

Tan Teck Khong and another (suing as Committee of the Estate of Pang Jong Wan) v Tan
Pian Meng
[2002] SGHC 152

Case Number : Suit 1072/2001
Decision Date : 17 July 2002
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Prabhakaran N Nair and Raadthie Vijayan-Nair (Ong Tan & Nair) for the Plaintiffs;
Daniel John and Damita Nathan (John, Tan & Chan) for the defendant
Parties : Tan Teck Khong and another (suing as Committee of the Estate of Pang Jong
Wan) — Tan Pian Meng

*Succession and Wills – Testamentary capacity – Validity of will – Mental capacity of testator
– Whether testator has mental capacity to make will and enter into various transactions to dispose
of property – Undue influence – Whether exercise of undue influence on testator to make will and
dispose of property*

Judgment
Vult

Cur Adv

GROUND'S OF DECISION

INTRODUCTION

1. This action is brought by Tan Teck Khong and Tan Teck Hing as the Committee of the Estate of Madam Pang Jong Wan. Teck Khong is the eldest son and Teck Hing is the second son of Mdm Pang. They were appointed as her Committee under the Mental Disorders & Treatment Act (Cap 178) ('the Act') on 22 January 2001.
2. The Defendant is Tan Pian Meng. He is the third son of Mdm Pang who does not have any daughter. Mdm Pang comes from China and has no formal education (NE 21).
3. In the action, the Plaintiffs seek various reliefs in respect of certain documents or transactions purportedly executed or entered into by Mdm Pang:
 - (a) Her first Will dated 22 October 1997 under which Pian Meng is the sole executor and the sole beneficiary.
 - (b) Her transfer of a sole-proprietorship known as Canberra Karaoke KTV Pub ('the Business') to Pian Meng on 27 November 1997.
 - (c) The sale of her property known as 30 Medway Drive ('30 MD'). The option was granted on 26 May 1998 to a third party and the sale was completed on 31 August 1998. The net sale proceeds were deposited into a joint account of Mdm Pang and Pian Meng and subsequently withdrawn by Pian Meng. The Plaintiffs are not seeking to set aside the sale but want Pian Meng to repay the net sale proceeds.
 - (d) The mortgage of Mdm Pang's other property known as 64/64A Serangoon Garden Way ('64/64A SGW') to Keppel Tat Lee Bank ('KTL') to secure credit facilities from KTL to Pian Meng. The mortgage was executed by Mdm Pang on 3

November 1999, but dated 22 November 1999. The Plaintiffs are not seeking to set aside the mortgage but want Pian Meng to repay all monies secured by the mortgage and procure the discharge of the mortgage.

(e) Mdm Pang's second Will dated 3 November 1999 under which Pian Meng is also the sole executor and the sole beneficiary, except for \$10 given to each of the Plaintiffs as the sons of Mdm Pang.

4. The basis of the claim is that Mdm Pang had lacked the mental capacity to execute the documents or agree to the transactions. Alternatively, that she did so under the undue influence of Pian Meng.

5. In this judgment, 'AEIC' means Affidavit of Evidence-in-Chief and 'NE' means Notes of Evidence which will be followed by a page number and, where appropriate, the number of the line in the page.

BACKGROUND

6. In or around 1963 or 1966, the parents of the parties started the Business. The mother is Mdm Pang and the father was Tan Suan Kui. There was conflicting evidence as to what the business name was at that time but that is not material. The Business was subsequently carried on in No. 64 SGW and the family lived on top i.e in No. 64A SGW. 64/64A had been bought by the parents in or about 1966 using monies from the Business.

7. On 4 May 1973, 30 MD was registered in the name of the parents as joint tenants. Presumably the purchase monies were also from the Business. Both parents ran the Business with some help from the three sons as and when each was old enough to help out.

8. In 1982, the father died. At the time of the father's death, Teck Khong was about 32 years of age, Teck Hing was about 25 years of age and Pian Meng was about 24 years of age. Mdm Pang would have been about 57 years of age.

9. 30 MD became registered in Mdm Pang's sole name, as the remaining joint tenant. 64/64A SGW also became registered in her sole name. As for the Business, Mdm Pang relied primarily on Pian Meng to assist her, but, on all accounts, she was the one in charge. She was a determined person, energetic and sociable (NE 118).

10. Pian Meng appeared to have the highest level of education among the three sons. He stopped his education at 'A' levels whereas Teck Khong's and Teck Hing's education stopped at Secondary Two or thereabouts.

11. Pian Meng was also the most able of the three sons. After the father's death, it was he who would help his mother to liaise with bankers i.e Kwangtung Provincial Bank ('KPB') and the relevant authorities. He was also the cashier of the Business and was the sole signatory of the Business' cheques as Mdm Pang did not sign cheques. He had also apparently become a guarantor to KPB, after the father died, whereas neither of the Plaintiffs was a guarantor. He was also instrumental in renovating the business premises in 1986, and persuading Mdm Pang to run a karaoke pub also at the business premises in 1990 (although Teck Khong claimed he was the one who persuaded Mdm Pang), and in 1992 to focus on the karaoke pub business. Teck Khong helped in some cleaning work and acted as a bouncer. Teck Hing worked as a cook.

12. The entire family, including the father, had a gambling habit.

13. The eldest son Teck Khong had a violent temper and often had serious rows with his father. As a

result, his father had wanted to disown him. Teck Khong also had serious rows with Mdm Pang.

14. He was married in 1974. He had a daughter from this marriage but his wife divorced him and took the child with her around 1980. He then married a woman from Hainan, China in 1992 and had a son from this marriage. He bought a property in Hainan with the help of Mdm Pang but when he divorced his second wife, that property was transferred to her as part of a divorce settlement.

15. Subsequently, he placed a down payment to buy another property in Hainan, again with the help of Mdm Pang, but the purchase was not completed because the developer had discontinued its business.

16. In or about 1994, Teck Khong asked his mother to make him a partner in the Business but his mother declined.

17. In 1995, he married his third wife, also from Hainan, but this marriage also ended in divorce in 1997.

18. In June or July 1997, Teck Khong caused a fire in 64/64A SGW because of a cigarette butt he had left. As a result, there was a violent quarrel between Mdm Pang and him in which he threw a glass either at her which Pian Meng deflected or he threw a glass onto the ground.

19. In around April 1999, he resided with Pian Meng and his family at rented premises at 47 Walmer Drive. He married a fourth time in 2000. His fourth wife is also from Hainan. She was also residing at 47 Walmer Drive until about July 2000 when Teck Khong and her moved back to 64A SGW. This was because by then Pian Meng's wife had made a revelation when she had had a quarrel with Pian Meng. Teck Khong said she 'revealed that [Pian Meng] has swallowed the brothers' money' (NE 40). Also, Pian Meng's mother-in-law was not happy with Teck Khong's wife (NE 41).

20. The second son, Teck Hing, married one Wang Ah Choo who is known as Anna. She also helped in the Business by working in the kitchen peeling potatoes, cooking and washing the dishes (NE 100). They have three daughters. Apparently, living conditions became crowded at 64A SGW when the third child was born and in 1990, Mdm Pang bought a property known as 3 Cowdray Avenue for Teck Hing and his family to live in. This property was registered in the name of Teck Hing and Pian Meng and Anna's name was not included. Pian Meng assisted by liaising with the solicitors for the purchase. He suggested that Anna was resentful that she was not registered as a co-owner of 3 Cowdray Avenue. Pian Meng also suggested that Anna had been jealous of him as it was he, more than the other siblings, who was helping Mdm Pang in the Business.

21. As for Pian Meng, he was married to Angela Goh Lee Hoon in 1995 and had a son from the marriage in 1996. He suggested that Mdm Pang was particularly happy to have a grandson. At the time of Mdm Pang's first stroke, Pian Meng and his family were staying with Mdm Pang and Teck Khong at 64A SGW.

22. Since 1994, Mdm Pang suffered from hypertension and diabetes. There is some dispute as to who would take her to see the doctor. The Plaintiffs say it was Teck Hing and his wife who did so most of the time but Pian Meng said it was he who did this.

MDM PANG'S FIRST STROKE ON 16 AUGUST 1997 AND FIRST WILL DATED 22 OCTOBER 1997

23. On or about 16 August 1997, Mdm Pang went to Pow Sing Chicken Rice stall in Serangoon Gardens to buy food for a family dinner for the Hungry Ghost Month. She became disoriented and did not know how to make her way back. Fortunately, the owner of the Chicken Rice stall recognised her and brought her

home. He told the Tan family that Mdm Pang had become dazed and confused and while at his stall, she thought she was at the Business' premises. At that time she was about 72 years of age.

24. It is common ground that she had suffered a stroke that day. I will elaborate later on the medical evidence.

25. According to the Plaintiffs, Mdm Pang stayed with Teck Hing for three months after her stroke before she stayed with Pian Meng. During that time, Pian Meng would take Mdm Pang out for long drives. On a few occasions after they returned, Anna noticed Mdm Pang's right hand thumb was stained with ink and reported this to Teck Hing. When Pian Meng was confronted about this, he explained that there were forms to be signed before lawyers and banks. The Plaintiffs trusted Pian Meng and did not probe further. This version was not disputed except that according to Pian Meng, Mdm Pang stayed with Teck Hing for three weeks, and not three months, before returning to stay with Pian Meng and his family.

26. In or about February 1998, Pian Meng and his family moved to rented premises at 29 Saint Heliers Avenue. Mdm Pang came to live with them until February 2000.

27. I come now to the AEIC of Mr Colin Caines, a solicitor, whose late partner Mr J S Khosa had acted for Mdm Pang's husband in respect of the Business and other matters.

28. According to Mr Caines' AEIC, Pian Meng had telephoned him and informed him that Mdm Pang wanted to make a Will. Soon after that Pian Meng saw Mr Caines in Mr Caines' office and said that his mother had had a stroke and wanted to make a Will leaving everything to him. Mr Caines advised Pian Meng to get a doctor's report confirming that she was able to execute a Will.

29. On 22 October 1997, Pian Meng called at Mr Caines' office and produced a certificate dated 21 October 1997 from Dr Chong Piang Ngok ('Dr PN Chong'), a neurologist, certifying that she was in full command of her mental faculties and able to execute a Will. I will set out the terms of the certificate when I elaborate later on the medical evidence.

30. Pian Meng also informed Mr Caines that Mdm Pang was ready to execute her Will and that she was conversant in Hainanese. Mr Caines informed Pian Meng that the services of an interpreter would be required. His office then contacted the Subordinate Courts and an appointment was made for the interpreter to attend Mdm Pang at Mr Caines' office later on the same day.

31. Mdm Pang's Will was prepared by Mr Caines the same day. In the meantime, Pian Meng went to fetch Mdm Pang.

32. At the appointed time, various persons attended at Mr Caines' office. After the interpreter had interpreted the Will to Mdm Pang and confirmed to Mr Caines that the Will was in accordance with her wishes, Mdm Pang executed the Will in the presence of two of Mr Caines' staff.

33. Mr Caines was Pian Meng's witness. His AEIC was executed on 16 January 2002 and filed on 1 February 2002. Pian Meng's AEIC was executed on 31 January 2002, about two weeks after Mr Caines' AEIC was executed. Pian Meng's AEIC was filed on 1 February 2002, the same day as Mr Caines' was filed.

34. Pian Meng's AEIC was to the effect that after he had gotten married (in 1995) and had a son (in 1996), Mdm Pang started to indicate that it was time she transferred the Business and her properties to him.

35. In mid-1997, he brought Mdm Pang to Khosa & Caines. However, as they did not make an

appointment and Mr Caines was in court, they did not get to see Mr Caines that day. Pian Meng claimed that they spoke to Mr Caines' secretary, one Ms Tan, to explain Mdm Pang's intentions. The secretary advised them that a considerable amount of stamp duty would have to be paid if Mdm Pang transferred her properties to him (inter vivos). A cheaper way was to make a Will. Ms Tan suggested that they consider this and make another appointment to see Mr Caines.

36. However in August 1997, Mdm Pang had her (first) stroke. The rest of his AEIC tallied with Mr Caines' AEIC in that it was Mr Caines who advised him to get a doctor's report on Mdm Pang's ability to make a Will and Mr Caines (or his office) who arranged for the interpreter.

37. At first blush, there did not seem to be any material difference between Mr Caines' AEIC and Pian Meng's except that Pian Meng's had mentioned an additional 'fact' i.e an earlier visit to Khosa & Caines and the advice of Mr Caines' secretary whereas Mr Caines' had not.

38. However, during cross-examination, Pian Meng said that he had not spoken or seen Mr Caines at all before 22 October 1997, the day when Mdm Pang executed the Will.

39. Pian Meng also said that prior to 22 October 1997, and after the alleged visit to Khosa & Caines in mid 1997, he had called Ms Tan and told her that his mother wanted to make a Will, that she had had a stroke and could speak only Hainanese or simple Hokkien. It was Ms Tan who said her office would arrange for a Hainanese interpreter and that Pian Meng should get a certificate from a doctor as Mdm Pang had had a stroke. Pian Meng also said that he did not go to Mr Caines' office earlier and alone on 22 October 1997.

40. This evidence contradicted the AEIC of Mr Caines. It also contradicted Pian Meng's own AEIC at para 43 where he had said that it was Mr Caines who said that he (Pian Meng) should get a medical report on Mdm Pang.

41. Pian Meng insisted that it was Mr Caines who had made mistakes in his AEIC. He also said that as for para 43 of his own AEIC, that was a mistake on his (Pian Meng's) part.

42. Yet, when Mr Caines eventually gave oral evidence, Pian Meng's Counsel, Mr Daniel John, did not ask him whether he had made mistakes in his AEIC or take him through what Pian Meng had said in oral testimony.

43. I should also mention another point. In cross-examination, Pian Meng said twice, at NE 157 and 162, that Mr Caines did speak to Mdm Pang on 22 October 1997 in simple Hokkien about her Will. However, in cross-examination, Mr Caines said he had not spoken to Mdm Pang as she spoke Hainanese and he was totally ignorant of the language. He had left it to the interpreter to interpret the Will to her (NE 274). Mr Caines was not asked in re-examination whether he had spoken to Mdm Pang in simple Hokkien. Mr Caines also confirmed that in preparing the Will, he had acted on instructions from Pian Meng, and not Mdm Pang (NE 276).

44. As for the interpreter, this was one Loh Lim. He said that he had interpreted Mdm Pang's Will to her in Hainanese and did so in layman's language. Pian Meng's version was that the interpretation was done sentence by sentence and that each time the interpreter had asked Mdm Pang if she understood (NE 158).

45. Loh Lim said he made sure Mdm Pang understood the contents of her Will and she confirmed to him that she did. However, he could not remember how she had responded to him (NE 223).

TRANSFER OF THE BUSINESS TO PIAN MENG ON 27 NOVEMBER 1997

46. It is not disputed that Mdm Pang transferred the Business to Pian Meng on 27 November 1997 i.e about a month after she executed her first Will. This was done without the assistance of any solicitor and also without the knowledge of Teck Khong and Teck Hing at that time. Pian Meng alleged that an officer at ROCB had spoken in Hokkien to his mother.

47. It is not disputed that Teck Khong and Teck Hing knew about the transfer thereafter because various licences for the running of the Business had to be in the name of Pian Meng thereafter and these licences were displayed in the premises.

48. Teck Khong apparently spoke to Mdm Pang about the transfer of the Business to Pian Meng but he said she did not respond as she was ill (NE 24 and 25). Pian Meng's version was that Mdm Pang told Pian Meng to ignore Teck Khong's objection to the transfer (NE 25).

49. Teck Hing said he did not speak to Mdm Pang about the transfer of the Business because she was ill. He did not object to the transfer because he had asked Pian Meng why the transfer was done and Pian Meng had said this was for convenience because Mdm Pang was ill. The change was temporary until Mdm Pang got well (NE 128).

50. It is not disputed that after the transfer of the Business, Pian Meng continued to see to it that the salaries and bonuses of Teck Khong and Teck Hing up to the third week of January 2001 were paid although the actual sums paid were disputed.

51. Also, Teck Khong was given thousands of dollars on various occasions for his trips to China although the actual amount was disputed. In April 1998, \$6,000 was deposited into a fixed deposit account of Teck Khong's at Bank of China. In December 1999, \$70,000 was given to Teck Khong to help him buy a property in China. Some of Teck Khong's gambling expenses and his credit card bills up to March 2000 were paid.

52. For Teck Hing, Pian Meng also arranged for payment of the property tax of 3 Cowdray Avenue, utility bills, some household expenses and all or part of tuition fees for his daughters and, in 1999 to 2000, 12 monthly instalments for a car. In December 1999, Pian Meng provided \$10,000 for a holiday in Korea for Teck Hing and his family. Pian Meng also arranged for payment of some gambling debts of Teck Hing.

53. However, the actual source of all these monies is another matter.

SALE OF 30 MD (i.e MEDWAY DRIVE) AND USE OF THE NET SALE PROCEEDS

54. Pian Meng alleged that 30 MD was rented out initially. However because the tenants said the house was haunted and rebuilding it would cost too much, his mother decided to sell it (NE 179). Her intention was to use the sale proceeds from 30 MD to buy a property for Pian Meng and his family and also for Mdm Pang herself and Teck Khong, to stay in (NE 184). The new property was to be registered in Pian Meng's name only (NE 180). This appeared to be corroborated by Teck Khong (NE 38).

55. Teck Khong had accompanied Pian Meng to look for a suitable property. This was not disputed by Teck Khong. As Pian Meng could not find a suitable property to purchase and the property market was falling, Mdm Pang allegedly decided to sell 30 MD first. The option was granted on 26 May 1998 and the sale was completed on 31 August 1998. The sale price was \$910,000. Apparently, Pian Meng had told Teck Khong about the sale and the price.

56. One Ms Lee Lay See acted for Mdm Pang in the sale. Unfortunately, Ms Lee was not in Singapore when it was her turn to give evidence. The parties agreed that her AEIC should be withdrawn but no

adverse inference should be drawn on account of her not giving evidence.

57. The net sale proceeds of \$898,497.67 was deposited into a joint bank account with HSBC which Mdm Pang had opened with Pian Meng. The one per cent option money was also deposited into this account. This account was opened only after Mdm Pang's first stroke of 16 August 1997 (NE 182) although Mdm Pang had other bank accounts in her sole name. Pian Meng said that one of the functions of the joint account was to deduct property tax for 64/64A SGW from this account (NE 182). About \$900,000 was withdrawn from the joint account in various tranches by Pian Meng thereafter and placed in fixed deposits with HSBC and KPB and in an 'i' account with UOB, all of which were in Pian Meng's sole name. Pian Meng claimed his mother was aware of the monies being placed into the joint account although his siblings were not. He said there was no need to inform them of this because they knew the sale proceeds were for him to buy a new property (NE 187).

58. Pian Meng claimed that he used the \$900,000 to pay expenses for the three sons as well as Mdm Pang's.

59. He also claimed in para 57 of his AEIC that when Teck Hing found out that Mdm Pang had given him the sale proceeds, Teck Hing asked him for \$300,000 to settle his gambling debts and he gave about \$200,000 to Teck Hing. However, in cross-examination, Pian Meng said that the \$200,000 was an accumulated sum given over various occasions and not when the request for \$300,000 was made. Also, the \$200,000 was from both the sale proceeds and an overdraft from KPB (NE 195 and 196).

60. Pian Meng further said he used the balance of the sale proceeds to pay his own gambling debts. However, he did not say exactly how much was used to pay for expenses or gambling debts of others, and how much of his own. Neither was he able to produce any documentary evidence to link the use of the sale proceeds with any payment for any of the others' expenses or gambling debts.

61. I would add that in August 1998, before the completion of the sale of 30 MD on 31 August 1998, Mdm Pang had had a fall. I will elaborate on this later when I deal with the medical evidence.

MDM PANG'S MORTGAGE OF 64/64A SGW AND HER WILL DATED 3 NOVEMBER 1999

62. It is not disputed that in August 1999, Mdm Pang had had a second stroke. A few months later, she executed a mortgage of 64/64A SGW on 3 November 1999 but the mortgage was dated 22 November 1999. She also executed her second Will on 3 November 1999.

63. Pian Meng alleged that Mdm Pang had intended to transfer 64/64A SGW to him. It was mortgaged to KPB for about \$500,000 for the Business. He approached KTL for credit facilities. He could not remember whether he approached KTL before or after Mdm Pang's second stroke (NE 198 and 199). However, he said the manager and assistant manager of KTL came to 64 SGW one lunch-time and met up with him. Mdm Pang was not present but she was aware of the meeting. He told the bank managers that Mdm Pang wanted to transfer 64/64A SGW to him and it would be mortgaged to KTL for a loan (NE 198). The first letter of offer from KTL to Pian Meng was dated 15 September 1999. The offer was for an overdraft facility of \$400,000 and a term loan of \$1m. This was because KTL considered the property to be worth \$2m and was prepared to lend 70% of that figure.

64. Pian Meng said he wanted to take a loan totalling \$1.4m because, besides the \$500,000 owing to KPB, he was thinking of rebuilding the property. That would cost \$500,000 (NE 199). I think that what he meant was that the property was to be renovated.

65. As KTL had recommended to Pian Meng that Pian Meng and Mdm Pang see a solicitor Ms Annie Yap

of M/s Ng Yap & Partners, they did so. Ms Yap advised that if Mdm Pang gave the property to Pian Meng, KTL would not take a mortgage on the property. Presumably this was because KTL would be concerned that the gift may be set aside if Mdm Pang were to become a bankrupt or that the property might be subject to a charge for estate duty, depending on Mdm Pang's circumstances, should she pass away within a certain number of years.

66. Ms Yap advised that Pian Meng buy the property from Mdm Pang. The purchase price would be \$2m. He would have to raise \$200,000 as the deposit and subsequently when the sale was completed, Mdm Pang could give the purchase monies to Pian Meng.

67. Subsequently, Mdm Pang and Pian Meng met Ms Yap again on 23 September 1999, this time to sign the Sale & Purchase Agreement. It was interpreted to Mdm Pang in Hokkien by Ms Yap's secretary Mandy Phang.

68. According to Pian Meng, he had mentioned to Ms Yap on these two occasions that his mother had suffered a stroke but he did not mention how many times she had suffered a stroke. However Ms Yap did not suggest that a doctor's certificate be obtained before Mdm Pang signed the Sale & Purchase Agreement (NE 203 and NE 205 to 206).

69. As it turned out, Pian Meng could not raise the \$200,000 for the initial deposit. As for the \$900,000 he had received from the sale proceeds of 30 MD (in September 1998), he said that the three brothers had spent almost all of it by then.

70. After Pian Meng told Ms Yap that he could not raise the \$200,000 for the deposit, Ms Yap told him that he could not proceed with the purchase of 64/64A SGW.

71. Pian Meng alleged that he approached KTL again who suggested that he borrow about \$1.5m with Mdm Pang mortgaging 64/64A SGW to serve the loan. In cross-examination, he said that he approached KTL for a loan to rebuild the property (NE 207). However, that was not exactly what he had said in his AEIC. In para 63 of his AEIC, he said the balance of the loan, after paying KPB, would be used by him in the Business.

72. Pian Meng then received a second letter of offer from KTL. It was dated 8 October 1999 and was for a total of \$1.5m provided the property was valued at \$2.2m.

73. Pian Meng alleged that Mdm Pang and he then went to see Ms Yap again. This was on 3 November 1999 and by then, the mortgage and Mdm Pang's second Will had been prepared (NE 208). He had already spoken to Ms Yap on the telephone about these two matters.

74. Pian Meng alleged that after he could not proceed with the purchase of the property, his mother had told him to instruct Ms Yap to prepare the second Will (NE 209), which he did over the telephone. He alleged that Ms Yap had asked him whether he had other siblings and he told her he had two elder brothers and that his mother had made a Will in 1997, there was a certificate from a doctor and an interpreter was present. Ms Yap then said that she too would require a doctor's certificate for Mdm Pang and asked for the name of the interpreter which Pian Meng provided.

75. On 3 November 1999, Pian Meng produced another medical certificate from Dr P N Chong. It was also dated 3 November 1999 and was in similar, but not identical, terms as his 21 October 1997 certificate. I will also cite the terms of the second certificate later.

76. The second Will also appointed Pian Meng as sole executor. However, it was a bit more elaborate

than the first Will. It specified that 64/64A SGW was to be given to Pian Meng, whereas the first Will did not identify any specific property. It also specified that \$10 was to be given to each of his siblings, whereas the first Will did not mention this \$10 figure. The residue of Mdm Pang's estate was given to Pian Meng.

77. Pian Meng said it was Ms Yap who had suggested the \$10 gift to each of his siblings since 64/64A SGW was to be given to Pian Meng under the second Will (NE 210).

78. He said the same interpreter, Loh Lim, was also present. Loh Lim interpreted the second Will sentence by sentence to Mdm Pang (NE 212). The execution of the second Will was witnessed by Ms Yap and her secretary, Ms Phang. Loh Lim also interpreted the mortgage to Mdm Pang. Ms Yap then got him to sign a note to confirm that he had explained a letter of offer from KTL dated 8 October 1999 and the mortgage to Mdm Pang in Hainanese.

79. Loh Lim also gave evidence in respect of the mortgage and the second Will. He said he explained the second Will in layman's language and made sure that Mdm Pang understood what he had explained. He could not recall how she responded (NE 223). He explained the gist of KTL's second letter of offer dated 8 October 1999 and the gist of the mortgage and its consequences to Mdm Pang (NE 224 and 225). He agreed that he signed the note prepared by Ms Yap to confirm that he had explained the letter of offer and mortgage to Mdm Pang. He could not recall whether Mdm Pang had asked any question about the mortgage (NE 225/226).

80. Ms Yap also gave evidence for Pian Meng. It was Pian Meng who had called her in late August or early September 1999 to say that Mdm Pang wanted to make a gift of 64/64A SGW to him and he wanted to use the property to take a loan from KTL. Ms Yap confirmed that she had advised that the property should not be transferred to Pian Meng by way of gift if KTL was to take a mortgage on it. She suggested a sale and purchase instead. In fact she had informed Pian Meng of this over the telephone when he first contacted her (NE 232).

81. Pian Meng and Mdm Pang came to see Ms Yap in early September 1999. Although Mdm Pang spoke Hainanese, Ms Yap was able to speak to her in simple Hokkien. The first thing that Mdm Pang said was that she wanted to give the property to Pian Meng but she did not identify the address of the property. When asked whether it was 64/64A SGW, she confirmed this (NE 232). Ms Yap reiterated twice that Mdm Pang had said she wanted to give the property to Pian Meng (NE 233).

82. As regards the sale price, it was Pian Meng who suggested that it be \$2m (NE 236 line 21). She could not recall whether Pian Meng had mentioned in the first meeting that Mdm Pang had suffered two strokes (NE 233). Mdm Pang did not appear sick to her and was quite jovial (NE 234).

83. The Sale & Purchase Agreement Ms Yap prepared had a provision for vacant possession even though 64 SGW was being used for the Business and there was no suggestion that 64A would necessarily be vacant. Ms Yap explained that she had used the simplest form of a sale & purchase agreement because the transaction was between mother and son. She did not explain to Mdm Pang that the sale was with vacant possession.

84. Ms Yap confirmed that the Sale & Purchase had to be aborted as Pian Meng could not raise the \$200,000 deposit. Thereafter, it was Pian Meng who called her again in early October 1999. Pian Meng wanted to go ahead with taking a loan from KTL and the property would be mortgaged by Mdm Pang to secure the loan. It was also Pian Meng who mentioned that his mother wanted to make a new Will as one of her properties (i.e 30 MD) had been sold and Mdm Pang wanted to update the Will (NE 240). Subsequently, a copy of the first Will and the earlier medical certificate of Dr P N Chong was provided to Ms Yap. Ms Yap said it was she who asked for another medical certificate as a matter of prudence even though

Mdm Pang had appeared jovial to her in the first meeting. She said that she also included the clause in the second Will about the \$10 gift to each of the siblings because she had asked Mdm Pang whether there were other children and Mdm Pang said she had two other sons. However, it was Pian Meng who provided the names and particulars of the other two sons (NE 241 to 242).

85. She confirmed the execution of the mortgage and the second Will by Mdm Pang on 3 November 1999 and that she had asked Loh Lim to sign the note to confirm that Mdm Pang understood the KTL letter of offer dated 8 October 1999 and the mortgage.

HOW TECK KHONG AND TECK HING CAME TO LEARN ABOUT THE WILLS

86. It is not disputed that Pian Meng's wife had had a quarrel with Pian Meng in 1999. She then checked into a chalet. Feeling lonely, she called Anna (Teck Hing's wife) to join her. In the course of their conversation, she blurted out the details of Mdm Pang's Will or Wills (see Dr Kong Sim Guan's report dated 8 January 2001 and Teck Khong's evidence at NE 40 and 43).

87. Pian Meng alleged that Teck Khong then went through Pian Meng's drawers at 47 Walmer Drive and discovered the two Wills. He alleged that Teck Khong and Teck Hing then approached Mdm Pang to ask her to sell 64/64A SGW and give the sale proceeds to Teck Khong and Teck Hing but Mdm Pang said it was not to be sold as it was for Pian Meng. The conversation was allegedly in the presence of Anna at 3 Cowdray Avenue but Anna was not called by either side to give evidence.

88. It is common ground that the Plaintiffs subsequently applied for an inquiry on the question whether a Committee for Mdm Pang should be appointed under the Act. The application was filed on 21 June 2000 in OS No 924 of 2000. The Plaintiffs relied on the evidence of a psychiatrist Dr Francis Ngui. The application was contested by Pian Meng on the ground that Mdm Pang's mental condition was not such as to justify the making of an order to appoint a Committee. Pian Meng relied on the evidence of another psychiatrist Dr Kong Sim Guan, also known as Dr Douglas Kong. The application was to be heard by me and in view of the contest, I directed that the doctors were to attend and be cross-examined and that Mdm Pang be brought to court.

89. On the day of the hearing i.e 22 January 2001, I interviewed Mdm Pang for about 15 minutes in the presence of the respective doctors and solicitors before any person was to be cross-examined.

90. Thereafter, Pian Meng's Counsel, who was then Mr Koh Hai Keong, informed me that Dr Kong was prepared to take the position that as of the date of the hearing, a Committee should be appointed. As the application was no longer contested, a Committee of Mdm Pang was appointed. As there was no dispute as to who should be the members of the Committee, the Plaintiffs were appointed.

SUMMARY OF RESPECTIVE POSITIONS ON MDM PANG'S CONDITION

91. The Plaintiffs' position was that after the first stroke, Mdm Pang was confused especially in the first few months after the stroke. She was also very forgetful, noisy, stripping herself, seeing things, incontinent, had to be fed, needed assistance walking because she was weak on one side of her body and because of her partial blindness. She was knocking into things. Examples of Mdm Pang's poor memory were that she would forget that she had taken a meal. She would have to be reminded to brush her teeth and take her bath. She could not make much sense, apart from knowing the names of family members.

92. Pian Meng's position was that Mdm Pang's condition was not as severe as the Plaintiffs were making it out to be and that she recovered in October 1997 to a large extent to her original state. She was able to walk on her own and go out to buy her lunch (NE 121, 168, 173 to 175). Even after her second

stroke, she would visit the karaoke pub, sit near the cashier's counter and chat with the regular customers (NE 123). However Teck Hing said she was not doing anything at the cashier's counter and she recognised only some old customers without carrying on conversations (NE 126).

93. Pian Meng's position was that Mdm Pang was lucid at all material times and what he did was on her instructions or with her concurrence. However he also said that after the first stroke, Mdm Pang was more dependent on him (NE 175 to 176).

THE MEDICAL EVIDENCE

94. Evidence was given by three medical practitioners for the trial of the present action:

(a) Dr PN Chong, a neurologist, practising under the name of PN Chong Neurology Clinic. He has also written extensively.

(b) Dr Kong Sim Guan (also known as Dr Douglas Kong), a consultant psychiatrist, practising under the name of Ang & Kong Psychiatric & Behavioural Medicine Clinic. He has also worked in the United Kingdom before. He has conducted numerous lectures and written quite extensively.

(c) Dr Francis Ngui, a consultant psychiatrist at Woodbridge Hospital and then at Changi General Hospital. He also worked in Australia before Singapore and has written some papers.

Dr PN Chong and Dr Kong were witnesses for Pian Meng and Dr Ngui was a witness for the Plaintiffs.

Dr PN Chong and Dr Kong

95. As I have said, it is not disputed that Mdm Pang had had her first stroke on 16 August 1997. This affected her right occipital lobe, which in turn affected her vision. On 19 August 1997, she was brought to see a Dr Gordon Ku for her other ailments. Dr Ku referred her to see Dr PN Chong.

96. Dr PN Chong was informed that on 17 August 1997, Mdm Pang was talking 'wrongly to wrong person'. On 18 August 1997, she was walking in an unsteady manner. Her speech was repetitive. After giving money to a taxi driver, she was telling the taxi driver her age and cried. She was worried that she would not see her grandson walk and was afraid to be alone (see Exhibit D1).

97. However, when Dr PN Chong examined her on 19 August 1997, he found her to 'be rational, conscious, alert, orientated as to time, space and person'. Her memory was okay. There was a bit of impairment of movement of the limbs on the right side. She could not see things on the left side. Her sensory function was okay.

98. He gave instructions for a scan to be done and saw her the next day on 20 August 1997. The scan revealed a lacunar infarct i.e a blood clot.

99. He reviewed her on 15 September 1997. She was okay except that she was occasionally talking a bit of rubbish. In cross-examination, Dr PN Chong said the reason why Mdm Pang talked rubbish occasionally was because she was confused.

100. Dr PN Chong also said that the confusion had a lot to do with the fact that suddenly she could not see so well as a result of the first stroke, which affected her right occipital lobe. Hence, he was not too perturbed (NE 93). However, he also said that if he had seen her on one of those days when she talked

rubbish, he would have concluded that she was confused and that she would not have been able to exercise legal judgment (NE 142).

101. He saw her again on 21 October 1997. He recalled that Pian Meng had accompanied her. This was the visit to him to obtain the certificate for Mdm Pang's execution of her first Will. This was not a scheduled appointment as he was supposed to see Mdm Pang later.

102. In oral examination-in-chief, Dr PN Chong said, at NE 83:

'Q What was your opinion then?

A On 21 October 1997, Defendant brought Mdm Pang to see me as stated in para 6 of AEIC. When I saw her I found her rational, conscious, alert, orientated as to time, space and person. I did not state in my notes whether she wanted to do a will but I recollect that that was indeed what she wanted to do. This was in the context of a busy clinic and the Defendant asked if I could write a letter immediately. So I wrote a summary in p.20, of my AEIC, of what I thought about her mental capacity at the time.'

[Emphasis added.]

103. In cross-examination, Dr PN Chong said he did carry out some tests on Mdm Pang before he issued the certificate. By that, he meant he measured her blood pressure and examined her visual field (NE 95 and 96). He said he also carried out other tests on her cognitive abilities and this was written in his certificate of 21 October 1997. However his certificate was quite brief. It stated:

'Whom It May Concern

RE: PANG JONG WAN NRIC SD 0854224

This is to certify that Mdm Pang suffered a stroke in August 1997 resulting in a partial visual disturbance. However this did not affect her cognitive abilities at all. She is in full command of her mental faculties and is able to understand and execute matters relating to the will. Please do not hesitate to contact me if you need further information.'

104. Dr PN Chong said that it was the Defendant who told him that Mdm Pang wanted to make a Will. He could not remember whether he had asked Mdm Pang about it but, based on logic, he thought he would have asked her about it (NE 94).

105. The next time Dr PN Chong saw Mdm Pang was 8 December 1997. It was Pian Meng, and not Mdm Pang, who informed him that problems with the Will had been sorted out (NE 131). Dr PN Chong's case notes stated Mdm Pang was well, no complaints. She was smiling.

106. He saw her again on 6 March 1998 and 4 June 1998. Thereafter, the next appointment was in three months' time i.e in early September 1998.

107. However, Mdm Pang was brought to see Dr PN Chong earlier i.e on 21 August 1998. This was because she had had a fall which caused a swelling on the right side of her head. His later case notes

described it as a 'Ba-Lu-Ku'.

108. According to Dr PN Chong, ten days later, on 31 August 1998, Mdm Pang's condition had deteriorated (NE 134). However according to his case notes (Exhibit D1), the information on her deterioration like: loss of urine control, walking poor, left leg weak, pertained to 28 and 29 August 1998 because on the day before 31 August and on 31 August 1998 itself, she was okay. In any event, because she had deteriorated in late August 1998, he did a scan on 31 August 1998. The scan showed that she had bled from the brain because of the fall. She had a subdural haematoma.

109. Dr PN Chong saw Mdm Pang again on 5 October 1998. He noted there was no more 'Ba-Lu-Ku'. He repeated the scan. The subdural haematoma had been resolved.

110. On 16 October 1998, Pian Meng brought Mdm Pang to see Dr Kong because Mdm Pang frequently awoke and her memory had deteriorated (NE 85 and 217). This was her first visit to see Dr Kong. Dr Kong had been treating Pian Meng's wife for post-natal problems. Although the haematoma caused by the August 1998 fall had been absorbed, Dr Kong's observation of Mdm Pang on 16 October 1998 was that she was mildly confused. He also said she was not able to carry on a meaningful conversation. She was disoriented as to time and place. She was restless (NE 249). There was right hemiplegia meaning she was half paralysed (NE 248). His case notes stated that cognitive tests were impaired. This meant that Mdm Pang could not complete the tests (NE 250). He gave her Melleril and Fluanxol to clear her confused state of mind (NE 251).

111. The information given by Pian Meng to Dr Kong about Mdm Pang was:

'... can't sleep, wake up in night, goes to toilet, went to living room, talk nonsense, dreams. Dreamed about late husband, daytime excited.'

[Exhibit D8]

112. On 6 November 1998, Dr Kong saw Mdm Pang a second time. Her confusion had cleared. She had improved but not totally (NE 251). Dr Kong encouraged Pian Meng to ensure that Mdm Pang was on regular medication. On 25 November 1998, Dr Kong saw Mdm Pang again. She was stable. On 3 February 1999, he was told that she was confused because her medication had been stopped as Pian Meng was afraid that she would be weakened by it. On 10 March 1999, she appeared okay (Exhibit D8).

113. In the meantime, on 4 January 1999, Mdm Pang was seen by Dr PN Chong. He was told by Pian Meng that she awoke frequently. Her memory had deteriorated. I note that these were the same reasons for bringing Mdm Pang to see Dr Kong in October 1998 (see para 110 above). Mdm Pang's body on 4 January 1999 was rigid, meaning, the muscle tone was stiff but her movement was not bad (NE 85). Dr PN Chong advised that the dosage of Melleril be reduced as Mdm Pang was too tired.

114. Dr PN Chong summarised the next three visits of Mdm Pang on 22 February, 5 May and 25 June 1999 as follows: 'Patient was still physically frail and mentally poor. Poor memory. Incontinent during this period. This was a bad patch' (NE 85 line 13 to 15).

115. On 30 August 1999, he saw her again. He wrote 'deteriorate' with an exclamation mark. She looked very frail and he was told that she had to be fed (NE 85 line 16 and 17). He repeated a scan and saw her again on 31 August 1999. He found that she had suffered a second stroke (NE 85 line 18).

116. When he saw Mdm Pang again on 3 November 1999, her condition had improved. His case notes

read, 'Mentally Ok'. However he said, 'I must emphasize that I am looking at the patient as a neurologist and not as a psychiatrist' (NE 85). When he was asked what the difference was, he said, at NE 89:

'My priority is to diagnose the patient's neurological problem, try to prevent deterioration and try to prevent outcome. Sometimes there can be very subtle psychiatric damage effect. I am not qualified to give an opinion on that. If brought to my attention, I will refer to a psychiatrist. If there were obvious deficits, I would have observed them.'

[Emphasis added.]

117. There was a time stamp for this visit and handwritten notes by Dr PN Chong's staff as to when Mdm Pang went in and out of his room. She was there for about half an hour.

118. As I have mentioned, 3 November 1999 was the date when Pian Meng had asked for a second certificate from Dr PN Chong. His second certificate was in similar, but not identical, terms to his first. I underscore the main differences below:

'3 November 1999

Whom it may concern

RE: PANG JONG WAN NRIC SD 0854224

This is to certify that Mdm Pang suffered a stroke in August 1997 and again in August 1999. This had resulted in a partial visual loss. however this did not cause a problem in her cognitive abilities. She is in full command of her mental faculties and is mentally capable of executing judgment in legal matters. Please call me if there are any further queries.'

119. Although Dr PN Chong said that Pian Meng had only mentioned a Will for the second certificate (NE 138 line 4), I am of the view that Pian Meng must have mentioned the mortgage or legal documents generally. That is why the second certificate is couched in different terms.

120. On this occasion, Dr PN Chong did not check with Mdm Pang as to whether she needed such a certificate (NE 139 line 17/18). His tests on that day were routine and took about five to ten minutes (NE 139 line 20 to NE 140 line 2).

121. In Dr PN Chong's opinion, Mdm Pang had started to improve again from 3 November 1999 (NE 136 line 5).

122. He saw her on another three occasions between 20 November 1999 to 15 May 2000 and also prescribed medication on three other occasions within that period, without having to examine her. There was no marked change in Mdm Pang's mental condition from that on 3 November 1999. In February 2000, Mdm Pang had another serious fall and had to be warded. Thereafter she stayed with Teck Hing and his family.

123. On the other hand, according to Dr Kong's evidence, Mdm Pang had maintained well until towards the end of 1999 when she was reportedly more severe than usual (AEIC para 7). In cross-examination, Dr Kong elaborated, at NE 254:

'Q AEIC para 7, "reportedly more severe than usual". Do you mean her

condition had deteriorated?

A That was in December 1999. She was more confused after 16 December 1999. For 16 December 1999, she was reported as OK and the prescription was continued. There was a phone conversation followed by a visit to my clinic because she was quite confused. That was then I advised the Defendant that Mdm Pang may well need the maximum dosage of Melleril i.e 150mg for each dose.'

124. Dr Kong also clarified that it was Pian Meng who called him (NE 254 line 11) and Mdm Pang probably did not turn up on 16 December 1999 (NE 253 line 7 and 8). It was Pian Meng who turned up to collect the medicine.

125. From Dr Kong's elaboration and clarification, I am of the view that Mdm Pang's condition had deteriorated from, and not after, 16 December 1999.

126. I would add that I have learned that Mdm Pang was seen by Dr Kong's colleague Dr Peh Lai Huat on 9 December 1999 i.e seven days earlier but as no evidence was given by Dr Peh, I will disregard that visit.

127. Mdm Pang was given some more medication on 7 January 2000. Dr Kong's evidence was that this was because she was confused (NE 255).

128. Therefore, although Mdm Pang appeared to have improved and remained stable between 3 November 1999 to 15 May 2000, according to Dr PN Chong's evidence, she deteriorated between 16 December 1999 to 7 January 2000, according to Dr Kong's evidence.

129. After 15 May 2000, Dr PN Chong examined Mdm Pang on 4 September 2000. He observed her to be looking very good and she was smiling (Exhibit D1, p 8). By then, the Plaintiffs had already applied to have a committee appointed for Mdm Pang under the Act and Dr PN Chong was aware that there was litigation (NE 256 line 2).

130. However, Dr PN Chong must have been told that there was a dispute over Mdm Pang's Will as he said that he referred Mdm Pang to Dr Kong for a full psychiatric assessment because of such a dispute (NE 86 line 1 to 3). As I have mentioned, Mdm Pang was already being treated by Dr Kong by then (see para 110).

131. Dr Kong examined Mdm Pang on 5 September 2000. From his case notes, he was also apparently told that there was a dispute about Mdm Pang's testamentary capacity.

132. Dr Kong's recollection was that Mdm Pang was fairly lucid on 5 September 2000 although she may have been somewhat tense (NE 256 line 17/18). His case notes indicated that she was able to provide him with some information. However he did not examine her in detail as he wanted a Hainanese interpreter to be present. In the meantime, he also sought an assessment of Mdm Pang by a clinical psychologist.

133. On 6 September 2000, Dr PN Chong examined Mdm Pang. There was no dramatic change.

134. On 26 September 2000, she was examined again by Dr PN Chong. He observed her to be smiling and this time he made a note with asterisks that she was looking excellent. Mdm Pang also informed him that she wanted to stay with Pian Meng.

135. On 14 October 2000, the other children and Anna (instead of Pian Meng) brought Mdm Pang to see Dr PN Chong. She had bruises on her forearm. On the same day, they also brought Mdm Pang to see Dr Kong. Dr Kong noted that although she appeared to recognise him from her wink and smile, she denied knowing him when Anna asked her whether she recognised Dr Kong (NE 264 and Dr Kong's AEIC p 18).

136. On 21 October 2000, Mdm Pang saw Dr PN Chong again because she had fallen. She had a bump on her head.

137. The assessment of Mdm Pang by a clinical psychologist Mr Yam was done on 13 November 2000.

138. After that, the examination of Mdm Pang by Dr Kong, with the aid of a Hainanese interpreter, was on 26 December 2000. Pian Meng and his wife were interviewed separately on 29 December 2000.

139. Both the assessment of Mdm Pang by Mr Yam (on 13 November 2000) and the examination by Dr Kong (on 26 December 2000) are summarised in Dr Kong's report dated 8 January 2001, which also contained Dr Kong's opinion. I cite from his report:

'Examination of the patient

Mdm Pang was examined with the assistance of a Hainanese interpreter. She was unsteady with her gait and her attention was variable at times and she appeared tired and tense somewhat. She entered my consulting room as she used to coming straight towards me with support and aid from her youngest son. She was able to give a simple account of herself, her two brothers, one of whom had died, and gave the date of her Chinese birthday. She could recall that her husband died when he was 61 years of age and she was 57 years. She was disorientated to time but remember coming to my clinic to see me for treatment. She was able to state that she had a shophouse in her name in Serangoon Gardens called Canberra and that she wanted the shophouse to be taken over by her youngest son, Pian Meng.

She now wanted to stay with her youngest son and she indicated that she was close to her youngest son emotionally. When tested cognitively, she failed all but the simplest of tests. She was given a hypothetical question of having 3 properties and what she would do with it and without hesitation, she said she would give it all to her youngest son. When asked why she would not give to her two other sons, she replied that she had no property so she could not give it to them. When asked why she would give to her youngest son, she replied that her youngest son treated her better and had been taking care of her, while her other two son would only see and visit her.

Asked about her stay with her second son, she said that her two other sons kept telling her that she is mad. She could not understand why. She denied that she was mad in any way. She said that she would want to give the business to her youngest son and in fact he was already running it after she had run the business for more than 10 years prior to him taking over. She could not remember making a will, but if she did she will give it to her third son. She openly acknowledge that her favourite son was the youngest. She could still (*sic*) recognized relatives and friends at family gathering and functions.

Psychometric assessment

[This is the assessment by Mr Yam]

The psychometric assessment was carried out with the Weschler Adult Intelligence Scale-III (WAIS).

Results indicated that her scores on all subtests were markedly impaired. She had difficulty maintaining attention and concentration. There were indications of recent and remote memory impairment, difficulties in verbal comprehension and reasoning. Her intellectual functioning is likely to be in the intellectually deficient range ie below 69.

Opinion

In my opinion, Mdm Pang did indeed suffer from a Dementia with deficits in her cognitive, memory and executive functioning. However, she remained alert and was able to maintain a simple but coherent and meaningful conversation. In the assessment of testamentary capacity, a person has to know the extent of their property, the claimants to her property and her decisions as to the claimants' share and the reasons for it. When these are simple, a person who is alert and coherent is able to make simple decisions on them and such decisions are valid so long as the person concerned is able to give a logical reason to it. It would appear to me that Mdm Pang passed the test of Testamentary Capacity on this count. To her, what she had was the family business at Canberra. She consistently had made it clear that she wanted her youngest son to take it over completely and she was able to state the reason why. The simplicity of her reasoning was clear and logical and therefore inspite of her Dementia, her ability to decide on this matter is valid. That is to say, her decision to gift the shophouse and its business to her youngest and favourite son as expressed in her actions prior to her stroke and in her will as well as in her various interviews with me is unambiguous and clear. She also indicated her desire to stay with her youngest son and expressed fondness for them and missing his family. It is clearly a reflection of her desire and intention.'

Of course, Dr Kong had no personal knowledge as to what Mdm Pang's actions prior to the first stroke were.

Dr Francis Ngui

140. Dr Francis Ngui examined Mdm Pang on 22 March 2000 i.e about 4 months after she executed the mortgage on 64/64A SGW and her second Will. He was given adverse information about Mdm Pang's condition by Teck Hing and Anna who brought Mdm Pang's brain scan reports and previous medication for his consideration. Dr Ngui carried out a detailed examination of Mdm Pang. His case notes show that Mdm Pang could not even do simple arithmetic:

| | | |
|--------------|---|---------------------|
| '\$100 - \$7 | = | \$70 |
| 90 - 7 | = | gave up |
| \$20 - \$3 | = | \$70 |
| 20 - 3 | = | 20 (second attempt) |
| \$1 - \$2.50 | = | \$2.50 |
| 7 + 5 | = | ?' |

141. I state below other extracts from his case notes for the examination of Mdm Pang on 22 March

2000:

**'A VERBATIM RECORD OF CONVERSATION WITH PATIENT
AND DOCTOR'S COMMENTS**

....

Says she used to own a home which she rented to a Japanese Co.

Doesn't know what happened to it.

Thinks maybe she still owns.

Can't remember selling it.

Doesn't want to sell her current property.

Doesn't recall signing any document to mortgage her current property.

MENTAL STATE EXAMINATION

....

Thought Processes

Relevant,
doesn't want
to sell her
'Canberra'
Shop. Wants
to keep it for
herself.
Doesn't want
to sell. Will
give it to 3
children and
grandchildren
equally.'

SUMMARY AND FORMULATION

....

In Nov 99, had allowed her property to be mortgaged for a loan to 3rd son worth \$1.5m.

MSE

[meaning, mental state examination] -
Shows memory & cognitive deficits,
acalculia [meaning, inability to calculate] -

however knows the extent of her estate
& her potential benefactors.

PROVISIONAL DIAGNOSIS:

Currently, fit to sign legal documents pertaining to testamentary capacity.
However, may have difficulty managing affairs in view of acalculia.

MANAGEMENT (*sic*) PLAIN:

Refer psychologist for neuropsych testing.

Open date

To write MR [meaning, medical report] when neuropsych testing completed.'

142. I note that while Mdm Pang was being examined by Dr Kong, she said she would give the Business and 64/64A SGW to Pian Meng. While she was being examined by Dr Ngui, she said she would give it to her three children equally.

143. The assessment by a clinical psychologist was done by Mr Christopher Choo on 29 March 2000. On the same day, Anna spoke again to Dr Ngui. Dr Ngui's case note on that day (P6) shows:

(at page 10)

'29th March 2000 - c/w [meaning, conversation with] 2nd DIL [meaning, daughter-in-law]

showed a
copy of the
mortgage
documents
which pt
[meaning,
patient]
thumbprinted
on
22nd November
1999. DIL
says that at
that time, pt
was even
more
confused than
currently.'

(at page 11)

'DIL says she went to see Dr P.N. Chong in February 2000 and says that Dr P.N. Chong told them he made a mistake when he certified that pt was fit to sign legal documents.'

Dr Ngui then noted down further information from the daughter-in-law and noted six lines from the bottom (of p 11):

'P: Probably not fit to sign legal documents.'

144. Dr Ngui said he changed his provisional diagnosis after the results of Mr Choo's assessment was known. Hence, his report dated 13 April 2000 stated:

'9. On mental state examination, Mdm Pang spoke in the Hainanese dialect. She remained calm and was relevant to questions. However, she displayed evidence of cognitive problems affecting her memory, orientation, arithmetic skills and general knowledge and was unable to describe the extent of her personal estate. She also lacked insight into her memory difficulties. There were no features of depression or psychosis.

10. Our clinical psychologist Mr Christopher Choo performed a formal neuropsychological assessment on 29 Mar 2000. The following results were found: In the *Clifton Assessment Procedures for the Elderly*, she scored 3 out of 12; Using *Wechsler Adult Intelligence Scale (Revised)*, she obtained a verbal IQ of 61, placing her within the mildly mentally retarded range, strongly suggesting a significant lowering of her intelligence from her premorbid level. The *Kendrick Object Learning Test* showed severe impairment in her memory function with her raw score of 8 falling within the range of patients suffering from dementia. Using the *CAPE Behaviour Rating Scale*, her functioning was assessed to be severely impaired.

11. In summary, the findings of her mental state and the neuropsychological assessment indicate that she suffers from dementia. It is highly likely that she was in a more confused state during the periods following her strokes in August 1997 and August 1999.

12. Based on the information available, she is currently mentally unfit to sign legal documents pertaining to her estate and is unfit to manage her affairs. In my opinion, it is likely that she was mentally unfit to manage her personal affairs from the time of her second stroke in August 1999.'

145. Dr Ngui examined Mdm Pang on a few more occasions which are not material for the present litigation. I now come to the examination on 10 January 2001. His case notes for that day were as follows:

'Pt [meaning, Patient]

- Cheerful
- misidentified Dr as lawyer
- feels nothing wrong with herself
- Don't need to see Dr

Says no problem with memory

bp 160/80 Denies seeing lawyer recently

Thinks she has 2 properties but can't give details

(actually pt has only 1 shophouse in her name in Serangoon Garden)

Denies giving any of her properties to son to sell off

Has 3 sons & 2 grandsons no Granddaughter

(actually has 2 G'son & 4 G'daughters)

Says she will divide her property equally among her sons if she has to will it away.

Day? Date? Month? Yr?'

146. Dr Ngui then provided a report dated 15 January 2001. The material part of this report stated:

'2. Mdm Pang continues to be on regular outpatient follow-up here. She was last reviewed on 10 Jan 2001. Her cognitive functions remain impaired without further improvement. She was disoriented to time and had significant memory deficits. She was unable to determine how large her family was. In my opinion, Mdm Pang is a mentally disordered person, and is of unsound mind in accordance to the Mental Disorders and Treatment Act (Chapter 178), and is incapable of managing her affairs.'

147. On 21 February 2001, Dr Ngui examined Mdm Pang again. She could carry on a social conversation, was cheerful and smiled easily. However she confabulated, meaning she provided information which was untrue but which she believed to be true. She said she slept well contrary to the information provided by Anna (Exhibit P6, p 15).

148. On 23 March 2001, she still appeared cheerful and could carry on a simple social conversation. She said she slept well and, according to Anna, she could sleep with medicine/treatment (Exhibit P6, p16).

149. During cross-examination, Dr Ngui's opinion was that at the time when Mdm Pang signed her second Will (and the mortgage) on 3 November 1999, she was of unsound mind. He was of the same view in respect of her mental capacity when she signed her first Will on 22 October 1997 but was less confident about that view because of the lapse of time between 22 October 1997 and the time he first examined her on 22 March 2000.

150. He testified that when Mdm Pang suffered her first stroke, her right occipital lobe was affected. The right occipital lobe affects her vision whereas the frontal lobes affect her executive functions like planning, decision making and organisation. He was of the view that the right occipital lobe may involve cognitive functions although he accepted that this was debatable (NE 65). He said it depended on the extent of the damage and he noted that the size of the infarct in Mdm Pang's case i.e the blood clot, was large.

151. He also noted that there was evidence of ischaemia in the peri-ventricular matter. He elaborated on this at NE 54 to 55 as follows:

'Q Your reference to the past medical history refers to 2 areas i.e recent large infarct in brain involving the right occipital lobe and secondly evidence of ischaemia in the peri-ventricular white matter. Please elaborate on the second.

A The peri-ventricular white matter is the deep white matter with nerve fibres extending to the frontal lobes. It is above the brain stem and is like in the centre of the brain. Ischaemia signifies a reduction in the blood supply to that area. When there is reduction in blood supply, there is damage to nerve pathways leading to the frontal lobe. Result would be impairment of the executive functions I have mentioned i.e decision making, organisation, judgment.'

152. He was of the opinion that Mdm Pang had periods of confusion interspersed with periods of lucidity (NE 64). He accepted Dr PN Chong's observation of Mdm Pang on 21 October 1997 but was of the view that this may have been during one of Mdm Pang's lucid intervals. He was of the view that Mdm Pang's disorientation immediately after the first stroke would not have cleared up in the two to three months thereafter.

153. He stressed that after Mdm Pang's second stroke in August 1999, there was cumulative damage (NE 59 line 9 and NE 66 line 20/21). He was of the view that she was consistently disorganised from then to the time he saw her on 22 March 2000 (NE 66 line 6). He said it was unlikely that there was a sudden improvement, in between, on 3 November 1999, when Dr PN Chong examined her and issued his second certificate (NE 66 line 7 to 9).

154. He expressed concern a few times that Mdm Pang would be vulnerable to being unduly influenced (see NE 58 line 6 and NE 64 line 17/18).

Dr PN Chong's and Dr Kong's responses to Dr Ngui's opinion

155. Dr PN Chong disagreed with much of Dr Ngui's opinion. He was of the view that the damage to Mdm Pang's right occipital lobe did not affect her cognitive ability. He was also of the view that the ischaemia in the peri-ventricular white matter was commonly seen in the elderly (NE 90 line 21). He said this 'may have no effect whatsoever' (NE 90 line 24) and then went on to say that in the case of Mdm Pang, her problem then was the occipital lobe and not the peri-ventricular matter which was an existing situation (NE 91 line 1 to 8). He noted that prior to the first stroke, there was no complaint about Mdm Pang's mental capacity (NE 91 line 7 to 12). He was of the view that Mdm Pang's confusion related to her loss of vision but did not affect her cognitive ability (NE 93 line 10 to 19).

156. Dr PN Chong's evidence was that her mental condition was unlikely to have changed between 21 October 1997, when he issued the first certificate, and 22 October 1997, when Mdm Pang executed her first Will. However, he accepted that after the first stroke, Mdm Pang had lucid moments and disorientated moments (NE 97).

157. As for the second stroke, Dr PN Chong was of the view that while it increased Mdm Pang's visual disturbance, it again did not affect her cognitive functions (Dr PN Chong's AEIC para 8).

158. As for her condition on 3 November 1999, Dr PN Chong maintained his observation of her that day.

159. He stressed that Dr Ngui had based his opinion very much on second-hand information (NE 142 line 1), meaning the information from members of the family since Dr Ngui had not seen Mdm Pang at the crucial times. He said that Dr Ngui was not a neurologist and did not manage stroke patients (NE 141), but this was not correct because Dr Ngui had considerable experience in dealing with stroke patients (NE 59). Dr PN Chong even went so far as to point out that as regards the assessment by Mr Choo, the psychologist reporting to Dr Ngui, Mdm Pang's score on the Cape Behaviour Rating Scale, 'was really bad but this was information given by the Plaintiffs' (NE 145 line 23). However, I note that the overall assessment of Mdm Pang by Mr Yam, the psychologist reporting to Dr Kong, was equally poor.

160. As for Dr Kong, he sought to disagree with Dr Ngui's conclusion in a more limited manner. He was prepared to accept that Mdm Pang was not fit to sign legal documents if they were complex but he was of the view that she was fit to sign a simple Will (NE 247). He thought that the latter was a specific assessment which Dr Ngui did not carry out (NE 247 line 10/11). However, he also accepted that Mdm Pang had periods of confusion and periods of lucidity (NE 267 line 7). Both he and Dr PN Chong pointed out that Dr Ngui's own provisional diagnosis was that Mdm Pang was fit to sign documents pertaining to testamentary capacity (NE 248 line 8 and NE 145 line 16 to 18).

161. As for undue influence, Dr PN Chong declined to venture an opinion thereon because he said he did not know the family and the dynamics (NE 145 line 12 to 15). On the other hand, Dr Kong accepted that Mdm Pang was vulnerable to being unduly influenced by whichever of her sons she happened to be with. Indeed, that was the very reason why, when he examined her on 26 December 2000 for the purpose of the application under the Act, he saw her alone with the interpreter (NE 265 line 14 to 22). He drew support for this conclusion from a visit on 14 October 2000 by Mdm Pang when she was accompanied by the Plaintiffs and Teck Hing's wife, Anna. He said that from Mdm Pang's facial expression, her smile and her wink, he concluded that Mdm Pang had recognised him. Yet when Anna asked Mdm Pang whether she recognised Dr Kong, there was a slight pause before she answered 'No'. However, Dr Kong also went on to say that Mdm Pang had a tendency of saying 'No' in other interviews when she wanted to evade or avoid something (NE 264).

THE LAW

162. In *R Mahendran & Anor v R Arumuganathan* [1999] 2 SLR 579, Karthigesu JA said:

'15. It is a well settled principle of law stated as far back as 1838 by Baron Parke in *Barry v Butlin* [1838] 2 Moo 480 at 482 and 484; 12 ER 1089 that the legal burden of propounding a will, the onus probandi lies in every case upon the party propounding the will, and he must satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable Testator. ... it is in general discharged by proof of capacity, and the fact of execution, from which the knowledge of and assent to the contents of the instrument are assumed. The proposition is framed by Theobald on Wills (15th Ed) at pp 35 to 38 in these terms:

Burden of proof.

The legal (or persuasive) burden of

proof always lies upon the person propounding a will to prove that the testator knew and approved of its contents at the relevant time. He must 'satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator'.

(a) *Presumption in ordinary circumstances. On proof that the testator was of testamentary capacity and that he duly executed the will, in ordinary circumstances, a rebuttable presumption arises that he knew and approved of its contents at the time of execution. The evidential burden of proof then shifts to the person opposing the will to rebut this presumption. If he does so, or if due to the particular circumstances the presumption is not applicable, the person propounding the will must produce affirmative proof of the testator's knowledge and approval so as to satisfy the legal burden of proof.*

(b) ...

(c) *Suspicious circumstances. If a will was prepared and executed under circumstances which raise a well-grounded suspicion that the will (or some provision in it, such as the residuary gift) did not express the mind of the testator, the will (or that provision) is not admissible to probate unless that suspicion is removed by affirmative proof of the testator's knowledge and approval. A classic instance of suspicious circumstances is where the will was prepared by a person who takes a substantial benefit under it. Another instance is where a person was active in procuring the execution of a will under which he takes a substantial benefit, for instance, suggesting the terms of the will to the testator and instructing a solicitor chosen by that person.*

However circumstances can only raise a suspicion of want of knowledge and approval if they are 'circumstances attending, or at least relevant to, the preparation and execution of the will itself'.

Affirmative proof of knowledge and approval.

Affirmative proof of the testator's knowledge and approval must be strong enough to satisfy the court in the particular circumstances. The greater the degree of suspicion, the stronger must be the affirmative proof to remove it. The suspicion 'may be slight and

easily dispelled. It may ... be so grave that it can hardly be removed'

One form of affirmative proof is to establish that the will was read over by, or to, the testator when he executed it. ... Another form of affirmative proof is to establish that the testator gave instructions for his will and that the will was drafted in accordance with those instructions.'

163. As for undue influence, I refer to the judgment of Justice Goh Joon Seng in *Pelican Engineering Pte Ltd v Lim Wee Chuan* [2001] 1 SLR 105 where he said:

'My decision

32 On what is 'undue influence', LP Thean JA in *Lim Geok Hian v Lim Guan Chin* [1994] 1 SLR 203 at 216 stated:

Undue influence is the unconscientious use of one's power or authority over another to acquire a benefit or to achieve a purpose. *Allcard v Skinner* (1887) 36 Ch D 145 established that cases of undue influence fall into two categories: first, cases where actual influence has been proved to have been exercised, and second, cases where, by virtue of a particular relationship between the parties, the court presumes that undue influence has been exercised unless the contrary is proved.

33 Judith Prakash J in *Rajabali Jumabhoy v Ameerli R Jumabhoy* [1997] 3 SLR 802 at 855 stated:

It is not enough to set aside a contract that one party tried to influence the other to enter it. There must be something wrong in the way that the influence was exercised, ie some unfair or improper conduct, some coercion or some form of misleading.

34 On actual undue influence, Judith Prakash J in the *Jumabhoy* case at p 855 stated:

In order to establish a plea of actual undue influence, a plaintiff must show that:

- (a) the other party to the transaction (or someone who induced the transaction for his own benefit) had the capacity to influence the complainant;
- (b) that the influence is exercised;
- (c) that its exercise was undue; and
- (d) that its exercise brought about the transaction.'

164. Justice Goh also said:

'53 On the plaintiffs' case based on presumed undue influence, the dicta of Judith Prakash J in the *Jumabhoy* case at p 854 is instructive:

To succeed under the 'presumed undue influence' category, the following elements need to be proved:

(a) the existence of a particular relationship which enabled one party to it to influence the decisions of the other;

(b) that the resulting transaction was manifestly disadvantageous to the person subject to the influence.

Upon proof of the above elements, the burden shifts to the defendant to prove that no undue influence had been exercised. The presumption can only be rebutted by showing that the ascendant party did not abuse his position and that the subservient party understood what he was doing and was in a position to exercise a free judgment based on full information.'

165. The Law of Wills by Hardingham Neave Ford states at p 51:

'[311 Undue influence: what is it?' The essential element of undue influence is, in this context, coercion. Persuasion or influence or importunity is not sufficient

It is worth citing two passages by way of judicial explanation of the meaning of the concept of undue influence, the first from Sir J.P. Wilde's direction to the jury in *Hall v. Hall*, the second from Sir J. Hannen's charge to the jury in *Wingrove v. Wingrove*:

To make a good will a man must be a free agent. But all influences are not unlawful. Persuasion, appeals to the affections or ties of kindred, to a sentiment of gratitude for past services, or pity for future destitution, or the like, - these are all legitimate, and may be fairly pressed on a testator. On the other hand, pressure of whatever character, whether acting on the fears or hopes, if so exerted as to overpower the volition without convincing the judgment, is a species of restraint under which no valid will can be made. Importunity or threats, such as the testator has not the courage to resist, moral command asserted and yielded to for the sake of peace and

quiet, or of escaping from distress of mind or social discomfort, these, if carried to a degree in which the free play of the testator's judgment, discretion or wishes, is overborne, will constitute undue influence, though no force is either used or threatened. In a word, a testator may be led but not driven; and his will must be the offspring of his own volition, and not the record of someone else's.

[I]t is not because one person has unbounded influence over another that therefore when exercised, even though it may be very bad indeed, it is undue influence in the legal sense of the word.
...'

166. For undue influence, Mr John relied in particular on the case of *Hooi Cheng Kwang & Anor v Hooi Paul* [1981] 2 MLJ 306 which Mr John submitted was a case with similar facts to the present case. There, Choor Singh J held that the mere relationship of mother and son and the fact that the two were living together was in itself not enough to raise the presumption of undue influence. Choor Singh J also held that independent legal advice is not essential to rebut the presumption of undue influence. What was necessary was to establish affirmatively that the gift was the 'free and intelligent' act of the donor. In that case, the claim based on undue influence failed.

167. Mr Prabhakaran Nair, Counsel for the Plaintiffs, did not dispute the legal principles enunciated by Choor Singh J. However, he pointed out that the facts in that case were different from those before me. For example, the donor herself gave evidence and her own solicitor had discussed the gifts in question with her. In my view, certain features of that case should be borne in mind.

168. There, the donor was one Mdm Ng Swee Kee. She had four sons:

- a) Hooi Cheng Loon
- b) Michael Hooi Cheng Kwang
- c) Paul Hooi Cheng Cheong
- d) Philip Hui Cheng Keong

169. She had on two occasions made gifts of shares in Yip Beng (Pte) Ltd and in Yip Beng (HK) Ltd to Paul and Philip in equal parts. Subsequently, she sought to set aside the gift of the shares to Paul, but not to Philip, on the ground of undue influence.

170. She herself gave evidence at trial although she passed away before the hearing was concluded. The trial judge described her as follows:

'Although the deceased was 82 years old and not educated, she did not betray any sign of mental weakness. She

impressed me as an intelligent, astute and strong-willed woman.' (see p 314 at B).

171. Mdm Ng had been asked to undergo an examination by a psychiatrist, not a neurologist, before the gifts were effected. The psychiatrist was Dr Paul Ngui. He had examined her and certified that she was of sound mind.

172. Apparently, her own physician, one Mr Wong, who had treated her for some six years described her as '... a very independent and determined woman' (see p 314 at C).

173. Her own solicitor Mr C S Wu pointed out that 'the deceased was despite her age a strong-willed person' (see p 314 at D).

174. I am of the view that even though these descriptions may apply to Mdm Pang before her first stroke, they did not apply thereafter.

175. Furthermore, in the case of *Hooi Cheng Kwang*, the evidence of Mr C S Wu demonstrated, and the trial judge so found, that he had discussed the gifts directly with the deceased and was careful in his explanations to her even though Mr Wu was also acting for Paul and Philip. Indeed, Mr Wu was not only careful but alert to the fact that the gifts might be challenged. His evidence on one of the occasions when he met up with Mdm Ng was:

'Plaintiff did not appear to be frightened. There was no reason for her to be afraid. She did not show any reluctance. If she showed the slightest hint of reluctant I certainly would have wanted to clear up the reason for her reluctance before obtaining her signature on the documents. In each of these instances when I witnessed her signing of these gift documents, I made a special effort to ensure that each transaction was properly executed in every respect and that every gift reflected the plaintiff's personal intention, as I fully expected that Michael and Cheng Loon might after her death decide to challenge these gifts bearing in mind the strains that existed amongst the brothers. What I never expected was that the plaintiff herself would repudiate these gifts. That I never expected ...' (see p 309 at H)

176. Also, in that case, the gifts were to two of the four children in equal parts. In the case before me, the two Wills and other transactions were in favour of Pian Meng only (except for two nominal gifts of \$10 to each of the other two sons).

177. In addition, the relationship between Mdm Pang and Pian Meng was not just one of mother and son. Mdm Pang relied quite heavily on Pian Meng as regards affairs of the Business.

MY CONCLUSION

The first Will

178. I accept Dr PN Chong's evidence that the ischaemia in the peri-ventricular matter was not the main problem in Mdm Pang's case. As regards the question whether her cognitive ability was affected or not by the first stroke, one aspect was clear to me. She was confused from time to time.

179. It is common ground between all the three doctors that Mdm Pang had episodes of confusion and of lucidity. For example, on 17 and 18 August 1997, her condition was poor (see para 96 above). Yet on 19 August 1997, when she first saw Dr PN Chong, her condition had improved (see para 97 above).

180. I accept Dr PN Chong's evidence, which was also accepted by Dr Ngui, that on 21 October 1997 when he examined her, he found Mdm Pang to 'be rational, conscious, alert, orientated as to time, space and person'.

181. I also accept his evidence that it was unlikely that her condition had changed dramatically on 22 October 1997. If it had, this would have been reflected in her conduct which would then have been noticed by Mr Caines or the interpreter. Neither of them noticed anything unusual.

182. However, while the mental condition of a testator on the day of execution of the Will is important, the determination of that mental condition on that day should not be confined to what was perceived on that day only.

183. It was possible that Mdm Pang did not have her full mental faculties on 21 and 22 October 1997 but that this was not obvious even to Dr PN Chong. As I have mentioned in para 116 above, he accepted that he would not have noticed subtle damage.

184. Secondly, Dr PN Chong himself had emphasized that he was looking at Mdm Pang as a neurologist and not as a psychiatrist. He accepted that an assessment by a psychologist was necessary (NE 141). He also said that his examination was 'elementary' and he accepted that, for the purpose of litigation, the opinion of a psychiatrist, was preferable. At NE 144 and 145 he said:

'Ct to DW 1 Earlier you had said that you referred her to Douglas Kong for a full psychiatric assessment because of dispute about a Will among family members. Since you had already issued 2 certificates, why was there a need to refer her to Dr Kong?

DW 1 Because I knew that today would come.

Ct to DW 1 Please elaborate.

DW 1 It would be good to get another assessment besides mine. I am willing to be shown to be wrong. I am not afraid of that.

Ct to DW 1 Why did you refer her to a psychiatrist, instead of another neurologist?

D W 1 If I need another neuro-psychologist's assessment, I would have to go through a psychiatrist. Another neurologist's assessment would not help because I know someone like the Plaintiffs would come up with someone like Dr Ngui who would do a detailed assessment. Therefore to be balanced I would want another neuro-psychiatrist's assessment. The first would be Dr Ngui's and his team. Mine is an elementary one.'

185. I also take into account the circumstances leading to the execution of the Will.

186. First, even though Pian Meng was the most capable of the three sons and Teck Khong had a violent temper, the Business had been used to pay the three sons their salaries and bonuses and various

expenses and debts of theirs before the first stroke. The benefits were not restricted to Pian Meng.

187. Secondly, there was no suggestion, before the first stroke, that Mdm Pang wanted to hand over the business to Pian Meng, save for one qualification i.e that according to Pian Meng, Mdm Pang had decided in mid-1997, before the first stroke, to transfer the Business and her properties to him and it was Mr Caines' secretary, Ms Tan, who advised against the transfer to save on stamp duty.

188. I find it questionable that Ms Tan would be prepared to give advice to strangers on their first visit without any prior instruction from Mr Caines. I say that Mdm Pang and Pian Meng were strangers to her during the alleged visit because Pian Meng's own evidence was that on that occasion, they spoke to a lady who introduced herself as Ms Tan (NE 149 line 9/10).

189. Also, I find it questionable that, if she did give the alleged advice, Pian Meng did not check Ms Tan's alleged advice with Mr Caines or even mention it to Mr Caines at all.

190. Furthermore, as I have said, Ms Tan did not give evidence. I do not accept Pian Meng's explanation that she was no longer working for Mr Caines (NE 163) as a sufficient reason to explain her absence. Attempts should have been to contact her but there was no evidence that such attempts had been made.

191. Neither was Mr Caines asked to corroborate that Ms Tan had the competence to give the alleged advice about stamp duty.

192. I draw an adverse inference against Pian Meng from the omission to call Ms Tan as a witness and the omission to seek corroboration from Mr Caines about Ms Tan's experience.

193. I am also of the view that Pian Meng's allegation about Ms Tan's advice was contradicted by subsequent events. If the intention in mid-1997 was to avoid stamp duty and hence the first Will was made, why did Mdm Pang purportedly want to transfer 64/64A SGW subsequently in late 1999 to Pian Meng? If Pian Meng wanted to borrow monies from KTL, Mdm Pang could have easily been the guarantor and executed a mortgage of 64/64A SGW, but that was not the initial plan then. The fact that Pian Meng's initial plan in late 1999 was to have 64/64A SGW transferred to him belies his evidence about trying to save stamp duty in mid-1997.

194. Mr John was initially not able to give a reason in response to this point during closing reply submissions. He then ventured to say that at that time, in 1999, the Business was not doing well. The suggestion was that the Business needed to borrow more money. In my view, there was still no reason to transfer 64/64A SGW to Pian Meng even if the Business needed more money. Indeed, it was illogical to incur stamp duty when it could be avoided.

195. After a lunch-break, Mr John said he had been instructed that since, by 3 November 1999, 30 MD had been sold, Mdm Pang was prepared to incur the stamp duty on only one property i.e 64/64A SGW.

196. I do not accept this explanation for various reasons:

(a) it was evidence from the bar, which Mr John acknowledged,

(b) it still did not address the point that the alleged original intention was to avoid paying any stamp duty, whether for one property, or two. In mid 1997, before the first stroke, Mdm Pang could and would have given instructions to transfer 64/64A SGW to Pian Meng, if that was really her intention then.

197. Thirdly, I do not accept Pian Meng's oral evidence as to how Mr Caines came to be instructed to prepare the first Will. I also do not accept that this was a case of minor differences in testimony which are explainable on account of the events occurring some four or five years ago. I have taken into account the fact that the events occurred some time ago and ignored minor contradictions. However, I note that Pian Meng had confirmed that he had read Mr Caines' AEIC before it was filed (NE 162). He could and should have met up with Mr Caines to try and ascertain whose recollection was correct. Even if that was not possible, he could and should have stated in his own AEIC that part of Mr Caines' AEIC was incorrect. He did not. Furthermore, as I have said, Mr John did not even ask Mr Caines whether he had made mistakes in his AEIC or take him through what Pian Meng had said in oral testimony in so far as it was different from what Mr Caines had said.

198. It seems to me that Pian Meng must have taken the view, subsequently, that Mr Caines' evidence would put his case in a bad light and so he belatedly gave a different version. Pian Meng had also chosen to refer more to Ms Tan in his oral testimony because he knew she was not being called as a witness.

199. Fourthly, I reiterate that Mr Caines had said that he was acting on Pian Meng's instructions only.

200. Fifthly, I note that Pian Meng appeared to be in a rush to get the first Will done. If Mdm Pang's intention had been to transfer her properties and the Business to him and if she was as consistently mentally fit as Pian Meng wanted me to believe, then there would have been no need to make a sudden visit on 21 October 1997 to see Dr PN Chong to obtain the certificate. After all, Mdm Pang was seeing Dr PN Chong from time to time and Pian Meng could have obtained the certificate on the earlier visit on 15 September 1997 or later in the next scheduled visit after 21 October 1997.

201. Sixthly, it was Pian Meng who informed Dr PN Chong on 21 October 1997 that Mdm Pang wanted to make a Will. It was also Pian Meng who informed Dr PN Chong on 8 December 1997 that problems with the Will had been sorted out.

202. I am of the view that the idea of Mdm Pang making her Will came to Pian Meng after Mdm Pang's first stroke. As she was enfeebled, he was able to persuade her to act according to his intentions, especially since she was used to relying on his help in running the business. However, he had to wait until her condition improved to an extent which would make her appear normal to an unsuspecting mind. In the period before 22 October 1997, her condition did improve and he then began to contact and later meet up with Mr Caines first. Thereafter, on Mr Caines' advice, he obtained the certificate from Dr PN Chong and presented it to Mr Caines. To Mr Caines and the interpreter Loh Lim, Mdm Pang appeared normal. They had assumed that because she appeared normal, she had her full mental faculties about her.

203. It did not occur to Mr Caines to ascertain for himself Mdm Pang's wishes, even though he could have done so with the help of Loh Lim and without the presence of Pian Meng. This was because Mr Caines had relied on the certificate from Dr PN Chong. By the time the interpreter arrived, Mr Caines was not seeking to verify for himself the mental condition of Mdm Pang but to complete the transaction i.e the execution of the first Will.

204. As for Loh Lim, his job was simply to interpret and Mdm Pang appeared to understand what she was doing.

The transfer of the Business

205. After the first Will was signed, Pian Meng then obtained Mdm Pang's execution to the necessary documents to transfer the Business to him.

206. However, I am of the view that if Mdm Pang had intended to transfer the Business to Pian Meng absolutely, she would have notified the Plaintiffs that Pian Meng had become the owner and the boss of the Business and that they were to comply with his instructions. While Pian Meng alleged that Mdm Pang was fed up with Teck Khong and Teck Khong had a violent temper, Mdm Pang was still running the Business before the first stroke. There was also no suggestion of her being fed up or afraid of Teck Hing. Furthermore, life went on as usual with the salaries and bonuses of Teck Khong and Teck Hing, as well as some of their expenses and debts, being paid for.

207. I have considered whether Pian Meng continued to take care of his siblings out of the goodness of his heart but the point still is that Mdm Pang had not told either of the other two that he had become the boss of the Business.

208. I have also considered whether Mdm Pang might have transferred the Business to Pian Meng on the condition that he was to continue to take care of his siblings. However, that was not Pian Meng's case. His case was that the transfer to him was absolute.

209. I also note from Dr Kong's examination of Mdm Pang that she had indicated that she wanted to transfer the Business to Pian Meng. However by then i.e 26 December 2000, the Business had already been transferred to Pian Meng, in November 1997.

210. Accordingly, I find that even if Mdm Pang had had the mental capacity to execute the first Will and the documents to transfer the Business to Pian Meng, she was so enfeebled that she was vulnerable to undue influence from any of her sons, especially Pian Meng who had been assisting her the most in the Business. It was not disputed that he had the capacity to influence Mdm Pang in respect of her first Will and the transfer of the Business to him. I find that he did exercise influence on her and that the exercise brought about the execution of her first Will and the transfer of the Business to him. The real issue, however, was whether the influence he had exercised was undue. I find that it was.

The sale of 30 MD and the use of the net sale proceeds

211. As for the sale of 30 MD around 26 May 1998, Mdm Pang was still in an enfeebled state of mind alternating between lucidity and confusion. It was Pian Meng who unduly influenced her to sell 30 MD then. This may have been because the property market was declining but I am of the view that he wanted or needed more money then.

212. That is why when the sale was completed on 31 August 1998, the net sale proceeds were deposited into a joint account. By then, her condition had not improved significantly. On the contrary, she had had a severe fall in August 1998 which resulted in a haematoma. Although this had been resolved when another scan was done on 5 October 1998, her condition remained poor. As Dr Kong noted on 16 October 1998, she was disoriented as to time and place. Cognitive tests were impaired because she could not complete them. He prescribed Melleril and Fluanxol to clear her confused state of mind. Even the information provided by Pian Meng to Dr Kong was that she could not sleep, she talked nonsense and was excited during the day (see paras 110 and 111 above).

213. However the medication took a toll on her and made her weak. That is why Pian Meng told Dr Kong on 3 February 1999 that he had to stop the medication for her (see para 112, and also 113 above).

214. I do not accept Pian Meng's explanation that the joint account was to effect payment of property tax on 64/64A SGW (NE 182). There was no previous problem about paying the property tax and if the intention was to effect payment from Mdm Pang's bank account, she had her own sole bank accounts to give effect to that intention. Furthermore, soon after the completion of the sale, the sale proceeds were

withdrawn, not to pay property tax, but to be deposited into fixed deposits and into the UOB 'i' account in Pian Meng's sole name.

215. I am of the view that the purpose of the joint account was to enable Pian Meng to withdraw the sale proceeds at will, contrary to his mother's intention. Pian Meng had considered the monies to belong to him because his mother's intention was to use the monies to buy another property to be registered in his name and for his family to stay in, even though Teck Khong and Mdm Pang were supposed to stay in the other property too.

The mortgage of 64/64A SGW and the second Will

216. In the first half of 1999, Mdm Pang's condition did not improve. Indeed it deteriorated. As Dr PN Chong said, 'This was a bad patch' (see para 114 above).

217. On 30 August 1999, he saw her again and wrote 'deteriorate' with an exclamation mark. That is when he repeated a scan and discovered she had suffered a second stroke in August 1999.

218. However, notwithstanding Dr Ngui's skepticism as to her condition about two months later on 3 November 1999, I accept Dr PN Chong's evidence that when he examined her on that day, she appeared to be in full command of her mental faculties. There was no reason for him to lie and, as I have said above in the context of the first Will, if Mdm Pang's condition had been as bad on that day as the Plaintiffs wanted me to accept, this would have been reflected in her conduct. This would in turn have been noticed by Ms Yap and the interpreter.

219. On the other hand, I prefer Dr Ngui's evidence that with the second stroke, there was cumulative damage to Mdm Pang's mental condition. I note that Dr PN Chong had also said that it was Pian Meng who informed him about the need to get a second certificate (NE 136 to NE 137) and he did not check with Mdm Pang on this request (NE 139).

220. Furthermore, Dr PN Chong had also described his examination of Mdm Pang on 3 November 1999 as routine (NE 139) and elementary (NE 145). I reiterate that in his own view, the opinion for a psychiatrist, supported by an assessment by a clinical psychologist, was preferable.

221. As for Dr Kong, I have mentioned that he disagreed with Dr Ngui's opinion regarding Mdm Pang's mental capacity on 3 November 1999 only to the limited extent that Dr Kong was of the opinion that Mdm Pang could sign a simple Will but he did not say she could fully understand the mortgage and the consequence of mortgaging 64/64A SGW for a credit facility for Pian Meng.

222. Mr John drew my attention to an apparent contradiction by Dr Ngui. In his case notes of the examination on 22 March 2000, Dr Ngui had said that Mdm Pang knew the extent of her estate and her potential beneficiaries (see para 141 above). However, in Dr Ngui's report dated 13 April 2000, after the assessment by Mr Choo had been completed, Dr Ngui said that Mdm Pang was unable to describe the extent of her personal estate (see para 9 of his report which is cited in para 144 above). However, Mr John did not cross-examine Dr Ngui on this contradiction. He said that the case-notes were made available in re-examination only and because Dr PN Chong was waiting to give evidence, he did not at that time notice the contradiction and so had not applied to cross-examine Dr Ngui on it. He only noticed the contradiction at submission stage.

223. I would add that Mr John did not suggest that Dr Ngui was deliberately misleading the court. Indeed, Mr John conceded that Dr Ngui had been 'extremely helpful and balanced in all his answers. He is therefore a competent professional and we do not seek to criticise his competence or integrity in any way'

(para 79 of his written submission).

224. However, notwithstanding that concession, Mr John further submitted that when Dr Ngui changed his provisional diagnosis, it was not so much because of Mr Choo's assessment, but because of further adverse information given to Dr Ngui on 29 March 2000 (which I have cited in para 143 above) and because of Dr Ngui's obvious sympathy for Mdm Pang. Mr John sought to support his argument on the basis that Mr Choo's assessment did not purport to have retrospective effect. Also it had a general assessment that Mdm Pang was unlikely to be able to take care of herself and manage her own affairs. This was not specific to the documents in question.

225. However, it must be borne in mind that Dr Ngui's opinion, and Mr Choo's assessment, were sought initially for the application to appoint a Committee for Mdm Pang. The question was whether Dr Ngui was prepared to apply whatever he had observed retrospectively and in the context of the documents in question. He was. Likewise, although Dr Kong had examined Mdm Pang earlier, his detailed examination, and Mr Yam's assessment, was after the event. Yet his examination was being used by Pian Meng to apply retrospectively as well.

226. Also, again Mr John did not cross-examine Dr Ngui as to whether he had revised his diagnosis for reasons other than Mr Choo's assessment.

227. Furthermore, I note that Anna had already given adverse information about Mdm Pang's condition on 22 March 2000 and, at that time, Dr Ngui was not minded to conclude that Mdm Pang failed to have testamentary capacity.

228. Having considered the reports of Dr Kong and Dr Ngui, and the oral evidence given by each, I find Dr Ngui to be more objective. Dr Ngui knew that the Plaintiffs wanted him to conclude that Mdm Pang did not have any testamentary capacity but yet his provisional diagnosis was that she did have such a capacity. It was only after the assessment by the clinical psychologist that he changed his provisional diagnosis.

229. On the other hand, Dr Kong appeared to place no or little weight on the assessment by his clinical psychologist.

230. Secondly, Dr Kong was engaged by Pian Meng to resist the application for a Committee of Mdm Pang to be appointed. Yet, when the crunch came, he was prepared to concede on her mental condition after the short interview I had had with her in his presence and that of Dr Ngui, as well as the respective Counsel (see paras 89 and 90 above).

231. Thirdly, when I asked Dr Kong during the trial whether he had thought a Committee should have been appointed at that time, he said, at NE 270:

'Ct to DW5 Are you aware that there was an application in OS 924 of 2000 under the Mental Disorders and Treatment Act for a committee to be appointed in respect of Mdm Pang?

DW5 Yes.

Ct to DW5 Your help was sought by Defendant in respect of that application?

DW5 Yes.

Ct to DW5 What was your opinion then in respect of the application i.e did you think a committee should have been appointed under the Act?

D W 5 I am unfamiliar with law and cannot give opinion on law. As a medical doctor, the confusion if treated with adequate rest, proper nutrition and medical treatment, Mdm Pang would come out of the confusion. People like Mdm Pang require supervision. My personal view, and not a medical opinion, is that as long as she is supervised as to diet, rest, exercise and with medical treatment for her various conditions, Mdm Pang could maintain very well like other elderly patients. A committee should be required if there was severe dementia. Dementia in distinction to confusion is persistent and permanent and in spite of all the measures, like rest and treatment etc, she would still not be able to be lucid.'

232. I find this evidence evasive. The question as to whether a Committee should be appointed was not only or primarily a legal one. Secondly, he was engaged then to give his professional opinion. I find his attempt to draw a distinction between his personal and his professional opinion to reflect his lack of conviction in his own views.

233. His next response, at NE 271, was startling:

'Ct to DW5 Should a committee have been appointed in respect of Mdm Pang?

DW5 Because she is in a state of confusion and I can't tell, my personal opinion is to clear the confusion with the measures I have mentioned and if it clears, a committee is not necessary. Confusion can be brought on by infection, stress including lack of sleep, lack of nutrients like oxygen, and any organ failure like heart or liver failure. Any toxic substance like alcohol can give rise to confusion.

234. If there was a possibility that Mdm Pang's confusion could clear with the proper treatment and care, it was incumbent on Dr Kong to venture this opinion on 22 January 2001 before I had made the order to appoint a Committee. He did not. Instead, at that time, he conceded that a Committee should be appointed. Furthermore, there was no qualification in the concession.

235. I also take into account Mdm Pang's poor scores in the assessment by each of the psychologists. Mdm Pang also gave different responses to Dr Kong and to Dr Ngui. I reiterate how she gave different answers as to who she would give the Business and 64/64A SGW to (see para 142 above).

236. As for Ms Yap, I am of the view that although Ms Yap spoke to Mdm Pang a few times when Pian Meng and Mdm Pang came to Ms Yap's office, it did not occur to Ms Yap to ascertain for herself whether Mdm Pang was acting of her own free will and mind. I do not accept Mr John's submission that there was nothing to alert Ms Yap to the possibility that Mdm Pang was not of sound mind or that she might be acting under undue influence. She had learned that Mdm Pang had had two strokes and Pian Meng had other siblings who were not going to get anything under Mdm Pang's Will. That is why Ms Yap herself suggested a nominal \$10 gift to each of the other two sons.

237. In my view, Ms Yap's attention was initially more occupied with the question whether KTL would take a mortgage if the title was derived from a gift. Even in court, she said at NE 236:

'Ct to DW4 [Ms Yap] Do you know what today's case is about?

Defendant wanted to take a loan on a property which the mother wanted to give to him. So I advised them in order to take a mortgage on the property, you have to purchase it from the mother. Defendant said the purchase price is \$2 million. I asked the bank what is your valuation. He told me about \$2.2 million. So I told the mother the purchase price is \$2 million. Are you agreeable to this price. She said "Yes". After all I want to give him this property. So I said after he has paid you this money, you can eventually give it to him. She said "OK".'

238. As for the Sale & Purchase Agreement for 64/64A SGW, it is true that Ms Yap required Pian Meng to put up the initial \$200,000 deposit instead of getting Mdm Pang to issue a receipt for it, without actually receiving payment. On the other hand, she admitted that because the intended transfer was from mother to son, she had used the simplest form without explaining to Mdm Pang that under its terms she was to ensure that 64/64A SGW was delivered with vacant possession.

239. I am of the view that the idea of getting the second doctor's certificate came to Ms Yap's mind only because Pian Meng had told her of the earlier doctor's certificate. She then suggested that a second certificate be obtained. It seems to me that after she had seen the second certificate, she did not consider it necessary to have a more careful discussion with Mdm Pang with the aid of the interpreter, which, preferably, should not be in the presence of Pian Meng.

240. Having considered her evidence in its entirety, I am of the view that she did not demonstrate the kind of caution that Mr C S Wu did in the case of *Hooi Cheng Kwang*.

241. Furthermore, although Ms Yap did meet with and speak to Mdm Pang on a few occasions, it was Pian Meng who was in the driver's seat. He was the one:

- (a) who contacted KTL about a loan,
- (b) who contacted Ms Yap on the phone about the initial plan to transfer,
- (c) who suggested the sale price of \$2m,
- (d) who said he wanted to proceed with a mortgage instead of a sale,
- (e) who informed Ms Yap that a second Will should be made because one of Mdm Pang's properties had been sold.

I am of the view that he was not just carrying out Mdm Pang's instructions, as he had professed to do.

242. As for Loh Lim, I am again of the view that as he was not told about both of Mdm Pang's strokes, and as she appeared normal to him, it did not occur to him to be more discerning or careful in his interpretation of the documents on 3 November 1999 to her. Also, Mdm Pang was probably required to give simple responses only to indicate that she understood.

243. In my view, when Mdm Pang appeared jovial or cheerful or gave simple responses, there was a tendency to assume that she was of full sound mind and was acting entirely of her own volition. However, as illustrated in Dr Ngui's case notes of 10 January 2001, even though she was cheerful, she obviously was not of full sound mind (see the case notes as cited in para 145 above).

244. I have also considered Pian Meng's explanation for the loan from KTL. He had said that the

intention was that after paying off the loan from KPB, the balance of the loan from KTL was to renovate 64 SGW as required by NTUC Fairprice in the intended lease of 64 SGW.

245. However, if the balance was to be used solely for renovation of 64 SGW, there was no reason for Pian Meng to be the borrower under the initial plan in 1999. Mdm Pang could and should have been the borrower since the property was hers and Pian Meng could have been the guarantor, as was the case for the loan from KPB. However, Pian Meng's initial intention then was that he was to be the borrower because he had his own ideas as to what to do with the balance of the loan.

246. Furthermore, the lease to NTUC Fairprice fell through and the renovation work was not done. Yet Pian Meng proceeded to obtain the loan from KTL for a larger sum than was needed to pay KPB.

247. I am also of the view that as the Sale & Purchase of 64/64A SGW from Mdm Pang to Pian Meng could not go through (because he could not raise the \$200,000 deposit), he wanted to make sure that 64/64A SGW was specifically bequeathed to him under a second Will to make sure that there was no dispute about the use of the monies from the KTL loan. He suggested the second Will to Ms Yap for this reason and not because one of the properties of Mdm Pang had been sold, as he had alleged.

248. Having considered the evidence, I find that even if Mdm Pang did have the mental capacity as at 3 November 1999 to execute the mortgage and her second Will, she was unduly influenced by Pian Meng to do so.

249. I will hear parties on the orders to be made in view of my findings and in particular the question of whether and to what extent Pian Meng is to provide an accounting of the sale proceeds of 30 MD and the loan from KTL. I will also hear parties on costs.

Sgd:

WOO BIH LI

JUDICIAL COMMISSIONER

SINGAPORE

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