Ong Wui Jin and Others v Ong Wui Teck
[2009] SGHC 50

Case Number	: DA 1/2008
Decision Date	: 04 March 2009
Tribunal/Court	: High Court
Coram	: Chan Sek Keong CJ
Counsel Name(s)	: Alfred Dodwell (Clifford Law LLP) for the appellants; Lim Joo Toon (Joo Toon & Co) for the respondent
Parties	: Ong Wui Jin; Ong Wui Swoon; Ong Wui Leng; Ong Wui Yong — Ong Wui Teck

Succession and Wills

4 March 2009

Chan Sek Keong CJ:

1 This was an appeal against the decision of District Judge James Leong ("the DJ") in *Ong Wui Teck v Ong Wui Jin* [2008] SGDC 103 ("the GD"), where he upheld, *inter alia*, the validity of a will dated 3 January 2005 ("the Will") executed by Mdm Chew Chen Chin ("the deceased") and granted probate of the same to the deceased's eldest son, Ong Wui Teck ("the Respondent"), as the sole executor of the Will.

2 At the conclusion of the hearing, I dismissed the appeal on the ground that the decision of the DJ was correct for the reasons given by him and also for the reasons I had indicated at the hearing of the appeal. As four of the deceased's other children (collectively "the Appellants") have appealed against my decision, here are my detailed grounds of decision.

Background facts

3 The undisputed facts are as follows. The deceased was the mother of the Appellants and the Respondent (who was the eldest son). On 3 January 2005, the deceased executed the Will when she was warded in the Singapore General Hospital. She had been diagnosed with metastatic carcinoma of the lung, diabetes mellitus and hypertension. Her chief complaint during her treatment in hospital from 28 December 2004 to 4 January 2005 was cough and weakness in the legs. On the same day before the execution of the Will, the Respondent arranged for a psychiatrist to examine the deceased to determine whether she was fit to make a will. Subsequently, Dr Ng Beng Yeong ("Dr Ng") examined her and certified her mentally fit to do so.

4 Later on the same day, the deceased executed the Will in the presence of one Ms Spring Tan ("Spring Tan"), an advocate and solicitor, and one Ms Lin Xiaoli ("Ms Lin"), an experienced interpreter who was a polytechnic diploma-holder in English-Mandarin interpretation. The Will had been prepared by Spring Tan on the instructions of the Respondent (who claimed that he had received instructions from the deceased). Ms Lin interpreted the contents of the Will to the deceased in Mandarin as Spring Tan read the contents to her in English. After the reading and interpretation were completed, the deceased affixed her right thumb print to the Will. She also signed the Will upon being asked to do so by Spring Tan. The first and second appellants were in the room during the execution of the Will. The Respondent was not present as he had left the room earlier.

5 The deceased was discharged from the hospital on 4 January 2005. On the same day, 4 January 2005, the first appellant, being unhappy about the contents of the Will, tried to get Spring Tan to have the Will changed and was rebuffed. He then instructed Tan Kok Heng Leroy Solomon ("Leroy Tan"), an advocate and solicitor, to draft a new will for the deceased to execute. Leroy Tan and his assistant, Ms Tan Hui Li, visited the first appellant and the deceased at home on 7 January 2005. They claimed that they took instructions from her to prepare a new will ("the unexecuted will") to replace the Will. Leroy Tan prepared the unexecuted will, but the deceased died the next day on 8 January 2005 before she could execute it.

6 The Will reads in relevant parts as follows:

> 1 I REVOKE all former wills … previously made by me.
>
> 2 I APPOINT my son [the Respondent] to be the sole Executor and Trustee of this my Will.
>
> 3 Subject to payment of my debts, funeral and testamentary expenses, I give devise and bequeath all my … property … unto my Trustee upon trust to sell call in and convert into cash … AND TO DIVIDE AND DISTRIBUTE the net proceeds of such sale, calling in and conversion and all ready monies … to the following persons in accordance with the specified manner, that is to say:
>
> > 3.1 To return the sum of $50,000.00 to my son [the Respondent];
> >
> > 3.2 To divide the remaining … net proceeds of my estate into five (5) equal … shares and to distribute the … shares among my five surviving children in equal shares, absolutely …
>
> IN WITNESS WHEREOF, I, [the deceased] have hereunto set my hand to this my last Will and Testament on this 3rd day of JANUARY 2005.
>
> The Right Hand Thumb Print of [the deceased] was affixed in our presence and by us in hers, the [deceased] being unable to understand the English language but understanding Mandarin and the Hokkien dialect, the Will having been translated into the Mandarin and/or the Hokkien dialect by Lin Xiaoli who is fully conversant with the Mandarin and/or the Hokkien dialect and the English language before the execution as stated above when the [deceased] appeared thoroughly to be of sound mind, memory and to understand and have knowledge of the Will.

7 In contrast, the unexecuted will reads as follows:

> I, [the deceased] ... do hereby revoke all former Wills and Testamentary depositions heretobefore made by me and declare this to be my last and true Will.
>
> 1. I appoint my son [the first appellant] (NRIC No. S1231153/B) of Apt Blk 547 Pasir Ris Street 51, #08-37, Singapore 510547 and my daughter [the second appellant] (NRIC No. S********) of Apt Blk 72 Marine Drive, #22-65, Singapore 440072, to be the Executor and Executrix and Trustees of this my Will (hereinafter referred to as "my Trustees").
>
> 2. The expression "my Trustees" in this Will shall mean and include the trustee for the time being hereof whether original or substituted.
>
> 3. I GIVE DEVISE and BEQUEATH my property known as Apt Blk 72 Marine Drive, #22-65, Singapore 440072, free of all sums charged or otherwise secured thereon at my death (which sums shall be paid out of my residue estate) to my Trustees upon trust to sell with power to

postpone the sale thereof for so long as they shall in their absolute discretion think fit without being liable for loss and to pay the net proceeds of such sale to the following persons in the following proportion: -

i. [the Respondent] (NRIC No. S********) – 20%

ii. [the first appellant] (NRIC No. S********) – 20%

iii. [the second appellant] (NRIC No. S********) – 20%

iv. [the third appellant] (NRIC No. S********) – 20%

v. [the fourth appellant] (NRIC No. S********) – 20%

4. I GIVE DEVISE and BEQUEATH all my monies in the following bank accounts:-

i. OCBC Bank Account No. xxx-x-xxxxxx

ii. OCBC Bank Account No. xxx-x-xxxxxx

iii. POSB Bank Account No. xxx-xxxxx-x

iv. iv. POSB Bank Account No. xxx-xxxxx-x

to the following persons in the following proportions:-

i. [the Respondent] (NRIC No. S********) – 20%

ii. ii. [the first appellant] (NRIC No. S********) – 20%

iii. iii. [the second appellant] (NRIC No. S********) – 20%

iv. iv. [the third appellant] (NRIC No. S********) – 20%

v. v. [the fourth appellant] (NRIC No. S********) – 20%

5. Subject to the payment of my debts, funeral and testamentary expenses, I GIVE DEVISE and BEQUEATH all my real and personal property, movable and immovable, of whatsoever nature and whatsoever situate (including any property over which I have a general power of appointment and disposition by will) not hereby or by any codicil hereto otherwise specifically disposed of unto my Trustees upon trust to sell call in and convert into cash in an expedient manner such parts thereof as shall not consist of cash with power to postpone the sale, calling in and conversion thereof for so long as they shall in their absolute discretion think fit without being liable for loss AND TO DIVIDE AND DISTRIBUTE the net proceeds of such sale, calling in and conversion and all ready monies which I may be possessed of at the date of my death to the following persons in the following proportions:-

i. [the Respondent] (NRIC No. S********) – 20%

ii. [the first appellant] (NRIC No. S********) – 20%

iii. [the second appellant] (NRIC No. S********) – 20%

iv. [the third appellant] (NRIC No. S********) – 20%

v. [the fourth appellant] (NRIC No. S********) – 20%

8 The following differences between the two wills may be noted. The unexecuted will is much more elaborate in detailing the bequests than the Will but in substance it is the same as the Will, except for the following: (a) the omission of cl 3.1 of the Will; and (b) the specific provisions for equal distribution of the deceased's flat at Block 72 Marine Drive, #22-65, Singapore 440072 and the moneys in the four bank accounts. There were four days between the deceased's execution of the Will on 3 January 2005 and her giving of fresh instructions for the unexecuted will on 7 January 2005 at a time when the medical condition of the deceased was deteriorating rapidly, so much so that she died the following day (on 8 January 2005). One of the ironical arguments in respect of the two wills advanced by the Appellants before the DJ and reiterated before me was that the deceased lacked testamentary capacity when she executed the Will, but did not lack testamentary capacity when she (allegedly) gave instructions for the drafting of the unexecuted will.

9 The first and second appellants were greatly agitated and rankled by the matter of the $50,000 that was to be returned to the Respondent, as provided in cl 3.1 of the Will. They could not accept that the deceased could have been in her right mind or mentally competent when she executed the Will with that clause in it. They could not accept that the deceased was capable of understanding cl 3.1 or that it expressed her intention since, as they claimed: (a) she had told Dr Ng that her estate would be shared equally among her children; and (b) to their knowledge, she did not owe the Respondent any money. It seemed to me, having regard to the manner in which they went about trying to get the deceased to revoke the Will, that they were emotionally devastated that the Respondent would get $50,000 more than them from the deceased's estate (which was estimated to have a value of $700,000). This led them to suspect that the deceased must either have lost her mind when she executed the Will, or that the Respondent had somehow taken advantage of the deceased's infirmity and had deceived, forced or influenced her into executing the Will. But, that did not prevent the first appellant from making a last minute attempt to get the Will revoked and a new will executed to ensure that all the children would get an equal share of their mother's estate.

Proceedings before the DJ

10 Before the DJ, the Appellants challenged the validity of the Will on the grounds (as pleaded in their defence and counterclaim) that:

(a) the Will was not duly executed by the deceased;

(b) the deceased did not know and/or approve the contents of the Will;

(c) the deceased was not of sound mind, memory and understanding; and/or

(d) the execution of the Will was obtained under duress and/or undue influence.

11 The particulars pleaded in relation to these grounds were as follows:

(a) The deceased was approximately 75 years old and was suffering from metastatic carcinoma of the lung and/or diabetes mellitus at the time in question.

(b) The deceased was under medication and was of unsound mind and/or incapacitated as a result of her illness and/or medication at the time in question, namely in relation to the

instructions and/or execution of the Will.

(c) The deceased did not engage the services of the law firm, Chantan LLC, and/or Spring Tan, who was engaged and paid by the Respondent.

(d) The Will was prepared on the instructions of the Respondent, who took a substantial benefit under it; and/or, in the alternative, the Respondent was active in procuring the execution of the Will, by suggesting its terms to the deceased and/or instructing Chantan LLC and/or Spring Tan on the terms to be included in the Will.

(e) The deceased did not instruct Chantan LLC and/or Spring Tan in relation to the preparation of the Will.

(f) Chantan LLC and/or Spring Tan were acting only in the best interests of the Respondent and failed to consider the best interests, the true will and/or instructions of the deceased in the execution of the Will.

(g) The Will did not express the mind and/or will of the deceased as the deceased did not apply her mind to the subject matter of the Will and/or was unable to understand the specific intent of the Will, especially in relation to the appointment of the Respondent as the sole executor and/or the inclusion of cl 3.1 (concerning the return of $50,000 to the Respondent).

(h) The making of the Will and/or the inclusion of cl 3.1 in the Will were caused by the Respondent without any proof, basis or merit. Clause 3.1 was included as a result of the Respondent exercising duress on the deceased by forcing her to agree to it.

(i) Clause 3.1 was included in the Will as a result of the Respondent exercising undue influence on the deceased by forcing her to agree to this clause and suggesting and/or influencing the deceased to agree to the inclusion of this clause.

(j) The deceased had not borrowed from the Respondent and/or incurred expenses paid for by him for which he was entitled to the return of the sum of $50,000, and the Respondent was put to strict proof thereof.

(k) The Will was not adequately interpreted to the deceased at the point of execution, and/or the interpreter was unqualified to provide the interpretation of the Will.

(l) The deceased did not know the contents of the Will and as such was unable to give her approval of the terms set out in the Will.

12 In relation to ground (c) (at [10] above), that the deceased lacked testamentary capacity, the Appellants also provided the following particulars in their defence and counterclaim:

(a) The deceased was under medication that may have impaired her ability to comprehend the true nature, intent and contents of the Will.

(b) The deceased was suffering from a degenerating illness, such that it had affected her mind and ability to provide instructions for the preparation of any will, and thus was unable to execute the Will.

(c) The deceased was unable to comprehend and/or understand and/or remember the issues raised which formed the subject matter of the Will and therefore did not have the necessary

knowledge and understanding of the Will and/or could not comprehend the terminology used in the Will.

(d) The deceased's health had affected her mind and memory, which undermined her ability to appreciate the legal expressions in the Will.

13 After a 21-day trial, which was heard in tranches, and in which seven witnesses testified for the Appellants and seven witnesses testified for the Respondent, the DJ found for the Respondent and rejected all the four grounds relied upon by the Appellants. He found on a balance of probabilities that the Respondent had discharged the burden of showing that the Will was valid, and that the Appellants' suspicions, that the deceased did not have testamentary capacity or that she did not understand the contents of the Will or that there was duress or undue influence on the part of the Respondent, were without merit and unsupported by evidence.

14 In relation to grounds (a) and (b) as set out at [10] above, the DJ accepted the independent evidence of Spring Tan and Ms Lin that they had properly read and interpreted the contents of the Will to the deceased and that the deceased had understood what was being interpreted to her. Although the Appellants had alleged that Spring Tan was a biased witness (on the ground that she was employed by a friend of the Respondent), the DJ found her to be a witness of truth who would not have compromised her professional integrity for the reason given by the Appellants. Similarly, he found that Ms Lin was also a credible witness.

15 In relation to ground (c) (see [10] above), the DJ found that the deceased had testamentary capacity when she executed the Will, and that this fact was confirmed by the testimony of Dr Ng who had examined her state of mind shortly before she executed the Will. The DJ also accepted the testimony of Dr R Nagulendran ("Dr Nagulendran"), a consultant psychiatrist, who had given a report to the same effect. Dr Nagulendran was initially engaged by the Appellants as their expert witness but was called by the Respondent to testify when the Appellants decided not to call him as a witness. Dr Nagulendran was of the opinion that the deceased was not suffering from any mental disorder when she executed the Will and that she was able to understand that she was executing the Will.

16 In relation to ground (d) (see [10] above), the DJ found that, except for the belief of the Appellants, there was no evidence to support their assertions or suspicions in relation to the pleaded grounds and particulars.

17 The DJ also found that "there was absolutely no credible evidence to support or give credence to any suspicious circumstances surrounding the execution of the Will" since "the Will was executed in an open manner with at least three of the [appellants] having knowledge of the offending [cl 3.1]" (at [27] of the GD).

18 In relation to the law, the DJ followed *R Mahendran v R Arumuganathan* [1999] 2 SLR 579 ("*Mahendran*") at [15] in holding that the burden of proof lay on the Respondent as the propounder of the Will to prove that the deceased knew and approved the contents of the Will, and the fact of execution. Proof of testamentary capacity and due execution will ordinarily be sufficient to establish knowledge and approval of the contents of a will. But the circumstances surrounding its making may raise suspicions to shift to the propounder the burden of adducing affirmative evidence of knowledge and approval of the contents of the will. The burden of proof is, however, the ordinary civil burden based on a balance of probability (see Rimer J in *Reynolds v Reynolds* [2005] EWHC 6 (Ch) ("*Reynolds*") at [119], citing *Fuller v Strum* [2001] 1 WLR 1097). The DJ also accepted the proposition as stated in J B Clark & J G Ross Martyn, *Theobald on Wills* (Sweet & Maxwell, 15th Ed, 1993) at p 36:

If a will was prepared and executed under circumstances which raise a well-grounded suspicion that the will (or some provision in it, such as the residuary gift) did not express the mind of the testator, the will (or that provision) is not admissible to probate unless that suspicion is removed by affirmative proof of the testator's knowledge and approval.

19 Applying these principles, the DJ found on the evidence that the Respondent had discharged the burden of proving that the Will expressed the mind of the deceased when she executed it, and that the suspicions of the Appellants as to the contrary were unfounded.

Proceedings on appeal

20 On appeal, the Appellants filed a 124-page appellants' case and a 28-page skeletal argument in which they attacked all the findings of the DJ, although it is not clear whether they were challenging the finding that the deceased had testamentary capacity when she executed the Will. Basically, the Appellants' case was that the DJ's findings and decision were wrong in law and in fact for the following reasons:

(a) There were suspicious circumstances surrounding the preparation of the Will that warranted a finding that the Will was invalid.[note: 1]

(b) The deceased did not have knowledge and/or did not approve the contents of the Will because it was not read over to her in a proper way.[note: 2]

(c) The Respondent had unduly influenced the deceased or subjected her to duress in relation to the making of the Will.[note: 3]

(d) The DJ had failed to consider the vast body of probate cases submitted by the Appellants and the Respondent,[note: 4] and had also taken into account irrelevant points in the GD.[note: 5]

21 As can be seen from [11]–[12] above, the Appellants (or their solicitors) have produced a set of indiscriminate and extravagant pleadings in their quest to invalidate the Will, without due regard to what the evidence was, what was provable or not provable, what was fact or merely personal beliefs, opinions or perceptions of what took place, and what the truth was. Indeed, the Appellants invoked every conceivable legal ground found in the textbooks in which a will may be challenged, whether or not they were self-contradicting. No doubt, the allegations of fact and law were pleaded in the alternative, but the Appellants had pleaded so many alternatives (and in fact the entire gamut of alternatives available in the law of probate) that it was clear to the DJ, as it was clear to me, that the Appellants were merely trying their luck and hoping to hit their target by chance. It is therefore not surprising that the DJ had to remind himself, in examining all the evidence that the parties had placed before him, that he had to be guided by the need to consider what was relevant with regard to the specific issue before him "*so as not to miss the forest for the trees*" [emphasis added] (see [19] of the GD).

22 Two illustrations will suffice to show the lengths to which the Appellants went in seeking to invalidate the Will. The first relates to the Appellants' allegation that when the deceased executed the Will on 3 January 2005 she did not have testamentary capacity, when the undisputed facts were as follows:

(a) A few hours before the Will was executed, Dr Ng had examined the deceased and found her mentally sound and capable of making a will.

(b) Dr Nagulendran had reported, and testified, that the deceased had testamentary capacity (which the Appellants did not dispute, although he had formed his opinion only from the deceased's medical case files).

(c) The Will was read to the deceased by Spring Tan and interpreted by Ms Lin in the presence of the first and second appellants.

Furthermore, the Appellants' allegation that the deceased did not have any testamentary capacity on 3 January 2005 can be contrasted with their own claim that, when the deceased gave instructions to Leroy Tan to draw up the unexecuted will on 7 January 2005, she had regained her testamentary capacity and was able to give instructions for what turned out to be a more detailed and elaborate will to be prepared for her execution, even though her medical condition had deteriorated so quickly that she died the next day.

23 The second illustration arises from the same context. The Appellants also alleged that the Respondent had unduly influenced the deceased or subjected her to duress in relation to the *making* of the Will, but did not make clear what they meant by the word "making", *ie*, whether it referred to the preparation of the Will or to the execution of the Will. As to the first meaning, the Appellants could not make such an allegation without contradicting themselves in alleging at the same time that the Respondent did not take instructions at all from the deceased, that he had merely written in the bounty of $50,000 for himself, and that they had only found out about it when they fortuitously saw him in the hospital as they were also visiting the deceased at that time. The Appellants, however, relied on both arguments as part of their case.

24 As to the second meaning, the Appellants failed to explain, and produced no evidence to show, how the Respondent could have exerted any duress or undue influence on the deceased in the making of the Will when the execution was done in the presence of Spring Tan, Ms Lin and, significantly, the first and second appellants who, according to Spring Tan, interrogated the deceased in relation to cl 3.1 of the Will. In fact, the Respondent had fortuitously left the room when the contents of the Will were being read and interpreted to the deceased in the presence of the first and second appellants. In the circumstances, it seemed to me that the Appellants alleged or pleaded duress and/or undue influence for no reason other than that both were legal causes for invalidating a will.

25 I therefore do not propose to rehearse the various findings of fact made by the DJ on the four grounds relied upon by the Appellants to invalidate the Will. I agreed with the findings of the DJ for the reasons given by him, and for the reasons given in these grounds of decision (except that, in my view, the DJ's evaluation of the evidence of Leroy Tan was somewhat generous, having regard to the contents of his attendance note when he (allegedly) took instructions directly from the deceased). Although counsel for the Appellants persisted in reiterating before me all the grounds and the arguments which the DJ had rejected, I indicated to him that, having regard to the evidence and the findings of fact of the DJ, the only relevant ground on which the Appellants could mount this appeal was that the deceased did not know or had not approved the contents of the Will, and that was only with reference to cl 3.1 since the Appellants had no real quarrel with the rest of the Will. Here, I should note that the Appellants did not plead or argue that *only* cl 3.1 was bad (which is a permissible argument under the law), but pleaded and argued that the *entire* Will was bad. I will now deal with the Appellants' arguments on this ground.

Did the deceased know or approve the contents of the Will?

26 In the Appellants' skeletal argument, the Appellants argued that the deceased did not know of the contents of the Will when she executed it for the following reasons:

(a) The Will was prepared by the Respondent without informing any of the Appellants of the deceased's alleged instructions or the preparations for the execution of the Will, under which the Respondent took a substantial benefit.

(b) There was no documentary proof that the deceased secretly desired to repay the Respondent the moneys he had provided for her.

(c) The Respondent did not know whether the $50,000 was intended to be a gift or a repayment of moneys he had spent on the deceased.

(d) The deceased had told Dr Ng that she wanted to distribute her wealth, *ie*, her shares and flat, equally among her five children.

(e) The deceased had told her domestic helper, Ms Luluk Ismania, that the Respondent "was to manage the treasure and to divide it equally among the siblings".

(f) Leroy Tan had testified that the deceased had told him that she wanted to provide for equal distribution among her five children, as he had provided in the unexecuted will drafted by him; and that his assistant (Ms Tan Hui Li) also heard this.

(g) The deceased did not know about the Will until Spring Tan was by her bedside in the hospital.

(h) Spring Tan should have read the Will to the deceased when they were alone. Instead, Spring Tan read it in the presence of the first and second appellants and also the Respondent who was hovering around "though not in extreme close proximity, yet sufficiently close" to enable the deceased to have seen him and know that he was nearby.

(i) There was hostility, angry questioning and berating of the deceased. The whole signing process was fraudulent in that it was chaotic, riddled with interruptions and there were raised voices.

(j) The deceased was merely nodding and smiling because she wanted to defuse the tension in the air, and wanted to be nice and kind in the hope that the parties would stop quarrelling over her estate.

(k) The deceased was very shocked and wanted a fresh will to be made again when she was told that the Respondent had prepared the Will through a solicitor containing cl 3.1 and that she had signed it.

(l) The deceased did not owe the Respondent any money so she was unlikely to have requested the inclusion of cl 3.1.

(m) Discussion of what was to be included or left out of the Will should not have taken place at the point of execution of the Will.

(n) The deceased did not have any formal education, so, on a balance of probabilities, she did not understand the contents of the Will when she was informed of them for the first time before she executed the Will.

27 The Appellants contended that, in the light of all these facts and factors, the Will could not

have been the deceased's will, *ie,* she did not know its contents, and in particular cl 3.1, because the contents had not been properly interpreted to her. These arguments were also advanced before the DJ who made the following findings, at [25]–[27] of the GD:

> 25. On the due execution of the Will, I saw no compelling reason not to accept the independent evidence of Ms Spring Tan (PW4), the advocate and solicitor, and Ms Lin Xiaoli (PW2), the certified interpreter who were present at the signing of the Will. While counsel for the [Appellants] tried to call into question Ms Spring Tan's impartiality on account, *inter alia*, of her then being employed by a friend of the [Respondent], she impressed me as a witness of truth who would not compromise her professional integrity on account of any connection, perceived or real, that her then boss may have had with the [Respondent] or in return for the professional fees to be earned for the Will. I similarly found Ms Lin Xiaoli to be a credible witness whose testimony was unshaken by cross examination.
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> 26. Ms Spring Tan and Ms Lin Xiaoli were present at the execution of the Will. The [Respondent, third appellant and fourth appellant] were not present. It is pertinent to note that the [first and second appellants] were also present at the time the Will was executed. They were fully aware of the disputed clause. They did raise objections to the clause which the deceased dealt with by deciding that the cash gifts requested by the [first and second appellants] were to be made outside the Will. Had the [first and second appellants] really wanted to dispute the clause and the Will, they should perhaps have done it more forcefully rather than allow it to be executed and only challenge it now. Given that the [first appellant] did contact Ms Spring Tan after the execution of the Will to request that she arrange for it to be changed, and only approached Mr Leroy Solomon Tan (DW3) to prepare a fresh Will because Ms Spring Tan had not agreed to his request, the present challenge to the Will seems to me to be very much an after thought. In my view, the [first appellant] would have known that the Will was in fact valid, which is why he did not initially seek to challenge or have it invalidated, and instead correctly set about trying to get a fresh Will executed instead. Unfortunately perhaps for the [Appellants], the deceased passed away before the fresh, draft Will prepared by Mr Leroy Solomon Tan could be executed.
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> 27. In my view, there was absolutely no credible evidence to support or give credence to any suspicious circumstances surrounding the execution of the Will. Regardless of whether the $ 50 000 was a repayment or a gift to the [Respondent], it was the deceased's property to bequeath. Furthermore, while the [Respondent] understandably did not volunteer to show the [Appellants] the Will prior to its execution since it was the deceased's Will and not his own document, he did ultimately let the [first, second and third appellants] have sight of the document before it was executed. As such, the Will was executed in an open manner with at least three of the [Appellants] having knowledge of the offending clause. Any challenge should really have been taken up with the deceased when she was still alive. In essence, having sieved through the evidence presented, I was satisfied that save for the [Appellants'] strong belief, perhaps particularly stronger for the [first and second appellants], that the Will was signed as a result of undue influence or fraud, there was nothing else to support their assertions.

28 The paragraphs quoted above do not fully explain why the DJ came to the conclusion that the deceased understood the contents of the Will when she executed it. The evidence is found in the testimony of Spring Tan and the attendance note she made in connection with the execution of the Will. The attendance note was initially not included in Spring Tan's first affidavit of evidence in chief ("AEIC") of 12 December 2005, but it was included in her second AEIC of 29 June 2006. She was cross-examined by the Appellants' counsel and asked to explain the earlier omission. She explained that it was due to inadvertence. It was not put to her that she had prepared the attendance note

after the exchange of AEICs between the parties. It was merely suggested to her that there was such a possibility. It was therefore not surprising that the DJ did not make a finding on this issue specifically in his GD. However, he found that she was a witness of truth. Before me, counsel for the Appellants tried to raise the same point again. I rejected it as I had no reason to disagree with the DJ. In my view, the attendance note supported the Respondent's case that the deceased was aware of the terms of the Will when she executed it.

29 Spring Tan's attendance note dated 3 January 2005 was as follows:

> On arrival, one other son [the first appellant] was sitting by bedside & talking to [the deceased].
>
> He was questioning [the deceased] when [the Respondent] gave $50k, in cash, in cheque, bank into A/C, can trace?
>
> [The Respondent] was trying to explain.
>
> When other son insist that I witness that [the deceased] appear to agree to give him $20k, told him that I'm here to witness her will.
>
> [The Respondent] told [the first appellant] the $50k is in repayment of the monthly $800 that [the Respondent] had been giving to his mum. [The first appellant] then said since he gave $300 a month to his mother, he should be entitled to $20k.
>
> I walked out & was shown by the nurses there to a conference room, after seeing doc's note on patient.
>
> 15 mins later, [the Respondent and the first appellant] agreed in the Conference Rm that the will [should] be as drafted and [the first appellant] will get $20k from his mother directly after she leave the hospital.
>
> While waiting with interpreter to read will, [the second appellant] also arrived & also disputing the will. [The first and second appellants] then proceeded to Conference Rm to discuss.
>
> After 15 mins, they came out & we proceed to see [the deceased]. [The deceased's] back was turned away from [the second appellant] & face[d] us, the interpreter & me.
>
> [The first and second appellants] insisted on being present, [the Respondent] not around. [The second appellant] said its just a will, can be contested anytime. [The deceased] [confirmed] her name & add[ress] at Marine Parade. As later read will, 1st para, [the deceased] interrupted & said she has no previous will, and that this is her 1st.
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> As [the interpreter] read para 2 & 3 [the deceased] nodded her head and repeated name "Wui Teck" [the Respondent's name].
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> As [the interpreter] read [para] 3.1, I asked [the deceased] [through the interpreter] whether there is anyone else she wants to give too. She said no. I asked her how about [the first and second appellants] who have come forward.
>
> She looked at them and [the second appellant] said "Mum, I looked after you last time, you should give me salary." Then [the deceased] said "OK $20k for you". She also said $20k to [the first appellant]. I asked her if she wants to add that to her will. She said "No, I will give myself". She said she's leaving hospital the next day and will [give] herself.

> She then confirmed that she wants to give $50k to [the Respondent], and the remaining divided equally between the 5 siblings.
>
> [The first appellant] then interrupt[ed] and said he wants the will changed to add him as executor as well. Told him that I will ask his mother myself.
>
> I asked [the deceased] if she would like to add another son or daughter as executor, she said ["]No, just Wui Teck [the Respondent][”].
>
> Then we [confirmed] with her again if that is all and she said yes.
>
> We used an ink pad from the hospital to get her thumbprint to be fixed on the will in duplicate. As the print looks a bit smudgy, I asked her if she can sign? She said yes & signed it as well, next to thumbprint. Sometime then, nurse came in & gave certification. Then [the interpreter] & I signed in duplicate. [The deceased] then asked is that all?
>
> I said yes that’s all. I asked her if she would like to keep her will herself, she said yes and one set to be kept by us she signed.
>
> I asked her if I should send it to her home? She said yes, her home at Marine Parade.
>
> We said goodbye to her and left.

30 In my view, Spring Tan’s attendance note says it all. In any event, even without the attendance note, Spring Tan’s testimony was sufficient to justify a finding of fact that the deceased was aware of the contents of the Will and had approved them. In her AEIC filed on 12 December 2005, she referred to certain other incidents that had occurred during the interpretation phase of the Will which showed that the deceased was fully conscious of what was going on and was able to give instructions to Spring Tan. At [19]–[20] of her AEIC, Spring Tan stated:

> At this point [when cl 3.2 was being read to the deceased], the [first appellant] interrupted and said that he wanted to be included as an executor and trustee of the Will as well. I then asked the deceased if she would like the [first appellant] to be added as an executor and trustee of the Will with the [Respondent]. The deceased replied no and said she only wanted the [Respondent] to be the sole executor and trustee.
>
> I then confirmed with the deceased that she had understood all the contents of the Will and that it reflected her true will and intention. The deceased then affixed her thumbprint on the Will in duplicate. As her thumbprint looked sort of smudged, I asked the deceased if she could sign her name next to her thumbprint. The deceased replied yes and signed below her thumbprint. The interpreter and I then both signed as witnesses to the Will. The deceased then asked me if that was all. I told her yes and asked the deceased if she would like to keep the Will herself. The deceased instructed me to keep a duplicate copy of the Will for her and to mail the original to her home at Marine Parade.

Were there suspicious circumstances?

31 A careful perusal of the Appellants’ case and their skeletal argument show that the Appellants’ entire case rested on their belief and perception that the circumstances surrounding the preparation of the Will were suspicious and that the deceased could not have understood the contents of the Will

or have executed it out of her own free will. The circumstances were suspicious because the contents of the Will were inconsistent with what the Appellants believed was the historical and contemporary intention of the deceased to provide for an equal distribution of her estate to all her children. However, the evidence did not bear out such a belief. As the DJ found, the return of the $50,000 to the Respondent was not truly inconsistent with the evidence of Dr Ng and Ms Luluk Ismania that the deceased wanted her shares and flat to be divided equally, since the evidence did not refer to cash. In any event, what was crucial in determining whether the deceased had knowledge of the contents of the Will was not the suspicious circumstances in the preparation of the Will, but whether there was anything suspicious in the way the Will was interpreted to the deceased before she executed it. The DJ found, at [27] of the GD, that "there was absolutely no credible evidence to support or give credence to any suspicious circumstances surrounding the execution of the Will". There could not have been any, because it was done in the presence of the first and second appellants who also overheard the interpretation of the contents of the Will. Furthermore, the DJ correctly pointed out that, whatever the deceased might have told the Appellants, Dr Ng or her domestic helper, there was no reason why she could not have changed her mind in respect of returning $50,000 to the Respondent. After all, she also agreed to return $20,000 to the first and second appellants when they pressed her on why she was returning $50,000 to the Respondent but not the money they had expended on her. Not surprisingly, the Appellants did not argue that the deceased did not know or understand this part of the conversation relating to the $20,000 to be returned "outside the Will".

32 In relation to the law, I have earlier (see [18] above) referred to *Reynolds* ([18] *supra*) and the DJ's reference (at [20] of the GD) to *Theobald on Wills* ([18] *supra*) that, where there are suspicious circumstances surrounding the making of a will, the propounder of the will has the burden of removing the suspicion. In this connection, the DJ referred to the following passage quoted from *Theobald on Wills* at p 37:

> **Affirmative proof of knowledge and approval.** Affirmative proof of the testator's knowledge and approval must be strong enough to satisfy the court in the particular circumstances. The greater the degree of suspicion, the stronger must be the affirmative proof to remove it. The suspicion "may be slight and easily dispelled. It may … be so grave that it can hardly be removed." [citing *Wintle v Nye* [1959] 1 WLR 284 at 291]
>
> One form of affirmative proof is to establish that the will was read over by, or to, the testator when he executed it. … Another form of affirmative proof is to establish that the testator gave instructions for his will and that the will was drafted in accordance with those instructions.

33 In the present case, the DJ made no finding that the deceased gave the instructions for the Will or that the Will was drafted in accordance with her instructions. This could mean that either he did not believe the Respondent's evidence that the deceased had given him instructions about the return of $50,000 or he was of the view that whether she had or had not given him instructions was irrelevant in the light of the evidence that the Will was read over to her in English by Spring Tan and interpreted to her in Mandarin by a qualified interpreter and that the deceased understood what was interpreted to her before she executed the Will. However, it should be noted that the deceased was examined by Dr Ng to ascertain whether she had the mental capacity to make a will (which was not disputed by the Appellants). This must imply that she knew that she was going to make a will. The issue is whether the Respondent has adduced affirmative proof of the deceased's knowledge and approval of the contents of the Will. The DJ at [25] of the GD accepted the evidence of Spring Tan and Ms Lin that the deceased confirmed with them that she understood the interpretation and contents of the Will after it had been read and interpreted to her in the presence of the first and second appellants. I saw no reason to disagree with the DJ on this finding. On this basis, the

Respondent had discharged the burden of having to remove any suspicious circumstances in the preparation of the Will. Any suspicious circumstances relating to the preparation of the Will were neutralised and negated by the reading and the interpretation of the Will to the deceased in an open and transparent manner, after which the deceased executed the Will. There were no suspicious circumstances relating to the execution of the Will.

34 The final complaint of the Appellants against the decision of the DJ was that the DJ had failed to consider the vast body of probate cases submitted by the parties and had also taken into account irrelevant points in the GD. In my view, this vast body of probate case law (*viz*, *Reynolds* ([18] *supra*), *Boyse v Rossborough* (1857) 6 HLC 2; 10 ER 1192, *Garnett-Botfield v Garnett-Botfield* [1901] P 335, *Hastilow v Stobie* (1865) LR 1 P & D 64, *Wingrove v Wingrove* (1885) 11 PD 81, *Lazar Joseph Peter v Joseph F Lazar* [2001] SGDC 404, *Lamkin v Babb* (1752) 1 Lee 1; 161 ER 1 and *Hall v Hall* (1868) LR 1 P & D 481) was wholly irrelevant to the single issue of fact in this appeal, *viz*, did the deceased understand and approve the contents of the Will? I agree entirely with the findings of the DJ that the deceased understood and approved the contents of the Will for the reasons he has given and for the other reasons given above.

35 Counsel for the Appellants placed heavy reliance on the decision in *Reynolds* as being applicable to the present case. I rejected the submission. In that case, the testatrix, Isobel, had made three wills, in 1986, 1994 and 1999. In the 1986 will and the 1994 will, both of which were professionally made, Michael (her youngest son) was a major beneficiary together with his daughter, Nicola. In the 1999 will (which revoked the 1994 will), Isobel gave her bungalow to Ronald (her eldest son) even though he owned a rented property at Barr Hill (whilst Michael was living in council accommodation). Michael and Nicola challenged the validity of the 1999 will on the grounds of: (a) lack of testamentary capacity; (b) forgery; and (c) absence of knowledge and approval of its contents. Rimer J found that Isobel had testamentary capacity and that she had signed the will. However, he found that Ronald had failed to discharge the burden of showing that Isobel had known or approved the contents of the will because:

(a) the testimony of the solicitor, that he had taken instructions from Isobel and had filled up the will form, was rejected as untrue;

(b) Ronald's evidence as to the making of the will was rejected on the grounds of being remarkably vague, uncertain and inconsistent; and

(c) there was no evidence from either of the attesting witnesses that Isobel knew or approved the contents of the will.

In contrast with *Reynolds*, the crucial finding of fact in the present case is that the DJ accepted the evidence of Spring Tan that the deceased had understood and approved the contents of the Will before she executed it.

Conclusion

36 For the above reasons, the appeal was dismissed with costs to be paid by the Appellants and the usual consequential orders.

[note: 1]Appellant's case ("AC") at pp 89–111.

[note: 2]AC at pp 112–219.

[note: 3]AC at pp 220–248.

[note: 4]AC at pp 250–254.

[note: 5]AC at pp 256–263.

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