

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC220

Suit No 967 of 2013

Between

Yeo Henry @ Yeo Wee Heng

... Plaintiff

And

- (1) Yeo Charles
- (2) Yeo Yuan-Han John
- (3) Yeo Yuan-Yin Evangeline

... Defendants

And

- (1) Yeo Yuan-Han John
- (2) Yeo Yuan-Yin Evangeline

... Plaintiffs-in-Counterclaim

And

Yeo Henry @ Yeo Wee Heng

... Defendant-in-Counterclaim

JUDGMENT

[Succession and wills] – [Testamentary capacity] – [Mental disability]

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**Yeo Henry (executor and trustee of the
estate of Ng Lay Hua, deceased)
v
Yeo Charles and others**

[2016] SGHC 220

High Court — Suit No 967 of 2013
Andrew Ang SJ
2–5, 10, 11 June; 12 October; 4 December 2015

11 October 2016

Judgment reserved.

Andrew Ang SJ:

Introduction

1 The plaintiff in this case seeks to propound the will dated 2 August 2012 (the “2012 Will”) of the late Mdm Ng Lay Hua (“Mdm Ng”) who died on 18 March 2013, a widow aged 88 years. The plaintiff is the sole executor and trustee appointed under the 2012 Will and the principal beneficiary thereunder.

2 Mdm Ng is survived by four children comprising an equal number of sons and daughters, namely:

- (a) The elder son, Mr Charles Yeo, the first defendant (“the first defendant” or “Charles”);
- (b) The elder daughter, Mdm Yeo Wee Tsan (“Wee Tsan”);
- (c) The younger son, Mr Henry Yeo, the plaintiff (“the plaintiff” or “Henry”); and
- (d) The younger daughter, Mdm Yeo Wee Yong (“Wee Yong”).

3 Charles has two children, namely:

- (a) Mr John Yeo, the second defendant (“the second defendant” or “John”). John is married and, at the time of Mdm Ng’s death, had two sons; and
- (b) Ms Evangeline Yeo, the third defendant (“the third defendant” or “Evangeline”). Evangeline is not married.

4 Wee Tsan is married and has a married daughter, Ms Mabel Lee, and a granddaughter.

5 Henry and Wee Yong are both married but have no children.

6 Mdm Ng had executed several wills in her lifetime. Apart from the 2012 Will, she had earlier executed other wills including:

- (a) On 26 May 2009 (“the 2009 Will”);
- (b) On 4 July 2008 (“the 2008 Will”);
- (c) On 23 January 2002 (“the 2002 Will”); and

(d) On 6 July 1997.

7 The defendants seek to impugn the 2008, 2009 and 2012 Wills on the basis that Mdm Ng lacked the testamentary capacity to execute any of them. (I shall hereafter refer to them collectively as “the disputed Wills”.) If they succeed, this will leave the 2002 Will as the last will of the deceased. All the wills were prepared by Ms Ang Hooi Yeong, Pauline (“Pauline Ang”), an advocate and solicitor whom Mdm Ng had known for many years. Pauline Ang witnessed the execution of every will, in each instance together with another advocate and solicitor or a secretary in her office.

8 In seeking to propound the 2012 Will, strictly, all that the plaintiff is required to do is to prove the validity of the 2012 Will. However, the dispositions under the 2009 and the 2012 Wills are the same, the only difference being in the executors. In other words, the dispositions in the 2012 Will originated in the 2009 Will. For this reason, the plaintiff has chosen to defend the 2009 Will as well. Even if he were to fail in propounding the 2012 Will but succeeds in defending the 2009 Will, his inheritance would still be the same. In contrast, in order for the second and third defendants to have the full benefit of the dispositions in their favour, they will need to succeed in their challenge regarding the validity of all three of the disputed Wills.

9 Originally, Charles was the sole defendant seeking to impugn the disputed Wills on the basis, amongst others, that, if Mdm Ng had not lacked testamentary capacity, she would have provided for him (as the elder son) as well as for his children, John and Evangeline, under the disputed Wills. Successfully impugning the disputed Wills would leave the 2002 Will as the last valid testamentary disposition of Mdm Ng. However, in the midst of trial,

when he learnt that he was not a beneficiary under the 2002 Will either, the question as to his standing to contest the Wills arose. For this reason, John and Evangeline joined as the second and third defendants respectively. They too challenged the disputed Wills on the ground that Mdm Ng lacked testamentary capacity and did not know what she had executed. This formed the basis for their counterclaim in which they sought a pronouncement against the 2012 Will, a declaration that the 2009 and 2008 Wills were void and invalid, and a pronouncement in favour of the 2002 Will.

Background

10 Mdm Ng was born on 5 January 1925 and died on 18 March 2013, aged 88. She spoke Hokkien and Mandarin, was fairly conversant in English and could also speak some Bahasa Melayu. She was by nature quiet and reserved, but had strong views and opinions.

11 According to Pastor Koh Yee Leng (“Pastor Koh”), a pastor of Jubilee Church who had known her for over 30 years, Mdm Ng was a devoted Christian who was clear about her religious convictions and had great reverence for God. She was brought up in a Christian family and married Yeo Chee Kiat of the Yeo family which also had a strong Christian tradition. During her lifetime she attended church regularly, giving tithes and helping the needy.

12 Yeo Chee Kiat, who died in 1985, was a founding director of Yeo Hiap Seng Ltd. Mdm Ng bore him the four children earlier mentioned.

13 Except for Wee Yong, who has resided in Sweden since 1982, the other children reside in Singapore. However, Wee Yong spoke to her mother

often and would return to Singapore during certain periods (such as during the last two months of her father's life and when her mother chose to spend the Chinese New Year period in Hong Kong). From 2006, she visited her mother in Singapore almost yearly.

14 Mdm Ng was an accomplished business woman and enjoyed much success investing in real property and in stocks and shares. Her estate included the following assets which are specifically the subject of the present dispute:

- (a) The property at No 64 Sian Tuan Avenue, Singapore 588338, at which she resided immediately before her death ("64 Sian Tuan Avenue");
- (b) The property at No 6 Watten Terrace, Singapore 287230 ("6 Watten Terrace");
- (c) The property at No 55, Hua Guan Avenue, Singapore 589151 ("55 Hua Guan Avenue"); and
- (d) A portfolio of stocks and shares.

15 Mdm Ng lived at 55 Hua Guan Avenue for about 35 years. After Charles' marriage in 1974, he and his family had dinner almost every evening at 55 Hua Guan Avenue except for a brief period after the death of his father in 1985.

16 Mdm Ng and her husband had made gifts to their children over the years. In 1975, they gave Wee Tsan 54 Hua Guan Avenue. Before the father died, in 1985, Charles and Henry each received a house from the parents. In 1989, Mdm Ng gave Wee Tsan another property at 29 Binjai Park because she

had given some shares to Charles and Henry. Mdm Ng did not give any property to Wee Yong because she was afraid Wee Yong would sell the property and donate the proceeds to charity. However, in 1997, Wee Yong asked for a loan from the mother so that she could buy an apartment in Sweden where she lived. Mdm Ng happily did so. (The defendants say the apartment was purchased for Wee Yong but nothing turns on it.) Mdm Ng also remitted money periodically to Wee Yong despite Wee Yong's assurances that she had enough. In later years, Henry took over the task of remitting the money on the mother's behalf.

17 In 1998, owing to renovation work on 55 Hua Guan Avenue, Mdm Ng moved into 64 Sian Tuan Avenue, next to Charles' house. She lived there for the rest of her life. Throughout this period, Charles and his family continued to have dinner at Mdm Ng's house almost daily.

18 In the 2002 Will, Mdm Ng made the following provisions:

- (a) 64 Sian Tuan Avenue was to be given to John and, failing him, to Evangeline (in the event John pre-deceased Mdm Ng leaving no issue) or to John's children (in the event John pre-deceased Mdm Ng leaving issue);
- (b) The property at 6 Watten Terrace was to be given to Evangeline and, failing her, to John (in the event Evangeline pre-deceased Mdm Ng leaving no issue) or to Evangeline's children (in the event Evangeline pre-deceased Mdm Ng leaving issue);
- (c) The property at 55 Hua Guan Avenue was to be given to the plaintiff and Wee Tsan's daughter, Mabel Lee, equally; and

- (d) The residuary estate to be given to the plaintiff and, failing him, to Wee Tsan.

19 In 2004, Mdm Ng was diagnosed with pancreatic cancer, based on clinical findings. She remained largely asymptomatic. In 2009, following her complaint of abdominal pain, an ultrasound examination showed a tumour mass in the pancreas. She was treated symptomatically. Over the years, she remained relatively symptom-free despite a large abdominal mass. When she passed away peacefully at home on 18 March 2013, the cause of death was certified as “Carcinoma Pancreas”. It was during this period between Mdm Ng’s diagnosis in 2004 and her death in 2013 that the key events of this dispute occurred.

20 Sometime in 2004, shortly after his return to Singapore following completion of his studies abroad, John moved in to live with Mdm Ng at 64 Sian Tuan Avenue. He stayed there until March 2009.

21 Initially, John attended church regularly but, sometime in 2005, he ceased to be a regular church-goer. On many occasions, Mdm Ng urged him to go to church. He agreed under cross-examination that Mdm Ng made it clear to him that it was important to her that he should attend church regularly.

22 On 27 May 2006, Mdm Ng fell in the bathroom at home. According to Charles, Evangeline found her sprawled on the floor and she had to be helped onto her bed. On 29 May 2006, Henry brought her to Mount Elizabeth Hospital where she was warded.

23 On 31 May 2006, she was transferred to the National University Hospital (“NUH”) and placed under the care of Professor Einar Wilder-Smith

(“Prof Wilder-Smith”), a senior consultant in neurology. She stayed there until 20 June 2006. While there, she was diagnosed as having intermittent complex partial seizures (“ICPS”) which, according to Prof Wilder-Smith, was likely caused by hyponatraemia (*ie*, low sodium electrolyte content in the blood) and a concomitant urinary tract infection. Her mental state improved over the period of hospitalisation to the extent that on discharge she was oriented as to time, person and place. There is no evidence that Mdm Ng suffered any relapse of ICPS thereafter.

24 In August 2006, Mdm Ng was brought to see Associate Professor Pang Weng Sun (“Dr Pang”), a specialist in geriatric medicine at Alexandra Hospital. She followed him to Khoo Teck Puat Hospital when he moved there and remained under his care until her death in March 2013. Throughout this period, she was treated principally for depression.

25 Mdm Ng executed a Power of Attorney in Henry’s favour (“the 2006 PA”) on 9 June 2006 while she was in NUH. In brief, this was to enable him to rent out and manage her properties at 55 Hua Guan Avenue and 6 Watten Terrace. The defendants have not challenged the validity of the 2006 PA.

The 2008 Will

26 On 4 July 2008, Mdm Ng executed the 2008 Will. The change effected under the 2008 Will was that 6 Watten Terrace was no longer to be given to Evangeline. Instead, the same was to be given to the plaintiff and, failing him, to Wee Tsan.

27 Sometime between late 2008 and early 2009, Mdm Ng came to know that John would be marrying a non-Christian. She was upset about this.

The 2009 Will

28 On 26 May 2009, Mdm Ng executed the 2009 Will. The change from the 2008 Will was that 64 Sian Tuan Avenue was no longer to be left to John and, failing him, Evangeline if he pre-deceased Mdm Ng leaving no issue. Instead, it was to be given to the plaintiff and, failing him, Wee Tsan.

29 About two weeks later, on 6 June 2009, John married his betrothed.

30 On 24 July 2009, Mdm Ng executed another Power of Attorney (“the 2009 PA”) appointing Henry to act on her behalf in dealing with all her securities and investments.

31 This was followed, on 28 September 2010, by her execution of a Lasting Power of Attorney (the “LPA”) before Dr Janet M K Fung, a medical practitioner and accredited Certificate Issuer under the Mental Capacity Act (Cap 177A, 2010 Rev Ed). Just as they did not challenge the validity of the 2006 PA, the defendants have not disputed the validity of the LPA nor of the 2009 PA. I should perhaps add that in his closing submissions, Mr Siraj Omar (“Mr Siraj”), counsel for the defendants, stated that the defendants did not admit that Mdm Ng had the requisite capacity to execute the PAs and the LPA. This, however, ignored the fact that Charles had given evidence that he was the one who approached Henry to obtain the 2006 PA and that he had no doubts that his mother had the mental capacity to execute the PAs and the LPA.

The 2012 Will

32 On 2 August 2012, Mdm Ng executed the 2012 Will. The only change from the 2009 Will was that the plaintiff was named as the sole executor and

trustee and, failing him, Wee Tsan in place of Mdm Ng's brothers, Ng Hock Hwa and Ng Tiong Wah respectively.

33 The medical evidence shows that Mdm Ng did not suffer from dementia. However, she was treated for depression from August 2006 until her death. In the words of Dr Pang, the geriatrician who had the care of Mdm Ng from August 2006 until her death, her depression was "severe and significant".

34 Dr Pang administered the Abbreviated Mental Test ("AMT") on her several times over this period (the last one being on 22 October 2012). He testified that in his view Mdm Ng did not have dementia. Dr Pang explained in cross-examination that the AMT is a "screening tool" and that "[g]enerally in patients with dementia, AMT will deteriorate over time. And if [a] patient has advanced dementia, they cannot even respond to any of the questions." However, throughout the series of AMTs administered on Mdm Ng, her score remained fairly consistent (8 out of 10 when tested on 19 October 2009 and 22 October 2012). As such, Dr Pang was "quite confident that she [did] not have dementia. Because over such a long period of time, a dementia person [*sic*] will deteriorate and develop problems". Dr Pang had given two medical reports on Mdm Ng. The first was on 13 August 2010 in connection with her intended execution of the LPA referred to above. In that Report, Dr Pang wrote:

Presently she is still alert and independent in mobility. Requires some assistance for self care. ... Her mood is still low but she has been generally stable, with occasional episodes of agitation. She is still able to make decisions for herself and indicate who she prefers to manage her affairs.

35 In cross-examination regarding that Report, Mr Siraj suggested to Dr Pang that there was a difference between the mental capacity required to

execute an LPA and that required to execute a will. He agreed. However, Mr Siraj did not ask the further question whether Mdm Ng's mental capacity at the time of that Report was sufficient only for the execution of the LPA but not for the purposes of a will. Perhaps all that he wanted to elicit from Dr Pang was that, in giving that Report, he had not addressed his mind to the question whether Mdm Ng had the testamentary capacity to execute a will.

36 Dr Pang's second Report was in response to a request by the solicitors for the plaintiff. In that Report dated 31 August 2013, Dr Pang made a summary review of her mental state from 2006 to 2013 as follows:

She had depression with agitation but her cognitive state remained relatively stable over the years – Abbreviated Mental Test (AMT) was 7-8/10 in 2006, 2007, 2009, 2010 and 2012. She was orientated to time, place and persons, with some difficulty with short term memory recall, though this may be related to concentration during testing. She tended to talk about past events.

During the clinic consult on 19 Jul 2010, she expressed that she wanted her son Henry to manage her affairs. Family was advised to consider application for Lasting Power of Attorney and a medical report was given.

The last Abbreviated Mental Test in Oct 2012 was still 8/10.
...

37 In Dr Pang's affidavit of evidence-in-chief ("AEIC"), he opined that Mdm Ng was "orientated to time, place and persons". He also opined that based on his Reports, Mdm Ng "was capable of preparing a short Will" and that "she had the mental capacity to do so". Under cross-examination, Dr Pang's replies on the question of Mdm Ng's testamentary capacity were less than categorical. At one stage, after reviewing with Dr Pang the latter's notes taken during Mdm Ng's outpatient visits up to 30 May 2008, Mr Siraj asked concerning Mdm Ng's testamentary capacity:

Q So at that time would you be able to say that [sic] with any certainty whether Mdm Ng has [sic] the testamentary capacity to execute her will?

A I think the difficulty with patients like this really depends on how complex her will is. In my opinion, she could decide who could look after her. That was something quite simple. It is a simple will, very straightforward, er, she might still be able to testify to that.

Q But it's a --- it's a question mark, correct?

A Yes, it is a question mark.

At another stage, after reviewing Dr Pang's notes for the period from March 2008 to June 2009, Mr Siraj again asked Dr Pang about Mdm Ng's testamentary capacity in the following exchange:

Q Right. Now this is June 2009. Just looking at the period March 2008 to June 2009 and I have taken you through the notes. Would you agree that there was no significant change in Mdm Ng's physical and mental condition during this period?

A Yes. There was no significant change.

Q And so would you agree that you would not be able to say whether she had testamentary capacity to execute a will at or around that time? And by that time I mean June 2009.

A It will be difficult for me to say.

38 In view of what appeared to be a doubt raised as to whether, as at 29 June 2009, Mdm Ng had the requisite testamentary capacity (in contrast to what Dr Pang had deposed in his AEIC), the court sought clarification of Dr Pang. His final answer was that she could probably do a simple will. He explained his difficulty thus:

... [I]t's very hard for a doctor to look at you all [sic] in the clinic and when she goes out of the clinic and does something else, I cannot use that clinic visit to say she can or cannot, you know, sign that will.

In fairness to Dr Pang, for him to give a firm answer to the question whether Mdm Ng had the requisite testamentary capacity, he had to be present at the execution of the will. No doctor was present at the signing of any of the disputed Wills.

39 Mr Siraj then took Dr Pang through the remainder of his notes covering consultations up to March 2013. That included a period from 31 October 2011 up to at least October 2012 when, according to Dr Pang, Mdm Ng’s depression got better. In his words: “The period in between, she was doing quite well. Even of July 2012, I wrote there ‘generally well’.” (The 2012 Will was, as earlier stated, executed on 2 August 2012.) Notably, Mr Siraj did not ask Dr Pang for his opinion as to Mdm Ng’s testamentary capacity during this period in contrast to the two earlier periods during which time the 2008 and 2009 Wills were executed.

The Law

40 Under the common law, a testator is at liberty to leave his assets to whomsoever he wishes provided that he has testamentary capacity at the time he executes the will. This was recently reiterated in *Leow Li Yoon v Liu Jiu Chang* [2016] 1 SLR 595 at [28] where the learned Judicial Commissioner Aedit Abdullah cited *The Vegetarian Society and another v Scott* [2013] EWHC 4097 9 (Ch) at [23]–[24] for the following statement:

23 ... [T]here is no legal fetter to the general principle of testamentary freedom by which a person may leave his or her assets as he or she sees fit, whether such disposition be unexpected, inexplicable, unfair and even improper (see *Gill v Woodall* [2010] EWCA Civ 1430, [2011] Ch 380, Lord Neuberger, Master of the Rolls (as he then was) p.390G) or surprising, inconsistent with lifetime statements, vindictive or perverse (the same case and judgment p.390H) or hurtful, ungrateful or unfair to those whose legitimate expectations of

testamentary benefit are disappointed, (see *Hawes and Burges* [2013] EWCA Civ 94, Mummery LJ para. 14 with whom Patten LJ agreed).

24 However, the law does require that when exercising testamentary freedom the testator has capacity so to do. ...

41 The relevant principles are well established. For a will to be found valid, the testator must, at the time of execution of the same, have possessed the requisite testamentary capacity, have known and approved the contents of the will, and have been free from undue influence or the effects of fraud: *Chee Mu Lin Muriel v Chee Ka Lin Caroline* [2010] 4 SLR 373 (“*Muriel Chee*”); *Ng Bee Keong v Ng Choon Huay* [2013] SGHC 107.

42 In our present case, the defendants have not alleged that Mdm Ng was under undue influence or suffered the effects of fraud.

Testamentary capacity

43 The *locus classicus* on the essential elements of testamentary capacity is *Banks v Goodfellow* (1870) LR 5 QB 549 (“*Banks*”). As summarised by Francis Barlow *et al*, *Williams on Wills*, vol 1 (Butterworths, 10th Ed, 2014) at para 4.11:

... sound testamentary capacity at common law means that four things must exist at one and the same time:

- (i) The testator must understand that he is giving his property to one or more objects of his regard;
- (ii) He must understand and recollect the extent of his property;
- (iii) He must also understand the nature and extent of the claims upon him both of those whom he is including in the will and those whom he is excluding from his will; and
- (iv) No insane delusion shall influence his will in disposing of his property and bring about a disposal of

it which, if the mind had been sound, would not have been made.

44 The Court of Appeal in *Muriel Chee*, at [37], endorsed the following restatement of those essential elements in *George Abraham Vadakathu v Jacob George* [2009] 3 SLR(R) 631 (“*George Abraham*”) at [29]:

- (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.

45 In applying the test in *Banks*, the court must look at the totality of the evidence comprising both the factual component (including the evidence of friends and relatives who had the opportunity to observe the testator) and the medical. 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 (see *Muriel Chee* at [38]).

46 In the same vein, *Williams on Wills*, para 4.20 (citing *Blackman v Man* [2008] WTLR 389 and *Burgess v Hawes* [2013] EWCA Civ 74; [2013] WTLR 453 (“*Burgess*”)) cautions against placing too much reliance on the evidence of medical experts who did not have the opportunity of seeing the deceased. In contrast, “it has been said that it is a very strong thing for a judge to find that a testatrix did not have mental capacity when her will had been prepared by an experienced and independent solicitor following a meeting” (*Williams on Wills*, para 4.13 at p 47 citing *Burgess*).

Burden of proof

47 It is settled law that the legal burden of proving that the testator possessed testamentary capacity falls on the party propounding the will. However, testamentary capacity is generally presumed where the will appears to be 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 (*Muriel Chee* at [40]). In such a case, the evidential burden of proving unsoundness of mind shifts to the party alleging it.

48 If during the period prior to the execution of his will the testator suffered from serious mental illness, a presumption arises that it continued and the testator lacked testamentary capacity. This presumption may be rebutted by the person propounding the will by establishing that the testator made the will during a lucid interval or after recovery from the illness (see John G Ross Martyn, Stuart Bridge & Mika Oldham, *Theobald on Wills* (Sweet and Maxwell, 16th Ed, 2001). Lest it be misunderstood that any form of mental illness will suffice to raise this presumption, it should be pointed out that it can only arise where such serious mental illness is sufficient to cause testamentary incapacity (see *Muriel Chee* at [39]). As will be seen later in this case, the two medical experts disagree on whether Mdm Ng's severe depression affected her mental capacity to make the Wills.

49 It has been observed in *Williams on Wills* (at p 47) that the development of the law in this area has unfortunately resulted in the (evidential) burden of proof becoming highly mobile. The learned authors go on to opine that: "[o]ften it will simply be possible for the court to give a clear ruling on the weight of the evidence, without placing any reliance on presumptions or burdens".

50 Flowing from the legal principles outlined above, the issues which I have identified, based on the parties’ submissions, are:

- (a) Whether a presumption of testamentary capacity arises in this case in relation to the 2009 and 2012 Wills;
- (b) Whether Mdm Ng had testamentary capacity at the time she executed the 2009 and 2012 Wills, regard being had to the essential elements for establishing such capacity identified in *Banks*; and
- (c) Whether Mdm Ng knew and approved the contents of the 2009 and 2012 Wills.

(In relation to the above issues, counsel for the defendants included the 2008 Will but it will not be necessary to consider the 2008 Will unless both the 2009 and 2012 Wills fail. For ease of reference I shall hereafter refer to the 2009 and 2012 Wills collectively as “the Wills”.)

Issue 1: Whether a presumption of testamentary capacity arises

51 For the plaintiff, it is argued that the Wills are rational *ex facie* and were executed in ordinary circumstances by the testatrix who was not known to be suffering from any kind of mental disability at the time of their execution.

52 The defendants, on the other hand, contend that the terms of the Wills are *prima facie* irrational as there was no “rational and logical reason” for Mdm Ng to exclude the family of her eldest son, including her only grandson and her only great-grandsons, from her Wills. In *George Abraham*, the court restated at [32] 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. In aid of their contention that the Wills are *prima facie* irrational, the defendants assert that there was a Yeo family tradition favouring the eldest son over others and males over females. On this latter assertion, I need go no further than to say that I have carefully considered the evidence and found it to be far short of establishing any such tradition. As was noted earlier, in the 2002 Will which the defendants seek to uphold, Charles himself was excluded even though he is the eldest son.

53 A more pertinent question is why John and Evangeline were ultimately left out despite having earlier been included. This is not to say that the Wills were therefore necessarily irrational. Mr Siraj argued strenuously that the Wills were irrational on the basis that the net effect of the Wills was for Charles' family to be completely cut out of Mdm Ng's will. In support of this assertion, he pointed to how Mdm Ng and her husband had made gifts *inter vivos* to all their children. Charles himself had been given 66 Sian Tuan Avenue as well as shares in Yeo Hiap Seng Pte Ltd and Hiap Moh Corporation Ltd. His children had also received shares in Yeo Hiap Seng Pte Ltd. However, the contrary argument could be made that, provision having thus been made for Charles, it could not be said that it was irrational not to have provided further for him. It will be recalled that the 2002 Will which the defendants seek to uphold in fact made no provision for him. Nevertheless, the Wills do invite the question why Charles' children were left out. It may be that there is an explanation but the absence of any express explanation for a change in testamentary disposition is not sufficient to call a testatrix's testamentary capacity into question (see *Williams on Wills*, p 47, citing *Schrader v Schrader* [2013] EWHC 466 (Ch); 157 Sol Jo (no 11) 31; [2013] WTLR 701). Certainly, in my view, the Wills cannot be said to have disregarded natural

affection and the ties of near kinship. After all, the principal beneficiaries, Henry and Wee Tsan are the children of Mdm Ng. All that can be said is that the testatrix favoured them over Charles and her grandchildren John and Evangeline. In itself, that does not suggest irrationality.

54 Apart from the alleged irrationality in the Wills, the defendants further assert that Mdm Ng was suffering from a mental illness which called into question her testamentary capacity and that the presumption of testamentary capacity therefore does not arise.

55 I accept the defendants' assertion that the presumption in favour of the plaintiff does not arise and that the burden remains with him to prove testamentary capacity. It does not arise because the mental capacity of the testatrix has been called into question by the defendants' contention that the testatrix suffered from a serious mental illness. As long as such contention is not obviously spurious, the *onus probandi* remains with the plaintiff. Neither does the opposite presumption arise, *viz*, that the testatrix lacked the requisite mental capacity by reason of continuing mental illness. For that to happen, it has to be established that, before execution of the Wills, the testatrix suffered from serious mental illness sufficient to cause testamentary incapacity. That is very much a point in contention.

Issue 2: Whether Mdm Ng had testamentary capacity when she executed the Wills, regard being had to the essential elements for establishing such capacity identified in *Banks*

56 Of the four limbs comprising the essential elements in *Banks*, as set out in the Court of Appeal's restatement of the test which I cited at [44] above, only limbs (b) and (d) need to be considered. This follows from the defendants' acceptance of the experts' joint opinion that limbs (a) and (c) are

satisfied. With regard to limbs (b) and (d) (*ie*, (b) whether the testatrix knew the extent of the property she was disposing of; and (d) whether she was free from an abnormal state of mind (*eg*, delusions) that might have distorted feelings or judgments relevant to making the Wills), the parties' experts differ in their opinions. I shall deal with each of them in turn.

Whether Mdm Ng knew the extent of the property she was disposing of

57 The defendants assert that this limb of the test is not satisfied. They seek to rely on the opinion of Dr Francis Ngui ("Dr Ngui") in the Joint Expert Report that it is "unclear" whether Mdm Ng "had the requisite mental capacity to know the extent of the value of her estate" because "there was no documentation or assessment of whether she was aware of the actual monetary worth of her three properties and other assets". In particular, the defendants point to the fact that at the time of execution of the Wills, Pauline Ang did not ask Mdm Ng what her moveable assets were nor seek to ascertain their value.

58 The plaintiff, on the other hand, asserts that Mdm Ng did know the nature and extent of her assets. Apart from his own evidence, he relies upon the evidence of Wee Tsan, Wee Yong and Pauline Ang to the effect that Mdm Ng had in various conversations told them how she wished to dispose of 64 Sian Tuan Avenue, 6 Watten Terrace and 55 Hua Guan Avenue after her death. He also maintains that Mdm Ng was aware at all times of the nature and extent of her share portfolio, referring to evidence of Mdm Ng watching teletext to monitor share price movements and giving the plaintiff instructions for certain share trades between 10 September 2009 and 27 January 2011. The plaintiff also relies upon the admission by the first defendant under cross-examination that Mdm Ng would have known that she had a sizeable portfolio of shares although he (the first defendant) did not believe that she would have

known the exact quantity of her portfolio. The plaintiff's expert Dr Lim Chee Chong, Lionel ("Dr Lim") is of the opinion that –

Mdm Ng had sufficient cognitive ability to appreciate the value of her estate. Her ability to instruct her lawyer, the consistency of her Will, her ability to recognise her properties, her shares trading and her AMT score of 8/10 on 19 October 2009 and 22 October 2012 suggest that she was unlikely to have cognitive impairment.

59 The question whether a testator knew the extent of his estate is but one limb of the test whether he had the mental capacity to make the disposition of his assets in the will. In the case of a testator whose mental testamentary capacity is not in doubt, it is unnecessary to ask whether he knew the extent of his assets, much less whether he knew the monetary value of the same. In the case of a testator whose testamentary capacity is in doubt, the question whether he appreciated the extent of his assets is asked with a view to ascertaining whether he had the mental capacity to understand the extent of what he owned. This limb of the test does not require the testator to have undertaken or commissioned a valuation of his assets nor does it test his memory as to the result of such valuation if he had one. Thus, in *Simon v Byford* [2014] EWCA Civ 280, the trial judge found that the testatrix, who was suffering from mild to moderate dementia, had testamentary capacity based on her findings at [35] that the testatrix:

... was capable of understanding (and did understand) that her property included the house in Wellington Road, in which she was at the time, the Westcliff flat, reference to which was what triggered her wish to make a new will, and some shares in the Company (but not the correct number). He also found that she was capable of understanding (and did understand) that she owned other money and investments, but on the balance of probabilities that she was not capable without being told of remembering the details.

60 The decision was upheld on appeal by the English Court of Appeal, which stressed at [40] that “capacity depends on the potential to understand. It is not to be equated with a test of memory”. The Court of Appeal went further to add at [42] that even if the testatrix had initially forgotten that she owned the flat in question until she was prompted, that did not mean that she was incapable of understanding the extent of her estate. This is consistent with the earlier case of *Robin Sharp and another v Grace Collin Adam and others* [2005] EWHC 1806, where the English High Court endorsed at [213] the following proposition in *Susan Minns v Venetia Jane Foster* [2002] WL 31914915 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 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 ...

61 Despite some equivocation on the part of Dr Ngui in his Medical Report of 29 April 2015 (“the 2nd Ngui Report”) as to whether Mdm Ng suffered from dementia, by the time concurrent evidence was taken at trial, he agreed that Mdm Ng did not suffer from dementia. Nevertheless, his opinion was that Mdm Ng’s mental state was unstable and that the requisite mental capacity to know the extent of the value of her estate was “unclear at the material times as there was no documentation or assessment of whether she was aware of the actual monetary worth of her three properties and other assets”. It is to be observed that Dr Ngui was not stating categorically that Mdm Ng lacked the capacity to understand the extent of her assets but only that there was a lack of “documentation or assessment” of whether she was aware of their worth. As to this, I have two comments. Firstly, the cases referred to above show that the law does not require proof of actual

understanding but only that she had the capacity to understand the extent of her assets. Secondly, whether she had the capacity to know the extent of her assets could be inferred from all the evidence. These points were clearly made by Peter Gibson LJ in *Hoff and others v Atherton* [2004] EWCA Civ 1554; [2005] WTLR 89 where he said at [34]:

... If there is evidence of actual understanding, then that would prove the requisite capacity, but there will often be no such evidence, and the court must then look at all the evidence to see what inferences can be drawn as to capacity. Such evidence may relate to the execution of the Will but it may also relate to prior or subsequent events. It would be absurd for the law to insist in every case on proof of actual understanding at the time of execution.

62 It is also curious that Dr Ngui was prepared to concede that Mdm Ng satisfied limbs (a) and (c) of the test of testamentary capacity and yet held back from agreeing that she also was capable of understanding the extent of her assets; instead, he resorted to saying that there was no documentation or assessment of whether she was aware of their actual monetary worth. One would have thought that if Mdm Ng was able to understand the nature of the act of making a will and what its consequences were (thus satisfying limb (a)) and if she also knew who her beneficiaries were and could appreciate their claims to her estate (thus satisfying limb (c)), she would likely (though not necessarily) also have the capacity to understand the extent of her estate.

63 This is not the only reason I find it difficult to accept the evidence of Dr Ngui. Both Dr Ngui and Dr Lim had given their respective Medical Reports (two in Dr Ngui's case) prior to the Joint Experts Report. In para 32 of his Medical Report of 5 January 2015 ("the 1st Ngui Report"), Dr Ngui stated that it was unclear whether Mdm Ng had the requisite mental capacity to know the extent of her property because "there was no record of whether she was

asked specifically about whether she knew and recognised the value of her estate, what her properties were worth, whether she had any knowledge of any bank savings or investments in stocks and shares.” He went on to say that her AMT score was irrelevant to this limb of the *Banks* test.

64 Dr Lim disagreed with Dr Ngui regarding the relevance of the AMT score. As he explained in para 88 of his Medical Report of 19 March 2015 (“the Lim Report”):

In my view, the AMT score is relevant because Madam Ng would have to have sufficient cognitive ability in order to appreciate the value of her estate. The Abbreviated Mental Test (AMT) was designed to screen for cognitive impairment and a score of 7 or less is suggestive of cognitive impairment. Therefore, her AMT score of 8/10 was above the cut off of 7/10 when tested on 19 October 2009 and 22 October 2012.

65 In response, in the 2nd Ngui Report, Dr Ngui maintained his position, stating at para 9:

I have set out the questions asked in administering the AMT at paragraph 29 of my [earlier] report and none of these questions relate to the nature and value of property. Hence my conclusion in Paragraph 32 that Mdm Ng’s AMT score is irrelevant when assessing her ability to appreciate the value of her estate.

In order better to appreciate where Dr Ngui was coming from, it is necessary to set out the ten questions asked when the AMT is administered. They are set out in para 29 of the 1st Ngui Report as follows:

Abbreviated Mental Test (AMT)

Please remember the following phrase: “37 Bukit Timah Road”. I will be asking you to repeat the phrase to me later.

1. What is the present year? (Western calendar)
2. What time is it now (within 1 hour)?

3. What is your age? (for Chinese, +1 is acceptable).
4. What is your date of birth?
5. Where are we now?
6. What is your home address?
7. Who is Singapore's present Prime Minister?
8. Can the patient recognise two relevant persons (eg. Nurse/doctor)?
9. Count backwards from 20 to 1.
10. Please recall the memory phrase.

66 It then becomes immediately obvious that Dr Ngui's position is untenable. Instead of accepting that the testatrix who passed the AMT test with a score of 8/10 could be "considered normal" (as he himself had said at para 29 when explaining how to interpret AMT results) and therefore was unlikely to have suffered cognitive impairment so as to prevent her from appreciating the extent of her assets, he insisted upon proof that Mdm Ng had satisfactorily answered specific questions as to the extent of her assets. That, as earlier explained, is not the law.

67 I accept the evidence of Dr Lim, at para 89 of the Lim Report, that Mdm Ng had the capacity to know the extent of her property when she was disposing of the same under the Wills. This is supported by the evidence referred to in para 58 above. I am fortified in this view by the evidence of Charles himself who, when asked in cross-examination whether he would agree that his mother would not have forgotten that she had a share portfolio, answered quite candidly:

She would---she would know that she had a share---a---a---a sizeable portfolio of shares. But I would---I would not believe that she would know the exact, er, quantity of her portfolio.

Whether Mdm Ng was free from an abnormal state of mind (eg, delusions) that might distort feelings or judgments relevant to making the Wills

68 The defendants maintain that this limb of the *Banks* test is also not satisfied. With regard to this limb of the test of testamentary capacity, Cockburn J in *Banks* stated, at 565, that it is essential –

... that no disorder of the mind shall poison [the testator’s] affections, pervert his sense of right, or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made.

He went on, in that same page, to consider the degree of mental power which is required as follows:

... If the human instincts and affections, or the moral sense, become perverted by mental disease; if insane suspicion, or aversion, take the place of natural affection; if reason and judgment are lost, and the mind becomes a prey to insane delusions calculated to interfere with and disturb its functions, and to lead to a testamentary disposition, due only to their baneful influence – in in such a case it is obvious that the condition of the testamentary power fails, and that a will made under such circumstances ought not to stand.

69 As explained by Dr Lim, at para 106 of the Lim Report, “[d]elusions are beliefs that are not backed up by reality”. 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*, 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. The delusion must be such as to influence the testator in making the disposition as he did: see *George Abraham* 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.

70 The two experts were in agreement that Mdm Ng did not suffer any delusion. Indeed, between Mdm Ng's fall in 2006 and her passing on 18 March 2013, she had been attended to by no fewer than four doctors; none of them ever recorded that she had any delusional belief.

71 I move on to consider a diagnosis of delirium which Dr Ngui made. In summarising his conclusions, Dr Ngui, at para 37, of the 1st Ngui Report stated as follows:

Based on information available to me, it is my professional opinion that Mdm Ng had a Chronic Major Depressive Disorder caused by Pancreatic Carcinoma. She had recurrences of altered mental status with episodic agitation that was initially due to intermittent Complex Partial Seizures, and that subsequently persisted on and off as a chronic Delirium-type brain syndrome. Her inability to function occupationally and socially, combined with her impairment in self-care and Activities of Daily Living were indicative of the severity of her illness.

(It should be pointed out that the information available to Dr Ngui for the purpose of the 1st Ngui Report was given by Charles and did not include the AEICs of the plaintiff's factual witnesses. As a result his post-mortem diagnosis of Mdm Ng's mental state was more dire than it actually was.) Dr Lim did not disagree that there were periods when Mdm Ng was in a state of delirium but pointed out that delirious states are transient in nature and would not affect a person's testamentary capacity when it is cleared. I set out paras 82 and 83 of the Lim Report below:

82. In my view, Mdm Ng's cognitive problems were fluctuating in nature and appeared to coincide with

periods when she was in a state of Delirium. Her disturbance of consciousness with reduced ability to focus and a change in her cognition during this period was secondary to her medical problems as recorded by her NUH, AH and KTPH medical records.

83. Delirious States are transient in nature and therefore, will not affect a person's Testamentary Capacity once it [sic] is cleared. Her Abbreviated Mental State Test (AMT) scores as recorded by Dr Pang at different point[s] in time (8 September 2006, 19 October 2009, 17 April 2010 and 22 October 2012) indicated that if Madam Ng had suffered any cognitive impairment, it would have been mild.

In view of the transient nature of delirium, the question is whether at the time of the execution of the Wills, Mdm Ng was in a delirious state. Both experts agreed, during the taking of concurrent evidence, that she was not.

72 In court, Dr Ngui also agreed that, based on the evidence of Pauline Ang, the testatrix was not confused at the time when she executed the Wills. This concession was, understandably, troubling for Mr Siraj. He therefore asked Dr Ngui whether he was speaking generally or with reference to the particular point in time when the Wills were executed. Dr Ngui replied that he was talking about the latter. Mr Siraj then reminded Dr Ngui of para 5(b) of the Joint Experts' Report where he had said that Mdm Ng's mood was:

... predominantly depressed for a prolonged period of time due to a Chronic Major Depressive Disorder complicated by a Chronic Brain Syndrome that was persistent and pervasive and of a significant degree of severity as to affect her emotions and judgment when she executed her will.

Mr Siraj asked Dr Ngui whether his opinion that Mdm Ng was not confused on those particular days (*ie*, when the Wills were executed) was inconsistent with his medical opinion in para 5(b) of the Joint Experts' Report. Dr Ngui's answer was as follows:

At the point where [sic] the wills were executed, ... it appears that ... Mdm Ng was in a lucid state in terms of her cognitive function. So she seemed quite aware of the questions being asked and she was able to give ... the correct answers appropriately. So, in that sense, ... the symptoms of any cognitive changes were ... not present. But with a ... brain syndrome---with a ... chronic brain syndrome, you can have a---it's---again it's a fluctuating condition. You can have symptoms that are ... appear and causes her to be, say, confused, agitated, as reported in Dr Pang's notes, and at other times, she would be calm and lucid.

The court then asked Dr Ngui: "... when you refer to agitation and confusion, are you referring to the execution or giving of instructions or other times?"

Dr Ngui replied: "Other---I'm referring to other times."

73 It is therefore clear that Dr Ngui was of the opinion, based on Pauline Ang's evidence, that Mdm Ng was neither delirious nor confused at the time when she executed the Wills. And, as earlier noted, the experts were also in agreement that she did not suffer from dementia. Nevertheless, to Dr Ngui, there remained the question as to her "mood state". In para 21(d) of the 1st Ngui Report, Dr Ngui expanded limb (d) of the restated elements of the *Banks* test (see para 45 above) by adding "mood state" as an abnormality of mind that might distort feelings or judgments relevant to making the Will. At para 34 of the same Report, Dr Ngui answered the question whether Mdm Ng was free from an abnormal state of mind (*eg*, altered mental "or mood state") that might distort feelings or judgments relevant to making the will by saying that it was "unclear as there was no documented record of her reasoning for bequeathing her estate in the apparently disproportionate manner she chose." As noted earlier, in the light of Pauline Ang's AEIC, he had conceded that he could see that Mdm Ng was not in a delirious state and did not have symptoms of confusion or disorientation. He appeared to agree that she was capable of deciding rationally what she wanted to do. Nevertheless, Dr Ngui maintained

in his oral testimony that Mdm Ng suffered from a chronic Major Depressive Disorder that was treatment refractory (meaning that it did not respond to treatment) and posited that the decision to exclude her grandson and granddaughter made in 2009 was based on or coloured by her depressed mood. (This was a change from para 34 of the 1st Ngui Report where he had merely said that it was “unclear” whether she was so affected.) While he conceded that from what Pauline Ang had deposed in her AEIC it would appear that Mdm Ng was alert, attentive and could answer questions, he said that the AEIC did not address Mdm Ng’s “mood state”. Dr Lim, however, pointed out that in the same AEIC Pauline Ang deposed that Mdm Ng was able to have a social chat with Pauline Ang and to show concern for her. He pointed out that someone severely depressed would usually be withdrawn, disinterested and unable to interact appropriately. He therefore thought that Mdm Ng’s mood state at that point in time was not severe enough to impact her ability to make the judgment at that time with regard to the 2009 Will.

74 It is perhaps appropriate at this juncture to refer to another part of the concurrent evidence where Ms Barker questioned Dr Ngui’s conclusion (at para 37 of the 1st Ngui Report) as to Mdm Ng’s “inability to function occupationally and socially”. Ms Barker pointed to evidence that Mdm Ng went to church once a week, attended Senior Fellowship gatherings weekly, lunched out frequently, telephoned relatives overseas, spoke to her brother and played with her grandchildren. Dr Ngui conceded thus:

Okay, if that is the case, yes, I would say she’s able to function occupationally and socially. If she is able to interact, er, have, er, conversations and---and, er, er, continue with her interactions with, er, old groups of friends, yes, I would say she would be able to function socially.

Ms Barker also asked whether Dr Ngui would say Mdm Ng was occupationally incapable if one accepted Henry's evidence that she was able to give Henry instructions to carry out share trades on her behalf. Dr Ngui replied that he would not. Similarly, Dr Ngui was of the view that if she watched share price movements on the teletext, actually absorbing information, there again it suggested that occupationally she was still capable.

75 As to whether Mdm Ng's depression was refractory, initially Dr Ngui maintained that that was the case. However, Ms Barker pointed out that Dr Pang had recorded that in October 2011 he increased the dosage of medication and that Mdm Ng's mood was good until at least October 2012. Dr Ngui eventually accepted that if, from Dr Pang's notes, she had responded from 2011 onwards, then the refractory period was over. He clarified that when he said "treatment refractory", he was talking about the time when she was not responding to treatment before 2011.

76 When Ms Barker suggested to Dr Ngui that when Mdm Ng executed the 2012 Will her judgment would not have been affected by her depression as her mood had improved, Dr Ngui replied that he believed that the judgment that she made in 2009 when she was depressed carried over into 2012. However, he had to concede that as she was less depressed she could always have changed the will (in other words, reversed the exclusion of her two grandchildren) if she was so minded. He acknowledged that it was hard for him to make an opinion but nevertheless said he believed that "her later will was based on her earlier will and her earlier will was based on the false premise because of her depression". Ms Barker in her closing submissions has described this as mere conjecture on Dr Ngui's part. At the least, it is fair to say that his belief was on the assumption that Mdm Ng did not do any re-

assessment when she executed the 2012 Will. He himself admitted as much. As we shall see, this assumption could not stand in the light of Pauline Ang's evidence regarding the execution of the 2012 Will.

77 So there we have it. As regards the 2009 Will, Dr Ngui was of the view that Mdm Ng's decision to exclude John and Evangeline was based on or coloured by her depressed state which in his view was then refractory. Dr Lim agreed that Mdm Ng suffered a Major Depressive Disorder but was of the view that it was not refractory and that it was not severe enough to impact her judgment in making the Wills. He noted that Mdm Ng's depression had never been managed by a psychiatrist and that it had a fluctuating course, there being clear records of periods when her mood was better as noted by Dr Pang. Dr Lim pointed out in the Lim Report that Mdm Ng's beliefs about Charles and John were not delusional. Moreover the beliefs were consistent and had been present even before the onset of her mood symptoms. He noted that none of the doctors who treated her over the course of her illness had recorded any delusional belief in their interaction with her. The presence of delusion would have shown the severity of her depression as that is one of the symptoms of severe depression. (However, on this last point, he had to admit under cross-examination that one could suffer severe depression without having delusions.)

78 The foregoing dealt with the experts' views as to the degree of severity of Mdm Ng's depression. Underlying that discussion is a further question whether a Major Depressive Disorder, if severe enough, could qualify as a mental disorder capable of depriving a testator of testamentary capacity. Whilst it was implicit in Dr Ngui's evidence that it could, Dr Lim's position is less clear. Suffice it to say that he appeared not to have ruled out the

possibility. Perhaps there was no occasion for him to address the question since he was of the view that Mdm Ng's depression was not severe enough to impact her judgment in making the Wills.

79 On behalf of the defendants, it was urged upon me that mental disorders that impact on a testator's decision-making capabilities rather than his ability to comprehend his actions (*ie*, cognitive ability) may also be sufficient to justify a conclusion that the testator lacked the requisite testamentary capacity. Mr Siraj referred to *In re Key, decd* [2010] WLR 2020 ("*Key's case*"). In that case, the testator who was aged 89, and in psychiatric terms "*infirm*", had been totally dependent on his wife for his domestic care. His wife died in circumstances where the testator had little or no warning of her impending death. A week after his death, a lawyer came to his home to take instructions on a will at the request of one his daughters. Two days later, the same daughter brought the testator to the lawyer's office to sign the will. The will provided for the bulk of the testator's property to be divided equally between his two daughters, in contrast to his previous will that had left the bulk of his estate, subject to life interests in favour of his wife, to his two sons. Following his death, his sons challenged the will on the ground, amongst others, of lack of testamentary capacity. The court allowed the challenge. It held, at [95], without in any way detracting from *Banks*, that it had to be recognised –

... that psychiatric medicine has come a long way since 1870 in recognising an ever widening range of circumstances now regarded as sufficient at least to give rise to a risk of mental disorder, sufficient to deprive a person of the power of rational decision-making, quite distinctly from old age and infirmity.

The court went on to say, at [96]:

Banks v Goodfellow was itself mainly a case about allegedly insane delusions. Many of the cases which have followed it are about cognitive impairment brought on by old age and dementia. The test which has emerged is primarily about mental capacity to understand or comprehend. The evidence of the experts in the present case shows ... that affective disorder such as depression, including that caused by bereavement, is more likely to affect powers of decision-making than comprehension. A person in that condition may have the capacity to understand what his property is, and even who his relatives and dependants are, *without having the mental energy to make any decisions of his own about whom to benefit.* [emphasis added]

Taking the evidence as a whole, the court found that the testator had been devastated, rather than merely upset, by his bereavement and had been unable during the week following his wife's death to exercise the decision-making powers required of a testator.

80 In *Leow Li Yoon v Liu Jiu Chang* [2016] 1 SLR 595, the court had to consider whether depression could impact a person's capacity to make a valid Central Provident Fund ("CPF") nomination. The evidence showed that the deceased had overdosed on drugs twice in the months leading up to his demise, raising the suspicion of suicide. At the time of his death he was in the midst of a divorce and was suffering from depression. The deceased had nominated someone other than his immediate family members as the beneficiary of his CPF funds. There was expert evidence given on behalf of the wife and other family members that the deceased was significantly affected by depression at the time he executed his CPF nomination form: "not only was the mood low but he was affected in losing interest in usual activities showing change of cognitive functioning as well as passive thoughts of suicide" (at [48]). The nominee, a litigant-in-person, did not call any expert to controvert the evidence of the appellant's expert. On the basis of the *uncontroverted medical evidence*, the court found that there was a real

possibility that depression had affected the deceased's mental capacity, and his nomination was set aside. Observe, in particular, that the psychiatrist had opined that there was a change of "cognitive functioning". This, therefore, was not truly a case where the testator's decision-making capabilities were impaired while his cognitive ability remained unaffected.

81 In the Hong Kong case of *Chiu Man Fu v Chiu Chung Kwan Ying* [2012] HKEC 128, the court had to consider whether a testator lacked testamentary capacity as a result of bereavement on the death of his ex-wife. Although the court adopted the approach in *Key's* case, it eventually found that the bereavement was not of such severity as to have affected his mental capacity.

82 In *King v Hudson* [2009] NSWSC 1013, the New South Wales Supreme Court had to consider whether a testator, who suffered severe depression, had testamentary capacity to execute a will about two weeks before he committed suicide. On the evidence, the court found that the testator had testamentary capacity to do so although he was suffering from severe depression in the months leading up to and at the time of his death.

83 For the purposes of the present case, I do not wish to be understood to controvert the possibility that severe depression could, in an appropriate case, qualify as a mental disorder capable of depriving a testator of the power of rational decision-making. However, Dr Ngui's reference to "mood state" belies the requisite degree of severity of the depression that must be present before a testator's testamentary incapacity can be established. Use of the word "mood" runs the risk of understating what is required to impugn the testamentary capacity of a testator. Based on *Key's* case, it would so qualify

only if the depression was so severe that it left the testator without the mental energy to make any decisions of his own as to whom to benefit. Whether the present case qualifies as one will have to be decided by this court, assisted by the evidence of the psychiatrists (which we have seen) together with other evidence as a whole. The evidence will also answer the remaining question, *viz*, whether Mdm Ng knew and approved the contents of the Wills. I begin with the evidence of Pauline Ang.

Pauline Ang's evidence

84 With respect to the 2009 Will, Pauline Ang gave evidence that:

- (a) Mdm Ng had instructed her that she wanted to change her will.
- (b) When Pauline Ang asked what she wanted to do, she was able to instruct that she wanted to remove John and Evangeline as beneficiaries. Under cross-examination, Pauline Ang said that Mdm Ng was “very sure what she wanted and told me straight to the point”.
- (c) Pauline Ang’s attendance notes show that when she asked Mdm Ng why she wished to remove John as beneficiary under the Will, Mdm Ng replied that she was disappointed with him and appeared upset when she mentioned John. To the same question with regard to Evangeline, Mdm Ng did not want to say and instructed Pauline Ang just to take her name out. Under cross-examination, when Pauline Ang was asked whether Mdm Ng elaborated on why she was disappointed with John, she said that Mdm Ng expressed disappointment that John was marrying somebody of a different religious faith. Mr Siraj expressed scepticism that Mdm Ng had

actually said so, pointing out that this last statement did not appear in her attendance notes nor in her AEIC. She sought to explain that this elaboration was personal for which reason she did not include it inasmuch as she had excluded other “personal things”. This was met with the rebuttal that in her attendance notes for the 2012 Will, she had noted down Mdm Ng’s reason for removing Ng Tiong Wah as an executor despite the personal nature of the reason. While it might be said that Pauline Ang was arguably inconsistent in omitting to record in the 2009 attendance notes the reason for Mdm Ng’s disappointment with John but recording in the 2012 attendance notes the reason for the change of executor, I do not accept Mr Siraj’s suggestion that Pauline Ang was therefore lying when she elaborated on Mdm Ng’s reason for removing John from the 2009 Will. I will elaborate on this later. It is significant that when Ms Barker asked the first defendant whether he accepted as true what Pauline Ang had told the court (*ie*, that Mdm Ng told her that she was not leaving 64 Sian Tuan Avenue to John because she was disappointed in him and that she had explained that her disappointment was because he was not marrying a Christian) he replied in the affirmative. At another point in cross-examination, the first defendant also confirmed that he was aware from before John’s marriage that his mother was disappointed in John because he did not go to church. Indeed, John himself admitted as much although he clarified that sometimes he did go. He would not say she was “deeply unhappy” but that she was “disappointed”. He also said that after 2006 she would shout and yell at him to go to church. At the end of the cross-examination, Ms Barker suggested to him that it would have been perfectly rational for Mdm Ng to decide that if she was disappointed with him, she would not leave him 64 Sian Tuan Avenue.

His answer was: “If not for all the lingering doubt over her mental state and the way she was acting, I would say, ‘Yes’.”

(d) After Pauline Ang engrossed the 2009 Will for execution, Mdm Ng checked her name, identification number and address and read through the document herself before asking Pauline Ang to go through it with her. After Pauline Ang had done so in Mandarin, Mdm Ng confirmed that it was what she wanted and duly executed the same.

(e) After executing the 2009 Will, Mdm Ng was able to make conversation with Pauline Ang. She knew that Pauline Ang’s husband had died and tried to console her by saying that life was uncertain. She encouraged her to be strong and trust the Lord to lead her and the children. She also asked how old the children were and what they were doing.

85 With respect to the 2012 Will, Pauline Ang gave evidence that:

(a) She saw Mdm Ng on 2 August 2012 when she took her instructions and prepared the 2012 Will. She observed that Mdm Ng was frail but “mentally capable and coherent and also very alert”.

(b) When Pauline Ang asked her what she wanted to do, she replied that she wanted to change her will. She said she wanted to appoint new executors in place of the existing ones, *ie*, Ng Hock Hwa and Ng Tiong Wah. She explained that Ng Hock Hwa was getting old and had trouble walking, and that Ng Tiong Wah had some family problems, had divorced and had a woman from the People’s Republic of China.

(c) Mdm Ng had brought the 2009 Will with her and Pauline Ang went through it with her. She confirmed that all the gifts she had made there were to remain.

(d) Pauline Ang prepared the 2012 Will as instructed and handed the engrossment to Mdm Ng who checked her name, identity card number and address. She read through the engrossment once and then asked Pauline Ang to go through the same with her. Pauline Ang read through and explained the contents to her in Hokkien (although she was conversant both in English and Mandarin) as Mdm Ng had spoken to Pauline Ang in Hokkien on this occasion. She appeared to be fully aware of her assets as Pauline Ang went through the engrossment with her. Pauline Ang asked her whom she wanted to leave her assets to and also the alternative beneficiaries and she was prompt and certain with her answers. In particular, when Pauline Ang asked her who would inherit her residuary estate in the event Henry should pre-decease her, she promptly said, “Wee Tsan”.

(e) After Mdm Ng had executed the 2012 Will, she asked Pauline Ang how many years had passed. Pauline Ang was taken aback and was unsure if she was asking about the latter’s husband. Mdm Ng then pointed upwards and asked in Hokkien, “How long now?” Realising that Mdm Ng was referring to Pauline Ang’s deceased husband, she then replied that it had been six years since he passed away. Mdm Ng then looked compassionately at her and told her to trust God. Pauline Ang was surprised that Mdm Ng could remember that her husband had passed away despite having met him only infrequently over the years.

86 Summing up, Pauline Ang deposed, in para 31 of her AEIC, as follows:

From my interactions and conversation [*sic*] with Mdm Ng on 2 August 2012, I had no doubt that Mdm Ng was of sound mind. She knew her own mind, who her close relatives were, knew what assets she had and was able to express herself to me clearly how she wanted to dispose of them. She could also explain to me clearly what she wanted to change in her 2009 Will and her reasons for doing so.

87 The evidence of Pauline Ang is critically important as she was present with Mdm Ng at the execution of the Wills. The evidence of the two experts assumed that her account of the interaction she had with Mdm Ng was true. Obviously, if a psychiatrist had been in attendance it would have been better. However, that is not to say that the evidence of Pauline Ang therefore cannot be relied upon. She is a solicitor of more than 38 years' standing and with experience in the making of wills. For Mdm Ng alone, she had prepared at least five wills. She knew Mdm Ng well and, unlike a solicitor attending to a new client, was therefore in a position to know if the latter was behaving abnormally in any way.

88 There is also no reason to doubt Pauline Ang's credibility. In cross-examination Mr Siraj sought to find out if there was any business or other dealings between her and the plaintiff that might have pre-disposed her to favour the plaintiff but found none. She was acquainted with both the plaintiff and the first defendant, having sat with the latter on the board of Hiap Moh Corporation Ltd for many years. Pauline Ang gave her evidence in a forthright manner when she was asked whether she discussed with Mdm Ng the value of moveable properties. She admitted that she did not. Mr Siraj sought to discredit Pauline Ang's credibility on account of her evidence in court with regard to the 2009 Will, that Mdm Ng did tell her that she was removing John

as a beneficiary because he was marrying someone not of the Christian faith. As I have already set out his reasoning in para 84(c) above, I will not repeat the same here. I reject Mr Siraj's contention that Pauline Ang gave false testimony. My reasons are as follows:

(a) As an experienced solicitor familiar with preparing wills, she would have known that as a matter of law Mdm Ng did not have to give a reason for John's removal from her Will in order to give it effect. In fact, the attendance notes show that Mdm Ng did say she wanted to remove John from her Will because she was disappointed with him. Any further elaboration was unnecessary in any event. There was no reason for Pauline Ang to fabricate evidence elaborating upon her reason.

(b) It would have been reckless and a criminal offence for Pauline Ang to perjure herself for the benefit of a client.

(c) Mdm Ng's reason for John's removal did not come as a thunderbolt from out of the blue. It was consistent with her earlier utterances of her disappointment with John for failing to attend church and for his intention to marry a non-Christian. It is significant that when Ms Barker asked the first defendant whether he accepted as true what Pauline Ang had told the court (*ie*, that Mdm Ng told her that she was not leaving 64 Sian Tuan Avenue to John because she was disappointed in him and explained that her disappointment was because he was marrying a non-Christian), he replied in the affirmative. Mr Siraj stressed that Mdm Ng did not cut off ties with John and that she attended his wedding and made a gift of jewellery to his wife. From there he made the leap in reasoning that therefore she

could not have decided to disinherit him. With respect, I cannot agree that just because she did not sever family ties, she could not have decided to disinherit him.

(d) Pauline Ang's evidence was consistent with her contemporaneous attendance notes.

(e) There was no suggestion that Pauline Ang had anything to gain if the court decided in favour of the plaintiff.

I therefore accept Pauline Ang's evidence as true.

89 I earlier dealt with Dr Lim's and Dr Ngui's views as regards the 2009 Will. With regard to the 2012 Will, the two experts agreed that based on Pauline Ang's evidence Mdm Ng was not delirious at its execution. We also saw earlier that Ms Barker had referred Dr Ngui to Dr Pang's attendance notes which showed that the latter had increased the dosage of medication for Mdm Ng's depression in October 2011 and that thereafter her mood was good until at least October 2012. That eventually resulted in Dr Ngui conceding that, on the basis of those notes, the refractory period was over. We also have seen from Pauline Ang's evidence that although Mdm Ng was frail she was "mentally capable and coherent and also very alert" at the execution of the 2012 Will. The experts agreed that, on the basis of the evidence, Mdm Ng was not delirious.

90 Pauline Ang also gave evidence of a social chat that Mdm Ng had with her wherein Mdm Ng expressed sympathy and encouragement. As Dr Lim pointed out (albeit in the context of Mdm Ng's condition at the time of execution of the 2009 Will), a severely depressed person would usually be

withdrawn, disinterested and unable to interact appropriately. That is why, to Ms Barker's suggestion that when Mdm Ng executed the 2012 Will her judgment would not have been affected by her depression as her mood had improved, Dr Ngui was driven to opine that the judgment that Mdm Ng made in 2009 when she was depressed "carried over into 2012".

91 In my view, Dr Ngui's evidence in that regard falls far short of providing a basis for challenging Mdm Ng's testamentary capacity. My reasons are as follows:

- (a) It was, as Ms Barker submitted, mere conjecture on Dr Ngui's part.
- (b) It presupposed, as Dr Ngui admitted, that Mdm Ng did not review her testamentary gifts when she executed the 2012 Will. However, that assumption could not stand in the light of Pauline Ang's attendance notes and evidence.
- (c) Most important of all, in the light of the evidence as to her improved mood, it could not be said that at the time of execution of the 2012 Will, Mdm Ng suffered from a state of depression so severe that it left her without the mental energy to make any decisions of her own as to whom to benefit.

It is also significant that the provisions of the Wills were consistent with Mdm Ng's many utterances as to her testamentary intentions.

Indications as to Mdm Ng's testamentary intentions

92 Wee Tsan's evidence was that over a period of two months in April and May 2009, Mdm Ng told her several times that she wanted to see Pauline Ang to change her will. She told Wee Tsan that she did not want to leave the two houses (*ie*, 64 Sian Tuan Avenue and 6 Watten Terrace) to John and Evangeline. When Wee Tsan asked about Evangeline, Mdm Ng said to let her father take care of her. In this connection, Mr Siraj pointed out that under the 2008 Will, 6 Watten Terrace which had earlier been devised to benefit Evangeline, had been left to Henry (and, failing him, Wee Tsan). He said that it was therefore odd that Mdm Ng would have told Wee Tsan that she did not want to leave 6 Watten Terrace to Evangeline. Mr Siraj suggested that Mdm Ng must therefore have been confused. Wee Tsan disagreed. She said "Maybe she is trying to tell me that she doesn't want to give to Charles' children, Evangeline and John. So that's why she mentioned both ... their names." In other words, Mdm Ng could have been referring to the desired end result of the 2009 Will, *ie*, that both John and Evangeline would be left out of the 2009 Will. After all, in the 2008 Will, Evangeline remained the alternate beneficiary of 64 Sian Tuan Avenue if John were to pre-decease Mdm Ng without leaving issue.

93 Similarly, Henry gave evidence that some weeks before 26 May 2009 (the date of the 2009 Will), Mdm Ng "pestered" Wee Tsan and himself on several occasions to take her to see Pauline Ang. He recalled that his mother spoke to him on a number of occasions, when he was in her house, when she was in his car and also over the telephone, about taking her to see Pauline Ang so that she could change her will. She also told him that both 64 Sian Tuan Avenue and 6 Watten Terrace would be given to him while 55 Hua Guan

Avenue would be given to him and Mabel. When Henry asked his mother “What about Evangeline?”, Mdm Ng gestured towards Charles’ house next door and said in Hokkien to let Evangeline’s father sort it out.

94 Both Wee Tsan and Henry said that they did not immediately arrange for her to see Pauline Ang as she requested but asked her to think it over. It was only after she persisted over a period of time that they finally brought her to see Pauline Ang. This seems credible because if they had agreed promptly, she would not have had to approach her brother-in-law, Reverend Alfred Yeo (“Rev Yeo”), for help in that regard. According to Rev Yeo, about two to three years before she passed away, Mdm Ng had walked to his home nearby and asked him to bring her to a lawyer. Allowing for possible inaccuracy as to when this occurred, it could have been around the time she had asked Wee Tsan and Henry to take her to see Pauline Ang. Rev Yeo was asked whether it was possible she had actually approached him in 2009. He replied, “Yes, about that. Yah. As I said, the 2 or 3 years ... before she passed away.” That was not particularly illuminating. However, nothing turns on it. In any case, the defendants have not alleged that Henry and Wee Tsan arranged with alacrity for Mdm Ng to change her will or that they had encouraged her to do so.

95 Wee Tsan also testified that since mid-2009, Mdm Ng had told her on many occasions that she did not want to give Charles anything. On one or two occasions this was said in Charles’ and Evangeline’s presence. Wee Tsan recalled that Mdm Ng had pointed to Charles and Evangeline and said in Hokkien “*mai hor yi*” which she interpreted to mean “Don’t give *him*”. She also recounted that during this period Mdm Ng would often be agitated when she saw Charles and his family around the house. Wee Yong, who had no

benefit under the Wills, similarly testified that from around 2006 onwards, she noticed that when Charles or his family appeared at Mdm Ng's house, she would often "gesture or stare at them to show her displeasure at them". Sometimes she would start to say in Hokkien "Don't give *them*". (It will be observed that the same words in Hokkien were interpreted slightly differently by Wee Yong, the word "*yi*" being gender neutral and capable of referring to more than one.)

96 Wee Yong also gave evidence that some time before May 2009, her mother told her that she would not be giving the property at 6 Watten Terrace to Evangeline, offering the reason that Charles should be the one taking care of Evangeline. She also recalled that shortly before or in May 2009, during a telephone conversation, Mdm Ng told her that she was going to change her will and would not be giving the house to John. In addition, she recalled a conversation she had with Evangeline in June 2011, during which Evangeline told her that Mdm Ng used to threaten them that she was not giving houses or money to Charles' family. Evangeline testified that she did not recall the conversation.

97 It is significant that Charles himself admitted under cross-examination that his mother was not happy with him and his family in her "later years". When asked when those "later years" started, he declined to give a specific answer saying that he did not know. When Ms Barker persisted, he said he did not have a definite period "to pinpoint to". When asked if he had the year it started, he replied in the negative. Finally, upon urging by the court, he said: "Yes, Your Honour. I will try. Erm, two---ten---two---er, 2010. I'm just guessing, Your Honour."

98 Charles also confirmed that over a period of time his mother had said in his presence, “I’m not giving” or, in Hokkien, “*mai hor yi*”. He also said he believed she said those words to members of his family (in particular, John and Evangeline) although he could not be sure. (Charles’ wife, Irene Yeo *née* Ong (“Irene”) disagreed with her husband. She testified during cross-examination that Mdm Ng was unhappy with Charles alone. Wee Tsan testified that Mdm Ng’s dislike was more for Charles but added that Mdm Ng was not very happy with the rest of his family members.) When Charles was asked what he understood by those words uttered by his mother, he replied: “That she didn’t want to give us some inheritance.”

99 As stated above, under cross-examination, Evangeline said she could not recall at all telling Wee Yong that Mdm Ng used to threaten them that she was not giving Charles and his family any houses or money. Whether or not she did tell Wee Yong is of secondary importance. Behind the plaintiff’s counsel Mr G Raman’s question whether she had told Wee Yong is the more important question whether Mdm Ng had told Charles and his family that she was not giving them any houses or money. Mr Raman in cross-examination also did ask in effect whether she had at any time learnt that Mdm Ng had threatened not to leave anything to Charles and his family. She answered in the negative.

100 More specifically, at the end of her oral testimony, the court asked her whether there were occasions when Mdm Ng had pointed at Charles and his family and said “*mai hor yi*”. Her answer was that she did not “recall or recollect”. The court reasoned with her that if such an incident had happened it would have come as a startling statement that one would not easily forget. She

agreed. Nevertheless, she maintained that she “[did] not remember or recall that it happened.” I found that difficult to believe.

101 Coming back to the question whether she told Wee Yong that Mdm Ng used to threaten them as aforesaid, if she was unaware that Mdm Ng had said so, her answer to Mr Raman’s question would obviously have had to be “No”. How could she possibly have told Wee Yong that Mdm Ng had threatened so when she herself was unaware of the fact? Thus her answer, that she did not recall having told Wee Yong, suggests to me that she was aware that Mdm Ng had in fact made the statement.

102 Evangeline deposed that sometime before 2004, her grandmother informed Wee Tsan, in Evangeline’s presence, that she intended to leave her property at 6 Watten Terrace to Evangeline. Given that Mdm Ng had already done so in the 2002 Will, this is not surprising. In fact, as we have seen, it was known to Wee Tsan and Henry as well.

103 John deposed that while he was staying with his grandmother between 2004 and 2009, more than once she had told him that she would leave 64 Sian Tuan Avenue to him after she passed away. In particular, he recalled that after his marriage, Mdm Ng had “randomly mentioned that my wife and I should both move in to stay with her, telling me that ‘*[the Sian Tuan House] is yours anyway, it’s only right that you stay here.*’” In court, he placed the time this happened at perhaps the end of 2009 or early 2010.

104 There are several difficulties with his evidence in this regard and, in particular, with respect to this last incident. First, Mdm Ng had by then already removed John as a beneficiary under her 2009 Will which was executed on 26 May 2009. Did Mdm Ng lie to him or had she forgotten her 2009 Will?

His evidence also conflicted with the foregoing evidence of many occasions when she had declared her testamentary intentions. Finally, it also contradicted his own unequivocal evidence that after 2006 he and Mdm Ng had effectively stopped communicating and that there was no rational interaction between them. On balance, I did not consider John's evidence as recounted in [103] above reliable.

Non-medical evidence as to Mdm Ng's physical and mental condition

105 In her AEIC, Wee Tsan did not mention Mdm Ng's depression. However, under cross-examination she conceded that after 2006 Mdm Ng used more gestures in her communications and that she was sometimes confused. She also agreed that Mdm Ng became very quiet and withdrawn but added that it depended on whom she was with. She would sometimes talk with Wee Tsan and she would call her brother in China and talk for a long time. Wee Tsan mentioned in her AEIC that, up till 2013, Mdm Ng would make overseas and local phone calls to her relatives and friends on her own using a small booklet which served as a directory. She would read the newspapers every morning and would read the obituary pages in case any relative or friend might have passed away. She also doted on Wee Tsan's granddaughter, Ioanna. Wee Tsan recounted how, after Mdm Ng's discharge from hospital following her recovery from a fall in December 2012, her mother would go over to Wee Tsan's home to feed the fish with Ioanna and to play with her. Under cross-examination, when John was shown a January 2013 photograph of Mdm Ng in a hospital bed with her great-grandchildren around her, he agreed that even as late as then she was still able to play with her great-grandchildren. In re-examination, Mr Siraj tried, in my view unsuccessfully, to downplay this.

106 Wee Tsan also deposed that since the year 2000, she and Henry would take turns every Tuesday to bring their mother and her domestic helper (“the helper”) marketing for Mdm Ng and Charles’ family. Although she recognised that the marketing trips were an opportunity to take the mother out, she did not enjoy marketing for Charles and his family. She said that most of the items purchased by her mother on those trips were for Charles and his family.

107 Henry deposed that Charles’ wife would prepare a shopping list and the helper would bring that along on the marketing trips. According to him, during some of the trips Mdm Ng made comments to him in Hokkien that she had asked them (referring to Charles’ family) to manage their own meals but they just refused. He added that his mother’s needs were simple if all she had to do was to take care of herself. However, the extensive needs of Charles’ family turned their mother’s weekly marketing into a chore.

108 In cross-examination, Mr Siraj asked Henry whether Mdm Ng had ever asked Charles and his family not to go to her house for dinner every night. Henry stumbled badly over this simple question, giving inconsistent answers. Eventually, he settled on her not having done so. However, he maintained that she did tell him that she had asked them to do their own marketing and cooking despite which they still insisted on going to her house for dinner. He was not challenged on that.

109 Most Saturdays, if she was in Singapore, Wee Tsan and her husband would take her mother out to lunch, sometimes accompanied by Evangeline or Mdm Ng’s helper. From the year 2000, when she accompanied her husband abroad regularly, Wee Tsan would tell Mdm Ng her itinerary and the day she was due to return. According to her, Mdm Ng would mark the date and would

sometimes call Wee Tsan on the latter's mobile phone on the day itself to check if she was back. She testified that this practice continued until about the end of 2012. Sometimes she would call her mother when overseas and they would talk about the latter's activities for the day, her meals and how the weather was. Her mother would sometimes tell about visitors to her home. Wee Tsan said that those calls continued to be made until about the end of 2012. She added that on a few occasions Mdm Ng would call her mobile phone from home. (It is not stated in her evidence when Mdm Ng made those calls.)

110 Henry deposed that his mother had a daily routine which included reading the Chinese newspapers, watching news broadcasts and following drama series on television. (This was largely confirmed by Charles who agreed in cross-examination that even after 2006, until shortly before her death, Mdm Ng read the newspapers daily, watched television serials and continued to have conversations with relatives in China and Hong Kong.) Apart from a month in 2006 when she was hospitalised and brief stays at Alexandra Hospital in December 2009, she had followed this routine until a few weeks before her death. She also monitored share prices on the stock exchange regularly. In particular, until the end of 2012 she would ask him from time to time about the share prices of OCBC, UOB, DBS and SPH. She executed a Power of Attorney in July 2009 in Henry's favour authorising him to manage her investments.

111 Henry cited two instances after execution of the Power of Attorney when she instructed him to sell shares, viz, 20,000 NOL shares on 10 September 2009 and 16,500 City Development shares on 30 September 2010. He also deposed that after she had executed a Lasting Power of Attorney

in his favour (registered on 26 November 2010), she continued to give him instructions for share transactions she wished to enter into. In this connection, he mentioned two share transactions. Henry said that she retained a very strong interest in share transactions until the end of 2012.

112 Henry also deposed that since the year 2000 or thereabout, Mdm Ng would call him to collect her Central Depository Ltd (“CDP”) statements from her whenever she received them. When he received them, the statements were always open. Mdm Ng would sometimes remark that they showed a lot of money and should be properly kept. He believed that his mother must have looked at them before handing them over to him. In cross examination, Mr Siraj showed that right up to 7 March 2006 Mdm Ng had recorded her share transactions in writing in two notebooks and that the number of transactions (215 in the seven years preceding her fall in May 2006) had gradually tailed off in the years 2004 to 2006. For three years thereafter, there were no further transactions until the ones Henry executed on her behalf as mentioned above. When Mr Siraj suggested to Henry that it was necessary for her to appoint Henry to act on her behalf because she was no longer capable of managing her share portfolio, Henry disagreed. He said that she continued to follow teletext publication of share prices and would give him specific instructions. When asked why she could not give those instructions directly to the remisier she dealt with, Henry explained that the remisier, one Han Mei Mei, had said that she did not want to take Mdm Ng’s instructions because the latter was no longer sharp. He added, however, that sometime in 2007, when Mdm Ng met her at the Singapore Recreation Club and could recognise her, the remisier expressed surprise and even sent a note to Charles to say she was so happy that Mdm Ng was “really sharp”. Mr Siraj read from a reply from Charles in which he thanked her but added that she was “not fully well”.

113 Henry deposed that from September 2006 until she passed away, his mother attended church services with him and his wife in Newton Life Church. She would listen quietly sometimes nodding her head in agreement with the preacher. This would be followed by lunch with her before he took her home to rest. Mdm Ng would call him without fail on Saturday evenings to remind him to pick her up for church the next day and to confirm the pick-up time which might change if he had duty in church on the particular Sunday. He also took her to the Senior Fellowship meeting in Jubilee Church on Wednesday mornings followed by lunch at a food centre or restaurant.

114 Henry also deposed that he understood that Mdm Ng preferred to have her dinner before Charles' family. When he was asked whether she had told him that she preferred to have her meals alone at an earlier time, his answer initially was "She did in fact." Mr Siraj observed that that was not what he had deposed but he repeated that she did. When Mr Siraj asked him a third time, he said he could not remember. That caused the court to caution him to be careful to answer truthfully. In fact, there was no dispute that Mdm Ng chose to dine earlier than Charles' family. Whether it was because Charles and his family would scold her when she was choosy about her food, as Henry believed or that they struggled to persuade her to eat, as Evangeline deposed, may just be different ways of describing what happened. (The evidence of Mdm Ng's helper (at para 92) is that Mdm Ng preferred to have her dinner alone because Charles and Irene would make comments about her being fed by the helper and would ask her to feed herself.)

115 Wee Yong gave evidence that Mdm Ng's memory was "excellent". She recounted three incidents in support of her view. One occurred sometime after June 2006 when her mother was able to retrieve Wee Yong's identity

card with ease when Henry and Wee Tsan could not find it. The second was sometime between March 2007 and June 2011 when she could remember the combination for a lock Wee Tsan had found which Wee Yong needed for her luggage bag. The third was in January 2013 when she appeared able to recall that Wee Tsan's granddaughter's name was partly taken from Wee Tsan's grandfather's.

116 The evidence of the helper, Bonisah, is consistent with the evidence of Wee Tsan and Henry. Bonisah looked after Mdm Ng from around the middle of 2006 right up to her demise on 18 March 2013. (She now works for Wee Tsan.) She shared a room with Mdm Ng. She spoke to Mdm Ng in Malay and English and the latter would speak to her in Malay and some Hokkien. Bonisah said she was able to understand Mdm Ng and communicate with her without difficulty. She described Mdm Ng's daily routine which included reading the Chinese newspapers and church newsletters for about an hour. Sometimes Mdm Ng would ask for a pair of scissors and cut out articles she wanted to keep.

117 After reading, Mdm Ng would watch her favourite Taiwanese drama serial and then have lunch. (In court, she added that Mdm Ng followed share prices on teletext.) After lunch, she would watch the Chinese news on television before taking a nap. She would also make telephone calls. She had her own directory which she would ask Bonisah to get for her from a drawer if she needed it. She remembered Henry and Wee Tsan's respective telephone numbers and spoke to them often. She would also talk with her two brothers Ng Hock Hwa and Ng Tiong Wah, the church pastor and some friends and relatives.

118 Bonisah also stated in her AEIC that on Wednesdays before leaving the house for the Senior Fellowship at Jubilee Church, Mdm Ng would remind her to bring along a pen and some paper so that Mdm Ng could take notes. On Sundays, before leaving for church, Mdm Ng would also ask her to bring along some sweets. Mdm Ng herself would listen attentively at the church service. The sweets were for Bonisah so that she would not fall asleep.

119 Bonisah deposed that Mdm Ng did not like to eat with Charles and his family. She told Bonisah that it was because Charles and his wife, Irene, would nag at her and make comments about her being fed by Bonisah, asking her to feed herself. According to Bonisah, she would invariably feed herself if she ate outside. Mr Siraj sought confirmation from Bonisah that Charles had explained to Bonisah why he wanted Mdm Ng to feed herself. However, Bonisah denied that Charles had ever done so.

120 Bonisah recalled an incident in which Mdm Ng had asked Irene to do her own marketing and also asked Irene to pay for half the marketing costs. Irene's reply was "You no money ah?" (In court, Bonisah clarified that the conversation was in Hokkien and that she could understand it even though she could not speak the language.) Mdm Ng did not respond. When Irene was asked in cross-examination about this incident, she said she could not recall that the conversation ever took place. She denied having said "You no money ah?" but when Counsel asked whether she was saying that Bonisah lied, she demurred saying that she could not say so. When further pressed, she said that it was for the court to decide.

121 Bonisah deposed that Mdm Ng would normally open her letters and read them. She would sometimes tell Bonisah if certain letters were important

and would call Henry to collect them or ask Bonisah to ask him to do so. Bonisah added that Mdm Ng would always hide the letters from Charles and his family. In this connection, I should perhaps add that, according to Irene, prior to 2006 she was the one responsible for filing Mdm Ng's income tax returns. That would have necessitated access to financial information. However, there is no conflict with Bonisah's evidence as Bonisah was referring to the period after she commenced employment with Mdm Ng in or around the middle of 2006. In any event, Bonisah was not challenged on this part of her evidence.

122 Bonisah described in her AEIC an incident sometime before 2012 when Mdm Ng rang the bell for assistance while Charles and his family were having their dinner. They knew that Bonisah was having a shower (as she had already told them) but nevertheless did not answer Mdm Ng's call when Mdm Ng rang persistently. Bonisah quickly finished showering and found Mdm Ng in the toilet by herself. Mr Siraj sought Bonisah's agreement that sometimes Mdm Ng summoned for help only for the person responding to find that there was nothing she required. Bonisah disagreed.

123 Bonisah also gave evidence regarding the day Mdm Ng executed the 2012 Will. According to her, Mdm Ng told her in the morning that they were going to see a lawyer (whom we know to be Pauline Ang). Later, Henry picked both of them up and drove to the law firm. Bonisah and Henry sat outside in the reception area while Mdm Ng met with Pauline Ang. Mdm Ng told Bonisah not to tell Charles, Irene or any of their family members about her visit to the lawyer's office. She repeated this at home. Bonisah observed that Mdm Ng looked happy after her visit to the lawyer's office and that she

slept well that night. She added that Mdm Ng would have difficulty sleeping if she was unhappy or angry.

124 According to Bonisah, despite her fall in December 2012 for which she needed a hip operation, Mdm Ng remained mentally alert. She gave evidence that Mdm Ng could still play with her great-granddaughter Ioanna. She exhibited a compact disk showing a video recording of Mdm Ng playing the drum with Ioanna a few months before she passed away.

125 In cross-examination, Mr Siraj brought up, for Bonisah's confirmation, several incidents which showed abnormal behaviour on Mdm Ng's part. One example was her drumming with her fingers on the headboard of her bed, on the car window when she was being driven around and generally on objects she passed as she walked from the living room to her bedroom. Bonisah agreed. She confirmed an incident (recounted by Charles in his AEIC) when Mdm Ng refused to get out of the car for five hours after a short drive with Wee Tsan. She also agreed that there was an incident when Mdm Ng woke up at about 3am in the night and went to sit outside until 6am or 7am. She explained that she could not bring Mdm Ng back into the house because the latter did not want to sleep. She waited until the morning before she called Henry to bring the mother into the house. In re-examination, Ms Barker asked why she called Henry. She answered that Irene had told her before, "If there is anything, call Sir Henry or Mrs Lee". In fact, in a different context in cross-examination, when Bonisah was asked why she did not use the handphone beside her to call Charles, Irene or Evangeline when she was too ill to get out of bed, she replied that they had never given her their telephone numbers.

126 In his closing submissions, Mr Siraj contends that Bonisah “sought to paint a picture of Mdm Ng as being perfectly normal, ascribing any unusual behaviour that Mdm Ng displayed to tiredness or an occasional illness”. That is neither accurate nor fair. Bonisah did confirm a number of incidents Mr Siraj brought up without making any excuse on Mdm Ng’s behalf. While she did, in regard to at least two incidents, suggest that Mdm Ng’s behaviour was attributable to her tiredness, that might have been her honest opinion even if it might have been wrong. In any event, the court will not rely on that opinion, unqualified as she was. While Mr Siraj sought to suggest that, by reason of Bonisah’s employment with Wee Tsan, she was unwilling to contradict the plaintiff’s case, the fact remains that Bonisah’s evidence was largely unchallenged in his closing submissions.

127 Pastor Koh gave evidence that she had known Mdm Ng for over 30 years and that she saw her almost weekly during the worship service or during the Senior Fellowship gatherings. She recalled that Mdm Ng was always “well behaved and dignified” at the Senior Fellowship and never appeared disoriented or confused. When Mdm Ng returned to the Senior Fellowship after her absence for a period in 2006, she recognised Pastor Koh and other friends. When Pastor Koh asked her why she had not attended for some time, she replied in Hokkien to the following effect: “body not feeling well” and also “Give thanks to God”.

128 During the period 2006 to 2013, Mdm Ng continued to give regularly to the church. Pastor Koh observed that Mdm Ng was always alert and attentive during Senior Fellowship. Although Mdm Ng appeared physically weaker during the period 2006 to 2013 she could still speak clearly and would smile slightly when she met other people. Mdm Ng would call Pastor Koh for

two reasons – either to confirm whether the Senior Fellowship would meet that week or to request Pastor Koh to pass “condolence money” to the family of a deceased person of whose passing Mdm Ng had learnt from the newspapers that day. She would call only when she had reason to do so and would make the purpose of her call clear.

129 Pastor Koh deposed that she interacted with a lot of old people in the course of her work. Her work involved making visits to old folks’ homes and she had dealt with elderly people who were unable to recognise her or to even know where they were. Mdm Ng was not one with such issues. Pastor Koh ended her AEIC by saying that she had never observed Mdm Ng acting violently or screaming or shouting at anyone. Neither had she observed her making a scene anywhere. Mr Siraj’s cross-examination did not contradict Pastor Koh in any respect.

130 I turn now to the evidence given by the defendants’ factual witnesses as to Mdm Ng’s physical and mental condition.

131 Irene deposed that it was originally upon the invitation of Mdm Ng that Charles and his family started having their evening meals at 64 Sian Tuan Avenue with Mdm Ng. She objected to Henry’s account of Mdm Ng’s payment for their groceries and their free use of her helper as being “completely out of context” although she did not elaborate on how this was so. Irene deposed that Mdm Ng’s physical and mental condition deteriorated significantly and rapidly after her fall in 2006. She also described Mdm Ng’s mental state as having “deteriorated to a point where she was completely unable to make basic decisions”. It was not made clear whether she was describing Mdm Ng’s condition in the shorter period immediately after the fall

in May 2006 or the longer one ending with her demise. There is no doubt that during the shorter period Mdm Ng was suffering from ICPS and experienced recurrences of altered mental status. However, if she was describing the longer period including the time of execution of the Wills (as indeed she had to if she was giving evidence to impugn the Wills), then she would be faced with medical evidence which we have seen would challenge her description of Mdm Ng's mental state. To begin with, Prof Wilder-Smith described Mdm Ng as being oriented as to time, person and place on discharge from the hospital. The ICPS did not recur at any time thereafter.

132 Irene described various incidents which suggested that Mdm Ng's mental condition was abnormal. She mentioned that there were several occasions when the helper would ask her for help because Mdm Ng threw a tantrum and refused to co-operate with the helper. She also stated that Mdm Ng would be unable to decide what to wear and that she would help make that decision for her, especially when Mdm Ng was going out to attend wedding functions. Bonisah's account was that Irene would sometimes choose Mdm Ng's outfit on special occasions; Mdm Ng had two favourite outfits which she normally wore and Irene did not want her to have the same attire all the time. Nevertheless, Mdm Ng would tell Irene if she did not like what Irene chose.

133 Irene also deposed that Mdm Ng would sometimes blurt out incoherently while sitting in front of the television. She was also confused at times mistaking the helper for Irene or *vice versa*. Irene also stated that Mdm Ng would often drum with her fingers on the bed frame and yell incoherently. She recounted instances when Mdm Ng displayed what she considered child-like behaviour as (i) when she insisted on having a slice of a

cake on display only; and (ii) when she asked to join Irene's visit to the latter's "maiden family" because she wanted to eat *popiah* prepared by Irene's mother. She even had some "toys" which she would play with daily and which she would hide from her great-grandson, Daniel.

134 Irene described an incident sometime in September 2008 to show that Mdm Ng had become increasingly difficult to deal with. According to her, Wee Yong had cooked a bowl of noodles for the mother but could not persuade her to eat it. As a result, Wee Yong "flew into a rage". When in cross-examination Mr Siraj sought confirmation from Wee Yong that this incident occurred, her explanation gave a different perspective to the incident. She explained that she could not cook well and had put a lot of ingredients into the bowl of noodles. As a result Mdm Ng was "horried with all the ingredients". That caused Wee Yong to be frustrated. Just then, Charles' whole family arrived and they started persuading her loudly. That irritated Mdm Ng and she refused to eat. Wee Yong was "frustrated that they came over" then but, instead of shouting at them and asking them to go away (which she was unable to do), she shouted at her own mother, much to her regret.

135 Irene recalled that Mdm Ng also began hitting and verbally abusing Bonisah. However, Bonisah said there was only one occasion when Mdm Ng slapped her. Irene deposed that Mdm Ng had to rely on the helper to feed her and to assist her with putting on her clothes. As stated earlier, Bonisah's evidence was that Mdm Ng invariably fed herself when eating outside. Bonisah also gave evidence that Mdm Ng was able to dress herself but she helped Mdm Ng with her pants because she was afraid the latter might lose her balance. Regarding Irene's evidence, I have two observations. First, she was shown under cross-examination to have exaggerated, in para 34 of her AEIC,

the number of times Mdm Ng undressed in the living room. She deposed as follows: “The most extreme examples [*sic*] of how my mother-in-law was no longer herself was when she would undress in the living room without any care for who might be around.”

136 Under cross-examination, it turned out that there was only one such incident and that it was reported to her by the helper Bonisah who was the sole witness thereto. (In her AEIC, Bonisah contradicted Irene’s account. She asserted that Mdm Ng was a very proper lady and that it was untrue that she would undress in the living room without care as to who might be around. On the day in question, as it was very hot, she wanted to shower a second time. There was no one around other than Bonisah when Mdm Ng undressed in the living room.)

137 Irene also described herself as Mdm Ng’s “primary caregiver in terms of supervising and instructing the helper on how to care for [her] mother-in-law on a daily basis”. The supervision and the giving of instructions to Bonisah would likely have been more in the initial period in 2006 after Mdm Ng’s discharge from hospital. Moreover, as counsel pointed out, Irene was a school teacher and would not be home till 3.30pm or so. Irene then said there were occasions when she had to help Bonisah when Mdm Ng “kicked up a tantrum” about dressing, not wanting to eat, or when she had a fever or bed sores. She was twice asked how frequently in a month or a year she had to help Bonisah but replied that she could not say. I surmise that it probably was not often or else her answer would have been more readily given. She appeared to have exaggerated her role as a “primary caregiver”.

138 Irene’s account of Mdm Ng’s daily routine, in paras 20 and 21 of her AEIC, left out any mention of her reading the Chinese newspapers, making telephone calls and following share price movements on teletext. Instead of saying that Mdm Ng watched television programmes during the day, she described her as “sitting in front of the television”. This is not surprising since, in the preceding para 19 of her AEIC she had described Mdm Ng’s mental state as having “deteriorated to a point where she was completely unable to make basic decisions”. In the same vein, she prefaced her account of Mdm Ng’s daily routine with the statement, “Given her inability to carry out simple tasks on her own, she had a fairly simple and consistent daily routine”. Against such a background, an account of Mdm Ng’s more active daily routine along the lines described by Bonisah would have been incongruent.

139 It seems to me that this was another instance of exaggeration as to the state of Mdm Ng’s mental health. To be fair, I should also mention her statement at para 36 of her AEIC where she stated: “Anyone who spent time or interacted with my mother [*sic*] for any significant amount of time would be able to tell that she was not in perfect mental health.” One could not quarrel with that assessment.

140 My second observation is that Irene’s account of incidents which raised doubts regarding Mdm Ng’s mental state sought to give the impression that, after May 2006, Mdm Ng was mentally incapable of executing any will. Hence, her conclusion at para 47 where she deposed as follows: “I have no doubt that my mother-in-law was not mentally capable of properly executing a Will any time after 2006.” Charles deposed that Mdm Ng’s mental health “deteriorated rapidly from sometime in or around the middle of 2006”. On that basis he stated: “I have no doubt whatsoever that my late mother did not have

the requisite mental capacity to manage her affairs on her own, let alone execute a Will in respect of her assets.”

141 Charles too recounted incidents to support this contention. He recalled an incident sometime in 2006 when his mother’s behaviour was particularly embarrassing. According to him, when he brought her to Alexandra Hospital to see Dr Pang, she had pointed at passers-by, raising and swinging her arms at them. Another incident was on 29 November 2009 when she threw a tantrum and for five hours refused to get out of the car after she had gone out for a short drive with Wee Tsan. (As earlier mentioned, this was corroborated by Bonisah.) Yet another instance was at her brother’s wedding anniversary dinner where she started talking loudly to herself and, during the singing session, made inappropriate gestures with her left hand. Charles said these were by no means the only incidents and recalled that Henry even apologised to family and friends at their mother’s wake if her behaviour in the past had offended any of them.

142 Against the unequivocal assertions of Irene and Charles as to Mdm Ng’s testamentary incapacity after May 2006, there is the conflicting admission by Charles himself under cross-examination that she had the capability to make a will after 2006 if she was “sharp and alert”. The certified transcript of his evidence in this regard is as follows:

- Q And at page 3, which is the note of 21st September [20]07, the last point you made is that she has a sharp mind and is alert on [*sic*] what is happening around her.
- A Yes, I wrote that.
- Q So, that’s true? So on 21st September [20]07, you were of the opinion that she had a sharp mind and was alert on what is happening around her?

- A I agree, that's [sic] was, er, my personal opinion, my observation. Yes.
- Q And you would have no doubts about her ability to make a will on this day?
- A I don't know that at that time she had made a will.
- Q No, she did not. I'm saying on this day, you would have had no doubt that she has the capability?
- A If she was sharp and alert, yes, I will agree.
- Q Then we have---and would you agree that your mother was in fact sharp and alert on numerous occasions after 2006?
- A She fluctuated, er.
- Q Would you agree she was sometimes sharp and alert?
- A Sometimes, yes.
- Q And during those times, she could express herself clearly?
- A Yes.
- Q She could explain what it was she wanted?
- A Yes.
- Q And you---in fact, she could make decisions?
- A Yes.

143 John chose not to repeat his parents' description of his grandmother's condition following her fall in 2006. Instead, he added a few points from his own recollection. The key point he made was that, after her mental condition began worsening from around May 2006 onwards, Mdm Ng and he effectively stopped communicating. In para 15 of his AEIC, he gave two reasons for this. First, he said that after May 2006 his grandmother would only speak Hokkien to people around her, making it difficult for him as he was not fluent in the dialect. Second, most of the time she was no longer able to hold a proper conversation with anyone and would instead utter short or curt sentences.

He added that there were also times when she would rant in an incoherent manner or mumble to herself.

144 John contrasted the way she reminded him to go to church before and after her fall in May 2006. In the latter period, instead of gently reminding him to attend church as she used to before the fall, she would burst out crying and yelling at him. Even when he told her that he had attended church that week, she would not calm down. He concluded that she was ill and “could not rationalise what [he] was telling her”.

145 John also recalled that after 2010, whenever he brought his elder son to visit her, she would communicate with him more by way of gestures than words. However, as was suggested in cross-examination, that might have been because the baby was very young then. In cross-examination, when he was asked whether he had any conversations with Mdm Ng apart from those about going to church, he said he did not think she was in a state of mind to be having proper conversations.

146 Later in the cross-examination, John again said that during the first few years after the May 2006 fall, she was more agitated, ranting, raving and shouting, but added that towards the last few years before she died, she was just quiet, never saying anything. When Ms Barker suggested that she was calm and in good condition, John thought she was more in a “sedated” state. When he was challenged on that, he said it was just his opinion. At the end of re-examination, John again said that, after 2006, there was not any rational interaction between Mdm Ng and himself but it was really just her shouting, “You need to go to church. You need to go to church.”

147 Evangeline’s observations regarding her grandmother were that after 2006 her mental state deteriorated progressively. Her eating habits changed and it was a huge struggle for everyone in the house to persuade her to eat. She was extremely moody and would often spout gibberish. According to Evangeline, her grandmother was also very child-like in her behaviour. To illustrate this she related an incident when her grandmother “threw a tantrum” because the pizza Evangeline ordered did not have her favourite pineapple topping.

148 Rev Yeo, Charles and Henry’s uncle and brother-in-law to Mdm Ng gave evidence on behalf of the defendants. He was of the opinion that after her fall in 2006, Mdm Ng was “mentally and emotionally unstable”. He deposed that there were many times when he and his wife visited her or met her during Chinese New Year reunion dinners when she complained or blamed people or “would scold people for no reason”. To him, this was a clear indication that she was mentally and emotionally unstable.

149 Another occasion which led him to this conclusion was when he brought a nephew’s wife and son to visit her. Mdm Ng called the nephew’s wife a bad woman. In cross-examination, it was suggested to Rev Yeo that Mdm Ng had heard that the woman in question had “said bad things” about Mdm Ng’s mother-in-law and that Mdm Ng had reason to be unhappy with her. Rev Yeo said he did not know.

150 Rev Yeo explained that during the Chinese New Year season it was usual for people to talk about good and happy things rather than grumble. Ms Barker then asked whether Rev Yeo concluded that she was mentally and emotionally unstable because she complained about unhappy things during the

Chinese New Year season. He answered affirmatively. When Ms Barker asked whether that was not an unreasonable conclusion, he merely repeated that Mdm Ng was not that way many years ago and that it was only in the last few years that she spoke that way.

151 Elsewhere in cross-examination Rev Yeo was asked how often he saw Mdm Ng in the last few years. He confirmed that apart from the Chinese New Year reunion dinner, he only saw her once or twice a year. He also said that those meetings lasted only 15 or 20 minutes. He agreed his observations regarding her condition were fleeting. Ms Barker then asked:

Q So you say in para 23 that people who met her occasionally may have thought she was fine but others who have been in close contact with her for many years would be able to say she had deteriorated mentally, emotionally and physically after her fall in [20]06. You yourself were not in close contact with her in her last years?

A Yes, that's right.

152 Rev Yeo also deposed that Mdm Ng would sometimes complain to him and gossip about Charles and Irene. He said the complaints were trivial and untrue and that it was clear to him that she was not in a proper state of mind when she did so. He did not take her complaints seriously and dismissed them as yet another example of her speaking irrationally. When asked, Rev Yeo could not remember the complaints. That being the case, it is obvious that he would not have been able to say why they were trivial and untrue. As he said, he just dismissed them as an example of her speaking irrationally. When asked, he said she did not complain of her other children but did say John was no good and had not been attending church. Rev Yeo went on to add, in para 20 of his AEIC:

Charles and his family continued to be close to my sister-in-law and they were both very filial to her. They would accompany her for dinner almost every evening. This was excellent as it ensured that my sister-in-law had company every night and was surrounded by loved ones. ...

When he was asked how he knew that Charles and his family continued to be close to Mdm Ng, he said they would go over to have dinner with her every evening. It turned out that he was unaware that Mdm Ng had been having her dinner ahead of them.

153 Rev Yeo deposed that he was most surprised when he learnt of the contents of the 2012 Will. His first thought was that it was most unlike her normal generous self to exclude her eldest son, her grandchildren and her great-grandchildren. To him, it was “unreasonable impartiality [*sic*] towards her offspring”. He added that she had no reason to do so. He concluded that it must have been caused by her “unbalanced mental state”. When cross examined, it turned out he did not know that Charles had been excluded even in Mdm Ng’s 2002 Will. However, Rev Yeo argued that at least Charles’ children were included then.

154 Overall, the impression I have of Rev Yeo’s evidence is that he thought the 2012 Will was totally unfair to Charles and his family so much so that he was prepared to conclude that Mdm Ng was mentally unsound. The following question and answer will bear this out:

Q ... we cannot assume that just because they do not divide the assets in a way that we believe is fair that they are mentally unsound. Would you agree?

A ... I agree to that partly, ... but not to the extent of what it is today, what is given in the last will. ...

He formed this conclusion despite admitting that he knew Mdm Ng was very close to Henry.

155 It was also clear from the evidence that Rev Yeo believed, without enquiry or investigation, that Mdm Ng's complaints against Charles and Irene were untrue and simply dismissed her complaints as irrational. It is obvious that Rev Yeo, as a lay person, was not qualified to give his opinion that Mdm Ng was of unsound mind. What he could and did testify to was Mdm Ng's change physically and emotionally. That is not inconsistent with what we already know, that she was severely depressed and had episodes of delirium occasionally.

156 In my review and evaluation of the evidence given by and on behalf of the parties, one point stands out. Whereas Henry, Wee Tsan, Wee Yong and Bonisah largely omitted from their respective AEICs incidents which might cast doubt on Mdm Ng's mental state, concentrating instead on circumstances and events which showed her to be mentally well, Charles, Irene, John and Evangeline did precisely the opposite. The truth, however, lies somewhere in between.

157 In the years after her fall in May 2006, Mdm Ng continued to follow her daily routine, as described in the evidence of Henry, Wee Tsan and Bonisah. In particular, she read the Chinese newspapers, watched news broadcasts, followed television drama serials, monitored share prices, called friends and relatives and read her mail. She and Bonisah also went marketing every Tuesday with either Henry or Wee Tsan. In addition, she attended church services and Senior Fellowship meetings. However, there were also sporadic incidents in which Mdm Ng behaved strangely or abnormally

because of delirium as recounted by Irene, Charles, John and Evangeline.

Dr Ngui referred to that state in para 37 of the 1st Ngui Report thus:

She had recurrences of altered mental status with episodic agitation that was initially due to intermittent Complex Partial Seizures, and that subsequently persisted on and off as a chronic Delirium –type brain syndrome. ...

158 As we have seen, Dr Lim did not disagree that there were periods of delirium but pointed out its transient nature and that it did not affect a person's testamentary capacity once the delirium passed. What is important is that both experts agreed that at the time of execution of the Wills, Mdm Ng was not delirious.

The respective parties' relationship with Mdm Ng

159 Henry deposed that he had a very good relationship with his mother. He treated her with dignity and respect and cared for her well-being right through her old age. From 1994 until her passing, he was often the one Mdm Ng would call whenever she wanted to go out. This remained so even when she moved to 64 Sian Tuan Avenue next to Charles. Henry was also the one who arranged to have the mother's household repairs attended to. He showed some messages from Charles requesting him to attend to such repairs. Henry also stated that he sent his mother to almost all the medical appointments from 2006 until her passing. He never raised his voice against her. He trusted her decisions and never took her for granted.

160 Wee Yong's evidence in her AEIC is in similar vein. She deposed that when she was young, her mother told her that her brother Henry was the most filial and gentle among her children, and that Wee Yong was the most rebellious and naughty one. She also stated that Henry always spoke to their

mother in a quiet and gentle manner and that she had never heard him raise his voice at the mother. In contrast, she deposed that Charles and his family would talk to Mdm Ng in loud voices, as if they were shouting at her. (Charles explained in court that Mdm Ng was deaf in one ear and that they were only encouraging her to eat or to walk. When it was suggested to him that she could hear if one spoke softly to her in her other ear, he said he could not remember which ear was deaf.)

161 Charles' own account of his close relationship with his mother related principally to years much earlier than the time of execution of the disputed Wills. He covered his childhood and adolescent years. In 1983, Mdm Ng nominated him to represent her on the board of directors of Hiap Moh which subsequently was publicly listed and renamed Hiap Moh Corporation Ltd. He continued to serve as a non-executive director until it was delisted on 30 March 2009. He recounted how his mother trusted his business judgment as demonstrated by her joining him in 1995 in declaring support for a consortium challenging a takeover bid for Yeo Hiap Seng Ltd. He also deposed that Mdm Ng handed him a spare key to a drawer in her bedroom where she kept her valuables on about 15 May 1999. Finally, he recounted that in June 2004, his mother asked him and Irene to accompany her on a visit to Wee Yong in Sweden.

162 Significantly, there is no account after that date of any incident or circumstance suggesting that Mdm Ng had a close relationship with him. (It will be recalled that he was not included as a beneficiary in the 2002 Will.) To be fair, what his AEIC did show is that he paid close attention to his mother's state of health. For example, he tabulated her blood test results and sent them to Dr Pang. Comparing his own account with what was said by the

plaintiffs' witnesses as to his relationship with Mdm Ng, it would appear that his concern for her was either not known, unappreciated or misunderstood by her. Whichever it was is of little relevance to the outcome of the case. What matters is that, whatever the reason may have been, Mdm Ng was unhappy with him during the period when the disputed Wills were executed.

163 In his AEIC, John deposed that he always had a good relationship with his grandmother, Mdm Ng. He recounted incidents which showed that she favoured him. For example, around end 2004, she offered to buy him a new computer when he had problems with the one he was then using. She also subscribed to the sports package on her cable television network because she knew he liked to watch soccer matches. She even went to the extent of switching channels midway through a programme in order that he could watch soccer. No specific time period was mentioned but I surmise that it would have been when he was living with his parents before he left for further studies in the United Kingdom in 2001. This is because in recounting this, in para 9 of his AEIC, he said, "Whenever I went over to my grandmother's house ...". John also mentioned an incident in 2004 soon after his return from the United Kingdom, when he had an argument with his parents over his wanting them to buy him a car, Mdm Ng advised him not to "fight" with his parents and offered to buy him the car. He did not take her up on the offer.

164 According to John, sometime in 2005, he stopped going to church regularly. He maintained Mdm Ng was not upset but disappointed and would remind him regularly to go to church. What is significant about John's evidence is that he and Mdm Ng "effectively stopped communicating" after her mental condition "began worsening" from around May 2006. Indeed, John's evidence, as earlier mentioned, was that after 2006 the two of them had

no rational interaction, with Mdm Ng merely shouting at him to go to church. I do not propose to elaborate further on the reasons for this state of affairs as they have been covered in [143]–[146] above.

165 When John was cross-examined, he could not recall ever having taken his grandmother out to lunch. He did not take her out for any “joy ride” but might have “fetched her places”. John’s evidence, at para 18 of his AEIC, alluded to visits by his grandmother to his apartment. He deposed that during one of those visits she offered to pay his rent. Bonisah’s AEIC (filed after his) stated that to her knowledge Mdm Ng had only been to John’s apartment once with his parents to see John’s second son. In court, when he was asked whether he showed her his new “place”, he replied that she went to his apartment once with his parents. Why then did he allude to visits in the plural in his AEIC? It appeared to me that this may have been an instance of John overstating the extent of his contact with Mdm Ng prior to the breakdown in their interactions.

166 Evangeline’s evidence was that she always had a very close relationship with her grandmother. Apart from a period in 1980 when her father’s assignment abroad required the family to live in the United States, she always lived in close proximity to her grandmother. She recounted the many gifts she received from Mdm Ng over the years from the time she was very young and the love Mdm Ng had for her. There was nothing in her AEIC specifically describing her relationship with her grandmother around the period when the disputed Wills were executed.

My conclusion as to limb (d): whether Mdm Ng was free from an abnormal state of mind (eg, delusions) that might distort feelings or judgments relevant to making the Wills

167 To sum up, my first conclusion is that at the time of execution of the Wills, Mdm Ng's depression was not severe enough to have caused testamentary incapacity, such that the decision to exclude John and Evangeline was based on or coloured by her depressed mood. At risk of repetition, I set out in brief below my reasons for arriving at this conclusion:

(a) Both Dr Ngui and Dr Lim agreed that at the time of the execution of the Wills, Mdm Ng was neither delirious nor confused but that she suffered from severe depression. While Dr Lim was of the view, based on Pauline Ang's evidence, that Mdm Ng's depression on both occasions was not severe enough to affect her testamentary capacity, Dr Ngui's view was that the decision to exclude John and Evangeline from the 2009 Will was based on or coloured by her depressed mood. I find it difficult to accept that just because Mdm Ng suffered severe depression, her testamentary disposition had to be set aside. As noted earlier, *Key's* case, on which the defendants rely, requires that the severity of the depression had to be such that it left Mdm Ng without the mental energy to make any decisions of her own as to whom to benefit. Pauline Ang's evidence as to Mdm Ng's conduct at the execution of the 2009 Will and her ability to engage in a social exchange with Pauline Ang renders Dr Ngui's view of her mood state somewhat unlikely. This applies *a fortiori* to the execution of the 2012 Will when Mdm Ng's mood had improved.

(b) Mdm Ng was able to continue with her normal activities even after she was diagnosed with depression in late 2006. Her activities included the following:

- (i) Reading the Chinese newspapers, following her favourite Taiwanese drama serials on the television and watching Chinese news broadcasts.
- (ii) Monitoring share price movements on the teletext.
- (iii) Making telephone calls to relatives and friends.
- (iv) Playing with her great-grandchildren;
- (v) Making weekly marketing trips with Bonisah, accompanied by either Henry or Wee Tsan.
- (vi) Attending weekly Senior Fellowship meetings at Jubilee Church.
- (vii) Attending Sunday worship services at Newton Life Church.

(c) Mdm Ng's decision to remove John and Evangeline was not made on the spur of a moment. She had made known her intentions on various occasions to Henry, Wee Tsan and Wee Yong. She had also openly declared, in the presence of Charles and members of his family, that she was not leaving them any inheritance. Her declared reason for leaving John out was that she was disappointed with him as he was marrying someone not of the Christian faith. Indeed, from the evidence, her disappointment with him was also over his failure to attend church regularly (as was expressed to family members and even

to Dr Pang), even if it was not given to Pauline Ang as a reason for her decision. As regards Evangeline, even though Mdm Ng did not give any specific reason, her decision to leave Evangeline out was clear. She was leaving it to Charles to look after Evangeline.

(d) Mdm Ng's decision to leave the bulk of her estate to Henry is consistent with the high likelihood that he was her favourite son. He cared for her well-being throughout her old age, treating her with dignity and respect; spoke to her in a quiet and gentle manner; managed her affairs as her attorney; chauffeured her most of the time; arranged for her household repairs; sent her to Senior Fellowship meetings; attended church worship services with her; and took her out for meals.

168 The experts have also agreed that Mdm Ng was not suffering from dementia.

169 In the result, the final conclusion I arrive at with regard to limb (d) of the restated elements of testamentary capacity in the *Banks* test is that, on the balance of probabilities, Mdm Ng was free of an abnormal state of mind (*eg*, delusions) that might distort feelings or judgments relevant to making the Wills.

Issue 3: Whether Mdm Ng knew and approved the contents of the Wills

170 This is the final issue that I have to decide.

171 The defendants contend that the disputed Wills were prepared and executed in suspicious circumstances which raised doubts whether Mdm Ng knew and approved the contents thereof.

172 In regard to the 2009 Will, the defendants contend that Mdm Ng must have been confused when, according to Pauline Ang's attendance notes, she instructed to remove John and Evangeline as beneficiaries. The defendants argue that since Evangeline had already been removed as a beneficiary earlier under the 2008 Will, Mdm Ng's instructions to Pauline Ang were redundant; the fact that she issued them meant she must have been confused. The simple answer to that is that under the 2008 Will, Evangeline stood to inherit if John pre-deceased her without leaving issue. There was therefore no basis for saying Mdm Ng must have been confused. Her instructions to remove John and Evangeline were clear.

173 The defendants next contended that while the 2012 Will involved a change in the executors, Mdm Ng played no part in the decision as to the replacement executors. The events that led to the change were as follows:

- (a) Wee Tsan informed Henry that Mdm Ng was upset about the family affairs of her brother Ng Tiong Wah and Wee Tsan questioned whether, in that light, he should remain as executor of Mdm Ng's Will.
- (b) Henry later discussed with Mdm Ng and suggested that she change her executors. She agreed and asked him to call Pauline Ang.
- (c) Henry called Pauline Ang and told her that Mdm Ng wished to replace the executors.
- (d) Pauline Ang suggested that two suitable persons be found.
- (e) Henry discussed with Wee Tsan but they could not think of any suitable persons. They did not know then that they could be appointed.

(f) Henry called Pauline Ang and said that they could not come up with any suitable names. To his surprise, Pauline Ang then suggested that he could be appointed the executor and Wee Tsan the alternative.

(g) Henry reported back to Mdm Ng and conveyed Pauline Ang's suggestion. He did not ask Mdm Ng whom she wished to appoint.

(h) Mdm Ng agreed with Pauline Ang's suggestion.

(i) Henry then made an appointment with Pauline Ang on her behalf.

(j) On 2 August 2012, when Mdm Ng gave her instructions on the change of executors, Henry was not in the room with her but in the reception area of Pauline Ang's offices.

(k) Pauline Ang's evidence in regard to the meeting with Mdm Ng is found in [85] above. In essence, Mdm Ng instructed Pauline Ang that she wanted to appoint new executors and also explained why she wanted the change.

174 From the above, it can be seen that even though Henry had conveyed Pauline Ang's suggestion that he and Wee Tsan be appointed, it was Mdm Ng who ultimately gave Pauline Ang instructions to do so. This is not a case where a will is prepared by a solicitor on instructions given by a person who takes a substantial benefit under it. Pauline Ang had prepared the Wills on and in accordance with Mdm Ng's instructions alone.

175 The plaintiff’s assertion that Mdm Ng knew and approved the contents of the Wills is also supported by the evidence of statements made by Mdm Ng as to her testamentary intentions as set out [92]–[104] above.

176 Evangeline sought to suggest that Mdm Ng was in the habit of putting her signature to any document placed before her. She deposed to having been told that Mdm Ng had placed her signature on the voting slip during the 2011 General Elections. Evangeline doubted whether after 2006 Mdm Ng knew the contents of whatever she was signing. The plaintiff contends that this was wholly untrue. Given that the voting procedure at the General Elections ensured secrecy, no one could have witnessed Mdm Ng appending her signature to the voting slip. When pressed, Evangeline could not remember who told her that Mdm Ng had done so. She also admitted that she herself had never witnessed Mdm Ng signing any document blindly. When the court asked her on what basis she said that her grandmother was used to “signing blindly” she admitted that it was merely an “impression that [she] might have” and that “[she] may be wrong”.

177 In the circumstances, the evidence is preponderantly in favour of the plaintiff’s assertion that Mdm Ng knew and approved the contents of the Wills.

Conclusion

178 In conclusion, I find on the balance of probabilities that Mdm Ng possessed the requisite testamentary capacity when she executed the Wills and that she knew and approved the contents thereof.

179 In the premises, I pronounce in favour of the 2012 Will and decree the Grant of Probate of the 2012 Will to the plaintiff. Correspondingly, I dismiss the second and third defendants' counterclaim.

180 I will hear the parties on costs.

Andrew Ang
Senior Judge

Deborah Barker SC, Gopalan Raman and Priscilla Shen Peishi
(KhattarWong LLP) for the plaintiff;
Siraj Omar and Premalatha Silwaraju (Premier Law LLC)
for the defendant.
