

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2020] SGHCF 22

Suit No 2 of 2017

Between

(1) UWF
(2) UWG

... Plaintiffs

And

(1) UWH
(2) UWI

... Defendants

JUDGMENT

[Succession and Wills] — [Testamentary capacity]

[Succession and Wills] — [Undue influence]

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

UWF and another

v

UWH and another

[2020] SGHCF 22

High Court (Family Division) — Suit No 2 of 2017

Tan Puay Boon JC

8–11, 15–18, 22–25 January 2019; 26 April 2019; 6 April 2020; 11 May 2020

22 December 2020

Judgment reserved.

Tan Puay Boon JC:

Introduction

1 This case concerns the validity of a will made on 29 May 2002 (“the Will”) by a testator who was diagnosed with and had received treatment for bipolar disorder since 1978.¹ The testator later lost her mental capacity and deputies were appointed for her on 18 January 2012.² She died on 27 November 2016,³ a few days before her eighty-first birthday.

¹ Joint Expert Psychiatric Report dated 13 November 2018 by Dr Tan and Dr Ung (“Joint Expert Report”) (Bundle of AEICs (“BA”) at p 1050) at para 39.

² Chronology of Key Events dated 14 December 2018 (“Chronology”) No 74.

³ Chronology No 75.

2 The four parties to the suit and another son, the youngest son who is not a party to this suit (collectively, “the Siblings”), are the biological children of the testator (“Mother”) and her late husband (“Father”). In their claim, the Plaintiffs, who are two of the beneficiaries under the Will, sought the revocation of the Grant of Probate to the Defendants, who are the executors of the Will and also beneficiaries thereunder. The Plaintiffs contended that the Will is invalid because Mother lacked testamentary capacity at the time when it was made, and it was also made under the undue influence of the Defendants. The Defendants disputed these allegations and sought in their counterclaim to uphold the validity of the Will and the Grant of Probate.

3 The size of the estate, which included the family property located in the Tanjong Katong area (“the Family Property”),⁴ is substantial. Under the Will, the testator bequeathed to the Defendants and the youngest son one share each of the estate while the 1st Plaintiff received \$10,000 and the 2nd Plaintiff, the only daughter, received a half share. Pecuniary gifts of \$10,000, \$5,000 and \$5,000 were also bequeathed to three other children (one biological son and two adopted children) respectively from Father’s earlier marriage. Under the Intestate Succession Act (Cap 146, 2013 Rev Ed) (“Intestate Succession Act”), the Siblings would receive one share each of the estate if the Will was found invalid, with the value of each of such share being equivalent to 70% of the value of each of the shares allotted under the Will. This means that the youngest son and the Defendants would each get several million dollars less from Mother’s estate.

⁴ BA at p 777.

4 I begin by introducing the parties and their family members, and the witnesses of fact who gave evidence at the trial. I will introduce the four expert witnesses whom the parties called when discussing Mother's medical history later on in the judgment.

The parties and their witnesses of fact

The naming convention

5 For ease of referring to the parties and other witnesses of fact, I have used the pseudonyms that were provided by parties on my request. The pseudonyms of the Siblings and their respective family members are based on the first five letters of the alphabet, according to the birth order of each sibling.

6 The witnesses of fact and their relationships with Mother are set out in the table below:

Capacity	Name	Relationship to testator
Testator	Mother	Self
Testator's husband	Father	Husband
The Plaintiffs' witnesses of fact		
1st Plaintiff (PW1)	Derek	Fourth child / Third son
1st Plaintiff's wife (PW7)	Diana	Daughter-in-law

1st Plaintiff's daughter (PW3)	Daniela	Granddaughter
2nd Plaintiff (PW2)	Celine	Third child / Sole daughter
Sibling who is non-party (PW3)	Eric	Fifth child / Fourth son
Eric's wife (PW5)	Ellen	Daughter-in-law
Family friend (PW6)	Mdm T	Family friend
The Defendants' witnesses of fact		
1st Defendant (DW1)	Andrew	Eldest son
2nd Defendant (DW2)	Bernard	Second child / Second son
Lawyer (DW3)	Mdm L	Lawyer who prepared the Will
Family friend (DW4)	Gavin	Family friend

Key**medical terms**

7 It is helpful to next enumerate the agreed definitions of the key medical terms that will be featured in this judgment.

8 Bipolar disorder is defined as “a mood disorder with high and low moods”, which “causes clinically severe swings in mood, energy, thinking and behaviour, from elation and highs of mania on one extreme to the lows of

depression on the other”.⁵ Bipolar 1 disorder, being one of two clinical forms of the disorder, is the more severe of the two, with “at least one manic episode in the background of depressive episodes”.⁶ Bipolar 2 disorder is where the high moods are less intense and never reach full blown mania.⁷ A manic phase behaviour is characterised by “extreme elated mood, a grossly exaggerated sense of well-being and self-confidence, increased energy, activity and agitation, extreme irritability with those around them, inappropriate social behaviour disconnected and racing thoughts, grandiose beliefs and poorly judged purchases and investment”.⁸

9 Bipolar mood disturbances are changes that are either (a) “high”, leading to manic behaviour as in Bipolar 1 disorder or hypomanic (less than manic) behaviour as in Bipolar 2 disorder, or (b) “low”, leading to depressed moods.⁹ In between the high or low mood changes, the patient’s mood is called “euthymic”, which means that it is “neither high or low”.¹⁰ Symptoms remission refers to “symptom reduction whereby the patient experiences few, if any, symptoms of the disorder and consequently suffers no or minimal impairment in day-to-day function”.¹¹

10 Psychosis is defined as a “[m]ental disorder in which the thoughts, affective response, ability to recognize reality, and ability to communicate and

⁵ Agreed Glossary of Medical Terms at S/N 3.

⁶ Agreed Glossary of Medical Terms at S/N 5.

⁷ Agreed Glossary of Medical Terms at S/N 5.

⁸ Agreed Glossary of Medical Terms at S/N 3.

⁹ Agreed Glossary of Medical Terms at S/N 6.

¹⁰ Agreed Glossary of Medical Terms at S/N 6.

¹¹ Agreed Glossary of Medical Terms at S/N 54.

relate to others are sufficiently impaired to interfere grossly with the capacity to deal with reality”. The classical characteristics of psychosis are impaired reality testing, hallucinations, delusions, and illusions”.¹²

The undisputed facts and key findings

11 I first set out the facts on which the decision in this case is based. These comprise facts which are undisputed, and certain findings of relevant fact which I have made after considering the evidence of the witnesses. In relation to some matters, I have either made no express findings or set out my findings elsewhere in the judgment where required.

The family

12 I begin by describing Mother, who she was and how she lived her life. This was largely undisputed, but where there are disputes, I have set them out and made the necessary findings. I also describe the Family Property where the family once lived together and where some of the important events took place.

Mother

(1) From Mistress to Matriarch

13 Mother was Father’s second wife. Besides being the mother of the Siblings, she was also the step-mother to three children from Father’s previous marriage.

¹² Agreed Glossary of Medical Terms at S/N 45.

14 In his lifetime, Father had frequented night clubs and was described as a womaniser.¹³ Mother, who had been made to work as a lounge hostess since she was a teenager, met Father during one of his visits.¹⁴ They decided to cohabitate initially, with Mother as his “[third] mistress” of Father’s four mistresses.¹⁵ After Father’s first wife passed away, he legalised his relationship with Mother,¹⁶ *ie*, he married her. This was after she had given birth to all the Siblings. After marrying Mother, Father stopped womanising.¹⁷

(2) How Mother lived her life, her character and values

15 It is the Defendants’ case that Mother was a traditional woman who grew up in a conservative family and that she had conservative beliefs.

(a) According to Andrew, Mother believed that sons who carried on the family name were to be favoured over daughters.¹⁸ She saw Andrew, the eldest son, as the one to perpetuate the family name and take over the family business.¹⁹ She also held conservative views on the separate roles and expectations of men and women in society.²⁰

(b) Bernard testified that Mother was a traditional and conservative woman with fixed beliefs who had the philosophy and shared values of

¹³ Joint Expert Report at para 21.

¹⁴ Joint Expert Report at para 21.

¹⁵ Joint Expert Report at para 23.

¹⁶ Joint Expert Report at para 21.

¹⁷ Joint Expert Report at para 21.

¹⁸ Andrew’s AEIC at para 7.

¹⁹ Andrew’s AEIC at paras 7, 42.

²⁰ Notes of Evidence (“NE”) 18 January 2019 at pp 62-63.

her generation that daughters should inherit less as they “marry out of the family and they do not bear the family surname”.²¹ Bernard further cited an example of Mother’s traditionalism in a handwritten note by Daniela in Mother’s condolence book at her wake:²²

I remember being slightly dismayed at being banned from ballet by you but I know you only had the purest of intentions for me. Among other words of your brand of wisdom to ensure *I grow up a proper lady of value* include: “*A girl doesn’t shake her legs! You’ll be shaking away the family’s wealth!*” or “*You are getting way too dark — stay out of the sun!*” [emphasis added]

(c) Mdm L also corroborated this view that she had known Mother to be a traditional woman, although she admitted that Mother had not specifically told her that information and it was purely Mdm L’s surmise based on people of that generation about “giving properties to woman.”²³

(d) Eric’s email dated 2 March 2013 to Andrew, Celine and Bernard which was exhibited in Celine’s Affidavit of Evidence-in-Chief (“AEIC”) stated:²⁴

...You are right that mom is the cause of this. She brought us up bribing us with money, *cultivating the old chinese custom that the elder in the family deserve everything* but left out the need for looking after the family. [emphasis added]

Mother thus also subscribed to traditional Chinese customs that privileged the first-born child, which is consistent with evidence

²¹ Bernard’s AEIC at para 50.

²² Bernard’s AEIC at para 52; GWCC-12.

²³ NE 23 January 2019 at pp 90, 104; Mdm L’s AEIC at para 19.

²⁴ Celine’s AEIC at p 43

adduced at trial that Mother gave preferential treatment to Andrew as he was the firstborn (see [15(a)] above and [44] below).

16 The Plaintiffs were of a different view. Derek and Celine testified that it was untrue that Mother had adopted a philosophy that favoured sons over daughters, noting that Mother was especially protective of Celine.²⁵

(a) Celine testified that Mother was especially protective of her.²⁶ She cited an example of how Mother would not practise favouritism towards sons and would look out for the daughters in the family as she had specially purchased and paid regular premiums towards an insurance policy in favour of Derek's daughter, Daniela, so that she could purchase her own car when she came of age and be an independent adult woman, while no other grandchildren received such a gift from Mother.²⁷ Gavin, a family friend called by the Defendants who was a freelance insurance agent, corroborated the fact that Mother did indeed purchase an endowment policy for Daniela and pay for the insurance premiums.²⁸ Celine also said Mother was constantly worried about her well-being in Australia and would ask her to call home and visit as often as possible.²⁹ She said that Mother was the one who had persuaded Father to bequeath to her an equal share of his estate, as he did in his will and Mother had told her about this incident in the late 1990s.³⁰

²⁵ Celine's AEIC at para 18; Derek's AEIC at para 38.

²⁶ Celine's AEIC at para 19.

²⁷ Celine's AEIC at para 20; Derek's AEIC at para 38.

²⁸ Gavin's AEIC at paras 20–23.

²⁹ Celine's AEIC at para 19.

³⁰ Celine's AEIC at para 19; NE 9 January 2019 at pp 118-119.

Daniela testified that Mother was low-spirited after Celine left for Australia and that she had “never treated [Celine] any less than her brothers”.³¹ Celine and her brothers were also each given an equal share of the proceeds from the sale of a second property, the Upper Bukit Timah Property (registered in Mother’s name).³²

(b) Derek disagreed with the Defendants’ portrayal of Mother’s favouring sons over daughters, citing examples where Mother would always be excited whenever Celine was about to return to Singapore and would prepare Celine’s favourite foods and snacks, and would be very down whenever Celine left for Australia.³³

17 On balance, I find that Mother was a woman with traditional conservative beliefs. Daniela’s handwritten note in Mother’s condolence book at her wake (see above at [15(b)]) corroborates the testimonies of Andrew, Bernard and Mdm L that Mother had certain traditional beliefs of how a “proper lady of value” should act. The fact that Mother was protective of Celine and doted on Daniela does not detract from the possibility that Mother could nevertheless have held conservative views on the separate roles and expectations of men and women in society.

18 The effect of this finding will be further analysed in light of Mother’s strain in relationship with Celine, especially with regard to Celine’s decision to migrate to Australia and “marry a Caucasian man” (see below at [41]–[43]). I will analyse as well its implication on the rationality of the Will in giving Celine

³¹ Daniela’s AEIC at para 36(c).

³² Mdm L’s AEIC at LFC-2 Letter dated 5 December 2000.

³³ Derek’s AEIC at paras 38(a) and (b).

half share as compared to one share each to Andrew, Bernard and Eric (see below at [218(b)]).

19 Mother attended the lunar seventh-month auctions during the traditional Chinese Hungry Ghost Festivals annually and even organised events and auctions at the temple because she enjoyed it.³⁴ However, during her medical appointment with Dr Chee on 27 August 2002, Mother mentioned that she did not attend the auction in 2002.³⁵ Ellen said that it was because Andrew advised Mother not to go for the auction as she had already “donate[d] enough money”.³⁶ Andrew explained that he had informed Mother that Father was unhappy with her organising the temple auctions because the pressure was too much for her.³⁷

20 Mother was a kind-hearted and generous person as well, making donations to various temples, charities or clan associations.³⁸ She also rendered financial assistance to her friends in need, and seldom chased them for the repayment of monies.³⁹

21 Further, Mother was an independent woman.⁴⁰ Even after Father’s death on 25 January 2002, she would handle day-to-day activities herself, such as banking matters, shopping and going out for meals.⁴¹ Her chauffer would take

³⁴ NE 11 January 2019 at pp 25, 78-79; 22 January 2019 at p 29.

³⁵ Joint Expert Report at p 1304; Agreed Transcripts of Medical Notes (“AT”) at p 91; NE 11 January 2019 at p 24; 25 January 2019 at p 23.

³⁶ NE 11 January 2019 at pp 78-79.

³⁷ NE 22 January 2019 at p 29.

³⁸ Bernard’s AEIC at para 8.

³⁹ Bernard’s AEIC at para 8.

⁴⁰ Andrew’s AEIC at para 15.

⁴¹ Andrew’s AEIC at para 15.

her anywhere she needed or wanted to go and her maid would accompany her most of the time. Mother was known to make impulsive property purchases, such as a Sydney property when she was visiting Celine during a family holiday in 1993.⁴² She was also a compulsive gambler in stocks, lotteries, horse racing and *mahjong*.⁴³

22 Mother was extremely stubborn by nature and it was near impossible to change her mind once she had made a decision.⁴⁴ For instance, Bernard and Andrew testified that when they asked Mother to reconsider including Derek in the Will, she refused to consider it.⁴⁵ According to Andrew, Mother told him, “[y]ou better shut up, or else I leave you out of the will”.⁴⁶ As a result, Andrew kept quiet.⁴⁷ When the Plaintiffs cross-examined Andrew on why he did not mention the aspect of Mother threatening to take away his share of the Will in his AEIC, he explained that this was because he did not want to provide details of his “dirty linens” at first.⁴⁸ The Plaintiffs also suggested to Andrew that because his “retreat” in keeping quiet immediately was so “quick” and “inconsistent with the circumstances of that day”, that Mother was completely normal that afternoon, therefore his version of events must have been made up.⁴⁹ Andrew denied making this up and stated that he had nothing else to say if the

⁴² Celine’s AEIC at para 31(e).

⁴³ Joint Expert Report at para 24.

⁴⁴ Bernard’s AEIC at para 9.

⁴⁵ Andrew’s AEIC at para 18; Bernard’s AEIC at para 19.

⁴⁶ Andrew’s AEIC at para 18; NE 18 January 2019 at pp 157, 160-161.

⁴⁷ NE 18 January 2019 at pp 162-163.

⁴⁸ NE 18 January 2019 at p 157.

⁴⁹ NE 18 January 2019 at pp 162-163.

Plaintiffs accused him of fabricating the events.⁵⁰ In my judgment, it simply does not follow that Andrew must have made up his version of events just because he was not persistent in persuading Mother to reconsider Derek's share of the Will. Given the size of the estate and the risk of losing his share, which was a very significant sum, it was just as plausible that Andrew had decided not to jeopardise his own interest. I therefore accept Andrew's and Bernard's version of these events.

23 Mother also had mood swings and the family members would choose to stay away from her or avoid agitating her in such times as it would be impossible to get through to her.⁵¹ More will be said of her medical history from [85] below.

The Family Property

24 The Family Property is an estate in fee simple held by Mother and Father as joint tenants. It has a land size of 856.9 square metres and is worth over \$10m.⁵² Father and Mother had lived there since around 1966 till their deaths on 25 January 2002 and 27 November 2016, respectively.⁵³

25 Andrew and Bernard moved out from the Family Property in the 1990s but returned with their families often for visits and Mother would cook dinner for them.⁵⁴ After Father passed away on 25 January 2002, Andrew, Bernard and

⁵⁰ NE 18 January 2019 at p 163.

⁵¹ Bernard's AEIC at para 11.

⁵² Agreed Bundle ("AB") at pp 6–7, 127, 131.

⁵³ Chronology Nos 1, 41 and 75.

⁵⁴ Andrew's AEIC at para 60.

Eric took turns to bring Mother out for dinner so that she would have company as often as possible.⁵⁵

26 Derek stayed in one room in the Family Property with his wife and three children until they eventually moved out on 1 June 2002.⁵⁶ By then, he was 45 years old and his eldest daughter Daniela was 17 years old.⁵⁷ Celine stayed in the Family Property until she moved to Australia in 1982 and settled down there. Whenever she visited Singapore, she would stay in her bedroom. This continued until 2007, when Andrew took control of the care arrangements for Mother from Eric.⁵⁸ Eric moved out of the Family Property in 2007.⁵⁹

Mother's relationships with her family members

27 I describe here the individual relationships of the key family members with Mother. Some of these are not in dispute or have not been disputed. Where they are in dispute, I have set out my findings where necessary.

The 1st Plaintiff (Derek)

28 According to Andrew, Mother treated Derek very differently from her other children and he had always been left out as he was the “black sheep of the family”.⁶⁰ Mother and Derek would speak in hostile and confrontational tones

⁵⁵ Andrew's AEIC at para 61.

⁵⁶ Derek's AEIC at paras 19, 69.

⁵⁷ Derek's AEIC at para 10(d); Daniela's AEIC at para 11.

⁵⁸ Celine's AEIC at para 15.

⁵⁹ Eric's AEIC at para 4.

⁶⁰ Andrew's AEIC at para 27; Bernard's AEIC at para 31.

and language.⁶¹ According to Celine, Mother would sometimes pick on Derek and his wife.⁶²

29 When Andrew moved back to stay in the Family Property for a few years until he bought his own house in 1991, he observed that Mother was “either ignoring Derek or involved in an argument with him”.⁶³ Derek was home most of the time, never held a regular job or had to go to work⁶⁴ because Father had given each of his sons a significant share of the family companies, with yearly dividends amounting to about \$100,000 to \$200,000.⁶⁵ According to Andrew, it was Mother’s pet peeve against Derek that the yearly dividends gave Derek an excuse to “laze around all day doing nothing with his time”.⁶⁶ Until Derek moved out of the Family Property on 1 June 2002, he was living there with his wife and three children, occupying a single room.⁶⁷ Mother got into heated arguments with Derek, shouted and even demanded that he move out and get his own house on several occasions.⁶⁸ Derek would open the door, yell back and gesture aggressively at her.⁶⁹ Their relationship continued to deteriorate over time as Derek was never gainfully employed for most of his adult life.⁷⁰

⁶¹ Bernard’s AEIC at para 31.

⁶² Celine’s AEIC at para 26.

⁶³ Andrew’s AEIC at para 29.

⁶⁴ Andrew’s AEIC at para 29.

⁶⁵ Andrew’s AEIC at para 30.

⁶⁶ Andrew’s AEIC at para 30.

⁶⁷ Andrew’s AEIC at para 30.

⁶⁸ Andrew’s AEIC at para 31; Bernard’s AEIC at para 32.

⁶⁹ Bernard’s AEIC at para 32.

⁷⁰ Bernard’s AEIC at para 33.

30 In response to the allegations concerning his unemployment, Derek explained at trial that in the 1980s to the 1990s, he did make a living giving private tuition and teaching in several government schools.⁷¹ Derek also testified that Mother had never raised any concerns to him that she might have had about his supposed lack of a job.⁷² He said that Mother loved him and he disagreed with the Defendants that there was a “very strained relationship” between Mother and him.⁷³ Derek attempted to demonstrate their close relationship during the more than 30 years that he and his family stayed at the Family Property on the basis that Mother would personally cook for everybody, including him.⁷⁴ Whenever Mother prepared birds’ nest soup, an expensive delicacy, she would prepare a share for Derek and his family and invite him to join Father and her for dinner.⁷⁵ Derek also testified that he had accompanied his parents on several overseas trips from the 1980s and with Mother alone on numerous trips to Genting Highlands to visit the casinos.⁷⁶ There were occasions as well when Mother would specifically invite Derek and his family to relax with Father and her at hotels in Singapore for short “staycations”.⁷⁷

31 I find Derek’s evidence on his close relationship with Mother to be unconvincing. Under cross-examination, Derek conceded that the last time Mother had invited him for dinner in the Family Property was before the late

⁷¹ NE 8 January 2019 at pp 86-87.

⁷² NE 8 January 2019 at pp 51-52.

⁷³ Derek’s AEIC at para 21.

⁷⁴ Derek’s AEIC at para 22.

⁷⁵ Derek’s AEIC at para 22.

⁷⁶ Derek’s AEIC at para 22.

⁷⁷ Derek’s AEIC at para 22.

1990s.⁷⁸ I also find Derek’s assertion that Mother never once complained to him about his lack of a job to be unbelievable. Andrew testified that Derek’s relationship with Mother was “fractious and not a usual, loving, mother-son relationship”.⁷⁹ Derek eventually admitted at the trial that he was not able to get along with Mother.⁸⁰ Indeed, Derek’s message to Mother in the condolence book at her wake was most telling:⁸¹

Dear Mum,

Even though you *don't treat me like a mum ought to a son*, you're still my mum and I do believe there's still some semblance of love between us!

Your Son,

Derek V

1/12/2016

[emphasis added]

32 Multiple witnesses testified that Mother had made frequent complaints about Derek and knew about Mother’s dissatisfaction with Derek’s unemployment and refusal to move out of the Family Property. Bernard’s testimony was that Mother was angry and felt like she “lost face” because Derek was lazy and not working, and it became a “personal vendetta of [Mother] to get [Derek] out [of the Matrimonial Property]” such that she used a *changkol*, a digging tool with a long handle, to smash the windows of his bedroom in 1999 (see below at [38]).⁸² Eric also confirmed that he had “heard” that Mother did want Derek to leave the Family Property.⁸³

⁷⁸ NE 8 January 2019 at p 55.

⁷⁹ Andrew’s AEIC at para 39.

⁸⁰ NE 8 January 2019 at p 94.

⁸¹ Andrew’s AEIC at para 30.

⁸² NE 22 January 2019 at p 133.

33 Mdm T, a family friend who was called by the Plaintiffs, testified that whenever Mother was in a *manic state* of her bipolar disorder with psychosis (see below at [149]), she would repeat a particular story about his birth. Mother claimed that after she delivered Derek, the doctor told her that Derek was out to kill her because he had “very broad shoulders”.⁸⁴ However, Mdm T later acknowledged that it was possible that Mother simply meant that it was a “difficult birth” because of his broad shoulders.⁸⁵

34 Mdm L testified that Mother would be upset with Derek and his wife because Derek treated Mother with contempt, would not obey her, did not do any work and stayed in the room all day with his wife.⁸⁶ In the nursing assessment notes dated 22 January 2001, it was also noted that Mother “had conflicts with fourth son, Derek. Complained much about this son. Claimed son had never worked for a living”.⁸⁷ Gavin, a family friend of Mother called by the Defendants, testified that when he was at the house on social visits, he had heard Mother trying to chase Derek out and shouting at Derek to the effect that, “I am not going to give you one cent of my money!”, “maybe I consider giving you ten thousand dollars” or “the most I will give you is ten thousand dollars”.⁸⁸

35 Finally, I turn to the crucial point in the breakdown of their relationship that culminated in the Personal Protection Order (“PPO”) applications made

⁸³ NE 11 January 2019 at p 47.

⁸⁴ Mdm T’s AEIC at para 13.

⁸⁵ NE 15 January 2019 at p 5.

⁸⁶ NE 23 January 2019 at p 58.

⁸⁷ AB at p 773.

⁸⁸ Gavin’s AEIC at para 12.

against each other.⁸⁹ On 14 September 1999, Mother made an unsuccessful PPO application against Derek, wherein she claimed the following:⁹⁰

I had a quarrel with my son [Derek]. I told him that he had to leave the house in three months' time. He refused. He then clenched his fist and looked as if he wanted to assault me. As he is of big build and looked very aggressive, I became frightened. I kept quiet and he went away.

...

There was one occasion when I knocked at my son's door, requesting him to step out to speak to me. *Knowing I was just at the door he deliberately opened the door forcefully so that the door hit my head.* I bled and was sent to the General Hospital.

On another occasion, he pressed my head against a table and pointed a knife at my neck. He kept shouting "Do you still want to do it, do you?"

[emphasis added]

36 According to Ellen, Mother told her that the PPO application was made because Derek was trying to strangle her and harm her.⁹¹ The allegations of violence by Mother against Derek were not believed by Andrew and Bernard, and Bernard even testified that Derek is not a violent person who would hurt Mother.⁹² Derek's explanation for Mother's PPO application was an incident on 10 September 1999, when Derek, who was unaware that Mother was standing outside his room, opened the door and *accidentally* knocked into her.⁹³ Derek testified that in her delusion that he was out to hurt her, Mother applied for a PPO against him.⁹⁴ The door latch caused a cut on her forehead. Derek denied

⁸⁹ NE 22 January 2019 at pp 125-126.

⁹⁰ Derek's AEIC at WCT-7 (BA at pp 427-432); Chronology No 21.

⁹¹ NE 11 January 2019 at p 66.

⁹² NE 18 January 2019 at p 129-131; 22 January 2019 at pp 134-135.

⁹³ Derek's AEIC at para 27(c).

⁹⁴ Derek's AEIC at para 27(d).

all other incidents of violence alleged by Mother.⁹⁵ He thus testified that the PPO application by Mother was not a result of any “quarrels and fights” between Mother and him.⁹⁶

37 The court dismissed Mother’s application for the PPO, after asking for and considering the medical report from the Institute of Mental Health (“IMH”) dated 29 September 1999 on her, which stated the following:⁹⁷

1 She had been diagnosed to be suffering from a Bipolar Affective Disorder, Diabetes Mellitus, and was found to have old cerebrovascular accidents ("strokes") affecting different parts of the brain.

2 Following her discharge from hospital, she initially attended our hospital's outpatient clinic. When last seen on 17 March 99 she appeared well and her mood was euthymic (ie. neither elated nor depressed). *She, however, confided she was living separately from her husband and had been having problems with her "3rd son", whom she alleged had tried to assault her.* She has, since, defaulted outpatient treatment and is presumed to be well.

[emphasis added]

38 On 1 October 1999, Mother used a *changkol* to smash the windows of Derek’s bedroom.⁹⁸ As a result, Derek made a PPO application against Mother on 7 October 1999 out of concern of his family’s safety.⁹⁹ He was granted the PPO but did not enforce the PPO against her.¹⁰⁰ Eventually, Derek and his family moved out of the Family Property on 1 June 2002.¹⁰¹

⁹⁵ Derek’s AEIC at para 27(e), (f).

⁹⁶ Derek’s AEIC at para 29.

⁹⁷ Derek’s AEIC at para 27(i); WCT-8.

⁹⁸ Derek’s AEIC at para 27(j).

⁹⁹ Derek’s AEIC at para 27(k); WCT-9.

¹⁰⁰ Derek’s AEIC at para 27(k); WCT-9.

¹⁰¹ Derek’s AEIC at para 69.

39 Derek claimed that he never insisted on staying in the Family Property, but stayed on solely against Mother’s wishes because it was Father’s wishes and Derek feared for Father’s safety during Mother’s “unpredictable violent outbursts”.¹⁰² Father had allegedly asked Derek and his family not to move out as he would not be able to handle Mother’s mental illnesses and needed Derek’s support.¹⁰³ It was on this basis that Derek allegedly remained in the Family Property.¹⁰⁴ Derek claimed that once Father passed away, there was no longer any need for him and his family to stay in the Family Property to ensure Father’s well-being and safety.¹⁰⁵ According to Derek, he and his family agreed to move out because they could “sense that Mother was experiencing a down phase” and wished to avoid an eventual build-up to a “violent outburst” or a “manic-depressive episode”.¹⁰⁶ Derek explained that he found a rental property at Geylang and decided to move during the school holidays on 1 June 2002 to avoid being disruptive to his children’s mid-term examinations.¹⁰⁷

40 However, I find Derek’s justification to be misconceived and unbelievable. Despite service on Derek of a letter dated 28 February 2002 giving him formal notice to vacate the premises of the Family Property by 31 May 2002, Derek did not move out until 1 June 2002 (see below at [60]). Even taking the Derek’s case at its highest that he had only stayed in the Family Property for the sake of Father (and not for selfish reasons, *eg*, to save on rental), it is inexplicable for Derek to continue staying in the Family Property against

¹⁰² Derek’s AEIC at para 34.

¹⁰³ Derek’s AEIC at para 34.

¹⁰⁴ Derek’s AEIC at para 34.

¹⁰⁵ NE 9 January 2019 at p 80.

¹⁰⁶ Derek’s AEIC at para 36(i).

¹⁰⁷ 9 January 2019 at pp 80-81.

Mother's wishes until 1 June 2002, which was many months after Father had passed away on 25 January 2002, and also after the 31 May 2002 deadline in Mother's formal eviction notice. In fact, Derek's refusal to move out infuriated Mother and resulted in a heated altercation that erupted in or around mid-2002 where the police had to be called in to intervene.¹⁰⁸ Derek had more than ample time from the service of formal notice of eviction on 28 February 2002 to make arrangements to move out *by 31 May 2002*. Even if I accept Derek's claim that he breached the formal eviction notice for the sake of his children, the point remains that the relationship between Derek and Mother was strained to such an extent that she had to issue a formal eviction notice to him, her own flesh and blood, in order to get him and his family to move out, which he flouted in any case.

The 2nd Plaintiff (Celine)

41 Mother loved and doted on Celine since she was young, as Celine was her only daughter.¹⁰⁹

42 In 1982, Celine worked in Australia. She met and married her husband, an Australian, in 1984.¹¹⁰ They have two children and settled down there. When Celine was not in Singapore, she would speak to Mother over the telephone at least once a month.¹¹¹ Celine remained a Singapore citizen and returned to Singapore at least one to two times a year to visit her parents.¹¹² Whenever she

¹⁰⁸ Bernard's AEIC at para 44.

¹⁰⁹ Andrew's AEIC at paras 41, 49.

¹¹⁰ Celine's AEIC at para 11.

¹¹¹ Celine's AEIC at para 12.

¹¹² Celine's AEIC at para 12.

and her family visited, they would stay in the Family Property and Celine's bedroom would be kept intact for her family visits.¹¹³ The visits usually lasted five to six weeks on average, with the longer visits lasting up to three months.¹¹⁴ However, this living arrangement stopped by 2007, when Andrew insisted on taking control of the care arrangements for Mother from Eric, and arranged for the domestic helpers caring for her to stay in Celine's bedroom.¹¹⁵

43 Notwithstanding their close relationship, Celine's decision to marry a Caucasian man upset Mother.¹¹⁶ Celine testified that Mother wanted Celine to break off with him.¹¹⁷ Mother was so enraged that she flew to Australia to confront Celine and her then boyfriend.¹¹⁸ Mother even threatened to disown Celine, and protested by refusing to attend her wedding.¹¹⁹ As Celine explained, this was because Mother had a "preconceived notion that Caucasian men [were] philanderers" and did not take relationships seriously.¹²⁰ This was corroborated by Mdm L's evidence that Mother had "previously expressed her displeasure with Celine's decision to marry a "foreigner" and move out of Singapore.¹²¹ After Celine's marriage, Mother did not communicate with Celine for some time but eventually reconciled with her after Celine bore her first child.¹²²

¹¹³ Celine's AEIC at para 13.

¹¹⁴ Celine's AEIC at para 13.

¹¹⁵ Celine's AEIC at para 15.

¹¹⁶ Bernard's AEIC at para 51.

¹¹⁷ NE 9 January 2019 at p 116.

¹¹⁸ Bernard's AEIC at para 51.

¹¹⁹ Bernard's AEIC at para 51.

¹²⁰ NE 9 January 2019 at p 116.

¹²¹ NE 23 January 2019 at p 91.

¹²² Bernard's AEIC at para 51; NE 9 January 2019 at pp 115-116.

The 1st Defendant (Andrew)

44 As the firstborn son of the family, Mother and Father doted on Andrew since he was young and saw him as the one to perpetuate the family name and take over the family business.¹²³ Andrew felt that Mother gave him preferential treatment and would buy him anything he wanted or needed.¹²⁴ Andrew was the only child in the family who was sent overseas for studies and left Singapore when he was 15 years old. Andrew obtained a degree in Computer Science in a Canadian university and worked in various countries including Canada, Sweden and England, eventually returning to Singapore in 1989.¹²⁵

45 When Andrew returned to Singapore, he moved back into his room in the Family Property. Mother was happy, preparing his room and welcoming him back. Mother also trusted Andrew, and made him a joint account holder when she opened a bank account with Overseas Union Bank (now defunct) in 1990.¹²⁶ As of 2002, Andrew held an OCBC joint bank account with Mother.

The 2nd Defendant (Bernard)

46 According to Derek, Bernard was known as the “bad son” and troublemaker among the Siblings and had a “terrible relationship” with Mother.¹²⁷ It is Derek’s testimony that Bernard had a bad temper and would frequently threaten, shout and use abusive gestures on Mother and she was

¹²³ Andrew’s AEIC at para 7; Eric’s AEIC at para 4.

¹²⁴ Andrew’s AEIC at para 7.

¹²⁵ Andrew’s AEIC at para 8.

¹²⁶ Andrew’s AEIC at para 9.

¹²⁷ Derek’s AEIC at para 44.

always afraid of Bernard due to his violent tempers and anger management issues.¹²⁸

47 There was an incident around 1992–1993 when Bernard and Mother quarrelled over a domestic arrangement issue and violence was involved. The witnesses had differing accounts of the incident:

(a) According to Derek, in 1992 Bernard had an altercation with Mother and shoved her, causing her to fall to the ground. As a result of the push, Mother ended up in the hospital and had to undergo stitches.¹²⁹ This incident was witnessed and corroborated by Daniela and Diana. It had happened in the garden and Mother was bleeding profusely from her head.¹³⁰ A police report was filed and Bernard was detained in the police station.¹³¹ Bernard moved out of the Family Property afterwards,¹³² and he and his family did not visit Mother and Father for several years.¹³³ The account of this incident is further corroborated by the medical notes of Dr Wong Yip Chong ("Dr Wong"), a doctor from the Adam Road Hospital ("ARH") who saw Mother on 5 October 1997, which stated "[f]all – pushed down by 2nd son. Accident. Police station."¹³⁴

¹²⁸ Derek's AEIC at para 45.

¹²⁹ Derek's AEIC at para 46(c).

¹³⁰ Daniela's AEIC at para 33.

¹³¹ Diana's AEIC at para 38(c).

¹³² Diana's AEIC at para 38(c).

¹³³ Diana's AEIC at para 38(d).

¹³⁴ Diana's AEIC at para 38(e), YNK-3 at p 576.

(b) Bernard did not dispute that Mother had a fall and that he was in fact called to the police station as a result.¹³⁵ He testified that this isolated incident occurred in 1993.¹³⁶ He said that he and Mother had quarrelled over a domestic arrangement issue as Mother had wanted Bernard to move into a different room in the Family Property.¹³⁷ In her foul mood, Mother tried to push Bernard and somehow lost her balance, fell to the floor and sustained a head injury.¹³⁸ They were the only people in the driveway when she fell, and the other family members only heard the commotion.¹³⁹

48 On a balance of probabilities, I accept the testimonies of Derek, Daniela and Diana over Bernard's account, since the incident was witnessed by multiple family members and was also sufficiently significant such that Mother relayed the incident to Dr Wong in 1997. Further, I note that there were contradictions in Bernard's evidence on this incident, which affected his credibility. On the stand, Bernard testified that there was no police report made by Mother and that he had merely explained to the police officer that he did not push Mother and she "fell by mistake".¹⁴⁰ However, this was squarely contradicted by a joint affidavit filed by Andrew and Bernard in an application for the appointment of deputies for Mother. This affidavit stated that Mother had "filed the police report to pressurise [Bernard] to move out of the house".¹⁴¹ When confronted,

¹³⁵ NE 22 January 2019 at p 97.

¹³⁶ Bernard's AEIC at para 87.

¹³⁷ Bernard's AEIC at para 87.

¹³⁸ Bernard's AEIC at para 87.

¹³⁹ Bernard's AEIC at para 87, p 770.

¹⁴⁰ NE 22 January 2019 at pp 93, 95.

¹⁴¹ AB at p 261 para 15.

Bernard provided an inadequate explanation that it was only after he read the joint affidavit that he realised that it was a mistake.¹⁴² I therefore accorded limited weight to Bernard's evidence on this incident.

49 Bernard admitted to having a bad temper but also testified that he and Mother had reconciled in 1997. When Mother was admitted to ARH in 1997 (see below at [92]), Bernard rushed down to the hospital to see her and Mother was "so happy to see [Bernard]" as she had not seen him for so many years.¹⁴³ Indeed, Derek conceded that Bernard became less bad-tempered as he got older. Mother was also willing to go out with Bernard.¹⁴⁴ The improvement of Bernard's relationship with Mother is further evidenced by the photographs from 1998-2003 of celebrations that Mother had with Bernard and his family, and of various overseas holidays, Chinese New Year festivities and birthday celebrations of Bernard and his sons.¹⁴⁵ Bernard, along with Andrew, Eric and Celine, would take turns to bring Mother to the hospital whenever the need arose over the years.¹⁴⁶ Bernard would also bring Mother out for dinner regularly, especially after Father's death, to ensure that she always had company.¹⁴⁷

50 Mother trusted Bernard to help her manage some of her financial affairs. For instance, in the late 1990s, Bernard would assist Mother in filing her income tax returns every year as her main language was Cantonese and not English. Mother also trusted Bernard with managing her second property located at

¹⁴² NE 22 January 2019 at p 95.

¹⁴³ NE 22 January 2019 at p 109.

¹⁴⁴ NE 22 January 2019 at pp 64-65.

¹⁴⁵ Bernard's AEIC at paras 75-77; GWCC-13.

¹⁴⁶ Bernard's AEIC at para 81; GWCC-14.

¹⁴⁷ Bernard's AEIC at para 78.

Upper Bukit Timah which she had purchased in 1997. After the Temporary Occupation Period was granted, Bernard managed the property, secured a tenant and managed the tenancy until the property was sold in 2000. Mother had then executed a Power of Attorney in Bernard's favour for him to handle and effect the sale of the property.¹⁴⁸

51 It is evident that by the time of the making and execution of the Will in 2002, Mother and Bernard had a close relationship of trust.

Eric

52 As the youngest son, Eric was one of Mother's favoured sons aside from Andrew.¹⁴⁹ Eric would usually accompany Mother on her medical appointments to, among others, the IMH and Mount Elizabeth Hospital.¹⁵⁰

Father

53 Mother and Father loved each other and were an affectionate couple.¹⁵¹ She would always prepare his favourite foods and soup while he would bring her shopping and take her to her favourite eateries.¹⁵²

54 However, Mother would have bouts of jealousy whenever Father was friendly to other females and she would suspect that Father was having affairs.¹⁵³

¹⁴⁸ Bernard's AEIC at para 83.

¹⁴⁹ Eric's AEIC at para 4.

¹⁵⁰ Eric's AEIC at para 5; NE 9 January 2019 at pp 64-65.

¹⁵¹ Daniela's AEIC at para 15.

¹⁵² Daniela's AEIC at para 15.

¹⁵³ Daniela's AEIC at para 15.

She would also threaten divorce and demand that Father leave the Family Property during these outbursts.¹⁵⁴ Mother would also pick on Father at times. For instance, on a family trip in the early 1990s, She suspected that Father was having an affair with the domestic helper.¹⁵⁵ According to Celine, Mother would frequently share her suspicions of Father, including that Father wished to kill Mother.¹⁵⁶ Diana also became the subject of Mother's jealousy when Diana bore greater responsibility as Father's primary caretaker when his health deteriorated, and Mother accused Diana and Father of having an affair.¹⁵⁷ Father and Mother also had arguments in 1999 over letting Derek stay in the Family Property.¹⁵⁸

Daniela

55 Daniela, the grandchild who was raised by and had the closest bond with Mother, grew up in the Family Property until she moved out when she was 17 years old.¹⁵⁹ Mother and Daniela were affectionate towards each other and she would shower Daniela with gifts and pocket money.¹⁶⁰

¹⁵⁴ Daniela's AEIC at para 15.

¹⁵⁵ Celine's AEIC at para 27.

¹⁵⁶ Celine's AEIC at para 27.

¹⁵⁷ Daniela's AEIC at para 16.

¹⁵⁸ Bernard's AEIC at para 35.

¹⁵⁹ Daniela's AEIC at paras 9, 11.

¹⁶⁰ Daniela's AEIC at para 9.

The events after Father's passing on 25 January 2002 and the eviction of the 1st Plaintiff's family

56 When Father passed away on 25 January 2002,¹⁶¹ Mother became cold and distant. She was not her usual affectionate self and was indifferent to the family members' sadness.¹⁶² Daniela noticed that Mother did not display feelings of sadness, which was unusual, but occupied herself with the administrative matters of the funeral.¹⁶³ Mother wanted the "grandest wake possible", for a big group of monks to come daily and for the entire family to chant the longest chants throughout the day.¹⁶⁴ After Father's funeral, Mother would remain in her room and kept to herself, staying up late into the night.¹⁶⁵

57 After Father's passing on 25 January 2002, the executors of Father's will (one of the children from Father's previous marriage and Andrew) appointed Mdm L to extract the grant of probate for Father's estate and to deal with Father's estate-related matters.¹⁶⁶

58 Mother also made an appointment with the family lawyer, Mdm L, and asked for her assistance to lodge the Notice of Death of Father for the Family Property with the Singapore Land Authority.¹⁶⁷

¹⁶¹ Chronology No 41.

¹⁶² Daniela's AEIC at para 21.

¹⁶³ Daniela's AEIC at para 22.

¹⁶⁴ Daniela's AEIC at para 24.

¹⁶⁵ Daniela's AEIC at paras 26, 27.

¹⁶⁶ Mdm L's AEIC at para 12.

¹⁶⁷ Mdm L's AEIC at paras 12–14; LFC-3.

59 At the same appointment, Mother also informed Mdm L that now that she was the sole owner of the Family Property, she wanted to seek Mdm L's assistance to draft a legal letter to Derek, requiring him to vacate the Family Property.¹⁶⁸ Mdm L was not surprised with the request as she was "well-acquainted with [Mother's] tumultuous history with Derek".¹⁶⁹ Mdm L sent a letter dated 28 February 2002 giving Derek formal notice to vacate the premises of the Family Property by 31 May 2002.¹⁷⁰

60 Despite receiving the letter containing the notice, Derek refused to move out of the Family Property. This infuriated Mother.¹⁷¹ After a heated altercation between Mother and Derek in the middle of 2002, where the police had to be called to intervene, Derek and his family (including Daniela) eventually moved out on 1 June 2002.¹⁷²

61 Mother also made and executed the Will in May 2002. The events leading to and the circumstances surrounding this are described in the next section.

¹⁶⁸ Mdm L's AEIC at paras 12–14; Chronology No 44.

¹⁶⁹ Mdm L's AEIC at para 15; LFC-4.

¹⁷⁰ Mdm L's AEIC at para 15; LFC-4.

¹⁷¹ Bernard's AEIC at para 44.

¹⁷² Bernard's AEIC at paras 44, 45 and 57.

The making and execution of the Will***Discussions between Andrew, Bernard and Eric on the Will in May 2002***

62 The parties gave different versions of the discussions that took place between Andrew, Bernard and Eric on the making of the Will.

(a) On one hand, it is Eric's testimony that the subject of the Will was raised for the first time by Andrew with Eric on or around 8 May 2002 during a discussion on Father's will.¹⁷³ Andrew suggested that it would be a good idea if Mother were to execute a will as it would ensure that there was a proper demarcation of the estate when Mother passed away.¹⁷⁴ A week later, on 15 May 2002, the topic of making Mother's will also came up spontaneously when Eric, Bernard and Andrew were chatting.¹⁷⁵ Eric was surprised when he later found out that Andrew and Bernard had taken Mother to see a lawyer to make and execute the Will on 22 and 29 May 2002 respectively as he had not been informed of any scheduled appointment for Mother to execute the Will.¹⁷⁶

(b) On the other hand, it is Andrew's testimony that a few months after Father passed away on 25 January 2002, Andrew, Bernard and Eric were at the Family Property discussing the progress of obtaining the Grant of Probate for Father's estate. When they were on that topic, Mother told them that she wanted to make a will and give Andrew,

¹⁷³ Eric's AEIC at para 12.

¹⁷⁴ Eric's AEIC at para 12.

¹⁷⁵ Eric's AEIC at para 13.

¹⁷⁶ Eric's AEIC at paras 14-15.

Bernard and Eric a share of her estate each, but that she did not wish to give any share to Derek.¹⁷⁷ Andrew testified that he asked Mother to reconsider but she told him to keep quiet.¹⁷⁸ During the discussion, Mother told Bernard and Andrew that she wanted them to visit Mdm L's office with her.¹⁷⁹

The meetings with Mdm L on 22 and 29 May 2002

(1) Relationship between Mother and Mdm L

63 For background context, I shall first describe the relationship between Mother and Mdm L, the solicitor who drafted the Will. Mdm L had been Mother's family lawyer since her early years of practice and acted for several of the family members in the purchase and sale of properties, drafting of wills and probate matters, including the legal matters of Father's father (Mother's father-in-law, who was the patriarch of the family).¹⁸⁰ Mdm L also attended to some of the family company's legal matters.¹⁸¹ Mdm L and Mother knew each other from the early 1990s and she acted for Mother in the sale of multiple properties up to 2000.¹⁸² Mother would give instructions in Cantonese, which Mdm L was conversant in.¹⁸³

¹⁷⁷ Andrew's AEIC at para 18.

¹⁷⁸ Andrew's AEIC at para 18.

¹⁷⁹ Andrew's AEIC at para 18.

¹⁸⁰ Mdm L's AEIC at para 3.

¹⁸¹ Mdm L's AEIC at para 3.

¹⁸² NE 23 January 2019 at p 51; Mdm L's AEIC at para 4.

¹⁸³ NE 23 January 2019 at p 50; Mdm L's AEIC at para 5.

64 As time went by, they developed a friendship and whenever Mother was in the vicinity of Mdm L's office, she would drop by and have a chat with Mdm L.¹⁸⁴ It was through their many conversations that Mdm L came to know about Mother's strained relationship with Derek. Mother had confided in Mdm L that she "could not stand living under the same roof as Derek".¹⁸⁵

65 As for the other family members, Mdm L first met Andrew in the 1990s and Bernard when he was handling matters regarding the powers of attorney for Father and Mother.¹⁸⁶ Mdm L was not acquainted with Celine, and also could not recall meeting Eric before.¹⁸⁷

(2) Making of the Will on 22 May 2002

66 Mdm L testified that on 22 May 2002, Mother had arrived *alone* for the appointment and they met in her personal office,¹⁸⁸ which was separated by a partition wall and a door from the outer portion of the office where there was a visitors' area where visitors could wait.¹⁸⁹ Mdm L could not recall if anyone else was waiting in the visitors' area but conceded that there was a possibility that Bernard could have been present and that he might have been the one who prepared the cheque for payment to her.¹⁹⁰ Andrew's evidence is that he and

¹⁸⁴ NE 23 January 2019 at pp 51-52.

¹⁸⁵ Mdm L's AEIC at para 6.

¹⁸⁶ NE 23 January 2019 at p 53.

¹⁸⁷ NE 23 January 2019 at p 54-55.

¹⁸⁸ NE 23 January 2019 at p 112.

¹⁸⁹ NE 23 January 2019 at p 111.

¹⁹⁰ NE 23 January 2019 at p 112.

Bernard were late for the appointment at Mdm L's office, and Mother was already in Mdm L's personal office by the time they arrived.¹⁹¹

67 During their meeting, Mother informed Mdm L that she wished to make a will, and Mdm L recorded on her note pad the following instructions given by Mother:¹⁹²

- (i) Derek - ~~\$5,000~~ \$10,000/-
- (ii) Daughter — \$ ½ share
- (iii) 3 other sons — 1 share
- (iv) [Step-child] - \$10,000/-
- (v) [Step-child]- \$5,000/-
- (vi) [Step-child] - \$5,000/-
- (vii) Executors Andrew & Bernard

68 When giving instructions to Mdm L on the Will, Mother had thought for a moment and changed her mind about giving Derek \$5,000. She told Mdm L that she would give Derek \$10,000 instead, thus explaining the struck out “\$5,000”.¹⁹³ As such, Mdm L took note of the above instructions. As for the cancellation of the “\$” sign beside the Daughter's “½ share”, Mdm L explained that she had erroneously written down the “\$” sign as she was scribbling down the instructions from Mother.¹⁹⁴

¹⁹¹ Andrew's AEIC at paras 20-21; Bernard's AEIC at para 23.

¹⁹² Mdm L's AEIC at para 18; LFC-6.

¹⁹³ Mdm L's AEIC at para 18; LFC-6.

¹⁹⁴ NE 23 January 2019 at pp 113-114.

69 According to Mdm L, it did not take Mother long to convey her instructions as she was “clear and knew what she wanted to state in her will”.¹⁹⁵ The specific bequests made by Mother were also consistent with what Mdm L knew of Mother and her relationships with her children from their “chit chat” sessions.¹⁹⁶

(a) It came as no surprise to Mdm L that Derek was only given a fixed monetary sum of \$10,000 as compared to her other three sons. Mother had previously told Mdm L about her strained relationship with Derek.¹⁹⁷

(b) Her decision to give Celine only half a share of the estate was not unexpected as Mdm L knew Mother to be a traditional woman.

(c) Mother had also considered her step-children from Father’s first marriage and gave them pecuniary sums.

Mdm L informed Mother that she would draft the Will on the basis of the instructions and that Mother could come back in a week to go through the draft and execute the Will.¹⁹⁸ Both Andrew and Bernard did not give any instructions to Mdm L, other than a short greeting when they saw her.¹⁹⁹ Eric did not attend the appointment.

¹⁹⁵ Mdm L’s AEIC at para 19.

¹⁹⁶ Mdm L’s AEIC at para 19.

¹⁹⁷ NE 23 January 2019 at p 52.

¹⁹⁸ Mdm L’s AEIC at para 20.

¹⁹⁹ Andrew’s AEIC at para 22; Bernard’s AEIC at para 24.

(3) Execution of the Will on 29 May 2002

70 On 29 May 2002, Mother came back to Mdm L’s office to sign the Will. Mdm L could not recall if Mother was accompanied by anyone else and did not keep an attendance note of that appointment.²⁰⁰ Mother was given a copy of the draft of the Will and Mdm L translated each line to Mother in Cantonese and explained the contents of the Will to her.²⁰¹ Mother said that “she understood the contents, was happy with the draft and did not require any changes to be made”²⁰² Thereafter, Mdm L engrossed a final copy of the Will and Mother signed her name in Chinese, with Mdm L and her secretary signing the Will as witnesses.²⁰³

(4) Mdm L’s recollection of Mother’s behaviour at both meetings

71 According to Mdm L, at both meetings on 22 and 29 May 2002, Mother was “clear and lucid” and “was her normal chatty self”.²⁰⁴ Mdm L described Mother as “very clear and rational” at the time of making of the Will.²⁰⁵ Mdm L also described Mother to be “systematic and methodical” in settling her personal affairs in order after Father’s passing based on how she had timed and planned her visits and instructions to Mdm L:²⁰⁶

²⁰⁰ NE 23 January 2019 at p 96.

²⁰¹ Mdm L’s AEIC at para 21.

²⁰² Mdm L’s AEIC at para 21.

²⁰³ Mdm L’s AEIC at para 21; LFC-7.

²⁰⁴ Mdm L’s AEIC at para 23.

²⁰⁵ Mdm L’s AEIC at para 26.

²⁰⁶ Mdm L’s AEIC at para 24.

- (a) About a month after the late Father's passing on, in late February 2002, Mother came to lodge the Notice of Death with the Singapore Land Authority for the Family Property.
- (b) As the effective sole owner of the Family Property, she then instructed Mdm L to send a legal letter to Derek to evict him.
- (c) When she came back to collect the updated Certificate of Title on 22 May 2002, she gave Mdm L instructions on the drafting of the Will.
- (d) On 29 May 2002, Mother executed the Will (drafted in accordance with her instructions on 22 May 2002).

72 At the trial, Mdm L also described Mother as “shrewd” as she seemed to be in control of her finances and the manner in which she projected herself, and was able to relate to others in a way that did not offend anyone.²⁰⁷ It is Mdm L’s testimony that she was not aware that Mother had any mental illness at or before the time the Will was made.²⁰⁸ Had she been made aware or had any doubt of Mother’s testamentary capacity, or any doubt as to whether Mother fully understood the advice and explanations that were provided to her, Mdm L testified that she would have insisted that a doctor be present to confirm her testamentary capacity.²⁰⁹ Mdm L testified that based on her many years of experience and knowing Mother, she verily believed that Mother did possess

²⁰⁷ NE 23 January 2019 at p 112.

²⁰⁸ Mdm L’s AEIC at para 25.

²⁰⁹ Mdm L’s AEIC at para 25.

testamentary capacity to make the Will and that “there was a clear rationale behind each of the specific bequests made by her in [the Will]”.²¹⁰

73 After the execution of the Will, Mother visited Mdm L on several other occasions to converse with Mdm L, but never once brought up the Will or any desire to change the Will.²¹¹

When the Plaintiffs discovered the making and execution of the Will and its contents, and how they and the other beneficiaries conducted themselves thereafter

(1) The 1st Plaintiff (Derek)

74 On Derek’s version of events, the first time he found out about Mother’s intention to make the Will was on 29 May 2002. Diana heard about the Will from the family’s domestic helper.²¹² Eric later informed Derek that the Defendants had brought Mother to see a lawyer and had executed the Will.²¹³

75 On the Defendants’ version of events, Bernard met Derek in the garden of the Family Property on 30 May 2002²¹⁴ where Derek had told Bernard that Eric had informed Derek in Suntec City that Mother made the Will but did not give any share of the estate to Derek.²¹⁵ Bernard tried to pacify Derek and told him he should speak directly to Mother if he was unhappy about the Will.²¹⁶

²¹⁰ Mdm L’s AEIC at para 29.

²¹¹ Mdm L’s AEIC at para 28.

²¹² Derek’s AEIC at para 59; Diana’s AEIC at para 39.

²¹³ Derek’s AEIC at para 59.

²¹⁴ Bernard’s AEIC at para 57.

²¹⁵ Bernard’s AEIC at para 57.

²¹⁶ Bernard’s AEIC at para 57.

76 A few months after the Will was made, Derek said he confronted Andrew and asked him why he was in such a hurry to bring Mother to make the Will (on 29 May 2002) just two days before Derek and his family moved out (on 1 June 2002).²¹⁷

(2) The 2nd Plaintiff (Celine)

77 Celine said that Mother called her on or around 30 May 2002 to tell her that she had executed the Will and was only bequeathing half a share of the estate to her.²¹⁸ According to Celine, Mother sounded “uncertain and apprehensive” but she did not probe further for fear of upsetting Mother.²¹⁹ Celine was shocked to learn of the news since Mother had never once mentioned to her about an intention to making a will and, at that point, Father had passed away only a few months earlier on 25 January 2002.²²⁰

78 In the middle of 2002 when Celine returned to Singapore for the second time in that year, there was an argument involving Andrew, Bernard and Celine at a restaurant where Celine complained that Andrew and Bernard should not have reminded Mother to make the Will because if it had not been made, all the Siblings would receive an equal share under the laws of intestacy.²²¹

79 After Celine returned to Singapore from Australia at the end of 2002, she and Derek confronted the Defendants and asked them why they had

²¹⁷ Derek’s AEIC at para 69.

²¹⁸ Celine’s AEIC at para 41.

²¹⁹ Celine’s AEIC at para 41.

²²⁰ Celine’s AEIC at para 41.

²²¹ Bernard’s AEIC at para 61; Andrew’s AEIC at para 49.

unilaterally brought Mother to make a will.²²² According to the Plaintiffs, the Defendants came up with “excuses” for their actions, namely that they (a) wanted to prevent their step-siblings from claiming a share of Mother’s estate and (b) were concerned that the temple that Mother had ties to would also claim a share of Mother’s estate.²²³

80 After the various altercations, Celine refused to participate in extended family gatherings where Andrew and Bernard were present with their families.²²⁴ However, she continued to visit Mother at the end of each year in Singapore.²²⁵

81 According to the Defendants, the Plaintiffs never once confronted the Defendants with allegations that Mother lacked testamentary capacity to make the Will or that the Defendants had exercised undue influence on Mother.²²⁶

(3) Eric

82 Eric said Mother had never once mentioned to him that she was interested in making a will.²²⁷ Thus, he was surprised when he received a call from Mother on 29 May 2002 when Mother informed him that Andrew and Bernard had taken her to see a lawyer to execute the Will.²²⁸ Eric testified that he was never informed of any scheduled appointment for Mother to execute the

²²² Derek’s AEIC at para 70; Celine’s AEIC at para 49.

²²³ Celine’s AEIC at para 46; Derek’s AEIC at para 70.

²²⁴ Bernard’s AEIC at para 63.

²²⁵ Andrew’s AEIC at para 52.

²²⁶ Bernard’s AEIC at para 62.

²²⁷ Eric’s AEIC at para 11.

²²⁸ Eric’s AEIC at para 14.

Will.²²⁹ When Eric returned to the Family Property later in the day of 29 May 2002, he spoke to Mother about making the Will but Andrew allegedly lectured Mother against talking about the Will and she immediately kept quiet.²³⁰ On the other hand, Bernard testified that at Mother's request, he had fixed an appointment for her on 22 May 2002 and had called to inform Andrew and Eric. On the day itself, Bernard called to remind Andrew and Eric, but Eric did not turn up. In respect of the 29 May 2002 appointment, he called to inform Eric, but Eric did not turn up.²³¹ On balance, I accept Eric's evidence over Bernard's evidence and find that Eric only first knew about the Will on 29 May 2002. In my judgment, Eric's evidence that supports the Plaintiffs' case should be given greater weight than Bernard's evidence as the success of the Plaintiffs in the case would be against Eric's own financial interest. In the event that the Will is found to be invalid, Eric's share would be reduced in value as the estate now has to be shared between 5 beneficiaries, instead of 4½ beneficiaries after the pecuniary gifts.

Mother's alleged wish to change the Will in February 2003

83 Parties also gave conflicting accounts of an alleged incident in February 2003 between Andrew and Mother, where Mother was said to have expressed an intention to change the Will.

84 It is Daniela's testimony that in February 2003, during the first Chinese New Year after Father's passing, Mother had informed Daniela that she wanted to give Daniela and her brothers a share under the Will and wished to change

²²⁹ Eric's AEIC at para 15.

²³⁰ Eric's AEIC at para 16.

²³¹ Bernard's AEIC at paras 21-22, 26; NE 22 January 2019 at p 149.

her will.²³² However, Andrew reprimanded her and told her that she could not do so as “it would not be fair to the other grandchildren” and Mother “looked guilty”.²³³ According to Ellen, she witnessed a conversation between Mother and Andrew where he advised Mother against considering to give \$200,000 to each of Derek’s children under the Will, as it might be contested and the Will might not be valid.²³⁴ On the other hand, Andrew categorically denied that such an incident had occurred and testified that Mother never said anything to him about wishing to amend the Will.²³⁵

Mother’s medical history

85 I now turn to Mother’s medical history.

Expert witnesses

86 The following expert witnesses were called to testify regarding Mother’s medical condition for reference in this section.

Capacity	Name	Relationship to testator
Plaintiffs’ expert witness (PW9)	Dr Tan Chue Tin (“Dr Tan”)	Mother’s treating physician from April 2003, ²³⁶ after she suffered lithium poisoning.

²³² Daniela’s AEIC at para 40(d).

²³³ Daniela’s AEIC at para 40(d).

²³⁴ NE 11 January 2019 at p 75.

²³⁵ Andrew’s AEIC at para 69.

²³⁶ Chronology No 64; Dr Tan’s notes at WCT-4.

		He also certified that Mother did not have mental capacity on 26 November 2010.²³⁷ Main author of Joint Expert Report
Plaintiffs' expert witness (PW8)	Dr Ung Eng Khean ("Dr Ung")	Co-author of Joint Expert Report
Defendants' expert witness (DW5)	Dr Leslie Lim ("Dr Lim")	Mother's main treating physician ²³⁸ when she was a patient at IMH from 1998 to early 2003.
Defendants' expert witness (DW6)	Dr Chee Kuan Tsee ("Dr Chee")	Mother's treating physician at IMH when Dr Lim was not available.

87 For the Plaintiffs, Dr Tan and Dr Ung collectively penned a Joint Expert Psychiatric Report dated 13 November 2018 (the "Joint Expert Report").

88 For the Defendants, Dr Lim prepared two reports: the first report dated 23 November 2017 ("Dr Lim's 1st Expert Report")²³⁹ and the second report dated 21 December 2019 in response to the Joint Expert Report ("Dr Lim's 2nd

²³⁷ Chronology No 72.

²³⁸ Joint Expert Report at para 69.

²³⁹ Dr Lim's AEIC at LLEC-8.

Expert Report”).²⁴⁰ Dr Chee prepared one report dated 23 January 2018 (“Dr Chee’s Expert Report”).²⁴¹ After the amendment of pleadings in HCF/SUM 125/2019 (“Summons 125”), the Defendants were allowed to recall Dr Lim as a witness and to file a supplementary AEIC by Dr Lim.²⁴²

May 1978 diagnosis

89 Mother was emotionally unstable and mentally unwell for years and started seeing Dr Wong, a Senior Consultant Psychiatrist (since deceased), on two occasions in May 1978 for a severe psychotic breakdown with prominent symptoms of schizophrenia, including disorders, hallucinations, delusions and violent, aggressive behaviours.²⁴³ She was also diagnosed with manic depression (otherwise known as bipolar disorder).²⁴⁴

90 There was a long gap of almost 20 years after the outpatient consultations in May 1978 when Mother did not consult any psychiatrist and was not prescribed any psychotropic medications.²⁴⁵

Mood swings

91 Daniela testified that over the years, when Mother lapsed into one of her unstable moods, she would suffer from delusions. These occurred with

²⁴⁰ Report attached to Letter from Defendants dated 21 December 2018.

²⁴¹ Dr Chee’s AEIC at CKT-3.

²⁴² Dr Lim’s Supplementary AEIC.

²⁴³ Joint Expert Report at para 28.

²⁴⁴ Joint Expert Report at para 39.

²⁴⁵ Joint Expert Report at para 40.

increasing frequency and severity as she aged.²⁴⁶ Sometimes during her unstable moods, Mother would display religious fervour and chant to herself, at times in the middle of the night, and spend an increased amount of time at the altar.²⁴⁷ Mother would hand Daniela joss sticks and demand that she pay respects to their ancestors if Daniela were in the vicinity.²⁴⁸ During her most extreme mood swings, Mother would scream at people around her.²⁴⁹ According to Daniela, the mood swings were influenced by both negative stimuli (*eg*, stress from organising annual religious events and losing money in her shares) and positive stimulators (*eg*, going on holidays).²⁵⁰ When Mother appeared to be experiencing a “low”, she would be hostile and cold towards Daniela, accuse Daniela of not loving her, and even ignore Daniela for one to two days.²⁵¹

Admission into Adam Road Hospital in October 1997

92 In October 1997, Mother’s condition worsened and she was found at the Family Property wielding a knife and screaming for no reason. No one was able to calm her down. Father had to call ARH to send help to the Family Property.²⁵²

93 Mother was admitted in ARH for the first time from 5 October 1997 to 17 November 1997. The medical report from ARH dated 29 March 2017 stated that the diagnosis of Mother in 1997 was that of depressive psychosis.²⁵³ She

²⁴⁶ Daniela’s AEIC at para 14(a).

²⁴⁷ Daniela’s AEIC at para 14(b).

²⁴⁸ Daniela’s AEIC at para 14(b).

²⁴⁹ Daniela’s AEIC at para 14(c).

²⁵⁰ Daniela’s AEIC at para 17.

²⁵¹ Daniela’s AEIC at para 18.

²⁵² Andrew’s AEIC at para 11; Joint Expert Report at para 41.

²⁵³ Bernard’s AEIC at GWCC-3 p 4.

also had symptoms of unstable mood and abnormal behaviour, including agitated behaviour, disinhibited behaviour, talkativeness, irritability, threatening behaviour, muttering to herself, chanting to herself, talking to herself, irrational speech, poor sleep and hostility.²⁵⁴ By the time Mother was discharged, her condition had stabilised and was “her usual pleasant self again and completely normal”.²⁵⁵

94 At her review on 2 December 1997, Dr Wong noted that Mother relapsed and “became Schizophrenic”.²⁵⁶ This was the last review by Mother in ARH, and she was subsequently seen at the IMH by Dr Lim.

September to December 1998

95 In 1998, Mother was admitted to IMH from 24 September 1998 to 2 November 1998 (40 days), on 8 November 1998, and again from 23 November 1998 to 5 December 1998 (18 days).²⁵⁷ She was diagnosed to be “psychotic, paranoid and delusional”.²⁵⁸ She held a delusion that she had been followed by people from the government for more than 10 days when she went out.²⁵⁹ There were mentions of Mother’s mental condition as schizo-affective disorder in medical notes on two instances and once in a nursing note on 26 September 1998.²⁶⁰

²⁵⁴ Bernard’s AEIC at GWCC-3 p 5.

²⁵⁵ Bernard’s AEIC at para 14.

²⁵⁶ Joint Expert Report at para 47.

²⁵⁷ Joint Expert Report at paras 58-66.

²⁵⁸ Joint Expert Report at para 56.

²⁵⁹ Joint Expert Report at para 56.

²⁶⁰ AT at pp 6, 7 and 18.

96 As Mother’s gait was unsteady and she was incontinent in urine, she was admitted to Tan Tock Seng Hospital (“TTSH”) from 17 to 23 November 1998 due to a suggestion of a neurological disorder.²⁶¹

December 1998 to February 2003

97 Following her discharge from inpatient treatment, Mother was seen as an outpatient in IMH on multiple occasions from December 1998 to February 2003, mostly by Dr Lim.²⁶² Of importance, based on the records in Dr Lim’s medical notes from Mother’s many outpatient visits during this period, the following events (including relapses of Mother’s condition) occurred.²⁶³

(a) During the visit on 17 March 1999, Mother accused Derek of threatening her with assault and “push[ing] door against her head” when she knocked on his door wanting to speak to him.²⁶⁴ It is crucial to note that this was several months before Mother’s unsuccessful PPO application against Derek on 14 September 1999 (see above at [35]).

(b) Mother defaulted follow-up consultations and medication in the first half of the 2000. On 22 May 2000, Mother was brought to IMH by an ambulance accompanied by Andrew, Bernard and Eric for the relapse of her illness that occurred a week after Celine left for Australia.²⁶⁵ Mother was dressed in black Buddhist robes and had threatened to move

²⁶¹ Joint Expert Report at para 64.

²⁶² Joint Expert Report at para 69.

²⁶³ Joint Expert Report at para 81.

²⁶⁴ Joint Expert Report at para 81.

²⁶⁵ Joint Expert Report at para 70.

out of the house.²⁶⁶ She told Dr Lim in an interview on 23 May 2000 that she was better off dead as her husband did not love her.²⁶⁷

(1) Outpatient visits proximate to the making and execution of the Will

98 In January 2002, Mother's maid alleged that she had been assaulted by Mother. During investigations, the police requested a medical report on Mother from IMH.²⁶⁸ In this medical report, Dr Lim stated that Mother was not of unsound mind and certified that she was fit to plead.²⁶⁹ When Father's health deteriorated as he was diagnosed with cancer, Daniela described Mother to be constantly irritable, emotionally detached and increasingly withdrawn.²⁷⁰ Mother informed Dr Lim during the outpatient visit on 16 January 2002 that she felt sad about Father's heart condition and serious illness.²⁷¹ This was shortly before Father passed away on 25 January 2002.

99 During the outpatient visit when she was seen by Dr Lim on 27 February 2002, Mother mentioned that Father died a month ago and that she was grieving.²⁷² Mother said that she missed him and that he had loved her.²⁷³

²⁶⁶ Joint Expert Report at para 70.

²⁶⁷ Joint Expert Report at para 76.

²⁶⁸ BA at p 106 (IMH Report dated 24 January 2002); Chronology No 38.

²⁶⁹ Dr Lim's AEIC at para 14.

²⁷⁰ Daniela's AEIC at para 19.

²⁷¹ Joint Expert Report at para 81.

²⁷² Chronology No 43; Dr Lim's AEIC at LLEC-2.

²⁷³ Joint Expert Report at para 81.

100 During the outpatient visit when she was seen by Dr Lim on 10 April 2002, it was noted that Mother's mood was *stable* and she still missed Father.²⁷⁴ She was "at times tearful" as she was grieving but her sleep and appetite were normal.²⁷⁵ This was the most recent visit to IMH before the making and execution of the Will by Mother on 29 May 2002.

101 On 30 May 2002 (*ie*, one day after making the Will), Mother went for an outpatient appointment at the IMH. She saw Dr Chee, who noted the following:²⁷⁶

Patient came with a son (unnamed).

She looked puffy, walked stiffly and smelled of urine with a history of urinary incontinence.

She was on treatment for diabetes and had a blood pressure of 150/90.

Her sleep and appetite were apparently satisfactory.

She stated that her husband passed away in Jan 2002 and she was still grieving over him having been married for 50 years. It was also revealed that the court case over her maid was pending.

She was staying with a married son (unnamed) who was moving out because of disagreement.

Her regular medicines prescribed by Dr Leslie Lim were repeated for 6 weeks.

102 On 16 July 2002, Mother saw Dr Chee at another outpatient appointment, and he noted the following:²⁷⁷

²⁷⁴ Joint Expert Report at para 81.

²⁷⁵ Chronology No 46; Dr Lim's AEIC at LLEC-2; AT at p 90; NE 24 January 2019 at p 179.

²⁷⁶ Dr Chee's AEIC at CKT-2 and CKT-3 (Letter dated 23 January 2018).

²⁷⁷ Dr Chee's AEIC at CKT-2 and CKT-3 (Letter dated 23 January 2018); AT at p 90.

...

She was spontaneous and talkative. She asked about Dr Lim and wanted to send him a bouquet of flowers. She remembered me and talked about missing her husband. She reported not sleeping so good for last few nights but eating alright. Her son said she was a little high.

It was claimed that she was regular with medication.

She was living alone with maid but her children took turn to visit her daily.

She was prescribed 6 weeks of dothiepin 25 mg nocte, thioridazine 25 mg nocte, lithium 400 mg nocte and two weeks of diazepam 5 mg nocte to be taken when necessary.

...

... However on 16 July 2002 diazepam 5 mg nocte was added for her sleep problem. No change in medication would indicate that she was fairly stable though a little "high" in spirit.

103 On 27 August 2002, 9 October 2002 and 27 November 2002, Mother resumed seeing Dr Lim at IMH.²⁷⁸ During her outpatient visit on 27 August 2002, it was noted that Mother was *euthymic*, was not convicted in court and seemed to have put on weight.²⁷⁹

104 Less than a year after making and executing the Will in May 2002, Mother's health steadily deteriorated such that she could barely walk and could not speak coherently.²⁸⁰ Mother also suffered from uncontrolled chronic diabetic state in November 2002 and had to undergo regular treatment.²⁸¹

²⁷⁸ Chronology No 46; Dr Lim's AEIC at LLEC-2.

²⁷⁹ Joint Expert Report at para 81.

²⁸⁰ Celine's AEIC at para 51.

²⁸¹ Celine's AEIC at para 51; Joint Expert Report at para 81.

Lithium Poisoning in April 2003

105 In or around April 2003, Mother was hospitalised for lithium poisoning at Mount Elizabeth Hospital Medical Centre in a comatose state, and was treated by Dr Tan.²⁸² Mother had previously been taking lithium as her treatment for bipolar disorder.²⁸³

106 By the end of 2003, Mother could not speak properly and was mostly bedridden, cognitively impaired and unable to respond coherently.²⁸⁴ She was also wheelchair bound and never fully recovered from the overdose of her prescription medication.²⁸⁵

The loss of her mental capacity and appointment of deputies

107 On 15 November 2010, Eric and Ellen brought Mother to Dr Tan to be assessed for her mental capacity.²⁸⁶ On 26 November 2010, Dr Tan issued a medical report diagnosing Mother to be suffering from an unsoundness of mind arising from dementia, and stating that she was hence unable to make decisions for herself, or manage herself, her properties and assets.²⁸⁷

108 On 10 January 2011, an application was made by Derek, Celine and Eric to be Mother's deputies under the Mental Capacity Act (Cap 177A, 2010 Rev

²⁸² Chronology No 64; Dr Tan's notes at WCT-4.

²⁸³ Celine's AEIC at para 52.

²⁸⁴ Daniela's AEIC at paras 42-43.

²⁸⁵ Daniela's AEIC at para 44.

²⁸⁶ Chronology No 72.

²⁸⁷ Chronology No 73.

Ed).²⁸⁸ A cross-claim was made by Andrew and Bernard to be appointed as Mother's deputies on 21 April 2011.²⁸⁹ On 18 January 2012, Celine, Eric, Andrew and Bernard were, by consent, appointed as Mother's deputies pursuant to an Order of Court.²⁹⁰

Mother's passing

109 Mother passed away on 27 November 2016.²⁹¹

Reading of the Will and Grant of Probate after Mother's passing

110 On 16 January 2017, Andrew and Bernard called a family meeting to formally read the Will.²⁹² After the Will was read out, they said that the Plaintiffs did not appear surprised by the contents of the Will as they were already aware of the contents of the Will since 2002.²⁹³

111 On 14 February 2017, Andrew and Bernard extracted the grant of probate of the Will.²⁹⁴ On 17 February 2017, Derek sent a letter to Andrew and Bernard informing them of his intention to challenge the Will and that he did not accept the Will as a valid expression of Mother's legacy.²⁹⁵

²⁸⁸ Chronology No 74.

²⁸⁹ Chronology No 74.

²⁹⁰ Chronology No 74.

²⁹¹ Chronology No 75; Andrew's AEIC at para 54.

²⁹² Chronology No 78.

²⁹³ Andrew's AEIC at para 56.

²⁹⁴ Chronology No 79; AB at p 5.

²⁹⁵ Chronology No 80; Derek's AEIC WCT-16 at p 474.

The case

112 On 1 March 2017, the Plaintiffs commenced HCF/S 2/2017.²⁹⁶ The trial originally took place over three weeks in January 2019. However, after the completion of the trial and the exchange of two rounds of written submissions and one round of oral submissions, the Plaintiffs applied in Summons 125 to re-amend their Statement of Claim.

Summons 125: the amendment to the Statement of Claim

113 On 6 September 2019, I allowed the Plaintiffs' application under Summons 125. Besides editorial amendments, the only amendment sought was to insert in para 6 of Statement of Claim (Amendment No 1) the sentence in italics below in the amended Statement of Claim (Amendment No 2):

[Mother's] lack of testamentary capacity is evidenced by her history of mental illness, dating back from the 1970s. [Mother] suffered, *inter alia*, from schizophrenia and bipolar syndrome. *In particular, [Mother] suffered from psychosis, including a delusion / overvalued idea that the 1st Plaintiff was out to harm her.* She was on permanent medication, but was not diligent about taking her medication, such that she was prone to bouts of extreme mood swings, violence and irrational behaviour.

114 I have provided my reasons for granting the amendment in a judgment released *via* Registrar's Notice on 9 September 2019, which I now summarise.

115 First, in order to arrive at a comprehensive decision, I was of the view that it was necessary to deal with the issue on the existence of the delusions and overvalued ideas suffered by Mother when she was in a euthymic state.

²⁹⁶ Chronology No 81.

116 Second, I disagreed with the Defendants' submission that the amendment contradicted the evidence. On the contrary, there was some evidence that supported the amendment.

117 Third, this case concerned the mental state of Mother. Most of the factual evidence on this matter had been ventilated, and what remained could be elicited from further cross-examination. The rest turned on the expert evidence of the doctors. There was a divergence in expert opinion, in particular between Dr Tan and Dr Lim, on the existence of delusions and overvalued ideas in Mother when she was in remission, which remained unresolved and was dealt with in the second tranche of the trial.

118 Fourth, I disagreed with the Defendants' submission that the amendment would result in prejudice being caused to them in a manner that could not be compensated by costs. Any prejudice would be substantially mitigated by the granting of leave for the Defendants to amend their Defence & Counterclaim; apply for further and better particulars, interrogatories and discovery; recall witnesses (including expert witnesses) for cross-examination; and adduce evidence from expert witnesses (including new expert witnesses, if required).

119 Fifth, the focus of the additional enquiry was limited to the sole issue of Mother's mental condition when she is in a euthymic state and its impact on her testamentary capacity. Therefore, allowing the amendment would not cause substantial prejudice to the Defendants.

120 The Plaintiffs originally pleaded in paragraph 6 of the Statement of Claim (Amd No 1) that "[Mother] suffered, *inter alia*, from schizophrenia and bipolar syndrome". However, the Plaintiffs did not plead the mental disorder "psychosis", or the term "delusion/overvalued idea". The amendment sought by

the Plaintiff was specific to the mental condition of Mother, as the Plaintiffs sought only to add to paragraph 6 of the Statement of Claim the following sentence: “In particular, [Mother] suffered from psychosis, including a delusion/overvalued idea that the 1st Plaintiff was out to harm her”.

121 As mentioned above at [10], psychosis is defined as “mental disorder in which the thoughts, affective response, ability to recognize reality, and ability to communicate and relate to others are sufficiently impaired to interfere grossly with the capacity to deal with reality”: see Agreed Glossary of Medical Terms. Dr Tan testified that in a bipolar disorder with psychosis, it is possible to have psychosis within the bipolar disorder disturbance as well as outside of the bipolar disorder disturbance.²⁹⁷ It was also Dr Tan’s evidence that for schizo-affective disorder, there could be a psychotic element as well.²⁹⁸ Further, Dr Tan testified that bipolar I disorder has several classifications, with or without psychosis.²⁹⁹ According to the *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Publishing, 5th Ed, 2013) (“DSM-5”) at p 123, the criteria for a diagnosis of bipolar 1 disorder also does not require psychosis to be present. The medical evidence before the court at the time of the application for Summons 125 was therefore that psychosis is an independent mental disorder from bipolar syndrome, which can be present separately.

122 As regards to the adding of the term “delusion/overvalued idea” in the proposed amendment of the Statement of Claim (Amd No 1), the classical characteristics of psychosis are “impaired reality testing, hallucinations, delusions and illusions”: see [10] above. Delusions are therefore characteristics

²⁹⁷ NE 16 January 2019 at p 87

²⁹⁸ NE 16 January 2019 at p 87

²⁹⁹ NE 16 January 2019 at p 142

of psychosis. As for the term “overvalued ideas”, Dr Tan’s testified on 18 January 2019 that an overvalued idea is a less intense form of delusion.³⁰⁰ Dr Lim confirmed that according to the DSM-5 definition, when compared to a delusion which is a false, *unshakeable* belief, an overvalued idea is a false, *shakeable* type of belief.³⁰¹ As delusions and overvalued ideas are characteristics of psychosis, I found that their inclusion in the pleadings were not strictly necessary but helped to define the nature of the Plaintiffs’ case.

123 Since “psychosis” is an independent mental disorder from “bipolar syndrome” and bipolar I disorder could be present with or without psychosis, I held the view that the Plaintiffs were introducing *a new mental disorder*, circumscribed by the characteristics that are included, through the amendment of the pleadings, despite the Plaintiffs’ submission that the amendment was to clarify that the bipolar disorder was accompanied by psychosis. In fact, the Plaintiffs’ written submissions for Summons 125 stated that the amendment “seeks to simply and explicitly spell out the Plaintiffs’ position that Mother harboured a delusion that [Derek] was out to harm her”.³⁰² The Plaintiffs eventually shifted their position in their further closing submissions in the second tranche of the trial that the pleaded psychosis was independent of Mother’s bipolar disorder (which I will elaborate on below). I also accepted that the amendment added a new mental disorder that the Plaintiffs rely on for alleging that Mother lacked testamentary capacity.

124 For the reasons above, I allowed the Plaintiffs’ application for amendment so as to make it clear that the mental disorders on which the

³⁰⁰ NE 18 January 2019 at p 15.

³⁰¹ NE 24 January 2019 at p 111.

³⁰² Plaintiffs’ Submissions for SUM 125/2019 at para 11.

Plaintiffs are basing their claim that Mother did not have testamentary capacity include psychosis that is defined by the characteristics described. This would put to rest the question of whether the shares given to Derek and Celine were the result of Mother's lack of testamentary capacity, taking into account any mental illnesses that she may have been suffering from.

125 In addition, I granted leave for the Defence and Counterclaim (and subsequent pleadings, if necessary) to be amended and allowed both the Plaintiffs and Defendants to recall witnesses (including expert witnesses) for cross-examination, and adduce evidence from expert witnesses (including new expert witnesses, if required) *only* on the issue of delusions or overvalued ideas of Mother when she was in a euthymic state. Consequent to the amendment of the Defence and Counterclaim by the Defendants, para 6 of the Defence and Counterclaim (Amendment No 2) reads as follows (with the amendments appearing in italics):

Save that [Mother] had sought treatment for her mental condition since the 1990s, paragraphs 6 to 9 of the Statement of Claim ~~(Amendment No. 1)~~ (Amendment No. 2) are denied and the Plaintiffs are put to strict proof thereof. The Defendants aver that [Mother] had full testamentary capacity to make the Will on 29 May 2002. *[Mother] never had or expressed any delusion or overvalued idea concerning the 1st Plaintiff at any time, even when she was having a manic episode. In any event, at the time of the Will, [Mother] was in remission of her bipolar disorder.* Subject to discovery in this action and/or the administration of interrogatories in this action, the best particulars that the Defendants are presently able to furnish are as follows.

126 The Plaintiffs furnished Further and Better Particulars of the amended para 6 in Statement of Claim (Amendment No 2). The Plaintiffs pleaded that Mother suffered from psychosis as a mental disorder independent from bipolar syndrome and that the symptoms of her psychosis, in particular her delusions or

overvalued ideas, intensified when she was suffering from a mood episode.³⁰³ In particular, the Plaintiffs claimed that Mother's psychosis was diagnosed and recorded by Dr Wong in ARH on 5 October 1997, and subsequently recorded as "acute psychosis" in Dr Lim's medical notes on Mother when she was admitted to IMH on 24 September 1998 as well as in a nursing note dated 2 November 1988. However, no distinction was sought to be made as to whether Mother's psychosis was independent of her bipolar condition.³⁰⁴ The Plaintiffs further asserted that Mother's delusion/overvalued idea that Derek was out to harm her caused Mother's decision to only bequeath \$10,000 to Derek.³⁰⁵

The parties' cases

127 I now turn to deal with the parties' cases, taking into account the amendment introduced after Summons 125 was granted.

128 The Plaintiffs challenged the validity of the Will on the basis that it was made at a time when Mother lacked testamentary capacity.³⁰⁶ The Plaintiffs pleaded that Mother's lack of testamentary capacity was evidenced by her *schizophrenia* and *bipolar syndrome*, and that in particular, she suffered from *psychosis*, including a *delusion or overvalued idea* that Derek was out to harm her.³⁰⁷ Mother also did not receive the benefit of independent legal advice at the time she purportedly made the Will.³⁰⁸

³⁰³ Further and Better Particulars (Amd No 2) dated 8 November 2019 Question and Answer to 1(a).

³⁰⁴ Further and Better Particulars (Amd No 2) dated 8 November 2019 Question and Answer to 1(b).

³⁰⁵ Further and Better Particulars (Amd No 2) dated 1 October 2019 Question and Answer to 1(f).

³⁰⁶ Statement of Claim (Amendment No.2) ("SOC 2") at para 5.

³⁰⁷ SOC 2 at para 6.

129 Alternatively, the Plaintiffs claimed that the Will was made under the undue influence of the Defendants.³⁰⁹ They argued that the Defendants capitalised on Mother's mental fragility, her fear of being left alone after Father's passing and her irrational feelings about her family members, to persuade her to make a Will that could not reasonably reflect her true wishes.³¹⁰

130 The details of each plank of the Plaintiffs' claim will be dealt with below.

131 The Plaintiffs claimed the following reliefs, *inter alia*: (a) an order that the grant of probate dated 30 December 2016 and extracted on 14 February 2017 be revoked; and (b) a declaration that the estate of Mother be distributed in accordance with the provisions of the Intestate Succession Act.³¹¹

132 On the other hand, the Defendants' defence is that Mother made the Will of her own volition and that the Will was *not procured by the undue influence* of the Defendants as alleged or at all.³¹² The Defendants also averred that Mother had full testamentary capacity to make the Will on 29 May 2002, and that she *never had or expressed any delusion or overvalued idea* concerning Derek at any time, even when she was having a manic episode.³¹³ At the time of the Will, Mother was *in remission of her bipolar disorder*.³¹⁴

³⁰⁸ SOC 2 at para 9.

³⁰⁹ SOC 2 at para 5.

³¹⁰ SOC 2 at para 12.

³¹¹ SOC 2 at para 18.

³¹² Defence and Counterclaim (Amendment No. 2) ("D&CC 2") at para 2.

³¹³ D&CC 2 at para 6.

³¹⁴ D&CC 2 at para 6.

133 In their counterclaim, the Defendants sought, *inter alia*, (a) a declaration pronouncing the force and validity of the Will dated 29 May 2002 made by Mother; and (b) a declaration that the Grant of Probate issued to the Defendants on 14 February 2017 be upheld.³¹⁵

My decision

134 For a will to be found valid, three elements must be satisfied: the testator must (a) have the mental capacity to make a will; (b) have knowledge and approval of the contents of the will; and (c) be free from undue influence or the effects of fraud: *Chee Mu Lin Muriel v Chee Ka Lin Caroline (Chee Ping Chian Alexander and another, interveners)* [2010] 4 SLR 373 (“*Muriel Chee*”) at [37].

135 As explained above at [128]–[132], the parties contested only the first and third elements. As regards the second element, the Plaintiffs did not sufficiently plead that Mother did not have knowledge of and did not approve the contents of the Will in their pleadings. An examination of the relevant case law demonstrates that the element of a testator’s knowledge and approval of the contents of the will has been considered as a distinct issue from the element of the testator’s testamentary capacity and both elements have to be separately pleaded: see *Muriel Chee* at [50]–[63]; *ULV v ULW* [2019] 3 SLR 1270 at [25]–[35]. The Plaintiffs merely raised this point in their closing submissions. It is now not open for the Plaintiffs to retrospectively raise a new contention in relation to the second element to the prejudice of the Defendants. It is trite law that parties are bound by their pleadings and by their agreement or admissions in the court, and the court cannot decide on issues not raised in the pleadings:

³¹⁵ D&CC 2 at para 12.

Panachand & Co (Pte) Ltd v Riko International Pte Ltd [1985-1986] SLR(R) 311 at [7].

136 I also rejected the Plaintiffs’ submission that because they had pleaded that Mother “did not receive the benefit of independent legal advice at the time she purportedly made the Will”, the “only interpretation” of this pleading must be that Mother did not properly know or approve of the contents of the Will.³¹⁶ In my view, I cannot see how this would be the “only interpretation” of the fact that independent legal advice was absent at the time Mother made the Will and most definitely does not qualify as sufficient pleading that Mother did not properly know or approve of the contents of the Will. Indeed, the Will was made by Mdm L, a lawyer who was familiar with the business and personal matters of Mother and Father, and who had previously acted for Mother in her property transactions (see [63] above). To accept that “independent legal advice” is a legal requirement for the Will to be valid risks invalidating many wills that are made by testators in a similar position as Mother.

137 In *SIC College of Business and Technology Pte Ltd v Yeo Poh Siah and others* [2016] 2 SLR 118, the Court of Appeal emphasised that the underlying consideration of the law of pleadings is to prevent surprises arising at trial (at [46]). I note that the Plaintiffs raised no objections when the Defendants expressly submitted twice (*ie*, in both its written and oral opening statements) that the Plaintiffs were not disputing the limb of the testator’s knowledge and approval of the contents of the will, and that the *only two* issues before the court were (a) Mother’s testamentary capacity and (b) the undue influence allegedly

³¹⁶ Plaintiffs’ Reply to Closing Submissions at para 93.

exerted on Mother by Andrew and Bernard.³¹⁷ To allow the Plaintiffs to now run an unpleaded case that Mother did not have knowledge and approval of the contents of the Will that was first mentioned in their closing submissions would clearly undermine the purpose of the law of pleadings, which is to prevent surprises at trial. In my judgment, it would also be substantially prejudicial to the Defendants. The Plaintiffs were already granted a very late amendment to their Statement of Claim pursuant to Summons 125 after the trial had ended and written and oral submissions were exchanged, and the second element was nevertheless not pleaded.

Issues to be determined

138 In light of the above, there are two key issues that arise for my determination:

- (a) whether Mother lacked testamentary capacity at the time of making and executing the Will; and
- (b) whether Mother made and executed the Will under the undue influence of the Defendants.

Testamentary Capacity

139 I start with the issue of whether Mother lacked testamentary capacity at the time of making and executing the Will.

140 In this section, I will first deal with the Plaintiffs' pleaded claim and their shifts in positions throughout both tranches of the trial. Thereafter, I will

³¹⁷ Defendants' Opening Statement para 25; NE 8 January 2019 at p 28 lines 11-14.

address the diagnosis of Mother's mental condition. I will then address the following sub-issues: (a) whether Mother's bipolar disorder with psychosis was in remission; and (b) whether Mother suffered, at the time of making and executing the Will, from delusions or overvalued ideas that Derek was out to harm her. Following from my findings on the various sub-issues, I will conclude whether Mother lacked testamentary capacity at the time of making and executing the Will.

The Plaintiffs' claim

141 The Plaintiffs originally pleaded that Mother lacked testamentary capacity as she suffered from *schizophrenia* and *bipolar syndrome*.³¹⁸ During the course of the trial, the Plaintiffs abandoned their claim on schizophrenia,³¹⁹ given that both their own experts, Dr Tan and Dr Ung, contradicted the Plaintiffs' original case and had confirmed that Mother did not suffer from schizophrenia at the time of making and executing the Will.³²⁰

142 As a preliminary observation, the Plaintiffs' claim concerning Mother's lack of testamentary capacity was centrally grounded in the Dr Tan's and Dr Ung's Joint Expert Report. However, the Joint Expert Report listed numerous possible conditions that were likely to have adversely affected Mother's testamentary capacity, including, *inter alia*, paranoia and delusions, mood changes, cognitive impairment as a result of possible renal impairment and hyperglycaemia, family conflicts and her grief.³²¹ Many of these unpleaded

³¹⁸ SOC 2 para 6

³¹⁹ NE 25 January 2019, p 79 lines 17–21, 24 January 2019, p 150 lines 4–9

³²⁰ NE 16 January 2019, pp 80–81 (Dr Tan); 15 January 2019, pp 55–56 (Dr Ung).

³²¹ Joint Expert Report at Section IV, paras 92, 93, 114.

possible conditions were wanting in supporting evidence, made without any investigation into the evidence and eventually abandoned at trial. For instance, the Joint Expert Report claimed that Mother's renal impairment could have adversely affected her cognitive function and it was probable that Mother was cognitively impaired at the time of making and executing the Will during the period of May 2002.³²² However, at trial, when confronted with a conflicting medical report from Dr Gwee Hak Meng ("Dr Gwee"), who was Mother's treating physician for her diabetes from June 2000 to October 2016 which confirmed that Mother did not suffer from renal impairment from June 2000 to early 2003,³²³ Dr Tan and Dr Ung backtracked from their positions in the Joint Expert Report and conceded that there was indeed no renal impairment at the material time.³²⁴ Under cross-examination, Dr Ung also accepted the view of Dr Gwee that Mother did not have severe hyperglycaemia and conceded that Mother's testamentary capacity would not have been affected by hyperglycaemia at the time of the Will.³²⁵

143 Therefore, only the Plaintiffs' pleaded case on *bipolar syndrome* (a term which they use interchangeably with "bipolar disorder") from its original Statement of Claim remains for consideration. It is apposite to note at this juncture that it is not the Plaintiffs' case that a patient with bipolar disorder can *never* have the mental capacity to make a will. Pursuant to the amendments to their Statement of Claim in Summons 125, the Plaintiffs pleaded that, in particular, Mother suffered from *psychosis, including a delusion or overvalued*

³²² Joint Expert Report at paras 93, 98

³²³ Dr Lim's 2nd Expert Report at paras 3A(i), (iii), (vi), 3B(viii).

³²⁴ NE 16 January 2019 at pp 43 lines 15-18, 44 lines 2-5; NE 17 January 2019 at pp 45, 46 lines 8-11; 101 lines 22-24.

³²⁵ NE 16 January 2019 at pp 44 lines 12-24.

idea that Derek was out to harm her, which continued to operate at the time of making and executing the Will. The Plaintiffs also pleaded that Mother was grieving due to Father's passing, which had taken place three months before the time of making and executing the Will, and hence was not in a state of mind to make a will.³²⁶

144 The Plaintiffs argued that Mother had held the beliefs she had against Derek since he was a young boy and that these beliefs continued to torment her throughout her life.³²⁷ These “paranoid beliefs were of sufficient intensity that they were of a delusional nature (or at least in the form of overvalued ideas)” and such delusions and overvalued ideas persisted even when she was in a euthymic state.³²⁸ According to the Plaintiffs, these delusions or overvalued ideas existed and operated *independently* of Mother's bipolar illness.³²⁹ They claimed that Mother was on permanent medication, but was not diligent about taking her medication, such that she was prone to bouts of extreme mood swings, violence and irrational behaviour.³³⁰

145 I observe that there is a shift in the Plaintiffs' position from the evidence adduced by the Plaintiffs in the first tranche of trial to their pleadings and further closing submissions in the second tranche of trial.

(a) The Joint Expert Report by Dr Tan and Dr Ung adduced in the first tranche of trial stated that Mother's *paranoid delusions* against

³²⁶ SOC 2 para 7

³²⁷ Plaintiffs' Closing Submissions (“PCS”) at para 174

³²⁸ PCS at para 55, 61 and 174–175.

³²⁹ Plaintiffs' Further Closing Submissions (“PFCS”) at para 27.

³³⁰ SOC 2 at para 6.

Derek and his wife had *probably influenced* the Will in disposing of Mother's assets, which if she had been sound, would not have been made.³³¹ The Joint Expert Report did not address the question of whether Mother's bipolar disorder was *in relapse or in remission*. The Joint Expert Report stated that during Mother's *severe manic relapses* requiring involuntary admission to ARH and IMH, she had *psychotic symptoms of hallucination and paranoid delusions*.³³² Thus, the expert evidence given by Dr Tan and Dr Ung only briefly touched on the possibility of delusions affecting Mother's decision-making ability at the time of making and executing the Will, and having paranoid delusions was only listed as a symptom when Mother's *bipolar disorder with psychosis relapsed in its manic phase*. Read in its totality, the Joint Expert Report expressed an opinion that it was probable that at the time of making and executing the Will, Mother had displayed paranoid delusions *during a manic relapse of her bipolar disorder*.

(b) The same position was expressed by Derek and Celine on the stand during the first tranche of trial, where they both testified that it was *only during Mother's manic episodes* that Mother ostensibly had the alleged delusions about Derek and expressed her desire for Derek to leave the Family Property.³³³

(c) However, the Plaintiffs subsequently resiled from their original position that Mother's paranoid delusions against Derek only manifested

³³¹ Joint Expert Report at para 182.

³³² Joint Expert Report at para 179(h).

³³³ NE 8 January 2019 at pp 74 line 25 – 75 line 22; 10 January 2019 at pp 68 line 19 – 69 line 9.

itself during her relapses. In their further closing submissions, the Plaintiffs adopted the new position that Mother had delusions which could persist into remission, and that Mother's delusions or overvalued ideas existed and operated *independently* of Mother's bipolar illness.³³⁴ The Plaintiffs submitted that Mother's *pleaded psychosis* was independent of her bipolar condition and there was no causal relation between the two.³³⁵ They provided further and better particulars that (a) Mother suffered from psychosis as a mental disorder with symptoms independent from bipolar syndrome; and that (b) the symptoms of her *psychosis, in particular her delusions or overvalued ideas*, intensified when she was suffering from a mood episode.³³⁶

Medical evidence of Mother's mental condition

146 I start with the medical evidence adduced on Mother's mental condition.

147 For the purposes of their Joint Expert Report, Dr Tan and Dr Ung were instructed to *retrospectively* assess Mother's testamentary capacity at the time of the Will. Dr Tan was Mother's regular consulting psychiatrist while she was admitted to Mount Elizabeth Hospital and first saw Mother in 18 April 2003 when she suffered a lithium overdose (see above at [105]), which was nearly a year *after* the time of the Will (*ie*, 29 May 2002).³³⁷ Dr Ung has never seen Mother. Dr Ung admitted to not knowing what Mother's "norm" was, when making his assessment from a recorded video of Mother's level of participation

³³⁴ PFCS at paras 22, 27.

³³⁵ Plaintiffs' Further Reply ("PFR") at para 33.

³³⁶ Further and Better Particulars (Amd No 2) dated 8 November 2019 Question and Answer to 1(a).

³³⁷ Joint Expert Report at para 4.

at a birthday celebration that was played back in court.³³⁸ Francis Barlow *et al*, *Williams on Wills*, vol 1 (Butterworths, 10th Ed, 2014) at para 4.20 (citing *Blackman v Man* [2008] WTLR 389 and *Burgess v Hawes* [2013] EWCA Civ 94; [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* (see also *Yeo Henry (executor and trustee of the estate of Ng Lay Hua, deceased) v Yeo Charles and others* [2016] SGHC 220 (“*Yeo Henry*”) at [46]). The expert evidence of Dr Tan and Dr Ung on Mother’s condition at the time of making and executing the Will must thus be given limited weight.

148 In contrast, Mother was under the care of Dr Lim in IMH from 1998 to early 2003.³³⁹ Mother was admitted to IMH a total of four times during that period. In the year 2002, Mother was not admitted to IMH, but attended regular outpatient consultations at IMH on three occasions with Dr Lim on 16 January 2002, 10 April 2002 and 27 August 2002, and on two occasions with Dr Chee on 30 May 2002 and 16 July 2002.³⁴⁰ Dr Chee was a psychiatrist who saw Mother (on a stand-in basis) on behalf of Dr Lim when Dr Lim was away.³⁴¹ In particular, Dr Chee saw Mother on 30 May 2002, which was relatively proximate to the time of the making and executing of the Will on 22 and 29 May 2002 respectively. In that regard, more weight is attributed to Dr Chee’s assessment of Mother on 30 May 2002, which I will explain further below.

³³⁸ NE 17 January 2019 at p 22.

³³⁹ Dr Lim’s AEIC at para 6.

³⁴⁰ Dr Lim’s AEIC at para 9.

³⁴¹ Dr Chee’s AEIC at para 6.

(1) Bipolar disorder with psychosis

149 As for Mother's diagnosis, both the Plaintiffs' and Defendants' experts agreed that Mother suffered from bipolar 1 disorder.³⁴² At trial, they agreed that a more holistic diagnosis of Mother's mental condition would be that she suffered from *bipolar disorder with psychosis*.³⁴³

(a) Dr Tan and Dr Ung assessed Mother to be suffering from *paranoid psychosis* since the 1970s, probably bipolar disorder with *manic psychotic episodes* that needed involuntary admissions to the hospital.³⁴⁴ Mother had psychotic states with hallucinations, grandiose and paranoid delusions, thought disorders and violent behaviour. During these periods, she had paranoid ideas about various things including her husband having an affair, her maid stealing things from her, Derek and his wife, and the government.³⁴⁵

(b) Dr Lim clarified that the diagnosis of *bipolar disorder with psychosis* was a more accurate diagnosis of Mother, noting that not every bipolar patient has psychosis.³⁴⁶ In the second tranche of the trial, Dr Lim gave evidence that "psychosis" is a "non-specific umbrella term" that does not exist in isolation. If psychotic symptoms are observed, a treating physician must diagnose the condition giving rise to the psychosis, which could be caused by a brain tumour, substance-

³⁴² Joint Expert Report at para 178; Dr Chee's AEIC at Exhibit CKT-at p 2; Dr Lim's 1st Report (BA at p 1572).

³⁴³ NE 16 January 2019 at p 20 lines 2-7; NE 16 January 2019 at p 88 lines 1-9; NE 24 January 2019 at p 147 lines 16-20; NE 25 January 2019 at p 120 lines 8-15.

³⁴⁴ Joint Expert Report at para 116.

³⁴⁵ Joint Expert Report at paras 116, 119.

³⁴⁶ NE 24 January 2019 at p 147 lines 7-10.

induced psychotic disorder, bipolar disorder, schizophrenia or delusional disorder.³⁴⁷ Mother was however not diagnosed with psychosis as an independent psychiatric condition on its own.³⁴⁸

(c) Dr Chee diagnosed Mother with bipolar disorder, and clarified on the stand that as a mood disorder, *the bipolar disorder could be presented with psychotic symptoms*.³⁴⁹

(2) Schizo-affective disorder

150 The Plaintiffs also relied on the *possibility* of Mother's mental condition falling within the rubric of schizo-affective disorder in their closing submissions.³⁵⁰

151 I start with the medical evidence. There were mentions of Mother's mental condition as schizo-affective disorder in medical notes on two instances and once in a nursing note on 26 September 1998.³⁵¹ The experts disagreed on whether Mother could have suffered from a schizo-affective disorder. Both Dr Tan and Dr Ung were consistently of the view that a diagnosis of schizo-affective disorder could not be ruled out.³⁵² However, under cross-examination, Dr Tan accepted that it was *unlikely* that Mother suffered from schizo-affective disorder.³⁵³ On the other hand, in his 2nd Expert Report, Dr Lim took the view

³⁴⁷ Dr Lim's Supplementary AEIC at paras 21 and 24.

³⁴⁸ Dr Lim's Supplementary AEIC at para 21.

³⁴⁹ NE 25 January 2019 at p 120 lines 8-15.

³⁵⁰ PCS at para 43.

³⁵¹ AT at pp 6, 7 and 18.

³⁵² NE 15 January 2019 at p 55-56, 88.

³⁵³ NE 16 January 2019 at p 88.

that “[s]ince there were no signs or symptoms to suggest she had schizophrenia in the period I was treating her, this makes a diagnosis of schizo-affective disorder unlikely”.³⁵⁴ Dr Lim thus ruled out a diagnosis of schizo-affective disorder.³⁵⁵ Dr Chee expressed no view on this issue.

152 I note that the Plaintiffs’ submission goes beyond its pleaded case. Since it was never pleaded that Mother had schizo-affective disorder, whether Mother suffered from schizo-affective disorder is a non-issue. The Plaintiffs sought to argue that their contentions on this point were sufficiently pleaded because the Joint Expert Report states that “Schizo-Affective Disorder is basically Bipolar Disorder with psychotic features”.³⁵⁶ Dr Ung also clarified on the stand that a diagnosis of schizo-affective disorder did not *differ that much* from a diagnosis of bipolar disorder with psychotic manifestations.³⁵⁷ However, there is nevertheless a difference between the two distinct mental disorders, as they were defined separately in the Agreed Glossary of Medical Terms. It therefore follows that Mother’s schizo-affective disorder should have been separately pleaded, as required by Rule 398 of the Family Justice Rules 2014 (S 813/2014), which the Plaintiffs failed to do.

153 In any case, I find that the Plaintiffs have simply not proved that Mother had schizo-affective disorder at the time of making and executing the Will. The Plaintiffs’ own expert, Dr Tan, had conceded that it was *unlikely* that Mother suffered from schizo-affective disorder and contradicted the Plaintiffs’ own

³⁵⁴ Dr Lim’s 2nd Expert Report at para 2A(iii).

³⁵⁵ NE 25 January 2019 at p 81 lines 1-17.

³⁵⁶ Joint Expert Report at para 57; PCS at para 83(c).

³⁵⁷ NE 15 January 2019 at p 58.

position.³⁵⁸ Dr Tan testified that a diagnosis of schizo-affective disorder simply remained *a possibility*, although the diagnosis was likely to be bipolar disorder with psychosis *instead*.³⁵⁹ This diagnosis was fairly accepted by the Plaintiffs in their closing submissions.³⁶⁰ Dr Ung also merely took the view that there was a “possibility” that Mother might have been suffering from schizo-affective disorder on or around the time of making and executing the Will.³⁶¹ In my judgment, a *possible diagnosis* of schizo-affective disorder is plainly insufficient to prove that Mother suffered from the said disorder. Further, Dr Lim testified that since there was no existing diagnosis of schizophrenia of Mother (a position that was also accepted by Dr Tan and Dr Ung – see above at [141]) and there were no signs or symptoms to suggest Mother had schizophrenia in the period he was treating her, this made a diagnosis of schizo-affective disorder unlikely.³⁶² Dr Lim thus concluded that Mother did not manifest features of schizo-affective disorder at the time of making and executing the Will.³⁶³ In light of the above, I find that the references to Mother’s mental condition as schizo-affective disorder in the medical notes and nursing note must have been inaccurate and only preliminary assessments of Mother’s condition in 1998, and were therefore of limited evidential value.

³⁵⁸ NE 16 January 2019 at p 88.

³⁵⁹ NE 16 January 2019 at p 88.

³⁶⁰ PCS at para 48(b).

³⁶¹ NE 15 January 2019 at p 56.

³⁶² NE 25 January 2019 at pp 80-81; Dr Lim’s 2nd Expert Report at para 2A(iii).

³⁶³ Dr Lim’s 2nd Expert Report at para 2A(iv).

Whether Mother's bipolar disorder with psychosis was in remission at the time of making and executing the Will

154 I now turn to the issue of whether Mother's bipolar disorder with psychosis was in remission at the time of making and executing the Will.

(1) The medical evidence

155 First, the expert evidence of Dr Lim and Dr Chee was that Mother was in remission of bipolar disorder with psychosis at the time of making and executing the Will on 22 and 29 May 2002 respectively.

(A) DR CHEE

156 Dr Chee's Expert Report stated there was no change in medication prescribed to Mother from 10 April 2002 to 30 May 2002 (a period that would include 22 and 29 May 2002), save for an addition of diazepam added for Mother's "sleep problem" on 16 July 2002.³⁶⁴ The absence of a change in medication indicated that Mother was "fairly stable though a little "high" in spirit".³⁶⁵ Dr Chee's assessment was that Mother's mental state on 30 May 2002 was *apparently euthymic except for her grief over her husband's demise*; and (b) considered as being *in remission and stable*, and that therefore she should have been capable of making and executing a Will on 29 May 2002.³⁶⁶ Dr Chee explained that this meant that in the absence of symptoms of the bipolar disorder with psychosis, she was "stable" and was "not suffering from the active illness itself".³⁶⁷

³⁶⁴ Dr Chee's AEIC at Exhibit CKT-3 at p 2 answer (b).

³⁶⁵ Dr Chee's AEIC at Exhibit CKT-3 at p 2 answer (b).

³⁶⁶ Dr Chee's AEIC at Exhibit CKT-3 at p 2 answer (c)(i).

³⁶⁷ NE 25 January 2019 at pp 127-128.

157 I considered Dr Chee’s evidence in light of the following. First, Dr Chee conceded that his assessment of Mother was not made based on a specific test of testamentary capacity at the material time.³⁶⁸ Second, Dr Chee also admitted that the two consultations with Mother would usually have been approximately between 10 to 15 minutes each.³⁶⁹

158 I nevertheless give considerable weight to Dr Chee’s evidence on this issue. In particular, I found Dr Chee’s assessment of Mother’s medical condition on 30 May 2002 and the absence of the change in Mother’s medication a day after the execution of the Will to be crucial and highly probative of Mother’s euthymic state. This is critical contemporaneous evidence that was sufficiently proximate to 22 and 29 May 2002, the two days on which Mother met Mdm L for the making and executing of the Will. Dr Chee confirmed that he did not make any observation that would have made him consider Mother to be at a risk of relapse of her bipolar disorder on 30 May 2002.³⁷⁰

159 Dr Chee’s assessment was based on his medical notes dated 30 May 2002, which made no mention of Mother’s relapse of her bipolar disorder with psychosis, or any symptoms indicating that Mother might have relapsed on 29 May 2002. Dr Chee decided not to change Mother’s prescription (that he was merely carrying on from what Dr Lim had already prescribed) because Mother’s condition was “more or less stable”.³⁷¹ The fact that Dr Chee did not see fit to change Mother’s existing medication on 30 May 2002 is corroborative of Mother’s euthymic state. Even though I am cognisant of the limitations of Dr

³⁶⁸ NE 25 January 2019 at p 128 lines 11-15.

³⁶⁹ NE 25 January 2019 at p 99 lines 1-9.

³⁷⁰ NE 25 January 2019 at p 132 line 6–10.

³⁷¹ NE 25 January 2019 at p 120 lines 22-25.

Chee's assessment on that day as explained at [157] above,³⁷² the fact remains that Mother did not exhibit symptoms of a relapse on 30 May 2002 which warranted a record in Dr Chee's medical notes or a change in Mother's medication.

(B) DR LIM

160 Dr Lim's evidence corroborated that of Dr Chee. Dr Lim's evidence is that based on Dr Chee's medical notes on Mother, it appeared that Mother was "well enough to have the capacity to make [the] Will".³⁷³ Mother's "mental status was stable as Dr Chee had apparently seen no need to make any changes to her medication".³⁷⁴ Dr Lim's 1st Expert Report stated that Mother relapsed into manic phases of bipolar affective disorder (which is also known as bipolar disorder)³⁷⁵ and required readmissions from 8 to 17 November 1998, 23 November to 5 December 1998 and 22 May to 19 June 2000.³⁷⁶ In between these admissions, Mother was "mentally stable" and her medications remained mostly unchanged throughout the period of follow-up with Dr Lim until her last visit on 19 February 2003.³⁷⁷ In particular, it was recorded in Dr Lim's medical notes on 26 September 1998 and 30 May 2000 that Mother "[w]hen recovered ... is fully well" and "[w]hen in remission [has] no mental problem" respectively.³⁷⁸

³⁷² NE 25 January 2019 at p 87 lines 7-21.

³⁷³ Dr Lim's AEIC at para 19(iii).

³⁷⁴ Dr Lim's AEIC at para 19(i).

³⁷⁵ Agreed Glossary of Medical Terms S/N 4; Dr Lim's 2nd Expert Report para 1A(ii).

³⁷⁶ Dr Lim's 1st Expert Report at p 1.

³⁷⁷ Dr Lim's 1st Expert Report at p 1.

³⁷⁸ AT 5 and 78; AB at pp 506 and 710.

161 Dr Lim also testified that based on his own outpatient medical notes, Mother was in remission on *all the occasions* he saw her prior to the making and executing of the Will (*ie*, 16 January 2002, 27 February 2002 and 10 April 2002).³⁷⁹ Dr Lim’s medical notes also recorded Mother’s mood to be “stable”, “euthymic”, “okay” on six occasions (*ie*, 10 April 2002, 27 August 2002, 9 October 2002, 27 November 2002, 18 January 2003 and 19 February 2003).³⁸⁰ Dr Lim’s 1st Expert Report stated that based on his outpatient medical notes, Mother was “stable, coherent and rational during the period she attended outpatient treatment and follow-up”, her mood was “euthymic” and there had been no admissions around the time of her making and executing the Will.³⁸¹

162 The Plaintiffs mounted several arguments against Dr Lim, contending that it was questionable as to how much weight should be accorded to his evidence in the first tranche of the trial.³⁸² Dr Lim had testified that when he was initially approached by the Plaintiffs’ solicitors for his opinion on Mother’s testamentary capacity, he was “a bit reluctant” as Mother had passed away and he had to rely on “case notes”.³⁸³ Dr Lim also initially informed the Plaintiffs’ solicitors the following:³⁸⁴

Q. Specifically, what you said was: “it is impossible for me to comment on her testamentary capacity in May 2002.” The word you used was “impossible”. Do you agree?

A. Yes.

³⁷⁹ NE 25 January 2019 at pp 73-76; AT at pp 88-92.

³⁸⁰ AT at pp 90-92.

³⁸¹ Dr Lim’s 1st Expert Report at p 2.

³⁸² PCS at para 17.

³⁸³ NE 24 January 2019 at p 78.

³⁸⁴ NE 24 January 2019 at p 79.

Q. You said: “Notwithstanding the fact that I treated her 15 years ago at the Institute of Mental Health and that she paid a brief one off visit to the Singapore General Hospital on 4 April 2003, my examination at the material times did not cover testamentary capacity. I am afraid whatever opinion I render now would be open to challenge.”

A. Yes.

...

Q. You went further to say: “Moreover, I do not have any access to her case notes at the Institute of Mental Health as I am now working in the Singapore General Hospital and not at the Institute of Mental Health. Even if I were allowed access to her records, it would be impossible [for me] to make a valid comment on her testamentary capacity.”

A. Yes, that’s right.

163 Dr Lim also informed the Defendants’ then solicitors, M/s Lee & Lee, of the same.³⁸⁵ The Plaintiffs highlighted that despite his initial concerns, Dr Lim nonetheless attested as the Defendants’ expert that Mother had testamentary capacity in the present trial.³⁸⁶ Under cross-examination, Dr Lim explained that he had changed his mind and was persuaded by M/s Lee & Lee that he could rely on “case notes” entries “to extrapolate and to deduce testamentary capacity”.³⁸⁷ Dr Lim then conceded that the real reason he was giving evidence in the first tranche of the trial was that he felt compelled to appear in court, because even if he had said “no”, one of the parties “would subpoena [him]”.³⁸⁸ Therefore, the Plaintiffs argued that Dr Lim’s testimony on Mother’s testamentary capacity should be given little weight.

³⁸⁵ NE 24 January 2019 at pp 79, 80.

³⁸⁶ PCS at paras 17(b), 20.

³⁸⁷ NE 24 January 2019 at pp 79, 80.

³⁸⁸ NE 24 January 2019 at pp 84-85.

164 Further, the Plaintiffs highlighted that Dr Lim had fabricated evidence,³⁸⁹ citing an instance whereby Dr Lim had suggested that it was normal that Mother would have violent outbursts because it was in the character of Mother and her family to shout, talk to each other in raised voices, slam doors, be pushed down and make allegations of assault,³⁹⁰ despite there being allegedly no evidence suggesting that of the characteristic of Mother's family. Dr Lim clarified that this was with having the benefit of looking at the evidence and that he now held that view.³⁹¹ The Plaintiffs put to Dr Lim that this was despite the fact that there was no evidence that Mother was in the right frame of mind when she alleged that Derek had pressed her head against a table and pointed a knife at her neck in her PPO application against him (see above at [35]). In response, Dr Lim stated that he was not in a position to comment whether Mother was lying about those allegations. When confronted, Dr Lim also denied not being candid to the court and testified that he was trying his best to be as objective as possible.³⁹²

165 However, in my judgment, Dr Lim's comment was not entirely without basis. There is some evidence adduced at trial that Mother and her family did talk in raised voices. Ellen testified that Andrew did raise his voice and that was how Mother and her family talked.³⁹³ Bernard also had a bad temper, frequently threatened, shouted and used abusive gestures on Mother and there was an incident in altercation between Bernard and Mother in 1992–1993 where she fell down and a police report was lodged (at [46] and [47]). Evidence was also adduced that Mother had shouted at Derek on several occasions according to

³⁸⁹ Plaintiffs' Reply to Closing Submissions at para 19(c).

³⁹⁰ NE 24 January 2019 at p 129.

³⁹¹ NE 24 January 2019 at p 130.

³⁹² NE 24 January 2019 at pp 130-131.

³⁹³ NE 11 January 2019 at p 92.

Gavin, Andrew and Bernard (at [29] and [34]). Indeed, even though Mother's PPO application was unsuccessful, Dr Lim was not wrong in stating that the family made allegations of assault against each other, as evident from the cross-applications of PPO by Mother and Derek against each other in 1999. Thus, I find the Plaintiffs' submission that Dr Lim fabricated evidence unpersuasive.

166 The Plaintiffs went even further by submitting that because Dr Lim admitted to being "compelled" to be an expert in the present proceedings, this suggested that he was defending his two reports because the Defendants were more persistent in persuading him to attest to Mother's testamentary capacity. Thus, Dr Lim had a "lack of independence".³⁹⁴ However, I note that this specific allegation that Dr Lim lacked independence falls foul of the rule in *Browne v Dunn* (1893) 6 R 67 ("*Browne v Dunn*"), cited in *Public Prosecutor v Tan Lye Heng* [2017] 5 SLR 564 at [68], since this allegation was never specifically put to Dr Lim. The rule in *Browne v Dunn* operates on the proposition that an individual should be confronted with any contradictory evidence that is being relied upon (and intended to be adduced) by the cross-examiner. Thus, the Plaintiffs are precluded from making this specific submission.

167 Notwithstanding the above, given the fact that Dr Lim did not see Mother at or around the time of making and executing the Will (as was conceded by Dr Lim), I place limited weight on Dr Lim's assessment of Mother's testamentary capacity, which was admittedly based on Dr Chee's medical notes. In my judgment, Dr Lim's evidence on Mother's euthymic state on the six occasions he saw Mother is only relevant insofar as it does not contradict Dr Chee's assessment of Mother's euthymic state on 30 May 2002.

³⁹⁴ PCS at paras 19-21.

(C) DR TAN AND DR UNG

168 On the other hand, the position taken by Dr Tan and Dr Ung in the Joint Expert Report that Mother was probably influenced by her paranoid delusions against Derek and his wife, and was experiencing *a manic episode* at the time of making and executing the Will (see above at [145(a)]) must be rejected. First, Dr Ung conceded that there was no evidence that Mother was in a “full blown relapse” at the time of making and executing the Will, although he did qualify that he thought that Mother’s mood was “not very stable”.³⁹⁵ Second, Dr Ung’s assessment of Mother’s mood as “not very stable” is squarely contradicted by Dr Chee’s assessment of Mother’s euthymic state on 30 May 2002, which I prefer. Third, it is unclear how Dr Tan and Dr Ung could have arrived at their assessment that Mother had paranoid delusions against Derek and Diana which probably influenced her making and executing of the Will on 22 and 29 May 2002, when (a) neither of them had seen Mother at the material time (*ie*, during the period when she had made and executed the Will), and (b) Dr Ung conceded that there was a lack of evidence of a full blown relapse of Mother’s condition. I also find Dr Tan and Dr Ung’s evidence unconvincing when compared against Mdm L’s assessment of Mother on 22 and 29 May 2002, which I now turn to consider.

(2) Mdm L’s factual evidence

169 Most crucially, I give considerable weight to Mdm L’s evidence on Mother at the time of making and executing the Will on 22 and 29 May 2002.

³⁹⁵ NE 16 January 2019 at p 66.

170 In determining testamentary capacity, the court must consider the totality of the evidence as a whole, including both the factual component (including evidence of friends and relatives who had the opportunity to observe the testator) and the medical component, and generally accord equal 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: *Muriel Chee* ([134] *supra*) at [38]. The law is clear that in cases where the expert witnesses disagree, the court may place greater weight on factual witnesses: *George Abraham Vadakathu v Jacob George* [2009] 3 SLR(R) 631 (“*George Abraham*”) at [65]. In *Muriel Chee*, the Court of Appeal held that the testimony of the lawyer that prepared the will was critical because she was the best person to give a complete account of what had happened in relation to the preparation and signing of the will in question (at [57]).

171 In the present case, Mdm L’s evidence is of paramount importance as she was the only one who had contemporaneous evidence of Mother’s behaviour and mental condition at the time of making and executing the Will, since Mother had the meeting in Mdm L’s personal office alone on 22 May 2002 (see above at [66]) and possibly on 29 May 2002 and Mdm L’s unchallenged evidence was that she took instructions directly from Mother. I also considered that Mdm L had a long relationship with Mother as her lawyer and friend, and was in a position to know if Mother was behaving abnormally or differently from how she usually observed Mother to behave. Mdm L had testified that she would have held back on drafting the Will if Mother had “unusual instructions or behaviour”.³⁹⁶ She assessed Mother to be clear, lucid, rational and her “normal chatty self” at both meetings on 22 and 29 May 2002 (see above at

³⁹⁶ NE 23 January 2019 at p 107 lines 20-22.

[71]). No evidence was adduced at trial on whether Mdm L lacked credibility or was motivated to lie for any reason. Indeed, Mdm L testified that she had not acted for any of the Defendants in relation to their personal matters.³⁹⁷

172 Further, it is significant that Mother exhibited rational decision-making in changing her mind about giving Derek \$10,000 instead of \$5,000 at the meeting with Mdm L on 22 May 2002 (see above at [67]–[68]). Mother’s behaviour of doubling the pecuniary sum for Derek was inconsistent with someone who had delusions or overvalued ideas of Derek harming her. In Mdm L’s opinion, Mother’s decision to give Derek only \$10,000 instead of a share of the Estate was consistent with what Mother had told Mdm L about her strained relationship with Derek (see above at [69(a)]). The evidence from Mdm L does not appear to support the contention that Mother was in a manic phase of her bipolar disorder at the time of making and executing the Will.

173 The Plaintiffs sought to cast aspersions on Mdm L’s integrity as a professional, claiming that her failure to take *any contemporaneous notes* of the meetings with Mother on 22 May 2002 and 29 May 2002 was a “critical lapse in her professional practice” and that she knew it.³⁹⁸ Therefore, Mdm L’s testimony was self-serving and of no utility in assisting the court.³⁹⁹ This argument must be rejected for the following reasons.

174 First, this assertion is directly contradicted by the fact that Mdm L took down Mother’s instructions on a handwritten note taken on 22 May 2002 (see

³⁹⁷ NE 23 January 2019 at pp 86 lines 8-10.

³⁹⁸ PCS at para 14.

³⁹⁹ Plaintiffs’ Reply to Closing Submissions at para 62.

above at [67]).⁴⁰⁰ This most definitely served as a *contemporaneous note* of the meeting with Mother that indicated Mother's intentions for the Will.

175 Second, the Plaintiffs' allegation that Mdm L made a critical lapse in her professional practice as a lawyer falls foul of the rule set out in *Browne v Dunn* ([166] *supra*). Mdm L was cross-examined on the absence of an attendance note indicating who was present at the meeting on 22 May 2002.⁴⁰¹

A. Yes, I am very sure she came alone.

Q. You see, the problem we have is that you do not have an attendance note of who was at the meeting and who was not at the meeting, correct?

...

Q. You have to say "yes" or "no", Mdm L.

A. Yes, yes.

...

Q. I'm just wondering whether you could accurately remember what happened on that day, because we are handicapped here by the lack of contemporaneous attendance notes, Mdm L.

A. Yes, I know, because, as far as I know, Anna must have told [Mother] that the title is ready for collection. So she made an appointment to say that she's coming on the 22nd. ...

...

Q. Mdm L, again, we do not have the benefit of attendance notes, and here we find that you are also not answering the questions. If you can't recall, you say you can't recall, all right? You couldn't recall whether she came with the maid, for instance?

A. That -- subsequent to the will, she did pay me --

Q. On the 29th?

A. Yes, subsequent to that, she's visited me, and there was one occasion she came with the maid.

⁴⁰⁰ Mdm L's AEIC at para 18; LFC-6.

⁴⁰¹ NE 23 January 2019 at pp 80, 81, 95.

...

176 Mdm L was also cross-examined on her usual practice and it was put to her that because she took the matter lightly and shared a long relationship with Mother, Mdm L had not bothered keep notes on the case:⁴⁰²

Q. No, Mdm L, I am trying to understand your usual practice when you handle a session to take instructions for the drafting of a will. Do you usually keep attendance notes? Would that be your practice?

A. Will, to me, is quite simple, and then what is important is what that person wants. So you -- you have the name of the person, or what she wants to give or what she doesn't want to give. Because normally, when people make wills, they don't come with a whole gang of people.

Q. You're not answering the question again, I'm sorry.

A. So as I said, there's no necessity for me to -- to specifically take notes to say, "This one is present", "This is ...", because, from my instructions, you can deduce who will be present, who is the most important person whom you have to take note.

Q. If the notes are not kept, then that could give rise, of course, to what was said and what was not said, and what was explained to you and what was not explained to you, to take right? For instance, the family could say that they told you about her medical condition, and now you said, "That was not told to me", and there are no notes to back that up one way or another. That would be a big problem, wouldn't you agree?

A. This is the only case where something like this happens. It has not happened throughout my years of practice.

...

Q. I'm suggesting to you, Mdm L, that you did not keep the notes in this case because you were somehow taking the matter extremely lightly, perhaps in view of what you felt was a long relationship with [Mother].

A. I don't agree with you.

⁴⁰² NE 23 January 2019 at pp 96-98.

177 However, it was never specifically put to Mdm L that this failure to record attendance notes qualified as a *critical lapse in her professional practice as a lawyer*. Rule 12(3) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) also provides:

A legal practitioner must not, by asserting in a statement to a court or tribunal, make any allegation against a witness whom the legal practitioner cross-examined or was given an opportunity to cross-examine, unless the legal practitioner has given the witness an opportunity to answer the allegation during cross-examination.

178 As such, I would be slow to accept such a serious allegation against Mdm L, when it was not specifically put to her that her failure to take attendance notes of who was present at the meetings with Mother on 22 May 2002 and 29 May 2002 was a critical lapse in her professional practice.

179 Third, I do not find Mdm L's failure to record attendance notes with Mother for the meetings with Mother on 22 May 2002 and 29 May 2002 to be particularly detrimental to the weight that should be accorded to her factual evidence. While it is good practice for a solicitor to record the attendance of parties who attended the meetings, there is nothing to challenge Mdm L's evidence and recollection that she and Mother *were alone* during the meetings. More importantly, Mdm L recorded a contemporaneous handwritten note of Mother's intentions for her Will. In my view, Mdm L's unchallenged evidence on the meetings should be given full weight, despite her failure to take attendance notes for the meetings on 22 May 2002 and 29 May 2002.

(3) Conclusion

180 In light of all the above, I find that on a balance of probabilities, Mother's bipolar disorder with psychosis was in remission at the time of making and executing the Will on 22 and 29 May 2002.

Whether Mother suffered from delusions or overvalued ideas that Derek was out to harm her at the time of making and executing the Will

181 I next turn to deal with the merits of the Plaintiffs' pleaded case that Mother suffered from psychosis, including a delusion or overvalued idea that Derek was out to harm her, which persisted when Mother was in a euthymic state and continued to operate at the time that Mother made and executed the Will.⁴⁰³

182 As explained above, the original position taken by Derek and Celine at trial, and the Plaintiffs' experts in the Joint Expert Report is that Mother only had delusions about Derek *during her manic episodes* of her bipolar disorder with psychosis. The new position adopted by the Plaintiffs in their further closing submissions is that these delusions or overvalued ideas *persisted into remission, were independent of and not tied to* Mother's bipolar disorder.⁴⁰⁴ Notwithstanding this change in the Plaintiffs' position (see above at [145]), I will deal with the Plaintiffs' case on the basis of both positions for completeness.

183 I also observe that the Plaintiffs have yet to identify whether they are relying on Mother's alleged delusions *or* overvalued ideas as the basis for their claim. In their submissions, the Plaintiffs appear to use the terms interchangeably or as alternate arguments. However, the two terms are medically distinct. Delusions and overvalued ideas (a less intense form of delusion) are both characteristics of psychosis (see above at [122]). However, a delusion is a false, fixed, *unshakeable* belief, while an overvalued idea is a false,

⁴⁰³ SOC 2 at para 6.

⁴⁰⁴ PFCS at paras 14, 24 and 28.

shakeable type of belief which is held *with less intensity or duration*.⁴⁰⁵ Dr Lim explained that when one is shown the reality and truth of the matter to a person with an *overvalued idea*, they would probably drop the overvalued idea and can be convinced out of it.⁴⁰⁶ Dr Tan and Dr Ung did not provide any evidence that disputed this.

(1) Delusions or overvalued ideas during Mother's manic phase of bipolar disorder

184 In light of my finding that Mother's bipolar disorder with psychosis was *in remission* at the time of making and executing the Will on 22 and 29 May 2002, the Plaintiffs' original position that Mother suffered from delusions or overvalued ideas against Derek as a symptom when her *bipolar disorder with psychosis relapsed and was in a manic phase* must be rejected.

(2) Delusions or overvalued ideas that persisted into remission

(A) DELUSIONS OR OVERVALUED IDEAS FROM PSYCHOSIS INDEPENDENT FROM BIPOLAR DISORDER

185 I turn to the new position taken by the Plaintiffs at the second tranche of the trial, which is that the delusions or overvalued ideas persisted into remission of Mother's bipolar disorder and were *independent of Mother's bipolar disorder*.⁴⁰⁷ The Plaintiffs provided further and better particulars that (a) Mother suffered from psychosis as a mental disorder with symptoms independent from bipolar syndrome; and (b) the symptoms of her *psychosis, in particular her delusions or overvalued ideas*, intensified when she was suffering from a mood

⁴⁰⁵ Agreed Glossary of Medical Terms S/N 11 and 44.

⁴⁰⁶ NE 6 April 2020 at p 81.

⁴⁰⁷ PFR at para 33.

episode.⁴⁰⁸ Read together, the Plaintiffs' new position is that the alleged delusions and overvalued ideas that Derek was out to harm Mother stemmed from the Plaintiffs' pleaded psychosis, which was independent from Mother's bipolar disorder.

186 The Plaintiffs premised their claim on the following factual evidence from Ellen and the PPO application made by Mother:⁴⁰⁹

(a) Ellen testified that Mother told her that Derek had *strangled* her, even though it was untrue.⁴¹⁰ She testified that Mother thought that Derek was trying to harm her since she gave birth to him because he was a "big baby" and she had "difficulty in delivery".⁴¹¹ Mother repeated these stories to Ellen "all the time", even when Ellen observed that her mood was "*fine*".⁴¹² Ellen also testified that Mother's mood was either "very nice" or "very violent".⁴¹³ This was evidence of an instance where Mother still held such delusions or overvalued ideas against Derek even when her bipolar disorder with psychosis was in a euthymic state.⁴¹⁴

(b) The respective PPO applications of Mother and Derek against each other in 1999 (see [35] above) provided the factual support for the existence of Mother's delusions or overvalued ideas that Derek was out

⁴⁰⁸ Further and Better Particulars (Amd No 2) dated 8 November 2019 Question and Answer to 1(a).

⁴⁰⁹ PCS at para 28; PFCS at para 4.

⁴¹⁰ NE 11 January 2019 at p 66.

⁴¹¹ NE 11 January 2019 at pp 66-67.

⁴¹² NE 11 January 2019 at pp 66-67.

⁴¹³ NE 11 January 2019 at pp 66-67.

⁴¹⁴ PFCS at para 19(a).

to harm her. In particular, in Mother's unsuccessful PPO application, she alleged that Derek had pressed her head against a table and pointed a knife at her neck. Derek testified that Mother was "experiencing one of her episodes in the courtroom" and that she had "started bowing to the District Judge and command[ing] him to order [Derek] to move out of the family home".⁴¹⁵

(c) No evidence was adduced of Derek ever actually inflicting harm on Mother in the manner she described in her PPO application or as she allegedly told Ellen, save for the incident where Derek admitted to opening the door and hitting Mother on her head *accidentally*.⁴¹⁶ In fact, Andrew testified that Derek would not have hurt Mother (by pointing a knife at Mother's neck)⁴¹⁷ and Bernard testified that Derek was not a violent person.⁴¹⁸

187 In my judgment, the Plaintiffs' case that Mother suffered from delusions or overvalued ideas that Derek was out to harm her stemming from the Plaintiffs' pleaded psychosis that was independent of her bipolar condition cannot be sustained. I say so for the following reasons.

188 First, the Plaintiffs wrongly relied on Dr Lim's assessment of Mother's condition at the time of her PPO application. The Plaintiffs argued that Mother's delusions concerning Derek were not linked to Mother's bipolar illness because the delusions or overvalued ideas existed during the time of Mother's PPO

⁴¹⁵ Derek's AEIC at para 27(h).

⁴¹⁶ Derek's AEIC at paras 27(c), (e), (f).

⁴¹⁷ NE 18 January 2019 at pp 129-131.

⁴¹⁸ NE 22 January 2019 at pp 134-315.

application “which Dr Lim opined was when [Mother] was not manic”.⁴¹⁹ However, Dr Lim’s exact words on the stand were that there was “not enough evidence” to suggest that Mother was in a *manic phase* when she brought the PPO application against Derek.⁴²⁰ This is an opinion on *insufficiency of evidence*, which is entirely different from the submission put forth by the Plaintiffs that Dr Lim gave a *positive assessment* that Mother was *not in a manic phase* at the time of Mother’s PPO application. There is also no other evidence to suggest that Mother’s bipolar disorder with psychosis was *in remission* during the time of her PPO application (as she was during the time of making or executing the Will based on Mdm L’s evidence). In fact, Derek’s testimony that Mother was having an episode and her actions when appearing before the District Judge (see above at [186(b)]) seem to suggest otherwise.

189 Second, to base the case theory that Mother experienced delusions or overvalued ideas arising from an undiagnosed *psychosis independent of her bipolar disorder* on Ellen’s non-medical assessment that Mother’s mood was “fine” is, in my judgment, simply untenable. The Plaintiffs essentially equate Ellen’s assessment of Mother’s mood as “fine” to mean that Mother’s bipolar disorder with psychosis was in a euthymic state. Dr Lim testified that delusions and overvalued ideas can only be elicited through clinical interviews where a patient’s beliefs are explored and tested by a psychiatrist.⁴²¹ In his opinion, anecdotal references or comments made by the patient outside of formal tests by psychiatrists at a clinical interview constitute a weak basis on which to claim

⁴¹⁹ PFCS at para 24.

⁴²⁰ NE 25 January 2019 at p 68.

⁴²¹ Dr Lim’s Supplementary AEIC at para 11.

that an individual is suffering from delusions or over-valued ideas.⁴²² Ellen’s testimony that Mother only had two moods (*ie*, very nice or violent) is hardly a proper assessment of whether her bipolar disorder with psychosis was truly in remission or in relapse. Ellen also testified that there was a “flare” (*ie*, flare up) where Mother exhibited her violent mood in late July 2002 which lasted about two months, where she would have “more hallucination[s]”.⁴²³ In particular, I note that Ellen’s testimony that Mother was “fine” was given without reference to particular dates or events. The Plaintiffs therefore failed to establish, from Ellen’s evidence alone, that Mother was suffering from psychosis independent of her bipolar disorder *at the time of making and executing the Will*. Ellen’s general claim that Mother repeated these stories about Derek to her “all the time” even though Mother was “fine” cannot be extrapolated to mean that on 22 and 29 May 2002, Mother had delusions or overvalued ideas of Derek wanting to harm her, which persisted even when her bipolar disorder with psychosis was in remission.

190 Ellen’s evidence must also be seen in light of Mother’s actions at the time of making and executing the Will. When Mother gave instructions to Mdm L at the meeting on 22 May 2002 to make the Will, Mother changed her mind on giving Derek \$5,000 and increased it to \$10,000. If Mother had truly still suffered from a delusion or overvalued idea that Derek was out to harm her, as the Plaintiffs so alleged, it would have been entirely inconsistent for her to have changed her mind and doubled the money given to Derek in the Will. Further, during Mother’s appointment with Dr Chee on 30 May 2002, Dr Chee’s medical notes of that day recorded that Mother was staying with “a married son” (*ie*,

⁴²² Dr Lim’s Supplementary AEIC at para 11.

⁴²³ NE 11 January 2019 at p 67.

Derek) who was “moving out because of disagreement”.⁴²⁴ There is no record in Dr Chee’s medical notes of (a) Mother suffering from any alleged delusion or overvalued idea about Derek *wanting to harm her*, or (b) whether such delusions or overvalued ideas had continued to persist even when Mother was in a euthymic state. The court must be cautious not to displace a testator’s personal subjective preferences against a beneficiary in his or her will, especially when the testator’s decision in relation to the Will can be logically explained by his or her personal preferences. There is no evidence of such a delusion or overvalued idea persisting in Mother’s mind at the time of making and executing the Will.

191 In the round, there is simply insufficient factual evidence to support the proposition that Mother suffered from delusions or overvalued ideas that Derek was out to harm her at the time of making and executing the Will.

192 Third, I consider that the failure of the Plaintiffs to establish the diagnosis of the underlying condition causing Mother’s alleged psychosis has weakened their case. The Defendants submitted that Mother was never diagnosed with *independent psychosis* as a mental disorder.⁴²⁵ In support, Dr Lim testified that as Mother’s treating psychiatrist, she did not suffer from nor was she ever diagnosed as suffering from *psychosis as an independent psychiatric condition*.⁴²⁶ Dr Lim testified that if psychotic symptoms were observed, the treating psychiatrist would have to diagnose the underlying condition, and psychotic symptoms could not be present without an underlying

⁴²⁴ Dr Chee’s AEIC at Exhibit CKT-3 at p 1.

⁴²⁵ Defendants’ Further Closing Submissions (“DFCS”) at paras 4(e) and 46.

⁴²⁶ Dr Lim’s Supplementary AEIC at para 22.

condition.⁴²⁷ Instead, she was only diagnosed by both the Plaintiffs' and Defendants' experts as suffering from *bipolar disorder with psychosis*.⁴²⁸ Dr Lim also clarified that psychosis was *not an independent mental condition*, but was a *non-specific umbrella term* that did not mean anything on its own. In his view, psychosis did not mean a particular illness and there could not be a diagnosis of psychosis.⁴²⁹ I do note however that Dr Lim's definition diverges from the definition of "psychosis" in the Agreed Glossary of Medical Terms as a "*mental disorder* in which the thoughts, affective response, ability to recognize reality, and ability to communicate and relate to others are sufficiently impaired to interfere grossly with the capacity to deal with reality" [emphasis added].

193 In response to this, the Plaintiffs highlighted Dr Lim's concession under cross-examination that there are many causes of psychosis (*eg*, stress and genetics) that "there are a lot of things unknown in psychiatry" including the cause of psychosis.⁴³⁰ The Plaintiffs also pointed to Dr Lim's comment on the stand that delusions could have many causes but what was more important was whether Mother was deluded at the time when she made the Will.⁴³¹ In addition, the Plaintiffs submitted that this was consistent with Dr Tan's evidence that at times, because psychiatry is "not medicine", there is a "rag bag" that "consists [of] anything that cannot fit into [a pattern of clear classification]".⁴³² Finally, in their further closing submissions, the Plaintiffs relied on Dr Lim's alleged

⁴²⁷ Dr Lim's Supplementary AEIC at paras 21-22.

⁴²⁸ Dr Lim's Supplementary AEIC at para 22.

⁴²⁹ NE 6 April 2020 at pp 88-89.

⁴³⁰ NE 6 April 2020 at pp 83-84.

⁴³¹ NE 6 April 2020 at pp 31-32.

⁴³² NE 17 January 2019 at pp 71-72.

concession under cross-examination that the cause of the delusion is not important (as opposed to its content), to argue that the *cause* of the delusion is immaterial.⁴³³

194 However, in my judgment, the Plaintiffs mischaracterised Dr Lim’s comment as a suggestion that the cause of the delusion was unimportant. In fact, Dr Lim merely conceded that he agreed that the content of the delusion was *more important* than its cause, and not that the cause of the delusion was *not important*.⁴³⁴ Further, the court is entitled to determine what is important in a fact-finding exercise, which could include the consideration of whether or not a testator is suffering from a clearly diagnosed and recognised psychiatric disorder. For instance, in *Public Prosecutor v Chia Kee Chen and another appeal* [2018] 2 SLR 249, the Court of Appeal observed (albeit in the context of criminal cases) that where expert medical evidence was provided by psychiatrists, if the psychiatric report does not show that the offender is suffering from a clearly diagnosed and recognised psychiatric disorder, the court would be justified in rejecting the evidence of the offender’s purported mental condition (at [119]), citing Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at para 18.139 and *Public Prosecutor v Goh Lee Yin and another appeal* [2008] 1 SLR(R) 824 at [82].

195 Fourth, the medical evidence adduced was largely unhelpful to the Plaintiffs’ case. The Plaintiffs’ experts focused on the delusions that persist in relation to a patient with bipolar disorder (elaborated below in the following section at [204]). Dr Tan testified that Mother had paranoid delusions “all the

⁴³³ PFCS at para 11.

⁴³⁴ NE 6 April 2020 at p 32.

time”.⁴³⁵ He explained that the intensity of the delusion or overvalued idea could intensify at the height of the mania, but that when the mood settled, the idea persisted.⁴³⁶ However, Dr Tan explained that the basis of his assessment was Ellen’s evidence that came up during the first tranche of the trial (see above at [186(a)]), from which he had concluded that Mother continued to harbour the delusion against Derek.⁴³⁷ Dr Tan also did not testify that such a delusion that he referred to was *independent of Mother’s bipolar disorder*, as the Plaintiffs now frame their case after the second tranche of the trial. As mentioned earlier at [145(a)], the Joint Expert Report by Dr Tan and Dr Ung only expressed an opinion that it was *probable* that at the time of making and executing the Will, Mother displayed paranoid delusions during a *manic relapse of her bipolar disorder*.

196 The Plaintiffs also pointed to an occasion when Mother was admitted to IMH, where the medical notes had recorded a diagnosis of “[a]cute psychosis” on 24 September 1998,⁴³⁸ and suggested that this was an instance where an attending clinician had recorded a presentation of psychotic symptoms without reflecting that Mother was also in a manic state.⁴³⁹ As Dr Lim explained, he was not the doctor who had recorded such a diagnosis and this was a preliminary diagnosis made by a doctor (who did not testify) without sight of a full clinical picture of Mother’s condition, although it was common for doctors to attempt a

⁴³⁵ NE 16 January 2019 at p 101.

⁴³⁶ NE 17 January 2019 at p 72.

⁴³⁷ NE 16 January 2019 at p 100.

⁴³⁸ Further and Better Particulars (Amd No 2) dated 8 November 2019 Answer 1(b)(1); AT at p 3.

⁴³⁹ PFRS at para 34.

preliminary diagnosis when a patient is first admitted.⁴⁴⁰ Dr Lim confirmed that his own diagnosis after conducting a longitudinal review of Mother's condition was that she suffered from bipolar disorder with psychosis.⁴⁴¹ The Plaintiffs' assertion that Mother suffered from *psychosis* independent of her bipolar disorder is thus unsupported by *any* medical evidence.

197 The Plaintiffs also argued that the content of the delusions and overvalued ideas suffered by Mother about Derek were different from the delusions and overvalued ideas brought about by the mania of Mother's bipolar disorder. They submitted that when manic, the delusions that Mother suffered from were the ones that involved her being tailed by the government (see above at [95]) or being a Buddhist nun (see above at [97(b)]), which were different from the delusions of Derek harming her.⁴⁴² However, Dr Lim testified that even if Mother had an independent psychosis which was not caused by her bipolar illness, the anti-psychotic medication given to Mother would have wiped out all biochemical imbalances in the brain that resulted in the delusions.⁴⁴³ No evidence from Dr Tan or Dr Ung on this issue was adduced in the trial to challenge this. Under cross-examination, Dr Lim agreed that the medication prescribed to treat a patient suffering from bipolar disorder with psychosis and a patient who suffers from delusional disorder (which is a separate mental disorder that also has psychotic symptoms) would be the same.⁴⁴⁴ According to Dr Lim, the medication does not target only bipolar disorder "[l]ike a guided missile", but not other delusions caused by other disorders (*eg*,

⁴⁴⁰ Dr Lim's Supplementary AEIC at para 23(b).

⁴⁴¹ Dr Lim's Supplementary AEIC at para 23(b).

⁴⁴² PFCS at para 24; Joint Expert Report at Section IV.A.

⁴⁴³ NE 6 April 2020 at pp 55-56.

⁴⁴⁴ NE 6 April 2020 at p 57.

schizophrenia).⁴⁴⁵ In Dr Lim's view, the medication could treat hallucinations, thought disorders and psychotic disturbances in the patient.⁴⁴⁶ He qualified that once Mother was treated with anti-psychotic medication, her delusions would be treated (but not her overvalued ideas).⁴⁴⁷ Dr Lim also testified that the conditions where psychosis could be commonly present were schizophrenia, bipolar disorder, delusional disorder, schizo-affective disorder, organic psychosis, drug-induced and medication-induced psychosis.⁴⁴⁸ Since Mother's bipolar disorder with psychosis was *in remission* at the time of making and executing the Will and she was not diagnosed with any other mental disorder that causes psychosis, it follows that Mother was not suffering from any delusions at that time. In the absence of contradictory evidence, this means that the anti-psychotic medication prescribed to Mother not only addressed the delusions caused by the bipolar disorder, but also addressed the delusions caused by any other undiagnosed psychosis independent of her bipolar disorder (as the Plaintiffs alleged without sufficient evidential basis). I do note however that Dr Lim qualified his opinion and conceded under cross-examination that there was however a possibility of the delusions relapsing, and the point of giving anti-psychotic medication to a patient on a maintenance regime was to prevent such delusions from coming back.⁴⁴⁹

198 Further, the shift in the Plaintiffs' positions from the start of the trial to the second tranche of the trial undermines their case. The Plaintiffs argued in their closing submissions before the amendment of their pleadings in

⁴⁴⁵ NE 6 April 2020 at pp 55-56.

⁴⁴⁶ NE 6 April 2020 at pp 55-56.

⁴⁴⁷ NE 6 April 2020 at pp 55-56.

⁴⁴⁸ NE 6 April 2020 at p 86.

⁴⁴⁹ NE 6 April 2020 at pp 58-59.

Summons 125 that “[b]oth camps of psychiatric experts agree that [Mother] suffered from bipolar disorder with psychosis”⁴⁵⁰ and they abandoned their claim of schizophrenia. It was only in the second tranche of the trial (by way of their Further and Better Particulars) that the Plaintiffs now indicate a new position that Mother’s psychosis was independent from her bipolar disorder.⁴⁵¹

199 Sixth, even taking the Plaintiffs’ case at its highest that the delusion did “persist” in Mother’s mind at the time of making and executing the Will, this would be insufficient to deprive her of testamentary capacity. The *mere existence* of a delusion in the mind of the testator will not suffice. The testator will only be deprived of testamentary capacity if the testator’s mind was “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”: *Ng Bee Keong v Ng Choon Huay and others* [2013] SGHC 107 at [62], citing *Banks v Goodfellow* (1870) LR 5 QB 549 (“*Banks*”) at 565. Dr Tan’s assessment that “when the mood settles, the [overvalued] idea persists” does not assist the Plaintiffs in overcoming the threshold required to demonstrate that Mother’s mind was so dominated by the insane delusion that she was deprived of testamentary capacity. As I explain below at [218], when one considers the rationality of the Will, it cannot be said that Mother was unable to exercise judgment in disposing of her property reasonably and properly. Further, Mother’s decision to double the pecuniary sum given to Derek’s in the Will was also inconsistent with such an averment (see above at [190]). It also cannot be said that at the time of making or executing the Will, the delusion or overvalued idea that Derek trying

⁴⁵⁰ PCS at para 3.

⁴⁵¹ Further and Better Particulars (Amd No 2) dated 8 November 2019 Answer 1(a).

to harm her was persisting at the time of Mother making and executing the Will *dominated* her mind.

200 Finally, I should add that the Plaintiffs have also not shown how such delusions, which concerned only Derek, affected Mother in any way that resulted in Celine receiving only a half share under the Will.

201 For all of the above reasons, the Plaintiffs' case that Mother suffered from delusions or overvalued ideas of Derek harming her, stemming from the pleaded psychosis that was independent of Mother's bipolar disorder, must be rejected.

(B) DELUSIONS OR OVERVALUED IDEAS STEMMING FROM BIPOLAR DISORDER
WITH PSYCHOSIS

202 For completeness, I also address the alternative case (which the Plaintiffs did not run in their further submissions) that the delusions or overvalued ideas experienced by Mother stemmed from her bipolar disorder.

203 As I found earlier that Mother's bipolar disorder with psychosis was in remission at the time of her making and executing the Will (see above at [180]), the key question to be answered is whether Mother's delusions and overvalued ideas concerning Derek stemming from her bipolar disorder with psychosis could nevertheless persist into the euthymic state at the time of making and executing the Will.

204 The experts of the Plaintiffs and Defendants disagree on this issue.

(a) Dr Ung testified that for bipolar disorder patients, there are “paranoid-type delusions or ideas” even when there is no prominent depression, hypomania or mania.⁴⁵²

(b) Dr Tan testified that someone with bipolar disorder who has a delusion during the manic phase would also have the same delusion during remission, when he or she is in a euthymic state.⁴⁵³

(c) On the other hand, Dr Lim testified that for a patient diagnosed with bipolar disorder (such as Mother), when the patient’s mood stabilises or returns to a euthymic state, his or her hallucinations or delusions would disappear.⁴⁵⁴

205 The duties of a court in dealing with expert opinion are restricted to electing or choosing between conflicting expert evidence or accepting or rejecting the proffered expert evidence. The court should not, when confronted with expert evidence which is unopposed and appears not to be obviously lacking in defensibility, reject it nevertheless and prefer to draw its own inferences: *Saeng-Un Udom v Public Prosecutor* [2001] 2 SLR(R) 1 at [26]–[27], citing *Halsbury’s Laws of Singapore* vol 10 (Butterworths, 2000) at para 120.257.

⁴⁵² NE 15 January 2019 at p 57.

⁴⁵³ NE 17 January 2019 at p 66 lines 2-6.

⁴⁵⁴ NE 24 January 2019 at p 61 lines 11-15.

206 Dr Tan and Dr Ung relied on an extract from World Health Organisation, *ICD-10 Classification of Mental and Behavioural Disorders* (“ICD-10”) at para F30.2 on mania with psychotic symptoms:⁴⁵⁵

Differential diagnosis. One of the commonest problems is differentiation of this disorder [*ie*, bipolar disorder with psychosis] from schizophrenia, particularly if the stages of development through hypomania have been missed and the patient is seen only at the height of the illness when widespread delusions, incomprehensible speech, and violent excitement may obscure the basic disturbance of affect. *Patients with mania that is responding to neuroleptic medication may present a similar diagnostic problem at the stage when they have returned to normal levels of physical and mental activity but still have delusions or hallucinations.* Occasional hallucinations or delusions as specified for schizophrenia ... may also be classed as mood-incongruent, but if these symptoms are prominent and persistent, the diagnosis of schizoaffective disorder ... is more likely to be appropriate ... [emphasis in original removed; emphasis added]

The above passage deals with the problem of differential diagnosis, where a psychiatrist mistakes a diagnosis of bipolar disorder with psychosis for a diagnosis of schizophrenia. Dr Tan explained that the WHO “seemed to allow” for a patient who had recovered from a manic episode to nevertheless “have some delusions or hallucinations”.⁴⁵⁶

207 However, I observe that Dr Tan’s testimony on the stand as regards the applicability on the above evidence to Mother was self-contradictory. Dr Tan testified that (a) the classification in the ICD-10 had to be put in perspective and would not apply to an individual with existing overvalued ideas or delusions;⁴⁵⁷

⁴⁵⁵ Exhibit P1 ICD-10.

⁴⁵⁶ NE 15 January 2019 at p 60 lines 1-5.

⁴⁵⁷ NE 17 January 2019 at p 80 lines 20-24.

(b) Mother was a person with existing overvalued ideas or delusions;⁴⁵⁸ and (c) yet, the ICD-10 classification nevertheless applied to Mother.⁴⁵⁹ Additionally, I note that the extract from ICD-10 only applied to “[p]atients with mania that is responding to neuroleptic medication” and it was not established whether Mother fell within this category of patients.

208 Further, Dr Lim explained the purpose of the above extract from ICD-10:⁴⁶⁰

My understanding ... is that when the patient's mood is coming down towards normality and is responding to medications that have been administered, they may present a diagnostic problem, because, *while the physical and mental activity are normalising, the delusions and hallucinations may still not yet have normalised, may still not have subsided.* ... this sentence is to highlight to clinicians to be aware that the manic patient, the diagnosis is still that of mania and not to be confused with another diagnosis. [emphasis added]

He explained that when a patient has returned to normal levels of physical and mental activity, it did not mean that the patient was euthymic and in remission because the extract did not refer to the patient’s mood, which may still be elevated.⁴⁶¹

209 I gave considerable weight to Dr Lim’s expert evidence adduced in the second tranche of the trial. Dr Lim’s expert opinion is that delusions observed in the manic and depressive state of a patient’s bipolar disorder (as a mood disorder) *do not persist into the euthymic state*.⁴⁶² In euthymia, patients would

⁴⁵⁸ NE 17 January 2019 at p 81 lines 5-7.

⁴⁵⁹ NE 17 January 2019 at p 81 lines 1-4.

⁴⁶⁰ NE 24 January 2019 at p 60 lines 8-18.

⁴⁶¹ NE 24 January 2019 at pp 102 line 13 – 103 line 13; 25 January 2019 at p 28.

⁴⁶² Dr Lim’s Supplementary AEIC at para 15; NE 6 April 2020 at p 113.

recall with considerable embarrassment of having such delusions during a manic episode and that they must have been “crazy to think that way”.⁴⁶³ I found Dr Lim’s evidence on this issue well-supported by medical literature and cogent reasoning.⁴⁶⁴ I do not find the Plaintiffs’ challenges to the medical literature relied on by Dr Lim (*eg*, about it being antiquated, or unreliable due to small sample size) to be meritorious.⁴⁶⁵

210 In light of the above, I accept Dr Lim’s evidence and accept his medical opinion on this issue. I therefore find that Mother was not suffering from delusions or overvalued ideas that Derek was out to harm her at the time she made and executed the Will.

Whether Mother lacked testamentary capacity

211 According to the seminal case of *Muriel Chee* ([134] *supra*) at [37] citing *Banks* ([199] *supra*) at 565, the essential requisites of testamentary capacity are that: (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.

212 The propounder of the will bears the burden of proving that the testator possessed testamentary capacity (*Muriel Chee* at [40], [46] and [52]). The legal burden of propounding the Will thus lies with the Defendants.

⁴⁶³ Dr Lim’s Supplementary AEIC at para 17.

⁴⁶⁴ Dr Lim’s Supplementary AEIC at paras 15-20.

⁴⁶⁵ PFCS at paras 29-43.

213 The burden will *prima facie* be established by the due execution of the will in *ordinary circumstances* where the testator was *not known to be suffering from any kind of mental disability*: *UAM v UAN and another* [2018] 4 SLR 1086 at [57], citing *Muriel Chee* at [40]. The facts of the present instance cannot be said to fall within such ordinary circumstances, considering Mother's diagnosis of bipolar disorder with psychosis.

214 The evidence must be considered as a whole. If during the period prior to the execution of his will the testator is shown to have suffered from an *incapacitating* mental illness prior to the execution of the will that resulted in a loss of testamentary capacity, a presumption arises that the testator *continued* to lack testamentary capacity: *Muriel Chee* at [41]. 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*. It must also be noted that the element of whether the testator had the mental capacity to understand the nature of the will and its consequences is not necessarily determined by the existence of some form of mental impairment: *Muriel Chee* at [39].

215 In *Banks* ([199] *supra*) at 566, Cockburn LJ said that though a testator's mental power may be reduced by physical infirmity or the decay of advancing age to below the ordinary standard, he might still retain sufficient intelligence to understand and appreciate the testamentary act. Similarly, in *Muriel Chee*, it was found that the testator's condition of dementia varied in severity and fluctuated over time and she could have had moments of lucidity during which she would have possessed testamentary capacity to execute a will (at [50]).

216 In the present case, I am satisfied that the Defendants have successfully rebutted the presumption that Mother continued to lack testamentary capacity,

given my above finding that Mother made and executed the Will when her bipolar disorder with psychosis was in remission (see above at [180]). In particular, I give considerable weight to Dr Chee's assessment of Mother's condition on 30 May 2002 and Mdm L's evidence on Mother's behaviour and rational decision-making during their meetings on 22 and 29 May 2002 when she made and executed the Will. I also reject the Plaintiffs' case that Mother suffered from delusions or overvalued ideas that Derek was out to harm her when she was in a euthymic state at the time of making and executing the Will that arose from psychosis that was independent of her bipolar disorder (see above at [187]–[201]). Further, I reject the alternative case that the delusions or overvalued ideas experienced by Mother stemmed from her bipolar disorder (see above at [202]–[210]). The medical evidence instead supports a finding that Mother had testamentary capacity when her bipolar disorder with psychosis was in remission, and she would have been capable of making and executing the Will at the material time.⁴⁶⁶ Dr Lim's evidence, which I accept, is that (a) a patient suffering from bipolar disorder can have the capacity to make a will when the condition is stable and the symptoms were brought under control;⁴⁶⁷ and (b) Mother's testamentary capacity at the time of making and executing the Will was not affected by any alleged delusions or overvalued ideas.⁴⁶⁸

217 Finally, an indication of testamentary capacity is the rationality of the will, having regard to its terms and the identities of the beneficiaries (*Muriel Chee* at [40], citing *George Abraham* ([170] *supra*) at [33]–[36] and [67]). *Theobald on Wills* (John G Ross Martyn et al eds) (Sweet & Maxwell, 18th Ed,

⁴⁶⁶ Dr Chee's AEIC at paras 10(b) and 10(c); BA at pp 1590–1591.

⁴⁶⁷ Dr Lim's AEIC at para 19(i).

⁴⁶⁸ Dr Lim's Supplementary AEIC at para 30.

2016) (“*Theobald on Wills*”) states at para 3-010 that if a duly executed will is rational on its face, the testator is presumed to have had testamentary capacity. The party challenging the will may rebut this presumption by adducing evidence to the contrary, such as evidence that the testator was suffering from a medical illness that was serious enough for the court to find that the testator lacked testamentary capacity. The evidential burden of proving the unsoundness of mind shifts to the party alleging it (see *Yeo Henry* at [47]).

218 I find that Mother’s Will was rational on its face such that she is presumed to have had testamentary capacity. The Plaintiffs have not adduced sufficient evidence to the contrary to rebut the presumption of testamentary capacity.

(a) Mother’s rationale for giving Derek only a fixed monetary sum of \$10,000 can be logically explicable when one takes into account Mother’s poor relationship with Derek and her dislike of Derek’s lack of employment and his persistence on living with his entire family in the Family Property against Mother’s wishes (see above at [29], [31] and [34]). It is crucial to note that Derek was not completely left out of the Will, and she had even increased his initial entitlement from \$5,000 to \$10,000. It would have been plainly irrational for Mother to have done this if Mother’s alleged delusion or overvalued idea that Derek was out to harm her still persisted at the time of making and executing the Will. Further, I observe that Mother’s drafting of the Will was consistent with her decision to evict Derek. Given their strained relationship, it is unlikely that she would have wanted Derek to receive an equal share as Andrew, Bernard and Eric. Mother’s later consideration of changing her Will during February 2003 to give substantial pecuniary bequests to Daniela and Derek’s children (see above at [84]) was aligned with this

original decision, as she knew what she wanted Derek to have, but considered providing for his children separately in the Will.

(b) As for Celine's share, the fact that she received a half share, which was less than what Andrew, Bernard and Eric each received but more than what Derek received, is also explicable. As Mdm L and Andrew testified, Mother was a traditional woman who shared values of her generation that daughters should inherit less once they "marry out of the family".⁴⁶⁹ There is sufficient evidence to demonstrate that Mother was a woman who subscribed to traditional values and Chinese customs. Celine had been living overseas for decades and was not as involved in Mother's day-to-day life as Andrew, Bernard, and Eric, who were present in Singapore (see above at [26], [42]–[43]). Celine had also married a Caucasian man which upset Mother (see above at [43]). Even though Mother may have doted on Daniela, her eldest granddaughter, it did not mean that her views towards her daughter had to be aligned with that as well. The fact that people of Mother's generation treated daughters differently from sons did not appear to be disputed by the Plaintiffs. The real dispute is whether the evidence of Mother's affection towards Celine and Daniela (see above at [16], [41] and [55]) was sufficient to show that she had would have acted differently from other people of her generation when deciding how to divide her own estate. On balance, I am of the view that there is insufficient evidence adduced to demonstrate that it was irrational for Mother to have given Celine half a share, given her traditional values and views on the gendered roles. I further observe that the Plaintiffs have not sufficiently demonstrated

⁴⁶⁹ Andrew's AEIC at para 42; NE 23 January 2019 at pp 103-104.

how Mother's alleged delusion or overvalued idea of Derek wanting to harm her was relevant to Celine's share in the Will.

(c) Despite their previous difficult relationship, the giving to Bernard of one share can also be considered a rational decision by Mother. By the time of the making and execution of the Will in 2002, Mother and Bernard had a close relationship of trust which was much improved from what they had in the early 1990s (see above at [51]). It was unsurprising as well that Andrew and Eric received one share each given that Andrew and Eric were Mother's favoured sons (see above at [44] and [52]).

(d) Mdm L was of the view that Mother had exercised rational decision-making in their meetings on 22 and 29 May 2002 (see above at [171]–[172]). The specific bequests made by Mother were also consistent with what Mdm L knew of Mother and her relationships with her children from their “chit chat” sessions (see above at [69]).

In my judgment, the court must be mindful not to displace Mother's subjective preferences, especially when the Will is rational on its face.

219 For all of the above reasons, I find that Mother did not lack testamentary capacity at the time of making and executing the Will and dismiss the Plaintiffs' claim that is based on this issue.

Undue Influence

220 I now turn to the issue of whether Mother was under the undue influence of the Defendants at the time of making and executing the Will.

Relevant legal principles

221 In the context of a will, undue influence cannot be presumed and the burden of proof is on the party alleging the undue influence: *Rajaratnam Kumar (alias Rajaratnam Vairamuthu) v Estate of Rajaratnam Saravana Muthu (deceased) and another and another Suit* [2010] 4 SLR 93 (“*Rajaratnam*”) at [65]; *Lian Kok Hong v Lian Bee Leng and another* [2015] SGHC 205 (“*Lian Kok Hong*”) at [45].

222 Undue influence in the probate context means coercion, *ie*, the testator is coerced into making a will (or part of a will) which he does not want to make: John G Ross Martyn, Stuart Bridge and Mika Oldham, *Theobald on Wills* at para 3-032, citing *Hall v Hall* (1868) 1 P&D 481. In *Lai Hoon Woon (executor and trustee of the estate of Lai Thai Lok, deceased) v Lai Foong Sin and another* [2016] SGHC 113 (“*Lai Hoon Woon*”) at [354], it was also clarified that the persuasion must have been of such intensity as to overpower the volition of the testator without actually convincing him. It must be shown that the party accused of undue influence *dominated* the testator to such an extent that the testator’s independence was so undermined that the accused party’s domination caused the testator to execute the will: *Rajaratnam* at [67]–[68].

The Plaintiffs’ claim

223 The Plaintiffs’ case is that the Defendants capitalised on Mother’s mental fragility, her fear of being left alone after her husband’s passing and her irrational fears about family members, to persuade her to make the Will that could not reasonably reflect her true wishes.⁴⁷⁰ The Plaintiffs relied on the fact

⁴⁷⁰ SOC 2 at paras 12–13

that Mother's grief over her husband was in fact recorded by Dr Chee on 30 May 2002, the day immediately *after* the making of the Will.⁴⁷¹ Coupled with the mental infirmities that Mother suffered from, the Plaintiffs submitted that this lowered the threshold required to prove undue influence.⁴⁷² They submitted that where a testator is in a weakened physical or mental state, less influence would be required to overcome the wishes of a testator, relying on the observations made by the High Court in *Lian Kok Hong* at [115] and [116].⁴⁷³

224 The Plaintiffs argued that because Andrew was Mother's favourite, his elevated position allowed Andrew to "control what [Mother] could or could not do".⁴⁷⁴ They also submitted that Bernard, with his reputation and tendency to resort to violence, as shown by the incident of violence in 1992–1993 (see above at [47]), was "feared by his own parents".⁴⁷⁵

225 The Plaintiffs further averred that on the day the Will was made, no one but the Defendants and Mother knew about it and the Will was executed surreptitiously. They point to the fact that none of the other siblings (*ie*, Derek, Celine and Eric) were aware of the arrangements that were made for Mother to attend at Mdm L's office on 22 May 2002 and 29 May 2002 even though Eric was one of Mother's favoured sons (see above at [52]).⁴⁷⁶ In light of the alleged suspicious circumstances surrounding the preparation and signing of the Will, coupled with the fact that Mother did not have the benefit of medical

⁴⁷¹ PCS at para 144(b); AT at p 90 Case note dated 30 May 2002.

⁴⁷² PCS at para 144.

⁴⁷³ PCS at para 145.

⁴⁷⁴ PCS at para 150.

⁴⁷⁵ PCS at para 153.

⁴⁷⁶ PCS at paras 161, 163.

examination or independent legal advice, the Plaintiffs submitted that the only inference to be drawn is that the Will was never truly the intention of Mother and instead was the “brainchild” of the Defendants alone.⁴⁷⁷ Thus, a reasonable inference that Mother made the Will under undue influence must be drawn.⁴⁷⁸

Application to the facts

226 In my judgment, the Plaintiffs have simply failed to prove that Mother was under the Defendants’ undue influence on a balance of probabilities. I say this for several reasons.

227 First, Mother was an independent woman who was able to make her own decisions for herself in various aspects of her life, even after Father’s demise on 25 January 2002 (see above at [21]). This was corroborated by Derek’s testimony that Mother was independent in 2002 and the early part of 2003, because she actively took decisions about where she wished to go every day and had her driver take her there, including visiting Mdm L.⁴⁷⁹ In particular, the documentary evidence reveals that Mother was able to give instructions for a cashier’s order for the sum of \$37,013.47 in favour of Eric on 13 June 2002, two weeks after the date of the Will.⁴⁸⁰ Mother had the ability to take charge of her daily affairs, including her financial matters. It is therefore unlikely that she was subject to the Defendants’ undue influence at the material time.

⁴⁷⁷ PCS at para 167.

⁴⁷⁸ SOC 2 at para 12–13; PCS at para 139

⁴⁷⁹ NE 9 January 2019 at p 19.

⁴⁸⁰ AB at p 326.

228 Second, the witnesses' testimonies consistently suggested that Mother had a stubborn character and an independent person with a mind of her own. This makes it unlikely that Mother was easily susceptible to undue influence by the Defendants. The evidence was adduced is as follows:

- (a) Derek testified that Mother had a "stubborn streak";⁴⁸¹
- (b) Bernard testified that "I would like to add that my mother was an independent person with a mind of her own. She was stubborn by nature. Whenever my mother made a decision, it was near impossible to convince her to change her mind on it";⁴⁸²
- (c) Andrew testified that when he asked Mother to reconsider not giving any share of her estate to Derek, Mother told Andrew to "keep quiet" and that he said no more as Mother was "very stubborn and single-minded".⁴⁸³
- (d) Despite knowing what they would receive under the Will immediately after it was executed (around 29 and 30 May 2002), neither of the Plaintiffs approached Mother to discuss their shares of the Will when she could have easily addressed any of their concerns. This fact corroborates Mother's stubbornness. Although I note that this fact could also have suggested that the Plaintiffs knew it would be futile to persuade Mother to amend the Will given the alleged undue influence exercised by Andrew and Bernard over Mother, I find this unlikely given

⁴⁸¹ NE 8 January 2019 at p 26 lines 6–13.

⁴⁸² Bernard's AEIC at para 9.

⁴⁸³ Andrew's AEIC at para 18.

all the evidence about Mother's freedom to conduct her daily affairs and the easy access by Mother's family members to her.

229 Third, during the appointment on 22 May 2002 to make the Will, Mother was *alone* in Mdm L's personal office making and executing the Will respectively (see above at [66]), and Andrew and Bernard were *not in the personal office*. Further, Mdm L's assessment of Mother as "clear", "lucid", "her normal chatty self", and "very clear and rational" militates against a finding that Mother was under any form of undue influence by the Defendants, who were not present in the room at the material time.

230 In *Yeo Henry* ([217] *supra*), the evidence of the lawyer who had prepared the will was considered "critically important" as she was present with the testator at the execution of the will, was an experienced solicitor with experience in making wills, knew the testator well and would have known if the testator was behaving abnormally (at [88]). In *Muriel Chee* ([134] *supra*), the Court of Appeal similarly held that the testimony of the solicitor preparing the will was critical as she was the best person to give a complete account of what had happened in relation to the preparation and the signing of the will (at [57]).

231 Similarly, I place considerable weight on the evidence of Mdm L, who had the most contemporaneous assessment of Mother's condition and behaviour when they were both *alone* in Mdm L's office when Mother made and executed the Will. Mdm L was an experienced lawyer and long-term friend of Mother. Mdm L's evidence is that had Mother displayed any unusual instructions or behaviour, she would have held back on drafting Mother's Will.⁴⁸⁴ However,

⁴⁸⁴ NE 23 January p 107 lines 20-22.

since Mother was “perfectly normal” during her interaction with Mdm L, it cannot be said that Mother was under any form of undue influence by the Defendants. Mdm L’s description of Mother’s “systematic and methodical” settling of her personal affairs after Father’s passing also squarely contradicts the Plaintiffs’ case of undue influence.

232 The above has to be weighed against the countervailing evidence adduced that Mother allegedly intended to change her will in February 2003 by giving Daniela and her brothers a share of the Will but was reprimanded and advised by Andrew against doing so (see above at [84]). This, the Plaintiffs argued, evidenced the product of the Defendants’ hold over Mother.⁴⁸⁵ Even if I accept that this version of events had occurred, it would not be sufficient to satisfy the threshold of proving undue influence. To reiterate, for undue influence to be established, it must be shown that the party accused of undue influence *dominated* the testator to such an extent that the testator’s independence was so undermined that the accused party’s domination caused the testator to execute the will. Even if Mother had listened to Andrew’s opinion and Andrew had indeed stopped Mother from amending the Will on February 2003, the fact remains that during the making and execution of the Will, Mother and Mdm L were *alone* in her office and Mother gave Mdm L instructions without the presence of Andrew. Mother had also made the independent choice to change her mind on 22 May 2002 by increasing the pecuniary sum to Derek from \$5,000 to \$10,000 without any input from the Defendants (see above at [68]). The Plaintiffs have not proven that on 22 and 29 May 2002, the undue influence of Andrew and Bernard dominated Mother to such an extent that their domination caused her to make and execute the Will.

⁴⁸⁵ PCS at para 170.

233 Fourth, the evidence demonstrates that all the family members had full and free access to Mother throughout the years and even up to her death. In *Lai Hoon Woon* ([222] *supra*) at [355], the court found that there no evidence of undue influence was because all family members had access to the deceased and therefore it would be absurd to suggest that the plaintiff in that case could have and did exercise undue influence over the deceased. The same could be said in the present case. Derek’s testified that Celine,⁴⁸⁶ Eric⁴⁸⁷ and Daniela⁴⁸⁸ would visit Mother, and conceded that nobody stopped Eric from visiting her or prevented Derek from speaking to Mother since he was living in the same house as Mother at the material time until end May 2002.⁴⁸⁹ Celine’s evidence was also that she could speak to Mother herself in person or over the telephone, and that no one stopped her from doing so.⁴⁹⁰ Further, Mother was independent, resolute and decisive and her children had no control over her movements and activities, including during the years from 2002 to 2003.⁴⁹¹ As mentioned above, the Plaintiffs could have easily approached Mother to discuss the shares of the Will or any of their concerns whenever they had access to her.

234 The Plaintiffs also submitted that the fact that Andrew and Bernard had arranged for the preparation and execution of the Will without any of the other siblings’ knowledge demonstrates the surreptitious circumstances under which Mother made and executed the Will. Derek and Celine were left in the dark until after the Will had been executed on 29 May 2002. On Eric’s version of events,

⁴⁸⁶ NE 8 January 2019 p 135 lines 11–16.

⁴⁸⁷ NE 8 January 2019 p 134 lines 19–23.

⁴⁸⁸ NE 8 January 2019 p 134 lines 24–25.

⁴⁸⁹ NE 8 January 2019 p 59.

⁴⁹⁰ NE 10 January 2019 p 55 lines 24.

⁴⁹¹ Andrew’s AEIC at para 71.

which I accepted, Eric did not know about the making and execution of the Will until 29 May 2002 despite being a favoured son of Mother. This, the Plaintiffs argued, pointed to an irresistible influence that the Will was never truly the intention of Mother because the Will was prepared under “very curious and surreptitious circumstances”.⁴⁹²

235 I am of the view that these allegedly “surreptitious” circumstances must be weighed against the crucial circumstances surrounding the making and execution of the Will in Mdm L’s office. Upon examination of those circumstances, including *inter alia* (a) that Mdm L and Mother were *alone* in Mdm L’s office; (b) that the Will was not made and executed in the presence of Andrew and Bernard; (c) Mother’s stubborn nature; (d) Mdm L’s description of Mother’s state; and (e) the fact that Mother made independent decisions on the Will on 22 May 2002 (*eg*, changing her mind about Derek’s pecuniary share of the Will), I find that the Plaintiffs have not proven that Mother was under the undue influence of Andrew and Bernard at the time of making and executing the Will. An inference from the alleged surreptitiousness of the Defendants’ behaviour is simply insufficient, in itself, to prove that Mother was under the undue influence of the Defendants at the material time.

236 In light of the above, I find that the Plaintiffs have not demonstrated that the threshold of proving undue influence has been satisfied. The objective documentary evidence, the testimonies of witnesses from both parties, as well as the contemporaneous evidence of Mdm L of Mother at the time of making and executing of the Will demonstrate that Mother exercised a substantial degree of free will and independence in her daily affairs. The objective evidence

⁴⁹² PCS at paras 161-170, 178.

simply does not cohere with the Plaintiffs' case of undue influence. I thus dismiss the Plaintiffs' claim under undue influence.

Conclusion

237 Whatever legacy that children may expect to receive under the will of a parent who has passed on, it should be remembered that a testator has full autonomy on how to dispose of his estate. A parent is entitled to have favourite child(ren) and least-favoured child(ren), in accordance to his or her subjective preferences. When the parent chooses to divide the estate based on his own preferences, even if he decides to bequeath nothing to one or all of the children, unless it can be shown that the will that is made on that basis is invalid for lack of testamentary capacity of the parent, or is a result of undue influence, or for some other reason that invalidates the will in law, the parent's wishes have to be respected and followed.

238 For the reasons stated in this judgment, I dismiss the Plaintiffs' claim on both issues of testamentary capacity and undue influence. I also allow the Defendants' counterclaim against the Plaintiffs for (a) a declaration pronouncing the force and validity of the Will dated 29 May 2002 made by Mother; and (b) a declaration that the Grant of Probate issued to the Defendants on 14 February 2017 be upheld.

239 Indeed, given the evidence of the relationships of Mother with the Siblings, the way in which Mother chose to dispose of her estate was perfectly understandable, and was in full alignment with the places they occupy in her heart and her views of them, and of her personal beliefs, at the time when she made her Will. It is fair to say that the Will did reflect Mother's true wishes.

240 I will hear the parties on costs, if not agreed. Parties are to file and exchange written submissions, limited to 15 pages (excluding the list of disbursements, exhibits and authorities) within 21 days of the judgment. The submissions should also deal with the costs for summonses that have been dealt with where costs are still pending.

Tan Puay Boon
Judicial Commissioner

Lok Vi Ming SC, Lee Sien Liang Joseph, Chan Junhao Justin (Chen Junhao) and
Chia Bing Da Edric (LVM Law Chambers LLC) for the Plaintiffs;
Philip Antony Jeyaretnam SC, Lee Chia Ming and Alexander Choo Wei Wen
(Dentons Rodyk & Davidson LLP) for the Defendants.
