Ng Bee Keong *v* Ng Choon Huay and others
[2013] SGHC 107

Case Number : Suit No 367 of 2011

Decision Date : 14 May 2013

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Deborah Barker SC, Haresh Kamdar and Wong Xun Ai (KhattarWong LLP) for the plaintiff; Edmund Kronenburg and Lye Hui Xian (Braddell Brothers) and Lim Joo Toon (Joo Toon LLC) for the defendants.

Parties : Ng Bee Keong — Ng Choon Huay and others

Succession and Wills – Testamentary Capacity

14 May 2013 Judgment reserved.

Andrew Ang J:

Introduction

1 The dispute in this case concerns two wills executed by one Ng Ching Khye ("the testator") on 1 April 2009 ("the First Will") and 14 May 2009 ("the Second Will") respectively. The testator passed away on 31 May 2009 after a long battle with cancer.

2 The First Will appointed the plaintiff as the sole executor and beneficiary of the testator's estate. (The plaintiff, Ng Bee Keong, is the nephew of the testator. His late father, Ng Ching Leong, was the testator's elder brother.) The Second Will contained terms identical to those in the First Will save for the addition of the following paragraph:

> I DECLARE that I make no provision for my wife because soon after the marriage, I have lived separate and apart from my wife.

3 As sole executor of the Second Will, the plaintiff filed Probate No 192 of 2009 (*ex parte* originating summons for probate) of the Second Will on 15 July 2009.

4 It was, however, discovered that caveats against probate had been filed on 3 July 2009 by Ng Choon Huay ("the first defendant"), the elder sister of the testator who is represented in the action by her son Tan Thiam Chye ("Tan"); and Eng Cheng Hock ("ECH"), the testator's younger brother.

5 Following ECH's demise, his son Eng Tet Hwa ("the second Defendant"), filed a caveat against probate of the testator's estate on 18 February 2011 in his capacity as administrator of his father's estate.

6 The third defendant, Lim Kim Hong ("Ah Phee") filed a caveat on 25 November 2010. She claimed to have entered into a Chinese customary marriage with the testator some 50 years ago although they lived apart after the wedding ceremony. She has since withdrawn from the suit following a settlement with the plaintiff.

Factual background

Factual background

The parties and their witnesses

7 The testator passed away on 31 May 2009. It was not disputed that in life he treated himself at all times as single or divorced and did not have any children. A retiree, he derived the majority of his income from renting out his shophouse described below. At his death, the testator's assets were as follows:

(a) Apartment at Heritage View Condominium (6 Dover Rise, #05-02 Heritage View, Singapore 138678).

(b) Shophouse at 269 Holland Avenue.

(c) Shares.

(d) Money in bank accounts.

(e) Insurance policies (worth approximately $202,000).

(f) Car (worth approximately $40,000).

8 Apart from himself, the plaintiff called nine witnesses of fact and one expert witness. A table of the plaintiff's witnesses is set out below for ease of reference:

	Name	**Background**
1	Chan Soon Lian ("Rachel")	The plaintiff's wife.
2	Ng Bee Lye ("George")	The plaintiff's brother and nephew of the testator.
3	Yeh Jin Sien ("Mr Yeh")	The lawyer who prepared and witnessed the execution of the First and Second Wills.
4	Teng Kee Tin ("Diana")	Secretary to Mr Yeh and a witness to the execution of the First and Second Wills.
5	Teo Bee Piak ("Mdm Teo")	Hairdresser and close friend of the testator.
6	Er Boon Leong @ Jason ("Nurse Jason")	A nurse to the testator.
7	Dr Christopher Goh ("Dr Goh")	Doctor to the testator.
8	Vilma Bravo Videz ("Ms Videz)	Maid to the plaintiff's family.
9	Koh Choon Hong ("Mr Koh")	Bank officer from Maybank Singapore ("Maybank").
10	Dr Francis Ngui ("Dr Ngui")	Expert witness.

9 On the defendants' side there were the following witnesses as set out in the table below for ease of reference:

	Name	**Background**

1	Tan Thiam Chye ("Tan")	Nephew of the testator and son of the first defendant. Litigation representative of the first defendant.
2	Eng Tet Hwa ("the second defendant")	Nephew of the testator and son of the testator's late brother Eng Cheng Hock.
3	Peter Koh Teck Heng ("Peter")	Nephew of the testator and son of the testator's late sister Ng Khoon.
4	Ang Chai Seng ("Ang")	A long time friend of the testator.
5	Kong Ah Lan ("Nurse Kong")	A nurse to the testator.
6	Claudia Sumasni d/o Pakasekaran ("Nurse Claudia")	A nurse to the testator.
7	Dr R Nagulendran ("Dr Nagulendran")	Expert witness.

Chronology of Events

10 A brief chronology of events leading up to the signing of the First and Second Wills (collectively referred to as "the Wills"), will now follow. It should be noted from the outset that there was a dispute between the parties as to some of the facts laid out in the following paragraphs.

18 March 2009 conversation

11 On 18 March 2009, the plaintiff accompanied the testator to Best Denki at Vivocity to purchase a new television set. Later that same day, whilst installing the television set, the plaintiff asked the testator about his plans for the distribution of his assets upon his death. The testator allegedly replied that he would leave his entire estate to the plaintiff. [note: 1]

12 The plaintiff recounted that he expressed surprise and suggested that the testator leave his estate to someone else. The testator replied in the Hokkien dialect, with words to the effect, "if not to you, who else?" [note: 2] The testator reportedly declined to accept the plaintiff's suggestion that the testator's shophouse be returned to Ng Ching Leong Pte Ltd (on the basis that since the shophouse had allegedly been given to the testator by the plaintiff's father Ng Ching Leong) and reiterated his intention to leave his entire estate to the plaintiff. [note: 3]

13 The defendants contended that this conversation never took place.

25 March 2009 incident

14 The plaintiff alleged that on 25 March 2009, he informed Rachel about the testator's intention to make him the sole beneficiary of the estate. [note: 4]

15 Later that same morning, the plaintiff and Rachel visited the testator at his home. The plaintiff and Rachel claimed that during the visit:

(a) Rachel sought and received the testator's confirmation that he intended to leave everything to the plaintiff. [note: 5] The testator also confirmed, in response to a question from

Rachel, that he did not want to leave anything to the plaintiff's eldest brother, Ng Bee Huat. [note: 6]

(b) When asked by Rachel if he wanted to make a will, the testator replied in Hokkien, with words to the effect that he would make his will "in due course". [note: 7]

(c) The testator discussed briefly the rising value of his Holland Avenue shophouse with the plaintiff and Rachel. The testator advised the plaintiff to rent out the property as opposed to selling it or operating a business thereon. [note: 8]

16 The plaintiff and Rachel further alleged that Peter went to the testator's house that same day to show the testator a rental cheque he had collected on the testator's behalf [note: 9] and was informed by the plaintiff that the testator had decided to leave everything to the plaintiff. [note: 10] Peter then asked the testator if this was true to which the testator replied in the affirmative. [note: 11] Peter then knelt on one knee and asked the testator in Hokkien, "*You want to give everything to Ah Keong – one person only?*" to which the testator replied again in the affirmative. [note: 12]

17 The defendants contended that these two alleged conversations never took place.

26 March 2009 incident

18 Since the precise timing of the events on this day was disputed, the times given are only estimates.

19 The testator was admitted to the Accident & Emergency Department of the National University Hospital ("NUH") after he fainted in the carpark of his condominium. [note: 13] At or around noon, both the plaintiff and Peter, who were at the hospital, were informed that the testator was in a "critical condition". It was undisputed that the plaintiff then told Peter that he was leaving the hospital to arrange for a lawyer to prepare the testator's will. [note: 14]

20 The plaintiff telephoned the lawyer, Mr Yeh of J S Yeh & Co, for an appointment before going to his office in the afternoon. [note: 15] The plaintiff's version of what transpired during the meeting with Mr Yeh was disputed by the defendants.

21 Later that day, sometime in the late afternoon, the plaintiff and Mr Yeh arrived at NUH. Eng Cheng Hock and his three sons (including the second defendant) were there, while Peter had left NUH. When he was being introduced by the plaintiff to the testator, Mr Yeh was confronted by the second defendant in the testator's hospital room. Mr Yeh subsequently left without attending to the testator. The testator underwent his tracheotomy operation the same evening.

22 The plaintiff alleged that on that same night, at or around 10pm to 11pm, he telephoned Peter, the second defendant and Tan Fia Kee (the first defendant's late son) to suggest a plan to share the movables of the estate equally between the four branches of the family so that the signing of the will could go ahead. [note: 16] The plaintiff claimed that this plan was rejected by them. [note: 17] The defendants disputed this version of events and instead alleged that the agreement was to share the testator's entire estate equally between the four branches of the family, which they accepted. [note: 18] The defendants further claimed that it was Peter's idea that the plaintiff persuade the testator to

execute a will to that effect. [note: 19] It is undisputed by the parties that nothing came of either plan.

Signing of the First Will

23 On 31 March 2009, the testator was transferred to Singapore General Hospital ("SGH").

24 The plaintiff alleged that on 1 April 2009 he asked Mr Yeh to go to SGH at the request of the testator who wanted to execute his will. The terms of the First Will read as follows:

1. I NG CHING KHYE (holder of Nric No. [xxx]) of 6 Dover Rise #05-02, Singapore, 138678 HEREBY REVOKE all my former Wills and Testamentary dispositions made by me and DECLARE this to be my LAST WILL.

2. I hereby APPOINT my nephew, NG BEE KEONG (holder of Nric No. [xxx]) of 17 King's Close, Singapore 268194 to be my sole Executor and Trustee of this my [*sic*] Will (hereinafter referred to as "my Trustee").

3. After payment of my just debts, funeral and testamentary expenses, I GIVE BEQUEATH AND DEVISE all my movable and immovable properties wherever situated and of whatsoever nature or kind (including any property which I may have a general power of appointment or disposition by Will) to my nephew, the said NG BEE KEONG absolutely.

The plaintiff tendered to the court a video recording of the proceedings at the hospital taken by Rachel.

The joint accounts

25 On 9 April 2009, the testator was discharged from SGH and he moved back to his apartment at Heritage View.

26 On 14 April 2009, at the testator's request, the plaintiff arranged for Maybank Singapore ("Maybank") officers to attend to the testator at his home in order to execute the necessary forms to make the plaintiff a joint account holder of the testator's various Maybank accounts. [note: 20] It was undisputed that the testator executed these documents by affixing his thumbprint.

Events leading up to the signing of the Second Will

27 The testator was re-admitted to SGH from 15 to 20 April 2009 [note: 21] and underwent two sessions of chemotherapy on 30 April 2009 and 7 May 2009. [note: 22]

28 Rachel alleged that during the period leading up to the signing of the Second Will, the testator indicated again to her that he was leaving nothing to Peter or the second defendant's branch of the family. She further claimed that the testator had indicated to her that he had already given a sum of $30,000 to Peter. [note: 23] Her version of events was challenged by the defendants.

29 Sometime after the testator was discharged from SGH on 20 April 2009, the plaintiff was informed by Peter that he had received a telephone call from a lady called Ah Phee, the third defendant. [note: 24] Ah Phee was the same person who had allegedly undergone a Chinese customary marriage with the testator in the 1950s. Peter informed the plaintiff that Ah Phee had told him that

she wanted to visit the testator and had asked for his home address but Peter refused to give her the testator's address. [note: 25]

30 The plaintiff and Rachel informed the testator of this telephone call from Ah Phee on their next visit to the testator. The testator reportedly expressed anger and made a kicking gesture, which the plaintiff interpreted as meaning that he wanted nothing to do with Ah Phee. [note: 26] The testator agreed to the plaintiff's suggestion that Mr Yeh's advice be sought on this new development. [note: 27]

31 Mr Yeh advised executing a second will which would expressly exclude Ah Phee. [note: 28] The plaintiff alleged that the testator agreed to the suggestion and expressed his preference to sign the fresh will at home. The plaintiff thus made arrangements for Mr Yeh to attend on the testator at his Heritage View apartment. [note: 29]

The Second Will

32 The Second Will was executed on 14 May 2009. It contained terms identical to those in the First Will, save for the addition of the following paragraph:

> I DECLARE that I make no provision for my wife because soon after the marriage I have lived separate and apart from my wife.

The plaintiff tendered to this court a video recording of these proceedings taken by Rachel.

Subsequent events

33 On 30 May 2009, the testator was re-admitted to Mount Elizabeth Hospital. He passed away the next day.

The plaintiff's case

34 The plaintiff submitted that at the time of the execution of the Wills the testator had testamentary capacity and knew and approved of the contents of the Wills. The plaintiff further submitted that the defendants had failed to adduce evidence to show that the testator executed the Wills under undue influence as alleged.

35 The pertinent points of the plaintiff's case are as follows:

(a) A presumption of testamentary capacity arises as:

(i) on the medical and lay evidence, the testator did not suffer from any kind of mental disability at the time the Wills were executed;

(ii) the contents of the Wills were rational in the circumstances; and

(iii) there was no evidence of suspicious circumstances surrounding the Wills.

(b) Even if the court finds that the presumption of testamentary capacity does not arise or is rebutted, there was nonetheless sufficient evidence to establish that the testator had testamentary capacity at the time of signing of the Wills.

(c) The presumption of knowledge and approval has not been rebutted as the defendants failed to show that there were any suspicious circumstances surrounding the execution of the Wills.

(d) Even if the defendants succeed in rebutting the presumption of knowledge and approval, the testator knew and approved of the contents of the First Will as:

(i) he had, prior to the execution of the First Will, expressed his intention to will his estate to the plaintiff;

(ii) on the evidence, the testator knew that the document he was signing on 1 April 2009 was a will and that it would take effect after his death; and

(iii) on the evidence, the testator knew that the plaintiff was to be the sole beneficiary of his estate.

(e) Likewise, the testator knew and approved of the contents of the Second Will as:

(i) the testator had agreed that the lawyer should go to his house for the testator's execution of the Second Will;

(ii) the testator knew that he was signing a will as the lawyer had, prior to the signing of the Second Will, referred to the execution of the First Will and also used the term "*kuasa tao*" which means "administrator"; and

(iii) from the video evidence, it was clear that the testator knew that all his assets would be given to the plaintiff upon his death and to no one else.

(f) The defendants failed to show that the testator had been coerced into executing the Wills. In any case, the testator's character and his relationship with the plaintiff and Rachel made it highly unlikely that he could be coerced into executing the Wills.

36 Thus, the plaintiff prayed that the Wills be upheld and probate be granted to himself.

The defendants' case

37 The defendants submitted that the plaintiff failed to prove that the testator had the requisite testamentary capacity at the time of the execution of the Wills. They further submitted that the testator did not know or approve of the contents of the Wills.

38 The pertinent points of the defendants' case are as follows:

(a) The circumstances in which the Wills were prepared and executed were highly suspicious, such that there could be no presumption of testamentary capacity and no presumption of knowledge and approval:

(i) It was not in the testator's nature to make a will;

(ii) The circumstances leading up to and surrounding the drafting and attempted execution of the will on 26 March 2009 were highly suspicious; and

(iii) The Wills were not translated into a language that the testator could read and understand. Moreover, the term of the Wills that provided that the sole beneficiary was also a trustee was bad in law.

(b) The plaintiff has not proven on the balance of probabilities that the testator had testamentary capacity at the time of the execution of the Wills.

(c) The testator did not know or approve of the contents of the Wills, and may well have been under the impression that in executing the Wills he was executing a document giving authority to the plaintiff to handle his assets for him and/or manage his affairs.

39 Thus, the defendants submitted that it would be wholly unsafe to uphold the Wills and that probate should be denied.

The issues

40 The issues that arise for determination in the present case are as follows:

(a) Were there suspicious circumstances surrounding the Wills that prevent the presumption of testamentary capacity and presumption of knowledge and approval from arising?

(b) Did the testator possess the requisite testamentary capacity when he executed the Wills?

(c) Did the testator know and approve of the contents of the Wills?

The legal framework

41 For a will to be found valid, the testator must (a) have testamentary capacity; (b) have known and approved of the contents of the will; and (c) be free from undue influence or the effects of fraud.

The law on testamentary capacity

42 The essential elements of testamentary capacity were laid down in the leading common law authority, *Banks v Goodfellow* (1870) LR 5 QB 549 ("*Banks*"). The Court of Appeal in *Chee Mu Lin Muriel v Chee Ka Lin Caroline* [2010] 4 SLR 373 ("*Muriel Chee*") at [37] endorsed the following restatement of these essential elements in *George Abraham Vadakathu v Jacob George* [2009] 3 SLR(R) 631 ("*George Abraham*"):

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

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

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

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

43 It is ultimately for the court to decide on the evidence before it whether the testator had testamentary capacity at the time he executed the will, see *Muriel Chee* at [42].

Burden of proof

44 It is settled law that the legal burden of proving that the testator possessed testamentary capacity lies on the party propounding the will. However, testamentary capacity is generally presumed where the will appears to be rational on its face and is duly executed in ordinary circumstances by a testator not known to be suffering from any kind of mental disability (see *Muriel Chee* at [40]). The party challenging the will may then rebut this presumption by adducing evidence to the contrary.

45 In considering counsel for the defendants, Mr Kronenburg's, submissions on suspicious circumstances, I observe that the authorities show that the suspicious circumstances raised to rebut a presumption of knowledge and approval are distinct from those raised to rebut a presumption of testamentary capacity. I place some reliance on the defendants' own cited authority: *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate* by John Ross Martyn (Sweet & Maxwell, 2008) at para 13-20:

> The burden of proof may shift from one party to another in the course of a case. Where grave suspicion of incapacity arises in the case of those propounding the will, they must dispel that suspicion by proving testamentary capacity. Thus *where it is admitted by those propounding the will that the deceased suffered from serious mental illness at a period before the will, or where its terms are incoherent, irrational or strange, a presumption is raised against it, though not a conclusive one*. [emphasis added]

46 It appears from this extract that the suspicious circumstances being referred to where testamentary capacity is concerned are the circumstances that give rise to a grave suspicion of incapacity. For instance, where the testator suffers from mental disability or illness or where the terms of the will are incoherent, irrational or strange.

47 To further buttress this point, in cases where other suspicious circumstances were raised, such as the will having been prepared or procured by the person who takes a substantial benefit under it, probate was refused on the basis of lack of knowledge and approval, see generally *Buckenham v Dickenson* [2000] WTLR 1083, *Re Rowinska, Wyniczenko v Plucinska-Surowka* [2006] WTLR 487 and *Muriel Chee*.

48 Both medical and non-medical (factual) evidence may be adduced to prove mental capacity. However, the evidence of experts should not be held to outweigh that of eye-witnesses who had opportunities for observation and knowledge of the testatrix. As the Court of Appeal in *Muriel Chee* noted at [38]:

> The Judge has helpfully restated the law that in applying the test in *Banks*, the court must look at the totality of the evidence as a whole, comprising of both factual (including evidence of friends and relatives who had the opportunity to observe the testator) and medical components. The court should generally accord equal importance and weight to both types of evidence, so long as both the factual and medical witnesses had the opportunity to observe the testator at the material time.

49 A lack of testamentary capacity *cannot* be automatically inferred from the fact the testator suffers from a mental illness or disability. However, if the testator is shown to have suffered a serious mental illness that resulted in a loss of capacity prior to the execution of the will, then the court *may* presume that the illness continued and, accordingly, the testator's lack of testamentary capacity (see *Muriel Chee* at [41]). Thus, the evidential burden shifts back to the propounder to show that such illness or disability had not affected the testator's testamentary capacity at the time of the

execution of the will. As noted by the court in *George Abraham* at [39], the more serious the illness prior to the making of the will is, the higher the threshold of proof required of testamentary capacity.

50 The presumption of testamentary capacity will *not* arise where the terms of the will are *prima facie* irrational. In *George Abraham*, the court restated at [31] the proposition made by Cockburn CJ in *Banks* that an irrational will is one where natural affection and the claims of a near relationship have been disregarded. Whether the testator disregarded natural affection and claims of near relationship is a question of fact rather than of biological ties. In *George Abraham*, the court found on the facts at [67] that it was rational for the testator to have excluded his brother whom he detested from his will and instead name as beneficiaries his nieces and nephews whom he was fond of.

51 If no presumption arises, the propounder of the will must prove the requisite elements of testamentary capacity as enunciated above in *Banks*. I will now look at these elements in more detail.

Elements 1 and 2 – The testator understands the nature of the act and its consequences, and knows the extent of his property

52 The question that this court must ask is to what degree of detail must the testator understand the nature of the act, its consequences, and the extent of his property for the requirements to be satisfied?

53 Under the first element, it needs to be proven that the testator had capacity to understand *certain important matters* relating to the will, see *Hoff v Atherton* [2003] EWCA Civ 1554 at [33]. As elaborated by Cockburn CJ in *Banks* at 565, a testator must "be able to comprehend and appreciate the claims to which he might give effect". Hence, the "nature of the act and its effects" that a testator must understand is that his intended beneficiaries will have a claim on his estate upon his passing.

54 The second element of testamentary capacity concerns the testator's understanding of the extent of his property. Whilst the law is admittedly *unsettled*, it would appear to be generally accepted that there is no need for the testator to know the exact details of his property. In *Robin Sharp and Anor v Grace Collin Adam and Ors* [2005] EWHC 1806 ("*Sharp*"), the English High Court endorsed at [213] the following proposition in *Susan Minns v Venetia Jane Foster* [2002] WL 31914915 ("*Minns*") at [115]:

> It is … worth remembering that the question is not whether a person actually knows the nature and extent of his estate, but whether he has the mental capacity to be able to do so. No will is rendered invalid merely because a testator with the requisite capacity is mistaken about, or fails properly to ascertain, full details of his property. ...

It was further held in *Sharp* that the degree of precision required depended on the "testator's particular circumstances and intentions". Elaborating, the court stated at [210]:

> ... For example, if the testator is very rich, and intends pecuniary legacies of specific amounts with the residue being left to his only two children, and nobody else has any 'claim', it may not matter that he has little idea of the size of his estate or its component parts. All that he needs to know is that it is large enough easily to satisfy the pecuniary legacies, leaving the bulk of the estate to pass to his children. ...

55 In *Sharp*, the testator bought a stud (a farm used to train horses). In his will, he left a significant portion of his estate to those maintaining the stud, and less to his daughters. The will was

challenged. After discussing testamentary capacity, the court went on to rule that the degree of precision required of the testator was "some understanding of the assets and liabilities of the estate, including the amount of the mortgage indebtedness and current profitability of the stud" (at [210]).

Element 3 – The testator knows his beneficiaries and their claims to his property

56 To meet the third element of testamentary capacity, the testator must demonstrate sound memory, comprehension and understanding as well as decision-making ability when choosing his beneficiaries. In *Boughton and Anor v Knight and Ors* (1873) LR 3P&D 64 ("*Boughton*"), Sir James Hannen explained at 65 that the testator must have:

> ... a memory to recall the several persons who may be fitting objects of the testator's bounty, and an understanding to comprehend their relationship to himself and their claim upon him. ...

57 *Charles Harwood v Maria Baker* (1840) 3 Moo PC 282 ("*Harwood*") concerned a will, executed by the testator on his deathbed, which excluded his near relations in favour of his wife. In determining testamentary capacity, the court opined (at [289]) that the testator must be:

> ... capable of recollecting who those relations were, of understanding their respective claims upon his regard and bounty, and of deliberately forming an intelligent purpose of excluding them from any share of his property.

The will was ultimately held to be invalid because, owing to illness, the testator was unable to comprehend and weigh the claims of his relations.

58 In *Boughton*, it was also opined at 66 that the testator "may disinherit ... his children, and leave his property to strangers to gratify his spite, or to charities to gratify his pride" and still satisfy the test of testamentary capacity. Thus, this element is essentially a safeguard against the possible *unintentional* omission, as opposed to a *deliberate* exclusion, of beneficiaries who would have otherwise benefitted but for the testator's failing memory and/or understanding.

59 In *Battan Singh and Ors v Amirchand and Ors* [1948] AC 161 ("*Battan Singh*"), an appeal before the Privy Council, Lord Normand delivering the decision of the court noted at 170 that:

> ... A testator may have a clear apprehension of the meaning of a draft will submitted to him and may approve of it, and yet if he was at the time through infirmity or disease so deficient in memory that he was oblivious of the claims of his relations, and if that forgetfulness was an inducing cause of choosing strangers to be his legatees, the will is invalid. ...

There, the testator had assented to terms in the will denying the existence of his nephews with whom he shared a relationship of affection and in whose favour he had made a will as recently as two months prior to the contested will. The Privy Council noted that if the testator had testamentary capacity, he must have known that this statement in the contested will was untrue. It thus held that the testator was without sound mind or memory at the time of execution and the contested will was, accordingly, invalid.

60 However, the court must be careful not to treat deficiencies of memory as being necessarily equivalent to incapacity. As the Court of Appeal in *Muriel Chee* ([42] *supra*) noted at [39], although a testator's mental power may be reduced by physical infirmity or the decay of advancing age to below the ordinary standard, he might nevertheless retain testamentary capacity.

Element 4 – The testator is free from an abnormal state of mind/delusions

61 The defendants did not appear to argue that the testator was suffering from an abnormal state of mind or delusions at the relevant time. Hence, I will deal with this point briefly.

62 The fourth element relates to the testator's ability to exercise rational judgment. A testator suffers from a delusion where he holds a belief on any subject which no rational person could hold and which cannot be permanently eradicated from his mind by reasoning with him (*Dew v Clark* (1826) 3 Add 79). However, the mere existence of a delusion in the mind of a testator would not suffice to deprive him of testamentary capacity. As Cockburn J noted in *Banks* ([42] *supra*) at 565, a testator is deprived of testamentary capacity only where his mind is so dominated by the insane delusion that he is unable to exercise judgment in disposing of his property reasonably and properly, or of taking a rational view of the matters to be considered in making a will.

63 Moreover, the delusion must be such as to influence the testator in making the disposition as he did, see *George Abraham* ([42] *supra*) at [31]. In *Banks*, the testator suffered from two delusions neither of which was connected with the disposition of his property. As such, the court accepted the findings of the jury that irrespective of these delusions the testator had testamentary capacity when the will was executed.

Knowledge and approval of the contents of the will

64 In addition to testamentary capacity, proof of *actual knowledge and approval* of the testator as regards the contents of the will is required. The court must be satisfied on the balance of probabilities that the nature and contents of the will do truly represent the testator's intention; *per* Chadwick LJ in *Fuller v Strum* [2002] 1 WLR 1097 ("*Fuller*") at [70] citing *Barry v Butlin* (1838) 2 Moo PC 480 ("*Barry*").

65 The applicable principles may be summarised as follows (see generally *R Mahendran v R Arumuganathan* [1999] 2 SLR(R) 166 ("*Mahendran*") at [15]; *Muriel Chee* at [46]–[49]):

(a) The burden lies on the propounder of the will to show that the testator knew and approved of the will and its contents.

(b) A rebuttable presumption arises that the testator knew and approved of the contents of the will where testamentary capacity has been established and there is proof of due execution.

(c) This presumption, however, would not arise where there are circumstances that arouse the suspicion of the court as to whether the testator knew and approved of the will and its contents. The propounder of the will must then produce affirmative evidence of the testator's knowledge and approval.

(d) What affirmative evidence is required in each case will depend upon the circumstances of the case. The greater the degree of suspicion, the stronger the affirmative proof must be to remove it.

66 The suspicious circumstances considered are circumstances "attending, or at least relevant to, the preparation and execution of the will itself", see *W Scott Fulton and Ors v Charles Batty Andrew and Anor* (1874–1875) LR 7 HL 448 at 471 as cited in *Muriel Chee* at [46]. Although the circumstances to be considered would generally comprise contemporaneous events, they might also include events subsequent to the execution of the will where they have a direct bearing on the question whether the testator knew and approved of its contents at the time of execution, see *In the Estate of Lavinia*

Musgrove [1927] 1 P 264 at 286. For example, in *Muriel Chee* the Court of Appeal also considered the conduct of the plaintiff in connection with the respective readings of the wills in dispute (at [46]).

67 An example of suspicious circumstances is where the will was prepared by a person who takes a substantial benefit under it, or who has procured its execution, such as by suggesting the terms to the testator or instructing a solicitor to draft the will which is then executed by the testator alone. The rule has been expressed as follows in *Barry* at [482]–[483]:

> ... if a party writes or prepares a Will, under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the Court, and calls upon it to be vigilant and jealous in examining the evidence in support of the instrument, in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased.

Whether the burden of adducing affirmative evidence of the testator's knowledge and approval of the contents of the will shifts to the propounder of the will is largely dependent on the factual matrix of the case itself, see *Muriel Chee* at [47].

68 Affirmative evidence of the testator's knowledge and approval will typically include evidence that the will was read over by, or to, the testator when he executed it and that the testator heard and understood what was read. In *Mahendran*, the Court of Appeal held at [26] that in the absence of compelling evidence to the contrary, evidence that a will was read and explained to a testatrix with the requisite mental capacity gave rise to a "natural and proper inference" that the testatrix understood and approved of the contents of the will prior to signing it.

69 Nonetheless, as emphasised by Richards J in *Morley Lionel Bowman Franks v Jonathan Sinclair and Ors* [2006] EWHC 3365 (Ch) at [64], the terms in which the will is drafted are of central importance when considering the effect of reading the will over to the testator. In that case, he was not convinced that a mere reading over of the will to the testator would have sufficed to give the testator an understanding of the complex provisions in the will. In *Muriel Chee*, the Court of Appeal likewise held at [58] that reading a will line by line to the testator was "not conclusive evidence" that the testator understood the will, particularly since the testator was suffering from some degree of mental infirmity.

70 Another form of affirmative evidence is evidence that the testator gave instructions for the drafting of the will and it was drafted in accordance with those instructions. In *Cattermole v Prisk* [2006] 1 FLR 693, Norris QC found at [76] that despite the suspicious circumstances surrounding the *execution* of the will, the testator knew and approved of the will because she alone had given instructions for it without the aid of notes and had spoken about the terms to her banker.

71 Ultimately, in satisfying itself that the testator knew and approved of the contents of the will, the court will be wise to bear in mind the dictum in *Ip Wai Hung v Yip Man Chiu* [2007] HKCU 2108 at [74]:

> … Relevant or "suspicious" circumstances are pointers. They are not the end in themselves. For the court's ultimate task is to see whether the court's "suspicion" can be removed, i.e. the suspicion that the testator did not really know or approve of the contents of the will. Its task is *not* to see to it that each and every "suspicious" circumstance surrounding the making of the will is satisfactorily explained …

Undue influence and the knowledge and approval requirement

72 I note that it is not the defendants' case that the Wills should be invalidated for undue influence of the sort that overpowers the freedom of action of the testator. Rather, Mr Kronenburg submitted that a lesser form of influence falling below that of coercion may be taken into account by the court to find that actual knowledge and approval has not been established.

73 I am of the opinion that this submission is incorrect in law. First, it is trite law that undue influence may not be presumed, see *Rajaratnam Kumar v Estate of Rajaratnam Saravana Muthu (deceased) and another suit* [2010] 4 SLR 93 ("*Rajaratnam Kumar*") at [65]. The burden of proving that the will was executed under undue influence is on the party who alleges it. Hence, bringing undue influence into the knowledge and approval stage would in fact undermine the requirement that actual undue influence be proved by the challenger in order to invalidate a will.

74 Second and more critically, as pointed out by Ms Deborah Barker SC, counsel for the plaintiff, the authorities have drawn a distinction between wills and gifts *inter vivos*. Some influence, albeit not to the level of coercion overpowering the volition of the testator, is permissible. I place some reliance on the decision of Viscount Haldane in *Craig v Lamoureux* [1920] AC 349 at 356–357 which was cited in *Biggins v Biggins* [2000] All ER(D) 92:

> *... But even in such an instance a will, which merely regulates succession after death, is very different from a gift inter vivos, which strips the donor of his property during his lifetime*. And the Courts have in consequence never given to the principle to which the learned judges refer the sweeping application which they have made of it in the present case. *There is no reason why a husband or a parent, on whose part is natural that he should do so, may not put his claims before a wife or a child and ask for their recognition, provided the person making the will knows what is being done. The persuasion must of course stop short of coercion, and the testamentary disposition must be made with comprehension of what is being done*. [emphasis added]

75 A case of undue influence is only made out where there is evidence of pressure that has overpowered the freedom of action of the testator without having convinced the will of the testator. Evidence of persuasion alone would not suffice to make out a case of undue influence, as noted by our High Court in *Rajaratnam Kumar* at [66].

76 Ultimately, what needs to be established under the knowledge and approval requirement is that the testator knew and approved of the contents of the will at the time of execution, and not that he was completely uninfluenced from the time he first conceived the idea of making a will until he executed the will.

The duties of the solicitor

77 Some arguments on the duties of Mr Yeh were canvassed before me during the course of the trial. I think it incumbent on me therefore to briefly set out the law.

78 The central duty of the solicitor who undertakes the task of preparing the will and/or witnessing its execution is to ensure that the terms of the will reflect the wishes of the testator. There is little doubt that an inquiry into a testator's capacity to understand the contents of the will as well as actual knowledge and approval of aforementioned contents through the asking of appropriate questions would form part of a solicitor's responsibility, see generally *Muriel Chee* from [60]–[61].

79 However, whether or not the solicitor had asked the appropriate questions or asked them in an appropriate manner would only go towards *evidence* for or against the testator's testamentary

capacity or knowledge and approval. Ultimately, it is for the court to satisfy itself whether the Wills should be upheld.

80 Having set out the legal framework governing the validity of wills, I will now turn to consider the evidence before me.

My decision

Reliance on video evidence

81 Unusually, this court had the benefit of video recordings of the execution of the Wills ("the First Video", the "Second Video" and collectively "the Videos"). I thus had the opportunity to observe the recorded part of the proceedings with my own eyes and to form my own views. Nevertheless, I am mindful that the video recordings are not determinative of the issues at hand. Indeed, I have exercised caution in assessing the weight to be given to these recordings and would emphasise that the recordings must be looked at together with the other available evidence adduced before the court before a proper conclusion on testamentary capacity or knowledge and approval can be reached.

82 One preliminary issue that arose was whether the court could place any reliance on the testator's responses to Mr Yeh's questions in the Videos when determining if he had the requisite testamentary capacity to make a will or if he knew and approved of the contents of the will.

83 Both the plaintiff's and defendants' respective expert witnesses were questioned during their respective cross-examinations. The plaintiff's expert witness, Dr Francis Ngui, described himself as a psycho-geriatrician (a psychiatrist who specialises in patients aged 65 and above) with many years of experience in that field. The defendant's expert witness, Dr R Nagulendran, is a consultant psychiatrist with many years in practice.

84 Neither expert witness had the opportunity to observe and interact with the testator whilst he was still alive. I am mindful that their ability to assist the court is thus limited to material before them, including the testator's medical records, information about the testator provided by family members, and their own observations from the recordings of the execution of the Wills. As the proceedings captured on video were mainly conducted in Hokkien, Dr Ngui's understanding of the language no doubt put him at a slight advantage over Dr Nagulendran who had to rely on translations and subtitles.

The effect of close-ended questions

85 Both experts were asked to comment on the appropriateness and effect of asking the testator close-ended, leading questions in order to determine if he possessed the requisite testamentary capacity or to elicit his testamentary intention, as Mr Yeh did in the Videos. As mentioned above at [79] and I emphasise here, this is a matter regarding the reliability of evidence.

86 Both experts agreed that open-ended questions were preferable to close-ended questions. However, their views soon diverged from this starting point.

87 Dr Ngui stated in cross-examination that close-ended leading questions could still elicit reliable answers so long as the individual is given time and opportunity to explain himself:

> Q: It is for the same reason that close-ended or leading questions are not used because they do not allow the patient to express himself and, therefore, these three cognitive domains of

competency cannot be assessed. Do you agree with that?

A: Er, well, you can ask close-ended questions but the person can still be allowed to elaborate on his answers even though the questions have been close-ended but they are not ideal because from, er, a third party observ---observer, they may say that, "Hey, is this a lead---a leading question that's try---that's trying to influence him?" But if he has a free rein, after that close-ended question is asked, he---he can still continue elaborating on his answer. So it should---it can still be a "yes/no" answer but he can still elaborate just like in Court, same thing, mm.

Q: So in other words, you can use closed-ended or leading questions but you must give the patient the chance to explain his answer. Am I right?

A: Yah, yup, he has to be given a—a---a chance or time to explain himself. [note: 30]

He further opined that the testator's condition, *ie*, his speech difficulty, rendered it more practical and convenient for close-ended questions to be asked.

88 Dr Nagulendran, however, took the view that answers to leading questions were necessarily unreliable and that leading questions should never be used to assess testamentary capacity or elicit the testator's testamentary intention:

Q: … And the testator nods. Does that nodding of the testator have any impact so far as you're concerned?

A: As---as far as I'm concerned, this is the wrong way of asking a question, ah, because the whole purpose of exercise is for the testator on his own to come out, er, in some way or other to indicate these are his assets, ah. But instead of that, the lawyer puts all these things in and just put a leading question, "Yes or No". As I told you, that's---that's the problem with leading questions. Yes---"Yes or No" mean either you nod or you---you shake your head, ah. But it doesn't give a chance for the testator on his own to consider carefully what these assets are. [note: 31]

89 I am more persuaded by Dr Ngui's evidence on this point. It is stretching it somewhat to suggest that close-ended questions will always elicit unreliable answers especially when the person responding is given sufficient time to explain or elaborate on his answers. I note that this was in fact the case here. For instance, in the Second Video, the testator not only spread his hands apart affirmatively responding to Mr Yeh's question if he lived separately from Ah Phee but also elaborated on his answer by making further gestures and mouthing barely audible words. I also accept Dr Ngui's opinion that given the testator's condition in the Videos, Mr Yeh's method of questioning was a practical compromise which would not unduly affect the reliability of the testator's answers.

The presence of the plaintiff and Rachel in the room

90 The Videos were filmed by Rachel. In the First Video, the plaintiff could be seen standing at the foot of the bed. Also captured in this video was his nodding when Mr Yeh referred to him whilst speaking to the testator. In the Second Video, the plaintiff could first be seen changing his position to sit next to the testator and later adjusting the testator's hearing aid whilst the contents of the Second Will were being explained by the lawyer. Both the plaintiff and Rachel also made interjections at points to interpret the testator's gestures or barely audible words.

91 The expert witnesses were asked about the possible effect of the plaintiff and Rachel's presence in the room on the testator during the execution of the Wills.

92 I think it pertinent here to emphasise my findings above that influence of the lesser kind being argued by the defendants is not an aspect of the knowledge and approval requirement (see generally [72]–[76]). The defendants did not argue that the plaintiff and Rachel's presence evidenced actual undue influence which overpowered the testator's free will. Undue influence in this context would be relevant if it led to doubts whether the testator's answers were freely given.

93 Dr Ngui testified under cross-examination that the combined effect of the close-ended questions being put forth to the testator and the presence of the beneficiary in the same room could possibly result in the testator being influenced, although this was also dependent on the relationship between the beneficiary and the testator. When further questioned about the possibility of influence where the relationship was a close and trusting one, Dr Ngui stated:

> I---I---I believe that because it's a closed-ended---questions put forth close-ended and, er, because the beneficiary is present with him in a close---close, trusting relationship, there is a possibility that his, er, wishes would---are being influenced by the beneficiary; it's possible. Er, so what---what I'm saying is the possibility of being influenced. But when you say "Reliable" meaning is it accurately---*when you say "Reliable", I understand that whether it accurately depicts what he wants to do with his assets, I would say it's still very reliable. He---he---what he wants to do is his own volition, yah*. [note: 32] [emphasis added]

94 Dr Nagulendran differed from Dr Ngui, stating that the presence of the plaintiff and Rachel as well as their interjections during the signing of the Second Will would have *inevitably* affected the mind of the testator, although its actual effect would vary depending on the relationship between the testator and that member of the family. In other words, there was no circumstance in which the testator would not have been affected by the presence of a family member in the same room.

95 I am not persuaded by Dr Nagulendran's evidence that the effect on the mind of the testator was *inevitable*. "Possible influence", as averred to by Dr Ngui, appears to be a more realistic consequence, the degree of this influence being dependent on factors such as the relationship between the parties.

96 It is unfortunate that both the plaintiff and Rachel were present in the room. I accept the plaintiff's evidence that they were there not for selfish reasons but because they had not been advised to leave [note: 33] as corroborated by Mr Yeh and Diana. [note: 34] Moreover, I think it is unlikely that their presence in the room influenced the mind of the testator. The testator was described by the second defendant in cross-examination:

> A: He is a stubborn person, he is temperamental, he used to scold us since we were young, so we---we knew him well. He is just like an emperor. In Holland Road, he was known as a---an emperor or king.
>
> Q: So as a stubborn person, this means that he cannot easily be convinced to do anything that he does not want to do?
>
> A: It should be that. [note: 35]

Witnesses on both sides corroborated his evidence that the testator was a stubborn and strong-

willed man. [note: 36]

97 Despite their close relationship, the testator was clearly far from being easily influenced, much less intimidated by the plaintiff. Several incidents in the Nursing Notes demonstrate this. For instance, in an entry on 11 May 2009 at 1315 hours, just three days before the signing of the Second Will, the plaintiff, Rachel and Peter all tried, but failed, to convince the testator to consult a doctor. [note: 37] Further, the Second Video also captured the testator's annoyed brushing aside the plaintiff's hand when the plaintiff sought to adjust his hearing aid. To my mind, the testator was hardly a man in thrall of the plaintiff.

98 I thus find that the presence of the plaintiff and Rachel in the room was unlikely to have affected the voluntary nature of the testator's answers.

Testamentary capacity

99 In accordance with the legal principles set out above from [44] to [51], the burden is on the plaintiff, as the propounder of the Will, to prove that the testator met the four requisite elements of testamentary capacity. However, testamentary capacity may be presumed if the will is rational on its face and duly executed in ordinary circumstances by a testator not suffering from any mental illness or disability.

Did a presumption of testamentary capacity arise?

100 The plaintiff adduced substantial medical and lay evidence to show that the testator did not suffer any mental disability during the material time when he executed the Wills, and more generally during his lifetime. Dr Goh who attended to the testator from 31 March to 9 April 2009 gave evidence under cross-examination that the testator was "conscious, very alert and able to communicate effectively" [note: 38] during this period. The testator was also deemed mentally capable to give his consent to a medical procedure on 6 April 2009. [note: 39] Dr Goh's evidence is corroborated and supported by the observations of other doctors who attended to the testator at various times from March to May 2009 in several medical reports adduced as documentary evidence before this court.

101 Evidence from three private nurses who attended to the testator was also heard before this court. The defendants' witness, Nurse Kong stated in her affidavit of evidence-in-chief ("AEIC") that the testator "tended to be forgetful" [note: 40] and further stated, under cross-examination, that the testator was unable to make rational decisions about his own safety:

> A: … Most time, I---I---I try my best to understand him, er, what he wanted, but sometime it's for his own good I tell him not to do certain things, but he just wouldn't listen or he's not rational enough to---to know that this is something not for his safety. [note: 41] …

102 Her evidence however was contradicted by that of the defendants' other witness, Nurse Claudia:

> Q: So during the time that you took care of him, he was conscious and alert at all times?
>
> A: Yes.
>
> Q: And he--- able to make decisions?

A: Yes.

…

Q: You--- he was not mentally impaired right?

A: Yes.

…

Q: Is there anything wrong with him mentally as---

A: No.

Q: ---far as you know?

A: No.

Q: He appeared to be okay.

A: He appeared to be normal and okay. [note: 42]

Nurse Claudia further recalled, under cross-examination, an incident when the testator had tried to call Peter on his handphone. When asked why, the testator endeavoured to explain by communicating to her, albeit using gestures or in a very hoarse voice, that he was hungry. [note: 43]

103 Nurse Claudia's evidence is corroborated by the plaintiff's witness, Nurse Jason. In his AEIC, which was unchallenged in cross-examination, he stated that the testator was conscious of his surroundings and condition, and did not appear to suffer from any memory loss. He stated that the testator would remember the date and time of his medical appointments and would insist on dressing up in his preferred clothes for these appointments. The testator could also remember if he had previously been in the same clinic. [note: 44]

104 All three nurses who testified in court agreed that the testator continued to monitor his stocks on the teletext at home even after being discharged from the hospital. [note: 45] Nurse Claudia even recalled, under cross-examination, that the testator spoke to her about stocks and shares and recommended that she purchase Sembcorp shares. [note: 46]

105 Nursing Notes, maintained by various nurses from April 2009 to the testator's death at the end of May 2009, were also adduced in evidence. Extracts from the Nursing Notes indicated that the testator could understand what he was being told and could communicate with his caregivers. For example, an entry at 0140 hours on 20 April 2009 showed the testator bargaining with his nurse over ice cubes that were given to him on the condition that he cooperated by allowing the nurse to suck the phlegm out of his airways. [note: 47] The Nursing Notes also indicated that the testator remained capable of performing daily tasks like making his own coffee and shaving. [note: 48] Although there was an odd entry about the testator being confused as to which block of apartments he lived in, [note: 49] I am satisfied that the general tenor of the Nursing Notes was that the testator retained his mental faculties.

106 Thus, I find that the testator's refusal to cooperate with Nurse Kong was not a consequence of any mental incapacity or disability on his part but was consistent with his stubborn and strong-willed character which had been observed and commented on by the plaintiff, defendants and their respective witnesses.

107 The non-medical evidence, likewise, paints a picture of a man who was ill and weak but nevertheless in full command of his faculties. Peter, who like the plaintiff spent quite some time with the testator during the relevant period, testified under cross-examination that the testator continued to avidly monitor the performance of his stocks and shares at home following his discharge. [note: 50] It was also Peter's evidence that the testator was furious upon hearing that Ah Phee had contacted Peter, [note: 51] which suggested to me that the testator's memory of the past and his ability to express himself remained intact.

108 I am persuaded by the preponderance of medical and lay evidence before me and find that the testator did not suffer from any mental disability or infirmity at the time he executed the Wills.

109 The plaintiff further submitted that the terms of the Wills were rational in light of the relationship between the testator and the plaintiff and his immediate family, the relationship between the testator and his other relatives, and the testator's aspirations for his estate.

110 The plaintiff's close relationship with the testator was undisputed and corroborated on the stand by the second defendant and Peter. [note: 52] Mdm Teo also stated under cross-examination that the testator trusted the plaintiff and considered him an honest and responsible person who would not fritter away his wealth. [note: 53] The fact that the testator agreed to make the plaintiff a joint account holder of his Maybank accounts can be seen as further evidence of the trust and regard the testator had for the plaintiff.

111 It was also submitted by the plaintiff that the testator was close to the plaintiff's immediate family, in particular the plaintiff's son. A video of the testator happily communicating with the plaintiff's son through video phone was shown to this court. I note further Ms Videz and George's unchallenged evidence in their respective AEICs that the testator considered the plaintiff's immediate family his own. [note: 54] I find therefore that it was not irrational for the testator to want to benefit the plaintiff in his will.

112 The question, then, is whether it was rational for the testator to do so to the exclusion of all other relatives. The defendants submitted that it was inconceivable that the testator would leave his estate to a sole beneficiary and ignore his more needy relatives. It was undisputed that the testator had in the past extended financial help to various relatives, including the plaintiff. It was also undisputed that the plaintiff's father had made provision for the testator and another brother.

113 The evidence showed that ECH and his nuclear family received financial aid from the testator. In cross-examination, the second defendant testified that whenever his mother was in need she would call the testator herself or instruct him to ask the testator for money on her behalf. He explained in cross-examination:

> ... So from young until I grow up, when we didn't have money, we would give him a call. If I wanted something and I didn't have money to buy, I would give him a call. ... [note: 55]

That suggested that the testator might have felt obliged to assist ECH's family when they were in

financial difficulties and sought his help. However, I find it difficult to believe Peter's evidence that the testator rendered financial help to his family "readily and selflessly". [note: 56] Instead, I prefer the plaintiff's evidence that the testator "resented the demands for money and would grumble and complain". [note: 57] His evidence was corroborated by George who testified, under cross-examination, that the testator would "make a lot of noise" after giving [note: 58] and the second defendant's own evidence that the testator was "disgusted" and "fed up" with him and that he would be scolded by the testator over the phone before being asked to go over to collect the money. [note: 59]

114 I note further that the testator extended no financial aid to ECH's branch of the family for the period from 2004 onwards until the testator passed away. The second defendant explained, under cross-examination, that his family had not asked for money from the testator as they were receiving $8,000 a month from George in exchange for vacating the florist shop they had at 241 Holland Avenue #01-02. [note: 60] It would appear therefore that the testator would not volunteer any financial assistance but would grudgingly assist if requested to do so.

115 There is no evidence that the testator ever voluntarily provided the first defendant and her family with financial assistance during his lifetime. Unlike ECH's family, the first defendant and her family did not appear to be in any dire need. Although the first defendant suffered from cancer, she appeared to have been ably cared for by Tan. Even if I accept Tan's evidence that the testator had offered without hesitation a $100,000 loan to help tide him over his temporary cashflow problems (which Tan eventually did not accept), I think it pertinent that the offer only came *after* Peter brought this up to the testator. [note: 61]

116 In cross-examination, Peter stated that the testator was like a "sibling" to him in light of their slight age difference and their having grown up together. [note: 62] It was not disputed that Peter did provide services to the testator from 2001 until the testator's death. Despite this, it was Peter's own evidence, when cross-examined, that he did not expect to be remunerated for his services in the testator's lifetime or thereafter, and could only "hope" that the testator would leave him something. [note: 63] Peter claimed that he was in fact never so remunerated. The testator thus appeared to have accepted the services provided by Peter without feeling any obligation to remunerate or compensate Peter, apart from an occasion where he made a gift of $30,000 to Peter as a down-payment on a car for Peter's son. [note: 64]

117 The express exclusion of the testator's estranged "wife", Ah Phee, also did not appear irrational. Both the plaintiff and Peter gave evidence that the testator had left Ah Phee the day after the Chinese customary matrimonial rites and had lived alone for most of his adult life. [note: 65] Documentary evidence in the form of Inland Revenue Authority of Singapore returns was also adduced to demonstrate that the testator considered himself single. It is further undisputed that the testator was agitated and upset when he heard that Ah Phee had called Peter in an endeavour to look for him. I also had the opportunity to observe from the video recording the testator's agitation upon Mr Yeh's mention of Ah Phee in connection with the execution of the Second Will. It is thus unsurprising that she was excluded from the Second Will.

118 Ms Barker argued that it was rational that the testator would leave his entire estate to a sole beneficiary, as to divide his estate amongst his various relatives would have meant that the shophouse at 269 Holland Avenue would have to be sold. Both the plaintiff and Rachel gave evidence that the testator had expressed to them during their conversation on 25 March 2009 that the plaintiff should not sell the property but instead collect rent from it. [note: 66] The defendants' objections to

the version of events advanced by the plaintiff are noted and will be dealt with below. That aside, there was also Peter's evidence in cross-examination that throughout the time he helped the testator collect rent for the shophouse, the testator never discussed selling the shophouse. [note: 67]

119 In conclusion, I find that on the balance of probabilities it is unlikely that the testator felt any moral obligation to make provision for his other relatives. Even if his decision to exclude his other relatives might appear uncaring, it certainly could not be said to be irrational. Further, I find that his choice of the plaintiff as the sole beneficiary of his will appears rational in light of his close relationship with the plaintiff and his confidence that the plaintiff would not squander his estate. This case can thus be distinguished from cases like *Battan Singh* ([44] *supra*) and *Muriel Chee* ([44] *supra*). In the former case, much loved nephews who had been provided for in a previous will were completely ignored and a complete stranger was named the beneficiary. In the latter case, the testatrix inexplicably revoked a former will that benefited her favourite daughter.

120 Since the will is rational on its face and was duly executed in ordinary circumstances by a testator not known to be suffering from any kind of mental disability, I find that the presumption of testamentary capacity arises. As such the burden of rebutting this presumption falls on the defendants who would need to adduce evidence that the *Banks* criteria ([42] *supra*) were not met by the testator.

The Banks criteria

121 The applicable principles having been set out above from [52] to [63], I will now turn to the evidence.

Understanding the nature of the act and its consequences

122 It is noted that this first criterion would be met for the Second Will if the court finds that it was met during the execution of the First Will. This is because Mr Yeh, the lawyer, proceeded with the Second Will on the basis that the testator understood that he was making an amendment to his First Will.

123 The defendants submitted that there was no reliable evidence that the testator understood the nature of the act of making a will and its consequences, *ie*, that the testator understood that the plaintiff would inherit his estate upon his death. The defendants argued that the testator was not a highly educated man. Moreover, they asserted that Mr Yeh's explanation to the testator as seen in the First Video was woefully inadequate and there was no explicit explanation to the testator that the will would only take effect after his death. In fact, Mr Yeh made no explicit mention of death at all. Ang testified in court that having viewed the Videos, he was of the opinion that the deceased appeared confused and possibly did not understand Mr Yeh's explanation. [note: 68]

124 In rebuttal, the plaintiff argued that although the testator was not highly educated, he was financially astute enough to keep detailed accounts of his income and expenses as evidenced by his various account books and would have, in all likelihood, understood what a will was and its consequences. Moreover, it was also Ang's evidence under cross-examination that the testator had, in conversation with friends, discussed other people's wills on more than one occasion. [note: 69] Ms Barker thus submitted that the testator would have likely understood from those discussions the fact that a will only took effect after death. Mr Yeh further confirmed in cross-examination that it was his usual practice not to refer to death explicitly and instead use euphemisms and other phrases that alluded to death. [note: 70] During cross-examination, Mr Yeh stated that he said, "*jay eh ui-tsiok, eh*

pai hor ler ka cho" and explained that the words "*eh pai*" meant "next time" and served to connote death. [note: 71]

125 I am not persuaded that one needs to be highly educated to understand the nature and consequence of making a will. The average person is as likely to understand the nature of a will and its consequence; more so the testator who was financially astute. Moreover, I find that he was likely to have obtained an understanding of the nature of a will and its consequence from his discussions with friends (see [181] below).

126 Therefore, I find that the defendants have not succeeded in showing that the testator did not understand the nature of the act of executing a will and its consequences.

The testator knew the extent of his property

127 As previously mentioned above at [54], the degree of precision of knowledge as to the extent of his property required of the testator depends on the testator's *particular circumstances and intentions*. I note that the testator's estate was not a complex one and his intention was to leave everything to a sole beneficiary. As such, in my view, it would suffice to meet this element of *Banks* if the testator had a general idea of the assets he owned as listed above at [7].

128 The First Video showed Mr Yeh informing the testator that, "all your assets including house, shop, bank accounts will be given to Bee Keong" to which the testator responded with a nod.

129 The defendants relied on the opinion of Dr Nagulendran that this was a leading question and the answer to it was unreliable for an assessment of testamentary capacity. Moreover, they noted that the list was not even complete. The defendants thus submitted that there can be no reliable finding that the testator knew the extent of the property of which he was disposing. I have already dealt with the issue of leading questions at [89] above and I emphasise once more that the fact that the question about the testator's assets was asked by way of a leading question is not determinative.

130 The plaintiff sought to rebut the defendants' claim and submitted that in addition to Mr Yeh's question, as captured in the First Video, other available evidence supported his assertion that the testator knew the nature and extent of his property:

(a) Mdm Teo's evidence in her AEIC that the testator had told her that he bought his apartment at Heritage View Condominium was not challenged. [note: 72] Nor was it disputed that he lived there till his death. The plaintiff submitted that it was therefore unlikely that he would have forgotten that he owned this apartment when he executed the Wills.

(b) Peter testified that he collected the rental cheques for the Holland Village shophouse on behalf of the testator and had informed the testator that he had done so on 25 March 2009. [note: 73] This was a short time before the First Will was executed and followed a routine which had begun several years earlier. It is thus unlikely that the testator would have forgotten about the shophouse by the time he executed the First Will.

(c) There was an abundance of mutually corroborated evidence that the testator continued to monitor his shares on the teletext at home, despite his illness, till the end of his life. Thus, he was likely to be familiar with his share portfolio.

(d) It was not disputed that the testator had asked to and executed forms to have the plaintiff become a joint account holder with him for his various Maybank accounts on 14 April

2009. He thus knew that he had the bank accounts. The testator also regularly received and retained bank statements sent to him from Maybank to his Heritage View apartment and would have known what he had in the bank accounts. [note: 74]

131 In my view the defendants have failed to adduce sufficient evidence to show on the balance of probabilities that the testator did not know the extent of his property. I am persuaded by the evidence supporting the plaintiff's submission that the testator knew the extent of his assets at the time he executed the Wills.

The testator knew his beneficiaries and their claims to his property

132 The defendants submitted that there was no reliable evidence that the testator knew who his potential beneficiaries were and their claims to his property. They noted that in the Videos Mr Yeh did not verify or ascertain if the testator could recall his other relatives. Mr Yeh himself admitted in cross-examination that he was content with simply finding out from the testator if it was true that the plaintiff should be the sole beneficiary. [note: 75] Dr Nagulendran testified that as the testator did not indicate verbally or otherwise the names of close relatives, he was unlikely to have assessed their claims to his property. [note: 76] Significantly, Dr Ngui conceded under cross-examination that in light of the aforementioned lack of verification on the part of Mr Yeh, it is possible that this element of the *Banks* test was not fulfilled:

Q: For the first will he didn't mention anything about his wife. So based on what you are saying, for the first will, that element was not satisfied. Right?

A: Er, yes, if it was brought up later on that he had a wife, yah.

Q: So if we--- just forget about the second will for the moment and just focus on the first will, the third element of the Cockburn test vis-à-vis the first will where he says nothing about the wife, that is not satisfied. Because the only thing---

A: Yah.

Q: ---you are using to satisfy the element is his recollection of the wife.

A: That's right.

Q: So you would say at least for the first will, on the basis of what I've just told you, there was no testamentary capacity?

A: He failed---er, er, there was no---er, he would not pass the third---er, the third criteria. [note: 77]

133 However, with regard to the Second Will, it was clear from the testator's furious reaction and the agitated explanation that followed that he remembered who Ah Phee was. Dr Ngui opined that if the testator could recall Ah Phee whom he had left 50 years ago and who was largely absent from his life, the testator's memory must have been intact and he was therefore likely to be cognisant of other persons who might have had a claim to his estate:

It, er--- it's an inference because the wife seems like a distant relative or rather an absent relative or next of kin. So if he can recall someone who's far away, it would infer that he's able to

know people who are closer to him. So in that sense, I feel that he knew who are the potential benefi---beneficiaries of his estate. [note: 78]

134 Dr Nagulendran opined that although there was no strict rule against inferences, this was not the usual practice and certainly not his practice:

> There's no---there are no rule of principle that---that says that you can't do that or you---or you can do that, ah. But my practice---I think most of my colleagues' practice is that we don't make inferences when we do an assessment of testamentary capacity. We usually---we usually examine the, et, evidence given to us upon which to base our opinion, and based on that information and we make an, er, an opinion, er, as to the testamentary capacity. Er, I don't think I have seen any report of myself having ever done that, to use the word "inference", ah. [note: 79]

135 I find it difficult to accept Dr Nagulendran's opinion on inferences. The assessment of testamentary capacity in our case is post-mortem which does not afford the psychiatrist the benefit of first hand interaction with the testator. Therefore, it would appear that the next best thing a psychiatrist could do was to consider all available evidence, make the necessary inferences and arrive at a considered conclusion as to the testator's testamentary capacity at that time. It is not clear how else Dr Nagulendran could form an opinion. In fact, despite his evidence against relying on inferences, it is plain that his conclusions at paras 1 to 4 of his supplementary report were wholly based on inferences.

136 I thus accept Dr Ngui's evidence which is supported by psychiatric authorities, [note: 80] that a psychiatrist can consider all available evidence and arrive at a conclusion as to the testator's testamentary capacity at the relevant time. The question though is whether Dr Ngui's inference is a logical one. I am of the view that it is, in the absence of evidence to support Mr Kronenburg's suggestion that the testator suffered from short-term memory loss or impairment. [note: 81]

137 In addition to the testator's memory of Ah Phee, no evidence was adduced before this court to suggest that the testator had forgotten any of his other close relatives at the time he executed the Wills. On the contrary, the evidence before me suggested that the testator remembered and was frequently reminded of his other relatives and thus potential beneficiaries.

138 It was undisputed that ECH and his family were frequent visitors when the testator was warded at NUH from 26 to 31 March 2009. It was the second defendant's own evidence that he visited the testator on and off after 27 March 2009. [note: 82] It is likely that the testator would therefore have been reminded of them throughout that period. Tan confirmed in both his AEIC and before the court that his family had visited the testator at NUH and SGH on at least five separate occasions from 26 March 2009 to 9 April 2009. [note: 83] He further stated in his AEIC that on one occasion his mother had touched the testator's face and hands before the testator shed tears and waved goodbye to her. [note: 84] It is thus clear that the testator knew who the first defendant was and it was unlikely that he would have forgotten her or her family when executing either the First or the Second Will.

139 It was undisputed that Peter frequently visited or phoned the testator during the course of the latter's illness. In fact, Peter recounted in some detail how the testator phoned him persistently the day before the execution of the Second Will on 14 May 2009. [note: 85] It is highly unlikely therefore that the testator would have forgotten, and indeed there was no indication that he had forgotten, Peter's existence.

140 I thus conclude that the defendants have failed to adduce evidence to show that the testator did not know his beneficiaries and their claims to his properties after his death.

My conclusions on the testator's testamentary capacity

141 I find that Dr Ngui's expert opinion that the testator satisfied the *Banks* criteria [note: 86] is to be preferred to Dr Nagulendran's expert opinion that the testator did not. Dr Nagulendran's evidence was less than persuasive on several points which I have recounted above. More significantly, I note that in his first medical report dated 12 March 2012, Dr Nagulendran had averred that he could not make any determination as to the testator's testamentary capacity. He conceded this in cross-examination:

> Q: Now, at the time of the first report, you were asked to comment on testamentary capacity. That was the whole purpose of the first report.
>
> A: Yes, that's right, yah. But I didn't---I didn't comment on that because I---I---I couldn't have any evidence to indicate either way, er, whether he had or didn't have ah. [note: 87]

142 Surprisingly, however, Dr Nagulendran changed his views in his supplementary report and opined instead that the testator did not satisfy the criteria for testamentary capacity despite, as he admitted, having received no new medical or other information. His explanation for this change was unsatisfactory.

143 In contrast, Dr Ngui came across as a credible and impartial expert witness. He was forthright and honest in his answers during cross-examination and also made considered concessions. This is not to say that there were no flaws in Dr Ngui's preparation of his expert report. As he acknowledged under cross-examination, he had failed to interview other relatives of the testator apart from the plaintiff's branch of the family to test the information he received about the testator's family background and medical history. Nevertheless, I find that these omissions were not fatal as his expert opinion was corroborated by other evidence before this court as set out above.

144 In conclusion, I find that the defendants have failed to rebut the presumption of testamentary capacity.

Suspicious circumstances

145 As set out above at [65], a presumption that the testator knew and approved of the contents of the will would arise when it is proven that the testator had testamentary capacity at the relevant time. This presumption, however, can be rebutted if the parties challenging the will (the defendants) adduce evidence of suspicious circumstances. The defendants have sought to adduce evidence to suggest that highly suspicious circumstances surrounded various aspects of the signing of the Wills.

Not in the testator's nature to make a will

146 The defendants submitted that it was not in the testator's nature to make a will. Peter testified, in cross-examination, that he did not expect the testator to make a will [note: 88]. Ang testified in cross-examination that not only was the testator content to die intestate, but he was also content to let his relatives "fight it out". [note: 89]

147 Leaving aside the evidence of the plaintiff and Rachel about their conversations with the

testator on 18and 25 March 2009 for the moment, I am not entirely persuaded by the evidence given by Peter and Ang. Peter had, under cross-examination, admitted that he had never asked the testator about his plans for his estate [note: 90] as he felt that this was a sensitive topic and was worried that the testator would get the wrong impression that he was after the testator's assets. [note: 91] It became further evident during cross-examination that he formed this impression partly as a result of what Ang told him:

> Q: Now at para 23 of your affidavit, you say: [Reads] "I was under the impression … Deceased did not want to make a will." How did you form that impression?
>
> A: His, er, close friend Mr Ang Chai Seng once told me---after his can---he suffered cancer, that, er, this topic of, et, will was brought up among friends, and, er---to Ching Khye, and Ching Khye brushed the subject away. So he told me Ching Khye did not want---and then myself, because of, er, my long association and observation and, er, [his] being a Chinese, er, traditional man, doesn't like to talk about death. So I believed that he did not want to make a will. [note: 92]

148 It is thus difficult to see how Peter could have given an accurate picture of the testator's testamentary intentions. As for Ang's evidence at [146] above, I note Mr Kronenburg's explanation that this particular incident was eventually omitted from Ang's AEIC as the witness vacillated on this point on numerous occasions. [note: 93] I am thus not inclined to place reliance upon his account.

The events of 18 and 25 March 2009

149 As mentioned above at [67], it is a suspicious circumstance when a will is prepared by a solicitor on instructions given by a person who takes a substantial benefit under it. This would appear to be the case here since it was not disputed that Mr Yeh took instructions from the plaintiff when he drafted the First Will on 26 March 2009. The plaintiff's case, however, was that he acted as a mere mouthpiece for the testator and it was the testator's express intention to make a will leaving everything to him.

150 In cross-examination, the plaintiff and Rachel recounted their version of the events of 18 and 25 March 2009 as stated above from [11] to [17]. Ms Barker submitted that their version of events was credible as their testimony under cross-examination largely corresponded with the evidence they gave in their AEICs. Moreover, she submitted that the reliability of their accounts was buttressed by the inclusion of information that was not necessarily advantageous or made no difference to their case. The defendants suggested that the alleged conversations were fictitious.

151 It is not clear what prompted the plaintiff to ask the testator how he wanted to get his will done. Whilst the plaintiff's explanation was that he did so as the testator was in poor health, [note: 94] the testator had been in poor health for a long time and the plaintiff had not previously asked this question. Further, I find it puzzling that the plaintiff waited a whole week before informing Rachel of the testator's declaration of his intention to leave everything to him. The plaintiff's explanation for this delay, made through Ms Barker in oral submissions, was that he was mulling over the conversation and did not want to raise his wife's hopes unnecessarily since his uncle had not yet asked him to get a lawyer. This, however, fails to explain why he finally decided to inform her on 25 March 2009. His hesitation stood in stark contrast to the alacrity with which he went to instruct Mr Yeh to draft the testator's will on 26 March 2009.

152 In cross-examination, Peter denied that the plaintiff informed him on 25 March 2009 that the testator intended to leave everything to the plaintiff and also denied confirming the truth of the plaintiff's statement with the testator. [note: 95] Peter's evidence was that he found out about the plans for a will from the plaintiff only on 26 March 2009 and he immediately informed the other branches of the family. It was undisputed that ECH's branch of the family did go down to the hospital that same day.

153 I note Ms Barker's submission that the reason why Peter did not confirm with the testator at any time after 25 March 2009, if it really was his intention to will everything to the plaintiff, was that he had already done so on that day as alleged by the plaintiff and Rachel. I also note Peter's equanimity despite Rachel's evidence that he had gone down on one knee before the testator when he asked the testator whether it was true that he intended to leave everything to the plaintiff. One would have expected him to be gravely offended and to deny the allegations more emphatically, if not vehemently. To be fair, however, his mild response to the allegation might also be said to be in line with his general demeanour on the stand.

154 There is therefore some doubt whether the conversations on 18 and 25 March 2009 took place the way they were described. However, even if the plaintiff and Rachel's accounts of the 18 and 25 March 2009 conversations are to be believed, it is clear from their own evidence that the testator never told the plaintiff to instruct a lawyer to draft his will. The plaintiff conceded as much when cross-examined:

> Q: On the 25th, did your late uncle tell you, "Bee Keong, get me a lawyer so that I can make a will?" Did he tell you that?
>
> A: He did not say that.
>
> Q: Prior to the 25th of March, had he ever said anything like that to you?
>
> A: No. [note: 96]

At the most, the testator indicated on 25 March 2009 to Rachel that he would make his will *later*. [note: 97] As such, I am unable to accept the plaintiff's averment that he was acting as a mere mouthpiece for the testator when he first instructed Mr Yeh. On the contrary, it appears that he contacted Mr Yeh to draft the testator's will on his own initiative.

155 Be that as it may, when Mr Yeh attended on the testator on two other occasions, it appeared that the testator expected him. There would have been ample opportunity to seek the testator's consent. The plaintiff in fact testified that he obtained the testator's consent and approval to contact Mr Yeh for the signing of both the First Will on 1 April 2009 [note: 98] and the Second Will on 14 May 2009 [note: 99].

The instructions given to Mr Yeh

156 The defendants also submitted that the circumstances surrounding the meeting between the plaintiff and Mr Yeh, where Mr Yeh took his instructions, were highly suspicious. No attendance note of the meeting was tendered to the court and, even if it had been, Mr Yeh himself stated in cross-examination that the note he took only contained the particulars of the plaintiff and the testator and no instructions. [note: 100] This appeared out of line with his firm's standard practice as vouched for

by his own secretary under cross-examination. [note: 101] I note, however, Mr Yeh's explanation that he did not write down the instructions as they were "quite short, not too long". [note: 102]

157 More significantly, the evidence given by Mr Yeh and the plaintiff as to what transpired during the meeting was contradictory in many instances. When questioned by Mr Kronenburg, the plaintiff first stated that Mr Yeh did not ask him who the other members of the testator's family were. [note: 103] A short while later, he said that he could not remember if he had been asked about any other relatives. [note: 104] Mr Yeh, however, claimed otherwise under cross-examination:

> Q: Did Mr Ng Bee Keong say why Mr Ng Ching Khye, testator, was not giving anything to his younger brother?
>
> A: Yes, yes. Because, er, the deceased's younger brother, according to what Mr Ng Bee Keong told me, was a drug addict, gambler and always come to the deceased for money.
>
> Court: When did he say that?
>
> Witness: On the 26th itself. Because I'm thinking, "Why should he be the sole beneficiary?" Therefore, I feel that I have a duty to see those who may be interested to claim under the Intestacy Succession Act. [note: 105]

Mr Yeh went into some detail about what the plaintiff told him concerning the various members of the testator's extended family during the meeting. [note: 106]

158 At this juncture, I pause to note that the plaintiff's testimony on his instructions to Mr Yeh left much to be desired, to say the least. His answers were evasive and there was constant backpedalling on his part. One example of his prevarication was when he was questioned by Mr Kronenburg about his instructions to Mr Yeh as to the testator's marital status:

> Q: Right. At that point in time on the 26th of March 2009, you clearly told Mr JS Yeh that your uncle was single. Was that the truth?
>
> A: Yes.
>
> …
>
> Q: Why couldn't you tell this---the truth that the deceased was married to Mr JS Yeh on the 26th of March 2009?
>
> A: Well, I told him that he had gone through the Chinese customary marriage.
>
> Q: Oh, you told Mr Yeh that now? On the 26th of March 2009, you told Mr Yeh that?
>
> A: Sorry, I really can't recall, Your Honour. [note: 107]

159 As can be seen, the plaintiff gave three different answers within minutes. Eventually, I issued a warning to the witness against giving misleading testimony to the court. His prevarication and claims that he could not remember were all the stranger in light of the considerable clarity with which he

could recall contemporaneous events (like the conversations on 18 and 25 March 2009) under cross-examination and in his affidavit.

The contents of the Wills

160 Turning to the Wills themselves, the defendants submitted that the fact the Wills were not translated into Chinese for the testator's benefit even though there was time to do so between 26 March and 1 April 2009 was a suspicious circumstance. I am, however, not convinced by the defendant's submission on this point. Other than the fact that the testator sometimes read the Chinese newspapers, no other evidence was adduced that he would have been able to read the Wills if they were in Chinese. Critically, the defendants themselves submitted that he was a man with very little education. Moreover, the Videos and testimony of witnesses indicated that the testator mostly spoke and understood Hokkien. Thus, I place little weight on this omission.

161 The defendants also submitted that the fact that the Wills named the plaintiff as "sole executor and trustee" and sole beneficiary was another suspicious circumstance. Mr Kronenburg argued that the use of the term "trustee" rendered the will bad in law and cited as authority *Low Ah Cheow v Ng Hock Guan* [2009] 3 SLR(R) 1079 ("*Low Ah Cheow*") from [21] to [32] where the Court of Appeal held that the way in which the will was drafted to appoint the respondent the sole trustee and beneficiary of the estate gave rise to several legal difficulties and rendered the intention of the testator ambiguous.

162 Ms Barker submitted that in this context, the words "and trustee" were mere surplusage that did not add anything to the Wills or detract from their validity. She cited *Soh Eng Beng (as executor and trustee of the Estate of Soh Kim Poo, deceased) v Soh Eng Koon* [2010] SGHC 257 where Belinda Ang J applied at [14] the canon of construction "*falsa demonstratio non nocet cum de corpore constat*" to the interpretation of a will, albeit in a different context. The principle provides that a false description does not vitiate when there is no doubt as to the subject matter. Ms Barker submitted that as there was no doubt as to the testator's intention, the inclusion of the words "and trustee" had no adverse effect on the validity of the Wills.

163 I do not propose, at this point of the analysis, to comment on the plaintiff's submission that there was no doubt as to the testator's intention. However, I note that the present case can be distinguished from *Low Ah Cheow*. There, the will required all non-cash parts of the property to be converted into cash, with all leftover proceeds (after payment of debts, funeral and testamentary expenses) held "ON TRUST" by the sole trustee and "distributed" to himself as the sole beneficiary. Further, a term in that will protected the sole trustee from any loss occasioned by postponement in converting the assets in the estate into cash. There were also striking differences between the contents of the solicitor's attendance note and the will. There was much to suggest that the testator did intend to create a trust.

164 Unlike *Low Ah Cheow*, the reference to "trustee" in our present case is *in vacuo*, as it were, with no reference to duties assigned. Indeed, the paragraph which immediately follows states:

> After payment of my just debts, funeral and testamentary expenses, **I GIVE, BEQUEATH AND DEVISE** all my movable and immovable properties wherever situated and of whatsoever nature or kind (including any property over which I may have a general power of appointment or disposition by Will) to my nephew, the said Ng Bee Keong **absolutely**. [emphasis added in bold]

The language of this subsequent paragraph clearly shows an intention to give beneficially.

165 Moreover, unlike *Low Ah Cheow*, the relevant admissible extrinsic evidence here would not support the imposition of a trust on the plaintiff in the Wills. As observed above at [109]–[119], the testator did not have any children but was closest to the plaintiff's family and felt no moral obligation to make provision for his other relatives. This was in stark contrast to the familial situation in *Low Ah Cheow*, where there was evidence that the testator felt a sense of responsibility towards his wife and his other children and had been providing for them up till his death. Further, in *Low Ah Cheow*, the court placed some emphasis on the testator's own use of the word "*wei tok*" which means "entrust" as opposed to "*wei cheok*" which means "will". As will be demonstrated below, this does not arise in our present case. In fact, the word used by Mr Yeh and which the testator affirmed was "*hor*" which means "to give".

166 For the reasons above, I accept Ms Barker's submission that the term "trustee" was mere surplusage. I further note Mr Yeh's evidence that it was his usual practice to use the words "executor" and "trustee" in preparing wills even where there was a sole beneficiary, as it was his understanding that an executor's duty would encompasses the responsibilities of a trustee. [note: 108] It is in fact trite law that an executor would stand in the position of a trustee in relation to the residuary estate (see *Syed Ali Redha Alsagoff v Syed Salim Alhadad bin Syed Ahmad Alhadad* [1996] 2 SLR(R) 470). It is likely, therefore, that the use of the word "trustee" was an innocent mistake arising from a misconception on Mr Yeh's part.

My findings

167 Overall, I find that the defendants have adduced sufficient evidence of circumstances that should arouse the suspicion of the court as to whether the testator knew and approved of the Wills and its contents. As such, the evidential burden shifts back to the propounder of the Wills, the plaintiff, to adduce affirmative evidence that the testator knew and approved of the contents of the Wills.

Proof of knowledge and approval

168 As stated above from [64] to [71], the propounder of the will must produce affirmative evidence of the testator's knowledge and approval, and what affirmative evidence is required in each case will depend upon the circumstances of the case. The greater the degree of suspicion, the stronger the affirmative evidence must be to remove it.

169 Essentially, the two issues to be determined are whether the testator:

(a) knew that he was signing a will; and

(b) knew and approved of the plaintiff being the sole beneficiary of his estate.

170 The defendants' alternative case theory, the power of attorney theory, was that the testator was under the impression that in executing the Wills, he was executing something to authorise the plaintiff to handle his assets for him and/or manage his affairs while he was still alive. As such, he did not know that he was signing a testamentary document and could not have approved of the contents of the Wills.

The background circumstances

171 The defendants argued that the testator's intention always had been to let the plaintiff handle the testator's affairs on his behalf during the testator's lifetime. For instance, the plaintiff testified

that the testator made him a joint account holder/signatory of the testator's Maybank accounts in order to facilitate the plaintiff assisting the testator with his financial affairs, *ie*, payment for medical expenses and nursing care. [note: 109] In response, the plaintiff submitted that the events of 18 and 25 March 2009 made it clear that the testator always intended to leave his entire estate to the plaintiff upon his death. I have already indicated my doubts on those events above from [149] to [154] and will not repeat them here.

172 The plaintiff further relied on the evidence of Mdm Teo that the express intention of the testator was to leave all his property to the plaintiff. [note: 110] When questioned by Mr Kronenburg, Mdm Teo related:

> Q: Well, if the two of you were joking about who he would leave his property to, what suddenly gave you the impression he was not joking in telling you that he would leave all his property to Ah Keong?
>
> A: Because we were talking about him having so much money and who he would leave the money to. And then I asked him who he would leave the---the money to and he said he would leave them to Ah Keong.
>
> …
>
> Q: I have to ask you, how do you know he wasn't joking?
>
> A: He was---he was always telling the truth whenever he told me anything and he---he didn't joke about it.
>
> Q: So the two of you never exchanged jokes between yourselves?
>
> A: No, we would sometimes joke but he was serious about this. [note: 111]

At this juncture, I think it incumbent upon me to comment on Mdm Teo's credibility as a witness. It was not disputed that the testator saw Mdm Teo frequently to get his hair washed and that he told her about his relatives and daily life, conversations which she recounted easily in court. Moreover, her evidence about the testator's relationship with his relatives was corroborated by the evidence of other witnesses. I thus find no reason to disbelieve her evidence in this regard.

173 Unfortunately, as I noted at trial, Mdm Teo's evidence under cross-examination about what the testator said to her concerning his testamentary intentions was extremely muddled and she even "clammed up" at points during the cross-examination. Her account of what she told the plaintiff and Rachel, whilst in their car on 15 May 2009, was particularly confusing. Otherwise, this account would have been significant as it would provide contemporaneous evidence of the testator's intentions regarding his estate as communicated to her at that time.

174 I do not accept Mr Kronenburg's submission that it was inherently implausible that the testator would be so frank with his hairdresser about his testamentary intentions in light of his steadfast avoidance of the subject with his friends. It was not disputed that the testator divulged details of his personal life to Mdm Teo including his purchase of his Heritage View apartment and his illness. It is thus plausible that the topic of his estate might have arisen at some point during their acquaintance. Further, I stress that I did not find that Mdm Teo was being deliberately untruthful or evasive during cross-examination. I accept that her difficulty recalling details was at least partly due to the long time that had elapsed between those events. Nonetheless, in light of her confused testimony, I am

inclined to place less weight on her evidence that the testator intended to leave everything to the plaintiff.

175 The defendants relied on Mdm Teo's evidence in cross-examination that the testator had explained "all these would have to be given to Ah Keong for "*safekeeping*" [note: 112] to advance their power of attorney theory. I am inclined to agree with Ms Barker's submission that Mdm Teo's evidence about "*safekeeping*" was taken out of context by the defendants. It appears to me that the testator only mentioned "*safekeeping*" in response to the question as to whom he wanted to leave his assets to upon his death. Significantly, when asked by Mr Kronenburg whether the testator mentioned for whom the plaintiff was supposed to "*safekeep*" the properties, Mdm Teo replied, "Ng Bee Keong, Ah Keong? I don't know what you mean". When questioned again she said "He didn't say who it was for". [note: 113] To my mind, it is implausible that the testator would fail to mention the beneficiaries for whom the plaintiff was supposed to "*safekeep*" the properties if he was indeed contemplating a power of attorney or trust instrument. I thus find that "*safekeep*" should best be understood in the context of Mdm Teo's evidence that the testator trusted the plaintiff to be thrifty and not fritter away the testator's estate (see above at [110]).

176 Even if the plaintiff and Rachel's accounts of the events of 18 and 25 March 2009 and Mdm Teo's evidence do not persuade me, I could still find knowledge and approval based principally on the evidence provided in the Videos. This is because the authorities provide that affirmative evidence of the testator's knowledge and approval could include evidence that the will was read over by, or to, the testator when he executed it and that the testator heard and understood what was read. Even though it would have been better if Mr Yeh had taken instructions from the testator himself before preparing the Wills, it would suffice if Mr Yeh confirmed that the testator knew and approved of the contents of the Wills prior to execution. [note: 114]

177 As can be seen from the Videos, the testator was afforded time to mouth words or gesticulate in agreement or disagreement and which he in fact did. For instance, when asked by Mr Yeh whether Ah Phee bore any children, the testator waved his hand to indicate that she did not. [note: 115] At another point in the Second Video, the testator even rapped the table to express his disagreement when he felt that he was being misunderstood. [note: 116]

178 I now turn to the Videos.

The Videos

179 The defendants' arguments pertaining to the First Will substantially overlap with their arguments (dealt with above from [122] to [126]) about whether the testator understood the nature and consequences of the act of making a will. The defendants further argued that the proper term for "will" in Hokkien is "*wee tsiok*" and not "*kuasa*" which could also mean a transfer *inter vivos*. As such, they submitted that the testator might not have understood that he was signing a will.

180 It was undisputed that the First Video began rather abruptly with the word "*kuasa*". Mr Yeh explained in cross-examination that the full sentence (in Hokkein) containing the word was, "My name is Yap Jin Sien. I'm your lawyer. I come here to make a *kuasa* for you." [note: 117] His secretary (Diana) who was also present at the signing corroborated his evidence. [note: 118]

181 On the meaning of "*kuasa*", Mr Yeh explained that within the Hokkien community "*kuasa*" is commonly used to mean "will". [note: 119] His evidence was confirmed by the court interpreter. [note:

120] More significantly, Ang confirmed under cross-examination that the testator's friends used the word "*kuasa*" in his presence on more than one occasion when referring to "wills". [note: 121]

182 I am persuaded by the evidence above that the testator would have understood the word "*kuasa*" uttered by Mr Yeh in the First Video to mean "will". I find the testator therefore knew that he was executing a will on 1 April 2009.

183 Mr Yeh explained the contents of the First Will to the testator in Hokkien, " ... *hor Bee Keong. Long chong hor yee, boh hor pak lang liao. See ah mm see?*" Translated to English this meant, "give to Bee Keong. Whole thing give to him, not giving other people lah. Correct or not?" [note: 122] The testator responded with a nod. Mr Yeh went on to say:

> … ler bian kia yee lang duay ler ching wu hao sim lah. Ler chiam lok ker, eh pai yee lang ka eh hiao, ka eh sai chor dai chee. Mai hor jay kor lai ga chit eh hit dao go geow chit eh, un nee kuan lah … hor …

When questioned by Mr Kronenburg and the court about the meaning of this second statement, Mr Yeh replied:

> A: I say "After---after you have executed the will, then you can be rest assured that no one will come and challenge your property." "Geow che" or "kar che" it means, er, "They come here to---to dig your property or buy your property and you don't have to worry that the plaintiff and his wife will not be filial to you".
>
> …
>
> Witness: … I assure him that "Although you have executed the will, you can still do whatever they like and the plaintiff and the---
>
> Court: "You can still [do] whatever ..."?
>
> Witness: "Whatever you"---whatever he likes.
>
> ...
>
> Court: Whatever who likes?
>
> Witness: The deceased.
>
> …
>
> Q: You said there was no need to---to worry that people will come after or claim his assets. What's your basis for saying all of that?
>
> A: That means if he---if his will, the deceased's will is both legal and valid, you know, people will want to come and claim his assets. If he's, er, if the will after its ex--- execution, the will after its execution will become legal and valid and no other people whose names are not in the will, will come and grab or dig his assets. [note: 123]

184 Bearing in mind that to a layperson, the legal concept of separation of ownership into legal title and beneficial ownership is likely to be foreign, I find that the word "give" would have been understood by the testator as meaning to give beneficially. Hence, I accept Ms Barker's submission that the earlier statement that everything was to be given to the plaintiff and no one else, would have been clear and unequivocal to the testator. His nodding indicated his approval of the plaintiff

being his sole beneficiary. Whilst the second statement muddied waters somewhat since it is not clear to me how the plaintiff or Rachel's filial piety would matter to the testator once he was dead, I also note that the second statement was made *after* the testator had indicated his approval of the first statement.

185 At this juncture, I note with some concern that Mr Yeh's explanation of relatively simple terms of a will was not a model of clarity. As has been pointed out, the way Mr Yeh went about discharging his duty to the testator left much to be desired. Moreover, during cross-examination, he appeared defensive and gave rather confused answers even to simple questions. It took substantial effort and patience to derive any assistance on the matter from him. However, I feel constrained to add, in fairness to Mr Yeh, that his poor performance on the stand could be attributed to the effect of the passage of time; he appeared in court a shadow of his former self as seen in the Videos.

186 As regards the Second Will executed on 14 May 2009, the plaintiff averred that the testator knew that Mr Yeh and Diana were there in his home for the purpose of helping him execute a new will. Rachel stated in her AEIC that the testator got up from the sofa, walked to the dining table and gestured that the dining table was to be cleared when he saw Mr Yeh on 14 May 2009. [note: 124] This was unchallenged and supported by Mr Yeh's AEIC [note: 125] and Diana during cross-examination. [note: 126]

187 The plaintiff further submitted that the testator knew he was executing the Second Will as Mr Yeh referred to the execution of the First Will:

> (In the Second Video)
>
> J.S. Yeh (in Hokkien): *The previous time*, we were talking about all your assets. All will be given to Bee Keong (points to Bee Keong). Do you remember?
>
> NCK: (Nods at him)
>
> [emphasis added]

Mr Yeh also mentioned, later in the Second Video, the word "*kuasa tao*" which as translated means "administrator". [note: 127]

188 The defendants argued, however, that Mr Yeh's explanation appeared more consistent with the defendant's power of attorney theory. From the Second Video, it can be seen that Mr Yeh prefaced his remark about giving everything to the plaintiff with the words, "*ai cho eh mee kia, gao dai lah … Gao dai hor Ah Keong lai tuay ler cho dai chee*" which translate to "instruct Ah Keong to help handle affairs on your behalf". [note: 128] The defendants thus submitted that the full sentence could be interpreted to mean: "instruct Ah Keong to help handle affairs on your behalf *so* all your things, assets, whole thing give to Ah Keong". Such an interpretation, coupled with the use of the term "trustee" in the Wills, could have been understood by the testator to mean that he was only signing a power of attorney.

189 The plaintiff disputed the defendants' interpretation. Ms Barker submitted that the insertion of the word "so" – between the words "Instruct Ah Keong to help handle affairs on your behalf" and "all your things, assets, whole thing give to Ah Keong" – was inaccurate. Ms Barker relied on the evidence of the court interpreter that the word "and" would be a more accurate translation for "*Ah*" [note: 129]

so that the sentence would read: "Instruct Ah Keong to help handle affairs on your behalf *and* all your things, assets, whole thing give to Ah Keong". The first part of the sentence thus referred to the appointment of the plaintiff as the sole executor as per the first paragraph of the Second Will; and the second part of the sentence about the plaintiff being named sole beneficiary of the Second Will.

190 In the Second Video, Mr Yeh made a statement that "All will be given to Ah Keong and nobody else", to which the testator responded by making four gestures:

(a) Drawing a circle on the table.

(b) Using both hands and making a pushing/throwing motion towards the plaintiff.

(c) Drawing another circle on the table.

(d) Pointing to himself.

The defendants submitted that the four gestures read together could be interpreted as meaning, "*Everything I have I give to him, everything to do for me*" which would be consistent with their power of attorney theory.

191 The plaintiff argued that interpreting the third and fourth gestures to mean "everything to do for me" was strained and devoid of context. Ms Barker submitted that the defendants' interpretation of the four gestures would not occur to the ordinary, reasonable man and cited as an example the following exchange between Mr Kronenburg and Dr Ngui:

Q: Would you agree with me that what Mr Ng Bee Ke---Ng Ching Khye could have been saying is: "Everything I give for him, everything to do for me"? That is not possible that interpretation?

A: Can you say that again? Everything?

Q: "Everything I have give to him, everything to do for me."

A: Everything---

Q: "To do for me." That's when---

A: Er, er---

Q: ---he points to himself. "All I have give to him, all to do for me." Ending up point up to himself. That interpretation is not possible?

A: I don't quite understand "Everything to do for me", what---what that means. [note: 130]

192 Mr Yeh stated, under cross-examination, that he understood the testator's throwing gesture towards the plaintiff to mean that he was giving everything to the plaintiff:

… And this understanding is also from the will making that a deceased person can just throw a title deed to the beneficiary, can throw a car key or log book to the bene---ben---beneficiary as---as will. So the gesture here is to say, "I give of---everything of mine to Ng Bee Keong. [note: 131]

He further stated that he understood the third and fourth gestures to mean:

> A: These are all mine. I got the right. These are all---these property are all mine. I have the right.
>
> …
>
> Q: How can you be so sure that was what he meant?
>
> A: I could hear. He's not totally speechless. You, er, er, listen carefully. You---you can hear--- [note: 132]

193 The plaintiff was afforded the opportunity to clarify with this court if the testator had indeed said something whilst making the third and fourth gestures. He stated that the testator said "*wah ye guan*" which can be translated to mean, "*this is my right*". This, however, contradicted his earlier position that the testator was mouthing "*long chong wah eh*" which means "all this is mine". [note: 133]

194 Fortunately, my decision does not hinge solely upon the interpretation of those four gestures. Prior to the testator signing the Second Will, Mr Yeh had stated by way of confirmation:

> J.S. Yeh (in Hokkien): So, I will repeat again.
>
> Your name is Ng Ching Khye. Now you are appointing him (Bee Keong) to be your administrator. All your property, movable and immovable will be given to Ah Keong. (NCK nods).
>
> Your wife will not get a single item. Do you want to give her a little bit? (NCK makes a hand signal indicating "no"). [note: 134]

In light of the testator's unequivocal agreement above and the evidence adduced earlier that the testator was aware that he was signing a will, I am inclined to accept the plaintiff's submission that Mr Yeh's words and the testator's gestures demonstrate the testator's intention to will everything to the plaintiff as sole beneficiary.

My conclusions on knowledge and approval

195 I find that the plaintiff has adduced sufficient evidence to show that, on the balance of probabilities, the testator knew that he was signing a will and that the testator knew and approved of the plaintiff being the sole beneficiary of his estate. The knowledge and approval requirement has thus been satisfied.

Conclusion

196 For the reasons given above, I uphold the Second Will. The plaintiff's claim is thus allowed.

197 As a postcript, I note that the various relatives who challenged the validity of the Wills and gave evidence before this court were not unreasonable persons seeking to bring vexatious claims. On the contrary, they struck me as basically honest but mistaken witnesses who were forthright in their answers to the court. I feel therefore that the disparaging remarks made about them by the plaintiff and Rachel were mostly unwarranted.

198 I make one final observation that it is unfortunate that this dispute has not only resulted in familial discord but also a departure from what all parties agreed had been a long and proud family tradition of helping and supporting one another in times of need. It is hoped that, the matter having been put to rest, the task of mending ties can soon begin.

199 I will hear parties on costs.

[note: 1] 1AEIC (Bundle of Affidavits of Evidence-in-Chief, vol 1) Tab 1 at [44].

[note: 2] *Ibid*.

[note: 3] 1AEIC Tab 1 at [45].

[note: 4] 1AEIC Tab 1 at [47]; 2AEIC Tab 3 at [20].

[note: 5] 1AEIC Tab 1 at [48]; 2AEIC Tab 3 at [20].

[note: 6] *Ibid*.

[note: 7] 1AEIC Tab 1 at [49]; 2AEIC Tab 3 at [21].

[note: 8] 2AEIC Tab 3 at [22].

[note: 9] 1AEIC Tab 1 at [51]; 2AEIC Tab 3 at [23].

[note: 10] 1AEIC Tab 1 at [53]; 2AEIC Tab 3 at [25].

[note: 11] 1AEIC Tab 1 at [54]; 2AEIC Tab 3 at [26].

[note: 12] 1AEIC Tab 1 at [55]; 2AEIC Tab 3 at [27].

[note: 13] 1AEIC Tab 1 at [57].

[note: 14] *Ibid* at [59].

[note: 15] *Ibid* at [60].

[note: 16] *Ibid* at [71].

[note: 17] *Ibid* at [74]-[76].

[note: 18] 3AEIC Tab 13 at [25]; 3AEIC Tab 14 at [59].

[note: 19] 3AEIC Tab 13 at [30]; 3AEIC Tab 14 at [62]-[63].

[note: 20] 1AEIC Tab 1 at [99].

[note: 21] CT: 11 Jan 2013, p 61 (Certified Transcript).

[note: 22] 1AB.47 and 1AB.48 (Agreed Bundle of Documents, vol 1).

[note: 23] 2AEIC Tab 3 at [46].

[note: 24] 1AEIC Tab 1 at [91].

[note: 25] *Ibid*.

[note: 26] 1AEIC Tab 1 at [92].

[note: 27] *Ibid*.

[note: 28] 1AEIC Tab 1 at [92]; 2AEIC Tab 4 at [12].

[note: 29] *Ibid*; 2AEIC Tab 4 at [13].

[note: 30] CT: 16 Jan 2013, p 34.

[note: 31] CT: 17 Jan 2013 p 60.

[note: 32] CT: 16 Jan 2013, p 47.

[note: 33] CT: 9 Jan 2013, p 65.

[note: 34] CT: 15 Jan 2013, p 8; 11 Jan 2013, p 44.

[note: 35] CT: 16 Jan 2013, pp 1-2.

[note: 36] CT: 17 Jan 2013, p 74; 18 Jan 2013, p 69.

[note: 37] 1AB.166.

[note: 38] CT: 11 Jan 2013, p 65.

[note: 39] *Ibid*, p 62.

[note: 40] 3AEIC Tab 18 at [9].

[note: 41] CT: 18 Jan 2013, p 31.

[note: 42] *Ibid*, pp 51-52.

[note: 43] *Ibid*, pp 54-55.

[note: 44] 2AEIC Tab 7 at [10]-[11].

[note: 45] 2AEIC Tab 7 at [16]; CT: 18 Jan 2013, pp 36 and 50.

[note: 46] CT: 18 Jan 2013, p 50.

[note: 47] 1AB.91.

[note: 48] 1AB.172 and 1AB.180.

[note: 49] 3AEIC Tab 14 at [79]; Tab 4 at PKTK-1.

[note: 50] CT: 17 Jan 2013, p 97.

[note: 51] 3AEIC Tab 14 at [68].

[note: 52] CT: 15 Jan 2013, p 116; 17 Jan 2013, p 84.

[note: 53] CT: 10 Jan 2013, p 66.

[note: 54] 2AEIC Tab 10 at [9]; 1AEIC Tab 2 at [94]-[95].

[note: 55] CT: 16 Jan 2013 at p 6.

[note: 56] 2AEIC Tab 14 at [10].

[note: 57] 1AEIC Tab 1 at [119]; CT: 10 Jan 2013, p 24.

[note: 58] CT: 14 Jan 2013, p 44.

[note: 59] CT: 16 Jan 2013, p 7.

[note: 60] CT: 15 Jan 2013, p 111.

[note: 61] *Ibid*, p 77.

[note: 62] CT: 17 Jan 2013, p 75.

[note: 63] *Ibid*, p 76.

[note: 64] *Ibid*, p 85.

[note: 65] 3AEIC Tab 14 at [26] and [29]; CT: 9 Jan 2013, p 32.

[note: 66] 2AEIC Tab 3 at [22].

[note: 67] CT: 18 Jan 2013, p 3.

[note: 68] *Ibid*, p 89.

[note: 69] *Ibid*, p 74.

[note: 70] CT: 14 Jan 2013, p 68.

[note: 71] *Ibid*, pp 94-95.

[note: 72] 2AEIC Tab 9 at [21]-[22].

[note: 73] CT: 18 Jan 2013, p 1.

[note: 74] 2AB.1140-1250.

[note: 75] CT: 14 Jan 2013, p 83.

[note: 76] CT: 17 Jan 2013, p 62.

[note: 77] CT: 16 Jan 2013, pp 83-84.

[note: 78] *Ibid*, p 73.

[note: 79] CT: 17 Jan 2013, p 36.

[note: 80] Cope R & Humphreys M. Civil Matters. *Seminars in Practical Forensic Psychiatry* (1995) 11, 318-320, at 319.

[note: 81] CT: 16 Jan 2013, pp 80-81.

[note: 82] 3AEIC Tab 13 at [29].

[note: 83] 2AEIC Tab 12 at [30]; CT: 15 Jan 2013, p 101.

[note: 84] 2AEIC Tab 12 at [32].

[note: 85] 3AEIC Tab 14 at [81].

[note: 86] CT: 17 Jan 2013, pp 28-29.

[note: 87] *Ibid*, p 67.

[note: 88] *Ibid*, p 76.

[note: 89] CT: 18 Jan 2013, p 78.

[note: 90] CT: 17 Jan 2013, p 85.

[note: 91] *Ibid*, p 92.

[note: 92] *Ibid*, p 84.

[note: 93] CT: 18 Jan 2013, p 81.

[note: 94] 1AEIC Tab 1 at [46].

[note: 95] CT: 17 Jan 2013, pp 86-87.

[note: 96] CT: 8 Jan 2013, p 39.

[note: 97] CT: 11 Jan 2013, p 87.

[note: 98] CT: 9 Jan 2013, p 56.

[note: 99] *Ibid*, p 81.

[note: 100] CT: 14 Jan 2013, p 57.

[note: 101] CT: 11 Jan 2013, p 45.

[note: 102] CT: 14 Jan 2013, p 57.

[note: 103] CT: 9 Jan 2013, p 22.

[note: 104] *Ibid*, p 29.

[note: 105] CT: 14 Jan 2013, p 61.

[note: 106] *Ibid*, pp 61-62.

[note: 107] CT: 9 Jan 2013, pp 30-31.

[note: 108] 2AEIC Tab 4 at [20].

[note: 109] CT: 9 Jan 2013, p 13.

[note: 110] 2AEIC Tab 9 at [29].

[note: 111] CT: 10 Jan 2013, p 65.

[note: 112] CT: 11 Jan 2013, p 18.

[note: 113] CT: 11 Jan 2013, p 20.

[note: 114] CT: 14 Jan 2013, p 78.

[note: 115] 1AEIC Tab 1 at p 88.

[note: 116] 3AEIC Tab 3 at p 54.

[note: 117] CT: 14 Jan 2013, p 65.

[note: 118] CT: 11 Jan 2013, p 43.

[note: 119] CT: 14 Jan 2013, p 79.

[note: 120] CT: 16 Jan 2013, p 28.

[note: 121] CT: 18 Jan 2013, pp 74-75.

[note: 122] 2AEIC Tab 12 at p 16.

[note: 123] CT: 15 Jan 2013, pp 5-6.

[note: 124] 2AEIC Tab 3 at [51].

[note: 125] 2AEIC Tab 4 at [14].

[note: 126] CT: 11 Jan 2013, p 49.

[note: 127] 1AEIC Tab 2 at p 89.

[note: 128] 2AEIC Tab 12, p 22 at time 1.52.38.

[note: 129] CT: 15 Jan 2013, p 61.

[note: 130] CT: 16 Jan 2013, p 68.

[note: 131] CT: 15 Jan 2013, p 29.

[note: 132] CT: 15 Jan 2013, p 32.

[note: 133] CT: 10 Jan 2013, p 6.

[note: 134] Plaintiff's AEIC, p 89.