

VTL v VTM and another
[2021] SGHCF 30

Case Number : Suit No 4 of 2021
Decision Date : 20 August 2021
Tribunal/Court : General Division of the High Court (Family Division)
Coram : Choo Han Teck J
Counsel Name(s) : Chuah Hui Fen Christine, Zikri Muzammil (Hin Tat Augustine & Partners) for the plaintiff; Chiok Beng Piow Andy, Lee Hui Zhen Margaret (AM Legal LLC) for the defendants.
Parties : VTL — VTM — VTN

Succession And Wills – Mutual wills

20 August 2021

Judgment reserved.

Choo Han Teck J:

1 On 8 March 2001, the Father, then aged 68 and his wife (“the Mother”), then aged 64, executed mutual wills (“the Mutual Wills”) before their lawyer Wan Fairuz bin Wan Hussin of Messrs William Lai & Alan Wong. Wan Fairuz and his secretary Sim Poh Tian signed as witnesses to the Wills. The Mother was only conversant in Chinese so Sim Poh Tian acted as the interpreter for her and Wan Fairuz. The testator and testatrix have five children, namely, the three daughters, VTM, VTJ, and VTN, and their sons, VTC and VTL.

2 A couple of years after executing the Wills, the Mother was diagnosed with breast cancer in 2003. She was treated successfully and her condition was in remission until about 2017 or 2018. The Father, however, died in 2004 of pneumonia, at the age of 71. The authenticity of the Mutual Wills is not disputed. It is also not disputed that the original Wills were kept by VTL, the son.

3 The Father’s Will did not seem to be important because the entire family assumed that all the assets devolved upon the matriarch the Mother. Circumstances changed only in 2019 when the Mother died on 25 September 2019 aged 82. It then transpired that she had executed another will on 5 April 2017 (“the 2017 Will”) before a lawyer, Mimi Oh. The Mother was brought to see Mimi Oh by VTM, the daughter with who had regularly accompanied her to the doctors around the time her cancer returned. The witnesses were not certain, but that would be around 2017 or 2018.

4 VTL then recalled that he had possession of the Mutual Wills. Under the terms of the Mutual Wills, the Father and the Mother agreed not to alter the terms of the Wills. The estate has a net value of \$356,344.01, of which the bulk comprise the flat that the Mother stayed in (estimated at \$350,000).

5 Under the Mutual Wills, VTL who his sisters described as their parents’ favourite child, gets 35%. VTC’s son, VTE, gets 35%. The three daughters get 10% each. VTL and the first defendant VTM were named the executors and trustees of the Mutual Wills. The testator and testatrix’s son, VTC received nothing. Clause 2 of the Mother’s Mutual Will also provide that the Mutual Wills are irrevocable.

6 Under the 2017 Will, the Mother appointed VTM and VTN as the executors and trustees of the 2017 Will. Under this 2017 Will, all of the Mother’s properties were bequeathed to the two executors

and trustees equally. Their siblings, namely VTL, VTC, and VTJ were to receive one dollar (\$1) each. Hence, the difference in beneficial interests under the mutual Wills and the 2017 Will is substantial.

7 Given the existence of the mutual Wills of 2001 and the 2017 Will of the mother, VTL filed this suit for a declaration that the mutual Will of the mother executed with the father in 2001 was the last Will and testament of the mother, and that the grant of probate to VTM and VTN in respect of the 2017 Will be revoked, and for various ancillary and consequential orders. The defendant sisters in this action counter-claimed for an order that the 2017 Will was the last Will and testament of the Mother.

8 From the beginning to the end, the defendants' case is based on suspicious circumstances, or that the Mutual Wills were not properly explained to the Father and Mother, and were not approved by them. They say that neither parent knew enough English (and in the case of the Mother, none at all) to have made their Mutual Wills. They seem to think that because the Mutual Wills were made in the presence of the plaintiff who is a beneficiary, the Mutual Wills must be invalid. Counsel for the defendants submitted that the plaintiff's claim that the first defendant was present was refuted by the solicitor Wan Fairuz at the trial. The first defendant also denied that she was present. Counsel also submitted that the terms of the mutual Wills were unusual and complex and that there was no evidence to show that they were explained to the testator and testatrix. Finally, counsel submitted that the medical memos certifying that the Father and the Mother were of sound mind were dated 5 March 2001 when the Wills were executed on 8 March 2001, and that the said medical memos were not prepared by a psychiatrist as the medical memo was prepared by a general practitioner, one Mr Teh.

9 Wan Fairuz and his secretary, Sim Poh Tian, testified before me. They testified that the event was too far in time for them to remember details but as to the main issues, both recall clearly that they had not deviated from their standard practices, namely, that Wan Fairuz would satisfy himself that the clients knew what they were there for and what they wanted done. Once he was satisfied, and in this case, that the couple wanted to make Wills in identical terms, he (Wan Fairuz) would invite other persons to leave his room so that he can take detailed instructions from his clients. He also testified that he had a practice of excluding the beneficiaries from any discussion about the contents of a will. In this case, he would have excluded the plaintiff from the room while he discussed with the testator and testatrix. If, as in this case, the clients do not understand English but are conversant in Chinese, Sim Poh Tian would be called upon to translate.

10 Sim Poh Tian testified largely to the same effect. She could not recall the details, but upon seeing her signature on the Mutual Will, she had no doubt that she would have translated the document to the clients. Neither Wan Fairuz nor Sim Poh Tian recalled anything remarkable about the Mutual Wills of the Father and the Mother to suggest that there were any deviations from their standard practice.

11 Wan Fairuz impressed me as a lawyer who is competent, careful, and restrained. The Wills seem to be properly drawn up and executed. Bearing in mind that he was twenty years younger when he saw his clients, I do not see any evidence that indicates that Wan Fairuz's evidence should not be accepted. Likewise, twenty years since, Sim Poh Tian strikes a calm and dispassionate demeanour, and her evidence is that of a witness who was describing a job that she had been accustomed to do. I therefore have no hesitation in accepting the evidence of Wan Fairuz and Sim Poh Tian.

12 At the same time, I find no evidence that I can rely on to hold that the Mutual Wills are invalid. They had been validly executed in all respects. There is no requirement that a medical certificate must be issued on the same date as the making of a will. Indeed, no medical certificate is necessary save that in cases where there are grounds to suspect that the testator is mentally unsound,

evidence such as a medical certificate will be helpful. In this case, nothing suggests that in the space of the three days between the certification and the execution of the Wills, the mental capacity of both parties had deteriorated to the extent that a fresh certificate would have been necessary. The Father lived on for another three years, and the Mother even longer. During that time, none of the children had found either parent to be mentally unsound.

13 Other than a claim of mental unsoundness, the only other avenue open to the defendants to challenge the Wills is to show that the testator and testatrix acted under undue duress or undue influence. In this regard, there is not a shred of evidence to even hint that either one of them made his or her Will under such circumstances. There were no suspicious circumstances to speak of in the first place. Mere presence at the solicitor's office is not sufficient proof of anything save presence. The fact that the plaintiff was present is no different from the fact that the first defendant was present when the Mother made the 2017 Will. That the plaintiff who is a beneficiary was present at the making of the mutual Wills also does not indicate an irregularity in the making of the mutual Wills.

14 It is not disputed that after the Father died, the Mutual Wills that were left with the plaintiff for safe keeping were not produced. Left unexplained, that may be remarkable, but I accept the plaintiff's explanation that when the Father died, his widow, the Mother and all the children assumed that everything owned by the Father would devolve to his widow, the Mother. The evidence shows that that was indeed the case. That was why the question of inheritance and the Wills become an issue only after the Mother died. The plaintiff also testified that because nothing extraordinary would have affected the Father's estate, he (the plaintiff) forgot about the Mutual Wills. And he was not the only one. The Mother also seemed to have forgotten. If she forgot because of an unsoundness of mind, then her capacity to execute the 2017 Will would also have been suspect on that count.

15 Comparing the Mutual Wills against the one made by the Mother in 2017, it would seem odd that if the plaintiff had wanted to influence his parents for his own benefit that he would have them add the first defendant as a co-executrix. Furthermore, the terms under the Mutual Wills, though not equal, are fairer than the terms of the Mother's 2017 Will in which three of her children would receive only a dollar each. Reading all the Wills together, if there had been any undue influence on the Mother, it would have been in respect of the 2017 Will and not the Mutual Will. Counsel for the defendants submitted that the case of *Chee Mu Lin Muriel v Chee Ka Lin Caroline (Chee Ping Chian Alexander and another, interveners)* [2010] 4 SLR 373 is similar to this case, but there is no evidence here that it was the plaintiff who procured the Mutual Wills, no evidence that the plaintiff suggested the terms to the Mother, or had instructed the solicitor to draft the Mutual Wills. There is only the bare assertion by the defendant that the instructions came from the Father and the plaintiff. The defendants suggest that because the plaintiff was involved in the interpretation of the Mother's instructions, the plaintiff was therefore involved in giving instructions. The two are entirely different. Furthermore, there is no allegation that the plaintiff had misinterpreted the Mother's instructions, or that the Mother did not give those instructions herself. In any event, as I find, Ms Sim was present and it was she who interpreted the Mutual Wills to the Mother after the lawyer had drafted them.

16 I find that there is no evidence of any undue influence. I am of the view that the Mutual Wills had been forgotten, but now that they are found, they must take precedence over the 2017 Will of the Mother. I therefore grant an order in terms of prayers (a) to (f) of the plaintiff's claim. I will hear the question of costs at a later date if parties are unable to agree costs.