appears to have knowledge necessary to navigate the real estate arena.
4. It was not disputed that the parties had a very good relationship prior to difficulties which led to this litigation.² P was similarly on good terms with both her sisters. It was the plaintiff's position that P began to show signs of impaired motor control as early as 2008 and appeared to have

¹ Paragraph 30 of the defendant's affidavit of 5/9/2024.

² The are 2 brothers in the family, one of whom has passed on.

some cognitive difficulties which progressed over the decade since. In 2019, with concerns over her continued care in the UK mounting, P moved to Singapore and lived in her Queenstown apartment. It was not disputed that P's relationship with her husband was disharmonious and there were allegations that P was fearful of him. P's husband had initiated divorce proceedings prior to his death. In any event, her husband was some 20 years older than P and was not in a position to provide continued care for her. The plaintiff and defendant agreed to move P to Singapore, without the express approval of P's husband.

5. A LPA had been executed by P in September 2016³ in the UK (UK LPA) appointing the plaintiff and defendant as joint donees to manage P's personal welfare and property and affairs in the UK. With P's move to Singapore in June 2019, it was agreed that the plaintiff would assist in the management P's assets in the UK⁴ while the defendant would assist P in Singapore. On 12 November 2019, P executed a will appointing both the plaintiff and the defendant as joint executrices. The UK will provide for all of P's UK properties to be divided by the parties equally. Two of

³ There were 2 separate LPAs, one addressing personal welfare and the other, property/affairs.

⁴ Paragraph 12 of the plaintiff's affidavit of 29/5/2024.

the properties in the UK however were held by P and the defendant as tenants-in-common (UK joint properties).

6. P had also executed a will on 19 July 2016 for the administration of her estate in Singapore (first Singapore Will). In this will, only the defendant was named the executrix while both the plaintiff and defendant were named the beneficiaries of the Queenstown apartment. Apart from the Queenstown apartment, P had bank accounts in Singapore, some jointly held with the defendant. On 8 March 2021 however, P executed a will in Singapore, thereby revoking the first Singapore Will, and in this later will, the defendant was named the sole beneficiary of the Queenstown property as well as to P's assets outside of Singapore.⁵ The defendant expressed surprise at what this meant as she was under the impression that the UK assets were to be dealt with under the UK Will⁶.
7. The plaintiff alleged that difficulties arose when she was blocked from access to P by the defendant around June 2021 and that the defendant impeded the plaintiff's ability to manage P's assets in the UK. It was the defendant's position that the plaintiff was attempting to sever what she

⁵ Clause 4 of the 8/3/2021 (Singapore Will).

⁶ Paragraph 48 of the defendant's affidavit of 5/9/2024.

believed were joint tenancies to the 2 UK properties, which the defendant in fact held with P as tenants-in-common. The defendant alleged that the plaintiff was unilaterally dealing with solicitors in the UK to effect the severance, and to do so, was attempting to activate the UK LPA to deal with matters relating to the UK assets when P was not mentally incapacitated at the time. It was the defendant's further position that P wanted to sell all her properties.⁷

8. When P's husband had passed away, the defendant flew to the UK to settle matters arising from his passing on behalf of P. A POA was executed by P on 4 August 2021 to enable this.⁸ The plaintiff questioned the ability of P to execute the POA.
9. The focus of this matter was the LPA that was executed by P on 2 August 2021 and reissued on 10 January 2022 to rectify concerns about P's signature found on the 2 August 2021 LPA. The irregularity was rectified by having P affix her thumbprint to the LPA on 10 January 2022. It was the plaintiff's position that P did not have the mental capacity to execute the LPA in Singapore and that it should accordingly be revoked. In this

⁷ As P was the joint owner of a property with her late husband, this too came to be held in her sole name upon his passing in addition to properties she already held solely in her name.

⁸ Paragraph 4 of the defendant's affidavit of 18/11/2024.

regard, various medical doctors were asked to provide their position on the state of P's mental health at or around the time of the LPA execution.

10. It was also the plaintiff's position that the defendant had fraudulently and/or by exercise of undue pressure, induced P into creating/executing the Singapore LPA. A further contention was that the defendant had acted in various ways that showed the interests of P having been compromised and that the LPA ought to be accordingly revoked. The defendant disagreed with all positions taken.

Issue 1: Did P have mental capacity to create/execute a LPA?

11. The plaintiff sought to address the issue of fraud/undue pressure in the creation and execution of the LPA first. I was of the view that the core issue would be the mental capacity of P at time of the execution before exploration of the facts that parties relied on to show fraud/undue pressure, or the lack of it. Even as fraud and/or undue pressure are independent factors to consider in an application for a revocation of a LPA, the state of mind of P is inextricably linked to such determination as a poor cognitive state places P in a much more vulnerable position, potentially therefore leading to affirmative responses to requests or quick

execution of documents to avoid prolonged conversations, questions or confusion.

12. The expression of rational will is rooted in the idea of human dignity.

The execution of a LPA, at a time when an individual has the capacity to choose someone to act for him should capacity be lost, is an important expression of that human autonomy.

13. It is a challenge to determine if an individual was in fact asserting his

choice of a donee of power if that individual was suffering from a neurodegenerative illness at the time. There is a presumption of capacity⁹ and many neurodegenerative conditions do not signal an inability to execute documents. Indeed the law speaks of the need to avoid treating a person “*as unable to make a decision unless all practicable steps to help the person to do so have been taken without success*”.¹⁰ Determining whether an individual had the capacity to execute a particular document at the particular time it was executed, must turn on examination of the evidence from medical doctors, relevant observations of those who have been with P, and an assessment of P’s own actions, both past and present.

⁹ S 3(2) of the Mental Capacity Act.

¹⁰ Ibid. s 3(3).

14. Section 19 of the Mental Capacity Act 2008 (2020 Rev Ed.) (MCA) allows for the court to “*make declarations as to whether a person has or lacks capacity.*” S 4 (1) of the MCA provides the statutory definition of a lack of capacity. The law speaks of an impairment of or disturbance in the functioning of the mind or brain, regardless of its permanent or temporary nature [s 4(2)]. S 5 of the MCA goes on to provide that:

(1) For the purpose of section 4, a person is unable to make a decision for himself if he is unable –

(a) To understand the information relevant to the decision;

(b) To retain that information;

(c) To use or weigh that information as part of the process of making the decision; or

(d) To communicate this decision.

15. It is well established that the test for mental capacity as defined under s 4(1) of the MCA has both a functional and clinical component.¹¹

¹¹ *Re BKR* [2013] 4 SLR 1257 (HC); *Re BKR* [2015] 4 SLR 81 (CA).

16. While there was some conflict with respect to the time P started experiencing symptoms associated with Parkinson's Disease (PD), the fact that she did suffer from the condition was not disputed. A fair estimation of the relevant time would be around 2010.¹² Often conditions such as PD, Alzheimer's disease and dementia are referred to interchangeably. PD is, however, a disease which results in movement disorders and an individual may develop cognitive problems in later stages which includes cognitive impairment and dementia.¹³ Dementia is a broad term which refers to conditions which give rise to memory loss, confusion at times and behavioural changes. It embraces Alzheimer's disease, vascular dementia and Lewy body dementia.¹⁴

17. Dr X, a principal consultant (neurologist) gave evidence that she saw P from 19 June 2019 to 12 August 2024. As at June 2019, P was not exhibiting any cognitive impairment. Around December 2019, P was experiencing high levels of anxiety and was referred to the department of psychiatry at a public hospital where she came under the care of Dr C.

¹² Page 24 of Dr X's affidavit dated 18/2/2025 and page 84 of Dr C's affidavit of 4/3/2025.

¹³ Tanner, C.M. & Ostrem, J.L. (2024). Parkinson's Disease. *The New England Journal of Medicine*, 391 (5). See also Certified Transcript (Day 1), page 12, lines 9-10 where Dr C explains dementia as a later consequence of PD.

¹⁴ www.aic.sg (n.d.).

Dr X continued to see P. On 22 February 2021 and again on 8 August 2022, mental assessment tests were conducted. The Montreal Cognitive Assessment (MoCA) conducted at Dr X's clinic showed P receiving lower scores (17/30 and 12/30 in 2021 and 2022, respectively) than when she took a mental assessment test in 2020. Dr X stated that the test score in 2021 already indicated that P had moderate cognitive impairment (dementia).¹⁵ She was of the view that P had no mental capacity in 2023.¹⁶

18. Dr C, saw P between 17 February 2020 and 23 July 2024. She was as stated in the preceding paragraph, a consultant psychiatrist at a public hospital and the LPA certificate issuer. She had similarly issued a memorandum to support P making the UK LPA previously. She is also the doctor who issued a memorandum for the activation of the LPA on 23 July 2024. Her opinion, on assessment of P for mental capacity prior to the issuance of the LPA, was that P had the required capacity to execute the Singapore LPA.

19. A geriatrician, Dr M, had also seen P but her evidence pertained largely to P's physical health (osteoporosis and hypothyroidism) when she saw

¹⁵ Page 24 of Dr X's affidavit of 18/2/2025 containing her medical report issued on 19/9/2024.

¹⁶ Page 89, Certified Transcript of Proceedings (Day 1) at lines 1-3.

P first on 21 February 2022 (after the execution of the LPA). Despite the limited relevance of Dr M's evidence, I had the benefit of evidence from 3 integrated disciplines, namely neurology, psychiatry and geriatrics to come to the conclusion I did on the frame of mind of P when she executed the LPA.

20. I did not find the evidence of the doctors to be conflicting in any material way. While Dr X took the position that P did not have mental capacity in 2023, she was not able to say that P's capacity to make the LPA in August 2021 (and reaffirmed on 10 January 2022) was absent. The only doctor who could provide the court with a relevant clinical assessment of P's state of mental health at the time of the execution of the LPA was Dr C. In fact, when questioned, Dr X informed that she did not perform mental capacity assessments in her practice and more specifically, she did not conduct any for P. She stated that while mental capacity was not present in 2023, she was not able to speak to P's capacity in 2022 when the LPA was executed and as a neurologist, she would "*usually defer to the psychiatrist*",¹⁷ in this case, Dr C. The question then was whether Dr C

¹⁷ Certified Transcript of Proceedings (Day 1) at pages 81 and 82.

had conducted her examination with sufficient rigour. I found that the answer had to be in the affirmative for the following reasons:

- (a) Dr C has some 22 years of clinical experience and is currently a senior consultant psychiatrist at a public hospital. P had consulted Dr C over a sufficiently long period of time prior to the assessment conducted for purposes of issuing a LPA, thus enabling a good rapport to be established.
- (b) P was seen 6 times¹⁸ prior to her assessment by Dr C on 2 August 2021.¹⁹ It was Dr C's evidence that the purpose of the meeting on 2 August 2021 was understood by both P and Dr C to be for the purposes of executing a LPA, although she could not remember whether it was P who told her that she was there for that purpose before the assessment commenced.²⁰ While the defendant was present, Dr C explained that as a matter of practice, family members and helpers who accompany patients would sit behind the patient and the answers to questions were given directly to Dr C by P. Dr C had reviewed P's clinical history and background and was privy to the

¹⁸ One session on 26/11/2020 was a video consultation.

¹⁹ Paragraph 17 of Dr C's affidavit of 4/3/2025.

²⁰ Certified Transcript (Day 1), page 21 at line 13.

MMSE and MoCA test scores documented by Dr X during visits by P to Dr X's clinic. Dr C was of the view that there was no need to repeat the tests as these were simplistic tools and would not have changed much from 22 February 2021 when the MoCA score was 17/30. Dr C was of the view, and rightly so in my view, that clinical assessment was of greater significance in determining whether P was in a position to appoint a donee of power.

- (c) When questioned by the plaintiff's counsel on why Dr X was of the view that as at 22 February 2021 and based on the MoCA score, P was said to be suffering from "cognitive impairment (dementia)", Dr C explained that the terms are defined differently:

"Cognitive impairment and dementia are defined differently....so cognitive impairment just means that there are some ---uh, there was a demonstration of---uh, deficits when somebody is objectively tested as compared to a normal population. However, dementia is defined differently. Dementia is defined as the presence of cognitive impairment that is severe enough to cause difficulties in a person's activities of daily living. So, the scores would in---on their own, would indicate cognitive impairment. As a doctor, we would need

*more information than just the cognitive scores in order to determine the presence of dementia and the severity of the dementia”.*²¹

(d) On 2 August 2021, Dr C observed that P was well oriented, articulate and clear in her intentions as it related to appointing the defendant as her donee to manage her affairs in Singapore. Dr C informed that while P could not tell what the date was, she knew the day and had no signs of psychosis or suicidal ideation. More importantly, P could articulate the difference between a LPA, a POA and a will and when these documents would come into effect. She was also able to give an accurate account of her assets in Singapore.²² There was no suggestion that P, fluent in English and with sound mental capacity, did not read and understand the LPA before signing it and any challenge to this aspect of the process was not supported by the evidence.

(e) Given the refusal of the OPG to register the LPA on account of irregularities with the signature of P which Dr C explained as being likely due to “*physical decline from progression of Parkinson’s*

²¹ Certified Transcript (Day 1) at page 18, lines 13-24.

²² Page 80 of Dr C’s affidavit of 4/3/2025.

Disease affecting handwriting,²³ Dr C had met with P on 3 January 2022 and conducted a review again on 10 January 2022 with the same steps taken as before. During the visit on 3 January 2022, Dr C was informed that P had experienced hallucinations sometime in October 2021 and was admitted to a hospital in November 2021 to address the concerns. Equipped with this awareness, Dr C was mindful of the need to check on P's state during the clinical assessment for purposes of reissuing the LPA certificate. The steps she had taken in her assessment were similar to those undertaken in the July 2021 session²⁴ and the responses of P as to who she wanted to be her donee and the purpose of a donee were the same. Dr C's report states that P was "*cognitively largely the same as on 2 August 2021*".²⁵

- (f) There was no one else who had assessed P at the time the LPA was executed. Dr X who appeared to have suggested that P "likely" did not have the mental capacity to manage her affairs as at 22 February 2021, said "*I'll be happy to revise my view. Because I did not do a Mental Capacity Assessment at any point. I was not required to.*"²⁶

²³ Ibid. at page 81.

²⁴ Ibid. at paragraph 26.

²⁵ Id.

²⁶ Certified Transcript (Day 1) at pages 81 and 82.

21. Evidence other than that from the medical professionals, support the presence of functional capacity, in particular. There is considerable evidence even as late as December 2021 (after the Singapore LPA of August 2021 was signed by P) pointing to the plaintiff's desire to activate the UK LPA so that she could deal with the UK properties even though she appears to know that P had not lost her capacity as of that date. The plaintiff wanted bank statements from HSBC in relation to an account P had with the defendant as there were suggestions that money was being withdrawn without P's authority. In the affidavit of the defendant's son who in refuting allegations by the plaintiff that he had tampered with P's mobile phone to prevent communication with the plaintiff, produced a transcript of a conversation the plaintiff had with P.²⁷ From the transcript it appears that the plaintiff wanted P to allow for the activation of the UK LPA so that the plaintiff could make necessary enquiries even though she was cognisant of the fact that P had not lost capacity to act for herself.

22. A UK based solicitor also provided evidence that all her dealings with P in relation to commercial properties P held in the UK was with P directly. The solicitor made a trip to Singapore on 1 December 2022 and observed

²⁷ Affidavit of the defendant's son dated 24/9/2024 at pages 19-20.

that while P was slow in speech, she was alert, could recognise the solicitor, had a healthy appetite and appeared to be well cared for.²⁸

23. The plaintiff visited P in Singapore for a brief period between 24 September and 23 October 2019. She shared that P informed her that the defendant was making demands and using monies for her living expenses. Yet the plaintiff felt at that time that they “...*would eventually be settled amicably*” between P and the defendant.²⁹ Neither was any real concern about P’s capacity expressed. Once the relationship between the plaintiff and the defendant became tense however, the plaintiff chose to produce messages which she claimed showed that P did not have mental capacity after her return to Singapore. These messages relate to how P felt isolated and at times fearful of the defendant and her son. The plaintiff held on to a belief that P was without mental capacity even though the plaintiff was making such an observation without consistent physical contact with P. Indeed, the ability of P to call the plaintiff and to type coherent messages to the plaintiff complaining of her relationship with the defendant does not signify a lack of functional capacity. It was

²⁸ Paragraph 65 of the affidavit of UK solicitor dated 2/10/2024.

²⁹ Paragraph 13 of the plaintiff’s affidavit of 29/5/2024.

not disputed that P was in a state of stress and anxiety for which she was referred to Dr C as early as February 2020.

Issue 2: Was fraud/undue pressure exerted by the defendant in the creation/execution of the LPA?

24. Where there is fraud or undue pressure placed on a donor to induce her to create or execute a LPA, the court may direct that the instrument purporting to create the lasting power of attorney, not be registered or that the LPA be revoked.³⁰ In dealing with the allegation by the plaintiff that fraud and/or undue pressure was exerted by the defendant to execute the Singapore LPA, the plaintiff sought to show that there was intense acrimony between the parties, that the defendant intentionally concealed the relevant family dynamics from the certificate issuer, that the defendant was in sufficient proximity to P during the capacity assessment to exert pressure and that the defendant's own state of mind at the time showed that P's execution of the LPA had an ulterior motive.

25. Relying largely on *ULP v ULS*³¹ it was the plaintiff's position that fraud or undue pressure could be exercised even if P had the mental capacity to execute the LPA. This is not in dispute. The facts of *ULP* however

³⁰ S 17 (3) and (4) of the MCA.

³¹ [2021] SGHCF 19.

were, in my view, materially different from the instant case. So too were the facts of *VKX v VKW*³² which the plaintiff relies on to stand for the proposition that if Dr C was not aware of the family acrimony and dynamics, or if the mental capacity assessment was done in the presence of the defendant, these individually or collectively, should result in a revocation of the LPA. In *ULP*, the nature and state of P's dementia, diagnosed to be "*moderate stage dementia of the Alzheimer's type*",³³ the exceptionally high level of animosity by the son who secured a LPA, towards his father (P's spouse) and sisters (P's daughters), the rage displayed by the son towards his father in particular for the latter's insistence on his son pursuing medicine at a local university instead of chasing his dream of attending an Ivy League US liberal arts college, several acts of the son done secretly including removing P from her home and his absolute refusal to allow any access to P by other family members, led the court to call for greater scrutiny of the LPA.³⁴ Indeed the acts of the son if viewed collectively, represented conduct so egregious which made the retention of the LPA unsafe and a consideration of plans for the care of P through a deputyship application

³² [2022] SGFC 16, affirmed on appeal.

³³ Paragraph 3 of the Judgment.

³⁴ *Ibid.* at paragraph 50.

was considered a more prudent approach. Similarly, in *VKX*, P's mental health was not the same as P in the present case. In *VKZ* there were 2 feuding camps of siblings. A few of the siblings brought an action against one of their brothers who managed to secure a LPA from his mother. Just as was the case in *ULP* the feud amongst siblings was a long standing one, dating back decades and its roots entrenched. The defendant went "doctor shopping" to secure a report to validate his appointment as a donee. He removed his mother from her own home, sought a LPA to sell her home and created bank accounts in his son's name to retain monies belonging to P. He intentionally withheld information on medical reports he was privy to from other doctors concerning the mental state of his mother and he reigned personal attacks on anyone who disagreed with him. The effect he had over his mother when present during medical assessments or even in bringing her to the assessment was of concern in the larger context of the case.

26. In the present case, the plaintiff and defendant were united in their decision for P to return to Singapore and be under the care of the defendant. P and the defendant held properties and bank accounts jointly signifying that not all things had to be done together with the plaintiff. There was clarity in direction and freedom of communication with a

WhatsApp group chat to facilitate interaction. There was a unity of purpose and a reliance by P on the defendant, with no initial resistance by the plaintiff. The fact that P wanted to have harmony amongst them was also evident. The relationship soured only more recently over disagreements with the manner in which properties and financial matters of P were dealt with after P's move to Singapore. There was no historical hatred or animosity as seen in the cases relied on by the plaintiff. Nor was there deep pressure placed on P as was the case by the sons on their mothers in the 2 cases cited.

27. It is certainly important to inform doctors of the fact that there are other family members that may be interested in whether a LPA is issued in favour of another family member. This may likely lead the doctor to exercise even greater care to ensure that no fraud or undue pressure was being placed on P to make a choice. The question remains however as to whether the facts support fraud or undue pressure being placed on P. I was of the view that there was little to support the plaintiff's view. P was headstrong in her dealings with the UK estate agent on the price she was prepared to sell one of the properties she held jointly with the defendant. She lived in her own apartment in Singapore and was not at the mercy of the defendant for her daily care. Her ability to communicate with the

plaintiff allowed her an avenue to signal real distress and pressure if she felt that way. Dr C did not notice any such feelings when she was being assessed. In fact, P who had been seeing Dr C as far back as February 2020 never saw it fit to share about that she had a sister in the UK and the session in February 2020 was one where the defendant was not present.

28. Individuals in any close relationship are at times influenced or even pressured by each other into acting in certain ways. This is why the law calls for evidence of fraud or *undue* pressure before a LPA can be revoked. The term “fraud” is not defined in the MCA but it is safe to draw from criminal law to look for elements of intentional deception to gain an advantage.³⁵ The evidence did not support the position that the defendant concealed or represented facts dishonestly so as to compel P to execute the LPA. While fraud was alleged, the plaintiff appeared in fact to be relying largely on the allegation of undue pressure instead. In this regard, the evidence did not point to any excessive or unwarranted pressure. The fact that the defendant was present at the assessment conducted by Dr C can give rise to a suggestion of pressure on P. The

³⁵ S 25 of the Penal Code 1871.

evidence of Dr C however was that for mental capacity assessments, it was her practice to seat accompanying family members and caregivers “*behind the patient to allow the patient to speak directly to her, without interference*”.³⁶ Dr C was mindful of the need for P to speak freely. At the time P was assessed by Dr C for the purpose of the LPA execution, it was not their first meeting. It bears repeating that previous meetings where P’s family history was taken down and during which time the defendant was not present, would have afforded P the opportunity to share important information which Dr C would likely have addressed, if necessary, when she met P again on 2 August 2021 and 10 January 2022. It also bears repeating that P chose not to reveal the existence of the plaintiff in the UK when she spoke to Dr C as early as 2020. In August 2021 and January 2022, I had no doubt that P was not held back by the defendant in informing about the plaintiff to Dr C, if she had wanted to. The historical evidence shows that she did not think it necessary.

29. I did not doubt that P would have spoken her mind on things which concerned her when she met Dr C in 2021 and 2022 for purposes of the LPA. In her medical report, Dr C stated that P was calm and coherent

³⁶ Paragraph 19 of Dr C’s affidavit of 4/3/2025.

during her visit on 2 August 2021 and did not show signs of anxiety or stress.³⁷ To come to a different conclusion would be to reject the clinical assessment and observations of Dr C who appeared to have followed all reasonable steps to ensure that P knew what she was doing in appointing the defendant as her donee. While her physical vulnerabilities and age-related feelings of stress and isolation at times, must be acknowledged, she was not in my view, a victim of fraud nor was she labouring under any excessive force by the defendant to execute the LPA.

30. The interplay between mental impairment and undue pressure which was articulated by the Court in *Re BKR*³⁸ would require a look at whether P was susceptible to undue pressure given the frailty of her mind. Given that I had accepted the evidence of Dr C who is the certificate issuer and the only doctor who assessed P at the time the LPA was executed, more specifically, that P was “*able to express independent thought without seeking reassurance from her caregiver*”,³⁹ I was of the view that the degree of mental vulnerability did not occasion any feelings of pressure to the extent that the appointment of the donee ought to be invalidated. It

³⁷ Ibid. at page 80.

³⁸ Paragraphs 125 and 126 of *Re BKR*.

³⁹ Paragraph 26 of Dr C’s affidavit of 4/3/2025.

must be borne in mind that the specific query before me was the ability of P to execute a LPA freely at the time it was done and not every document that was executed by P. The exercise of determining whether a will or a POA were properly executed may involve different considerations. The defendant's counsel had asked the court to make findings with respect to the validity of various other documents and transactions. I made no findings as these issues were not before me and indeed a will is a far more complex document which would necessitate further evaluation of the evidence.

Issue 3: Has the defendant failed to act/will she fail to act in the best interests of P?

31. Any donee of power under a LPA or a deputy appointed by a court, must always act in the best interests of the person that is to be assisted. S 6 of the MCA provides:

(1) *In determining for the purposes of this Act what is in a person's best interest, the person making the determination must not make it merely on the basis of—*

(a) *The person's age or appearance; or*

(b) A condition of the person, or an aspect of the person's behaviour which might lead others to make unjustified assumptions about what might be in the person's best interests.

(2) The person making the determination must consider all the relevant circumstances and, in particular, take the steps specified in subsections (3) to (9).

Subsections 7 – 9 are of particular relevance and reads as follows:

(7) Where the determination relates to the disposition or settlement of the person's property, he or she must be motivated by a desire to ensure, so far as is reasonably practicable, that the person's property is preserved for application towards the costs of the person's maintenance during the person's life.

(8) He or she must consider, as far as is reasonably ascertainable –

(a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by the person when the person had capacity;

(b) the beliefs and values that would be likely to influence his or her decision if the person had capacity; and

(c) the other factors that the person would be likely to consider if the person were able to do so.

(9) He or she must take into account, if it is practicable and appropriate to consult them, the views of—

(a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind;

(b) anyone engaged in caring for the person or interested in the person's welfare;

(c) any one of a lasting power of attorney granted by the person; and

(d) any deputy appointed for the person by the court,

as to what would be in the person's best interests and in particular as to the matters mentioned in subsection (8).

32. The well-cemented relationship between the parties started to show cracks only in early 2021 when the defendant discovered an email thread

between the plaintiff and a UK solicitor regarding the 2 UK properties that the defendant held jointly with P. The discussion related to the need to sever what she thought were joint tenancies (as opposed to tenancies in common) so that it was in line with the intentions of P in her UK will. The defendant was alleged to have then restricted the plaintiff's communication and access to P and acted in a way that compromised the interests of P.

33. In seeking to show that the defendant was not acting or will not act in the best interests of P, the plaintiff pointed to various bank transactions in relation to joint accounts P held with the defendant. She alleged that the defendant was either removing P's monies away from P's reach into her own account or utilising P's monies without proper accounting.⁴⁰ She also sought to show that the sale of various residential properties owned by P solely or commercial properties jointly with the defendant was without P's agreement and not in P's best interests. The plaintiff further pointed to the defendant's failure to pay P's bills in relation to her properties in the UK. She also pointed to statements made by the defendant to show that the latter threatened to withhold medical treatment

⁴⁰ A summary of these transactions is provided from paragraphs 137 to 188 of the plaintiff's submissions dated 23/6/2025.

for P and that P had not seen Dr C for 2 years after the LPA was executed. She attempted also to show that the defendant's attempt to restrict the plaintiff's access to P compromised P's interests and so too did the execution of the Singapore will of March 2021 which she referred to as a "sham" will and one that was discordant with P's wishes and interests.

34. The various allegations by the plaintiff relating to the mismanagement of P's assets led the defendant to engage a forensics accountant to look specifically into the management of the 2 joint bank accounts held by P and the defendant (one with HSBC and the other with OCBC), a fixed deposit account held by the defendant (at UOB) and the management of income and expenses relating to the 2 UK properties in the name of P and the defendant.⁴¹

35. The accountant's detailed report did not show any material concerns with respect to the management of P's assets by the defendant such that it warrants a conclusion that the defendant failed to act in the best interests of P or that she will not act in the best interests of P moving forward as it relates to the administration of P's affairs in Singapore. This does not mean that each and every transaction cannot be further questioned in an

⁴¹ Affidavit of the forensics accountant dated 31/12/2024.

appropriate forum. Simply that for purposes of determining if the defendant had P's interests at heart, the accountant's report showed a pattern of the defendant acting to protect her equal share in various assets and one that ensured P's assets are kept for her needs, consistent with the need to maintain her continued stay in Singapore. The accountant essentially took the position that the monies in the joint accounts used to receive rental incomes from the jointly held UK properties could be attributable equally to P and the defendant. Following from that, payments or transfers from that account into a Singapore account could be treated as equally owned. A significant exception being the property jointly owned by P and her late husband, the sale proceeds of which was recognised by the defendant to be P's.

36. The report drew criticism by the plaintiff who stated that the accountant worked on the information provided by the defendant alone and there was a paucity of documentary evidence to show that certain expenses could be safely said to be P's expenses. In response, the accountant confirmed that he worked only with the information and documents provided by the defendant and that he was open to providing a supplementary report if the plaintiff wanted to provide him with more information. None was forthcoming. Neither did the plaintiff engage her own expert to scrutinise

the report. Much of the information would also be available from the UK where the plaintiff resides. While the burden of accounting for monies belonging to P was rightfully placed on the defendant, the burden cannot be an onerous one calling for perfect responses to quick allegations of mismanagement. The plaintiff had gone so far as to suggest that the accountant himself did not explicitly confirm that he relied on professional and ethical standards in drawing up his report. He had confirmed his professional standing as a chartered accountant licensed to practice in Singapore and by this fact, compelled to abide by professional and ethical standards.⁴² The plaintiff also lodged a rather abrupt request for the court to make an order for the appointment of an “independent expert” when this was not a specific prayer in the originating summons. While s 18 of the MCA allows a court to direct a donee of power to render reports and accounts, it was unclear as to the basis for the plaintiff’s call for an “independent expert”.⁴³

37. Several allegations of the plaintiff appears to be made so as to press the defendant to respond to her suspicions as opposed to any evidence that she may have. This was seen for example in her insistence that the

⁴² Paragraph 132 of the submissions of the plaintiff.

⁴³ Page 98 of the plaintiff’s submissions of 23/6/2025.

defendant had kept P's HSBC bank tokens from P so as to perform unauthorised transfers. This was so even when P herself had indicated that she misplaced them. The defendant had during her visit to the UK in August 2021 approached the bank to apply for a new one which could only be done with P's authorisation.⁴⁴ The defendant exhibited communication with a bank officer showing that she had tried to obtain a new token to replace the one that was lost and that there was a need for P to provide the mandate for the issuance, which was later obtained.⁴⁵

38. In relation to the sale of P's properties, there is little to support the position that P's interests were not being served. The process involving the sale of one of the UK properties held jointly with the defendant, saw P actively engaged with estate agent and insisting that it be sold at GBP 1.6 million and not anything less even as the agent pushed for a lower price which was against his own interest insofar as it related to his commission.⁴⁶ P appeared to be acting independently of the defendant in entering into such a sale. The sale of a property P held with her late husband similarly saw P speaking directly to the estate agent and

⁴⁴ Paragraphs 10-13 of the defendant's affidavit of 18/11/2024.

⁴⁵ Ibid.at Tabs V and W.

⁴⁶ Paragraph 37 of the estate agent's affidavit of 24/9/2024.

insisting that it be put up for sale at no less than GBP 1.35 million based on a 2022 valuation. Conversations between the plaintiff and P about discussions that P had with the defendant over the sale of these properties point to the fact that the defendant was not secretly compelling P to enter into property transactions to the detriment of P. There was a desire for all 3 sisters to discuss the plans of P to sell off her properties.

39. The change of the contents of the first Singapore Will in March 2021 and the mental state of P when this was executed were not the subject matters for determination. Regardless, there is evidence that a month prior to the execution of this will, Dr C had seen P and noted that there were no psychiatric issues that P was experiencing. Additionally, P was noted as being able to correct herself when she made mistakes.⁴⁷ Notwithstanding, the execution of the will and P's testamentary capacity remain an open issue. The defendant's counsel was of the view that I should make a finding on this. I disagree on account of the fact that the matter before me involved the need to look at the nature of a LPA and the situation P was in at the time it was executed, in addressing the plaintiff's request to revoke the LPA. Documents executed before and after may lend towards

⁴⁷ Page 79 of Dr C's affidavit of 4/3/2025.

this determination but a finding on P's capacity in the execution of each and every document was not what was sought by the plaintiff. It is an exercise far more involved, requiring an assessment of what P understood to be her assets at the time of the execution of the Singapore will in March 2021 and why she had changed her mind on who her beneficiaries were, including the import of Clause 4. The solicitor who drafted that will would also be someone whose evidence may be helpful.

40. It was well in line with the need to care for P in Singapore that an appointment of a suitable donee based in Singapore be made. The rising tensions between the plaintiff and defendant at a time when P's cognitive ability was on a downward trajectory made this an understandable need. There was little in evidence to show that P must have wanted to appoint the plaintiff jointly with the defendant to care for her needs and affairs in Singapore simply because there was a joint appointment for the UK LPAs. P had in the past dealt with the defendant to the exclusion of the plaintiff as evidenced by the 2016 First Singapore Will which named the defendant as the sole executor. She also held properties jointly with the defendant and not with the plaintiff. There were also numerous POAs authorising the defendant to deal with the sale and purchase of properties in Singapore for P.

41. The plaintiff's position that the defendant had in the past threatened to withdraw medical treatment for P and her restricting the plaintiff's access to P was more in my view, a reflection of the tensions between the parties rather than a desire to prevent the advancement of P's interests.
42. Even though Dr C had not been consulted for the last 2 years after the issuance of the LPA, consultations continued with the neurologist Dr X and the geriatrician Dr M, in 2023 and 2024. There is a consistent position taken by all doctors who were managing her care. By early 2024, P's condition had progressed such that palliative services were required and no further follow up was necessary with the 3 doctors. Dr C in particular had indicated that as at 2024, no treatments were necessary to treat any psychiatric symptoms or behavioural disturbances.⁴⁸
43. The plaintiff's position that the defendant and her son were restricting access to P even going to the extent of removing P's old phone and tampering with other technological devices was not supported by the evidence. There is on the other hand, evidence showing that P managed to contact the plaintiff using P's new phone.⁴⁹ Having said that, the

⁴⁸ Page 81 of Dr C's affidavit of 4/3/2025.

⁴⁹ Paragraph 28 of the defendant's son's affidavit of 24/9/2024.

tensions between the parties would make it entirely conceivable that the defendant was not making it easy for the plaintiff to have access to P. I could not conclude that this, if intentional, was targeted at compromising P's interests even if it would be an ancillary effect.

Conclusion

44. The central question for determination was whether P had properly executed an LPA appointing her sister, the defendant, as the sole donee of power to handle her matters in Singapore should P lose her mental capacity to do so. If so, should she be permitted to continue with such appointment given what the plaintiff saw as acts which breached or is likely to breach the defendant's duty to advance the interests of P.
45. The medical evidence points to P having had the capacity to make the appointment of a donee and she did so freely. The doctor who assessed P at the time the LPA was created/executed had taken all reasonable steps to accurately ascertain the capacity of P. She was aware of mental state tests done by Dr X previously, these tests being tools that provide practitioners with an idea of whether further investigations are necessary. Even as Dr X was doubtful of the capacity of P to execute the LPA, she agreed that she did not conduct a mental state assessment at any point in

time and that she can only categorically state that P had no capacity in 2023. Clinical observation and assessment were only done by Dr C and was sufficiently robust for this court to rely on.

46. Even as the plaintiff took the position that P was suffering from cognitive impairment that must have prevented P from executing an LPA that met the requirements of s 5 of the MCA, her own conversations with P even after August 2021 and the words and acts of P especially in dealing with solicitors and estate agents show not just an ability to make an appointment, but the absence of any fraud or undue pressure from the defendant in the creation of the same.

47. The holding of properties jointly with the defendant, the appointment of the defendant as the sole executor of the 2016 first Singapore Will (which the plaintiff herself acknowledged was understandable given that the defendant was the only one residing in Singapore),⁵⁰ the execution of POAs for the defendant to deal with the sale and purchase of the Jurong and Queenstown properties, respectively, the united understanding of the plaintiff and defendant in better times, for the defendant to care for P while she was in Singapore point collectively to the need to preserve the

⁵⁰ Paragraph 29 of the plaintiff's affidavit of 29/5/2024.

autonomy of P in her choice of the defendant as the donee of power. As s 3(4) of the MCA provides, respect must be had for choices made even if it is felt that P made an unwise decision.

48. The larger question was whether P's best interests were compromised by the defendant necessitating a revocation of the LPA. The accountant's report showed that P's interests were not compromised such that the LPA would need to be revoked. Clearly proper accounts would need to be maintained by the defendant and she remains accountable for P's monies, the proceeds from the sale of P's properties and for the personal welfare of P - an obligation that has been activated and which will continue unless revoked or upon P's passing.

49. A fear of losing financial entitlements is often found behind arguments that appear to be advancing the interests of mentally incapacitated individuals. Such arguments are veils. It would help parties to address these fears more directly and resolve differences between themselves, so as to mend the fracture in their relationship that has only recently surfaced.

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Shobha Nair
District Judge

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