TESTAMENTARY CAPACITY TO DO A WILL

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Case Note on Yeo Henry (executor and trustee of the estate of Ng Lay Hua, deceased) v Yeo Charles and others SGHC 220

On 11 October 2016, the Singapore High Court ("**SHC**") made a ruling regarding the testamentary capacity of the late Madam Ng Lay Hua ("**Mdm Ng**") in making a will, and also took the chance to discuss the law pertaining to this area. Mdm Ng was the wife of Mr Yeo Chee Kiat, one of the grandsons of Mr Yeo Keng Lian, the late founder of food and beverage conglomerate, "Yeo Hiap Seng."

Case Summary

Facts

Mdm Ng held several assets in her lifetime, ranging from real estate to a portfolio of shares and stocks. Whilst Mdm Ng was still alive, she executed a total of five Wills with the latest being the 2012 Will. The other Wills were executed in the years 1997, 2002, 2008 and 2009 respectively. In this case, Mr Henry Yeo ("**Henry**") is the Plaintiff and he is Mdm Ng's youngest son. Mr Charles Yeo ("**Charles**") is Mdm Ng's eldest son, and together with his children, John and Evangeline, are the Defendants in this action.

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The Plaintiff sought to prove the validity of either the 2009 or 2012 Will since the disposition under both Wills were the same. In advancing the case, the Plaintiff argued that Mdm Ng had testamentary capacity when she executed the Wills and that there were sound reasons why Charles' family was left out of the Wills.

In contrast, the Defendants sought to impugn the validity of the 2008, 2009 and 2012 Wills ("**the Disputed Wills**"). The Defendants argued that Mdm Ng could not possibly have intentionally omitted the family of her eldest son (ie Charles and his family), including her only grandson and only great-grandsons, and therefore it was likely that she lacked testamentary capacity when she executed the Disputed Wills.

The issue

The main issue here was whether Mdm Ng had testamentary capacity when she executed the above Wills.

The Law

The SHC first noted that generally, a testator is at liberty to leave her assets to whomsoever she wishes as long as she has testamentary capacity at the time she executes the will; has known and approved the contents of the will, and was free from undue influence or the effects of fraud.

Secondly, the SHC affirmed the essential elements that constitute testamentary capacity. These elements are:

1. The testator understands the nature of the act and what its consequences are;
2. She knows the extent of her property of which she is disposing;
3. She knows who her beneficiaries are and can appreciate their claims to her property; and
4. She is free from an abnormal state of mind (e.g. delusions) that might distort feelings or judgments relevant to making the will.

Thirdly, the party seeking to propound the will would typically bear the burden of proving that the testator had testamentary capacity when she executed the will. However, there is a presumption of testamentary capacity if the will appears to be rational on its face and was duly executed in ordinary circumstances by a mentally healthy testator. Therefore, should a party allege that the testator was suffering from any kind of mental disability, he would then bear the evidential burden of proof to show as such.

Finally, the SHC also reiterated that it would look at the totality of the evidence comprising both the facts of the case and the evidence of the medical witnesses. Both will be considered and weighed equally so long as both the factual and medical witnesses had the opportunity to observe the testator at the material time.

The Decision

The SHC dismissed the Defendants' claim and held in favour of the Plaintiff.

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At the outset, the SHC agreed with the Defendants that there was no presumption of testamentary capacity on the account that Mdm Ng's mental capacity had been called into question. The Defendants, therefore, bore the burden of proving that Mdm Ng lacked testamentary capacity when she executed the Wills.

However, the SHC found that the Defendants have failed to discharge this burden of proof Out of the four constituent elements, only limbs (ii) and (iv) were contested as (i) and (iii) were jointly accepted by both the Plaintiff and Defendants to have been satisfied.

Limb (ii)

With regard to the limb (ii), the SHC was not persuaded by the Defendants. The SHC held that this limb did not require the testator to know the exact value of her assets nor did it require a valuation of her assets. Instead, what was important was her capacity to understand the extent of her assets and whether she had this capacity could be inferred from all the evidence. On this point, the SHC took into account the fact that Mdm Ng had passed her Abbreviated Mental Test ("**AMT**") with a score of 80%, which is a mark considered normal. Further, Charles also conceded during cross-examination that it was unlikely that Mdm Ng would forget that she had a share portfolio. Therefore, it was unlikely that she was suffering from cognitive impairment when she made the disposition under the Wills.

Limb (iv)

As for limb (iv), the Defendants similarly failed to persuade the SHC. A testator is deprived of testamentary capacity only where her mind is so dominated by the insane delusion that she is unable to exercise judgment in disposing of her property reasonably and properly or to make the will rationally. Essentially, the delusion must be of such an extent that it influenced the testator in making the disposition as she did.

Here, the medical witnesses were in agreement that Mdm Ng did not suffer any delusions or dementia. The Defendants' medical expert argued that Mdm Ng was suffering from depression and was delirious at times. However, the SHC held that at the time of execution of the Wills, Mdm Ng's depression was not severe enough to have caused testamentary incapacity. Further, Mdm Ng was able to continue with her normal activities even after she was diagnosed with depression in late 2006, such as reading the newspapers, monitoring share price movements, and making telephone calls to relatives and friends, amongst others.

In fact, Mdm Ng had made a careful consideration to exclude the Defendants from the Wills. She was unhappy that John married a non-Christian and was not religious enough in her eyes because he did not attend church regularly. As for Evangeline, Mdm Ng took the view that Charles will take adequate care of her.

In addition, at various occasions in the presence of the Plaintiff and the siblings of the parties, Mdm Ng also made clear her intention to exclude the Defendants from the Wills. Finally, Mdm Ng also favoured the Plaintiff greatly as they got along very well and he took great care of her.

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One of the most important evidence adduced was also the one provided by Mdm Ng's long-term lawyer and friend, Ms Pauline Ang ("Pauline"). Pauline drafted and witnessed the execution of all five Wills, and she was of the view that Mdm Ng was lucid each time. The SHC accorded great weight to Pauline's evidence given her long-standing friendship with Mdm Ng and the fact that she was a very experienced lawyer in the drafting of wills with more than 38 years' standing. In short, Pauline's evidence was reliable and credible.

For the above reasons, the SHC was of the view that both limbs (ii) and (iv) were satisfied.

Conclusion

Consequently, given that all the constituent elements have been satisfied, the SHC was satisfied that on a balance of probabilities, Mdm Ng did possess testamentary capacity when she executed the Wills and the Plaintiff succeeded in this case.

Learning points

The present case once again reiterates the importance for the solicitors who drafted the will (and who would very often be one of the witnesses to the will) to keep contemporaneous attendance notes of their discussion with the clients.

The SHC in this case briefly noted that there were no doctors present at the signing of any of the Disputed Wills. While in theory, it would be preferable for a doctor to be present at the signing of a will where the testator/testatrix's mental capacity may be disputed in the future, this does not always happen in practice for various reasons. In the event this is not possible, the testator ought to visit his/her regular doctor shortly before the execution of the will, to obtain a written certification that he or she has the requisite mental capacity to do so.

It may be also useful for the testator/testatrix to prepare a written memorandum setting out his/her reason for bequeathing his/her assets in the manner as stated in the will. The doctor's certification and the testator/testatrix's memorandum should both be kept together with the will, and will serve as useful evidence should there be any disputes as to the validity of the will in the future.

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