Lim Boon Ming v Tiang Choo Yang
[2002] SGHC 50

Case Number : Suit 952/2001

Decision Date : 15 March 2002

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean JC

Counsel Name(s) : Gopalan Raman, Gopal Krishnan Nair (G Raman & Partners) and Teo Soh Lung (Instructing Solicitor) (Teo Soh Lung & Co) for the plaintiff; Lawrence Quahe, Tan Lee Cheng and Howard Cheam (Harry Elias Partnership) for the defendant

Parties : Lim Boon Ming — Tiang Choo Yang

Evidence – Proof of evidence – Making of will – Not finding original will after testator's death – Son seeking to admit to probate signed carbon copy of will – Widow opposing action and counterclaiming for grant of letters of administration – Whether rebuttable presumption of destruction animo revocandi arises – Burden and standard of proof for rebuttal of presumption – Whether presumption rebutted – s 15(d) Wills Act (Cap 352, 1996 Ed)

Judgment

GROUNDS OF DECISION

1. This is an action by the Plaintiff, Lim Boon Ming, to admit to probate a carbon copy of a will dated 22 September 1969 of the deceased Lin Keng Hwa @Lim Keng Hwa. The Defendant, Tiang Choo Yong, in opposition, claims that the deceased in his lifetime had destroyed his will with the intention of revoking it. In her Counterclaim, she seeks, inter alia, an order for grant of letters of administration as on an intestacy.

The Facts

2. On 22 September 1969, the testator, Lim Keng Hwa, made a will by which he left 30% of the residue of his estate to the Defendant, 60% to the Plaintiff and the remaining 10% to his adopted daughter, Joycelyn Lim Boon Eng ("Joycelyn"). The Defendant was appointed trustee and executrix of the will.

2.1 The will was made with the assistance of a lawyer, Chua Chong Hong (PW2) of M/s C H Chua & Co, who together with his former clerk witnessed the testator's execution of the will. It is accepted that after execution, the original will was handed over to the testator and Mr.Chua's firm retained a carbon copy of the will, similarly signed by the testator and the two attesting witnesses ("the duplicate will"), for the past 29 years.

2.2 The testator died on 6 October 1998, aged 73. Shortly thereafter, the Plaintiff contacted Mr. Chua who located the duplicate will in the Wills file of his firm. Despite due enquiries (such as a notice published in the December 1998 issue of the Law Gazette for information on the will of the deceased) and searches, after the death of the deceased at his residence, in the safe at the deceased's offices and other likely repositories, the original will has not been discovered or traced since.

2.3 The duplicate will is left with the Registry, Supreme Court in connection with a Citation issued to the Defendant on 27 September 1999 to accept or refuse probate.

2.4 At the trial, the Plaintiff produced three photostat copies of the will. According to the Plaintiff,

the first photostat copy (exhibit P7), is from his father who had handed it to him in January 1998 for his uncle Lim Kwong Ling (PW3). Koh Meow Tiang (PW5), who is the Plaintiff's wife, found amongst the pages of the deceased's photo albums (kept previously at the deceased's office) two other photostat copies of the will. They are exhibit P8 and exhibit P9 respectively.

2.5 The deceased had married Teo Thoe Moy, his first wife on 5 November 1954. There was a son from that first marriage and he is the Plaintiff. The Plaintiff was born on 4 December 1957. Sometime thereafter, the Plaintiff's natural mother abandoned both husband and son.

2.6 The Defendant has no formal education. She met and befriended the deceased at night classes where both had attended to learn English. This was sometime in 1958. A few years later, in 1961, the deceased and Defendant went through a Chinese customary marriage. They lived together as husband and wife up to the date of death of the deceased.

2.7 After divorcing his first wife, the couple was able to and did register their marriage on 24 February 1969. There was no issue from this marriage. The family was complete with the adoption of a baby girl, Joycelyn, born on 5 April 1965 to the deceased's younger sister, whose child the couple cared for as their own since the infant was 3 months old. Joycelyn is not a party to this action. Neither party called her as a witness.

2.8 The Defendant, since her marriage to the deceased, has been a housewife. She ran the household and raised both the Plaintiff and Joycelyn.

2.9 It is common ground that the deceased was a careful and meticulous man in his private and business affairs. Prior to his death, he was one of several directors of the two family companies, Teck Seng Enterprises Pte Ltd ("TSE") and Teck Seng Cycle Ltd ("TSC"). The deceased, together with 6 brothers, held equal shares in the companies.

2.10 TSE is in the business of industrial stickers and tapes. TSC, on the other hand, deal in motorcycle spare parts and bicycles.

2.11 Prior to his death, the deceased managed both businesses and under his stewardship, the fortunes of the two companies grew over the years to its present level. Lim Kwong Ling ("Kwong Ling"), who took over as managing director of TSE following the death of the deceased, estimated the value of both companies to be roughly $30 million. According to Kwong Ling, TSE is asset rich, with many immoveable properties registered in its name.

2.12 Unlike Joycelyn, the Plaintiff was not interested in studies. After national service, in 1978, the Plaintiff joined the family business full time. Initially, he worked together with his father in TSC at 41, Desker Road. Later, the Plaintiff worked for TSE together with Kwong Ling at Sim Lim Tower.

2.13 The deceased, during his lifetime, had a history of ill health. Not only was he a diabetic patient, he has had two cataract operations, one of which was not successful. In September 1996, he had colon cancer; was operated on and underwent chemotherapy for six months. During that time, he was still able to continue working. The next year, in December 1997, he again had surgery. This time it was to remove a malignant tumour in his brain. After this operation, the deceased stopped going to work completely.

2.14 Whilst recuperating at home, he had a fall and fractured his hip. On 19 February 1998, he was admitted to hospital for hip surgery. He was hospitalised until 27 February 1998.

2.15 It is common ground that throughout the last 25 months of the deceased's life, the Defendant was the primary care giver. Later in April 1998, a maid was engaged to assist her in the care of the deceased.

2.16 In July 1998, the deceased attended no less than ten physiotherapy sessions at Balestier Hospital, now known as HMI Balestier Hospital. Over time, the health of the deceased deteriorated. The Plaintiff had taken photographs (exhibit P6) of the deceased on 21 September 1998, slightly more than two weeks before his death and they show an emaciated man.

The Plaintiff's Evidence

3. The Plaintiff's written and oral testimony is that his father was a traditional Chinese man, conservative in his thinking. He was a filial son who believed in ancestral worship.

3.1 Towards the latter part of his life, his father became a Christian and was baptised on 3 March 1998. According to the Plaintiff, his father's conversion to a Methodist was forced upon him. The Plaintiff, like his uncles and grandmother, knew nothing about the deceased's conversion to Christianity.

3.2 When asked to describe his relationship with the Defendant, his stepmother, he said that he did not dislike her. He acknowledged that she had raised and looked after him and as such accorded her due respect.

3.3 As the only son, his father loved him. He, in turn, respected his father. They had enjoyed a close relationship in which both had been able to freely confide in each other.

3.4 Over the years, he had received gifts and financial assistance from his father. In his lifetime, the deceased had given the Plaintiff a new Toyota Starlet after he passed his driving test in 1980; a bigger car, a Toyota Corolla in June 1997; a sum of $39,000 to help fund the purchase of his Ang Mo Kio apartment in 1988 and later in March 1996 another sum of $27,349 to redeem the mortgage. His father also paid for his wedding expenses and honeymoon.

3.5 During cross-examination, it emerged that during the lifetime of the deceased, a POSB account no. 032-33055-0 (exhibit P4) and safe deposit box no. 172A (exhibit P5) were opened in the joint names of the deceased and the Plaintiff. Both the POSB account and safe deposit box no. 172A were opened on 16 January 1991. The Defendant never knew about the existence of the POSB account and safe deposit box no. 172A.

3.6 Although the POSB account was in joint names, the deceased did not operate the account, as he had not attended at the POSB to sign the passbook. The Plaintiff explained that that was intentional as the money was meant for him.

3.7 According to the Plaintiff, the deceased had given him some of the dividends, which the deceased had received from TSE. All the money deposited into the POSB account was from the deceased.

3.8 The Plaintiff testified that on instructions from his father, he closed safe deposit box no. 172A on 19 March 1997. When he closed the safe deposit box, there was a sum of $175,000 in it. Besides cash, there was nothing else in the safe deposit box.

3.9 According to the Plaintiff, his father had asked him to deposit the cash into their POSB account.

On 19 March 1997, he deposited $100,000 and $75,000 on 20 March. As to why he did not at the same time deposit the entire sum, he explained that the $75,000 was made up of $1000 notes and like him, his wife had not seen $1000 notes before. He had simply taken $75,000 home to show his wife.

3.10 On 21 January 1998, the Plaintiff withdrew $440,000 from their POSB account following instructions from the deceased to close it. He claimed that his father had given him the $440,000. On the same day, he deposited the money into another POSB account no.089-30647-7 (exhibit P1), which is in the joint name of the Plaintiff and his wife. This money was subsequently withdrawn at different times in lots of $100,000 each and placed separately in fixed deposit with OCBC in the joint names of the Plaintiff and his wife.

3.11 On 11 March 1998, the POSB account was closed. The Plaintiff took the $35,505.53 that was left in the account. He could not recall how the money was used.

3.12 The Plaintiff deposed in 53 of his affidavit of evidence-in-chief that in June or July 1998, he accompanied his father to HSBC, Orchard Road branch to access safe deposit box no. 919B. He was not told what his father had wanted to retrieve from that safe deposit box. Whilst at the bank, his father discovered to his surprise and annoyance that the Defendant had already closed the safe deposit box. Later on, his father in his presence accused the Defendant of taking his money and told her that she would never get hold of his money.

3.13 In 50 of his affidavit of evidence-in-chief, the Plaintiff stated that around the time his father renewed the COE of his car and transferred it to Joycelyn on 26 January 1998, his father retrieved an old piece of folded paper (exhibit P7) from an old diary and then directed him to give it to Kwong Ling and for the latter to contact the deceased. I shall hereafter refer to that incident and related events as the "January 1998 episode."

3.14 The Plaintiff testified that he did not read P7, but had later learned about his father's will from Kwong Ling.

3.15 After his father's death, he contacted Mr. Chua who traced the deceased's duplicate will in his firm's Wills file. The Plaintiff accepted that the original will was handed over to his father on 22 September 1969. In June 1997, he had occasion to look into a locked drawer in his father's bedroom. At that time, he did not see the original will or P7.

3.16 The Plaintiff in 42 of his affidavit of evidence-in-chief stated that he was told by the deceased that he, the deceased "*had settled or taken care of everything for me and I need not have any worry about my future*." He also deposed in 43 that the deceased had told him that important documents were kept in the safe deposit box. The Plaintiff did not specify in his affidavit the safe deposit box in question. Besides safe deposit box no. 172A, there was safe deposit box no. 919B leased to the deceased and the Defendant.

3.17 The Plaintiff agreed that his father knew that he was terminally ill. He did not in his father's lifetime ask him where he had kept the original will. He did not know why his father had not made available to him the original will nor disclosed to him its whereabouts. He said that his father must have had his reasons.

3.18 He disagreed with the Defendant's Counsel that the deceased, prior to his death, had destroyed the original will. He agreed with Counsel's suggestion put to him that it was unlikely that his father being such a careful man would have mislaid or lost the original will. His father would have known

where he had placed the original will and that it would definitely be around. Notwithstanding his surmise, the original will has not been found since the death of his father.

The Defendant's Evidence

4. The Defendant testified that the deceased and she was a loving couple. On account of the deceased's ill health, the couple grew closer to each other during the last ten years of their marriage.

4.1 The deceased in his lifetime was a fair-minded person, not at all old- fashioned in his thinking. As such, he treated his children equally. She disagreed that her husband was a traditional Chinese man who would prefer to give more to his son than daughter. She did not believe the deceased would have disposed of the residue of his estate in the proportions set out in the duplicate will.

4.2 She denied forcing the deceased to become a Christian. She said that prior to her husband's baptism, he had sought his mother's permission.

4.3 She admitted that after 3 March 1998, the deceased was still able to feed himself, sit up and walk about with assistance.

4.4 As for safe deposit box no. 919B, her evidence is that the deceased kept the key and she seldom opened the safe deposit box on her own. Sometime before he had surgery to remove the malignant tumour in his brain, the deceased had told her to close the safe deposit box no.919B, which she eventually did on 24 February 1998. When the safe deposit box was closed, there was nothing in there except for some coins which she had brought home to keep.

4.5 She disagreed with the Plaintiff's evidence that her husband went to the safe deposit box in June or July 1998. She denied that the deceased had subsequently confronted her in the way narrated by the Plaintiff.

4.6 On 20 August 1992, the deceased made a CPF nomination under which 50% of the money in his CPF account would go to the Defendant and 25% each to the Plaintiff and Joycelyn.

4.7 The Defendant said that she knew nothing about the will. During his lifetime, the deceased had never spoken to her about it nor had she seen it, whether original or any other like document, which had been executed by the deceased. The Plaintiff did not prior to the deceased's death disclose to the Defendant exhibit P7. She learned about the existence of a will for the first time seventeen days after the death of the deceased when M/s C. H. Chua & Co, representing the Plaintiff at that time, wrote on 22 October 1998 informing her of the will made in 1969 and her appointment as trustee and executrix. In that same letter, the solicitors disclosed that the Plaintiff is a beneficiary under the will and he wished to know when she would apply for probate.

Findings and Decision

5. The Plaintiff's case is that though the original will is missing and could not be found, it had been duly executed in identical terms as the carbon copy left with the Registry in connection with the Citation dated 27 September 1999, and it had never been revoked. Accordingly, the duplicate will should be admitted to probate under section 9 of the ***Probate and Administration Act***, Cap. 251 and the will proved.

6. The Defendant's primary contention is that the duplicate will does not represent the last testamentary intentions of the deceased at the time of his death. She asserts that the deceased in his lifetime had destroyed his will with the intention of revoking it. Section 15 (d) of ***Wills Act*** provides:

> *"15. No will or codicil, or any part thereof, shall be revoked otherwise than –*
>
> *(d) by the burning, tearing, or otherwise destroying the will by the testator, or by some person in his presence and by his direction, with the intention of revoking it."*

7. To satisfy the requirements of section 15(d), the Defendant relies on a prima facie rule of evidence, which states that a will, which could not be found, is presumed to have been destroyed by the testator *animo revocandi*.

8. The locus classicus of that well-known principle is found in the case of ***Welch v Phillips*** (1836) 1 Moo.P.C. 299. Parke B at page 301 states:

> *"Now the rule of the law of evidence on this subject ..is this: That if a Will, traced to the possession of the deceased, and last seen there, is not forthcoming on his death, it is presumed to have been destroyed by himself; and that presumption must have effect unless there is sufficient evidence to repel it. It is a presumption founded on good sense; for it is highly reasonable to suppose that an instrument of so much importance would be carefully preserved, by a person of ordinary caution, in some place of safety, and would not be either lost or stolen; and if on the death of the maker, it is not found in his usual repositories, or else where he resides, it is in a high degree probable, that the decease himself has purposely destroyed it. But this presumption, like all others of fact, may be rebutted by others which raise a higher degree of probability to the contrary."*

9. The presumption of destruction *animo revocandi* is acknowledged and accepted by the authors of 15 ***Halsbury's Laws of Singapore*** at 190.213.

10. The burden of adducing evidence to satisfy the court that the presumption should be rebutted is on the Plaintiff. The ordinary civil standard of proof on a reasonable balance of probability applies.

11. An objection raised by Counsel for the Defendant in submissions is that the Plaintiff had not pleaded any material fact to rebut the presumption. The Plaintiff had simply joined issue with the Defendant on the presumption and put the Defendant to strict proof. That narration of the pleadings is incomplete. The Plaintiff in 5 of his Defence to the Counterclaim, expressly denied the matters pleaded in the Counterclaim, which, amongst other things, avers to the destruction of the will by the deceased with the intention of revoking it. The Plaintiff went on to positively assert in the same paragraph that the deceased left a valid and subsisting will at his death.

12. I do not accept that a prima facie case of destruction cannot, in the circumstances, be answered by such a denial. It is really up to those representing the Defendant to request Further and Better Particulars of 5 of the Defence to the Counterclaim.

13. It is the Defendant's case that important papers were kept by the deceased in a locked drawer in his bedroom. Her argument is that it is difficult to envisage that a careful man like the deceased, who

kept in a locked drawer in his bedroom his share certificates of TSE and personal papers like 1920's vaccination certificates, his own birth certificate in a sealed plastic bag, would lose his will or leave it somewhere that it could not readily be found. There is, however, evidence that the Plaintiff's birth certificate and the couple's marriage certificate were not amongst the papers in the locked drawer.

14. When the will was executed, the deceased was residing at no. 38 St Michael's Road. That property was demolished to make way for a block of flats. After completion of the development, the couple lived in one of the flats, namely, 22A Mar Thoma Road, until the deceased's death. The family would naturally have had to move out of 38 St Michael's Road, reside somewhere until their flat was ready for occupation. It is possible that the original will could have gone astray in any of these moves.

15. The family business, Teck Seng Company, was initially located at a shop along Rochor Road. Later in 1972, the business operated out of 66 Jalan Besar. In 1984 or 1985, following a fire at the Jalan Besar shop, the deceased moved the family business to 41 Desker Road. Again, it is possible that the original will could have gone astray in any of these moves. It is to be remembered that two photostat copies of the will were found in the photo albums kept at 41 Desker Road.

16. So the simple loss of the original will is at least as much a possibility as the destruction, which is presumed from the mere fact of absence of the document at the date of death.

17. It is clear that between the parties, it is accepted that the last that was ever seen of the original will was when it was handed over to the deceased on 22 September 1969 after it was duly executed and witnessed. Mr. Chua testified that in the normal course, the original will would have been handed over to the testator. The proper inference to be made is that the original will was in the hands of the deceased after execution. Both parties have admitted in their respective pleadings that after death it could not be found. It is not the Plaintiff's case that the Defendant had anything to do with the missing will.

18. I am satisfied that the rebuttable presumption of destruction arises here in circumstances where the deceased has had possession of his original will but, it could not be found after his death.

19. Therefore, the sole question for determination is whether there is sufficient evidence before me to rebut the presumption. Where evidence to rebut the presumption of destruction is admissible, counter-evidence is then admissible to support the presumption.

20. There is, in my view, evidence standing on its own sufficient to warrant a holding that the presumption of destruction is rebutted. I have reached this conclusion even though my confidence in the Plaintiff as a witness is undermined by his answers to questions in the witness stand. He is in the habit of giving lengthy answers to straightforward questions. What is damaging is that some of his evidence is either demonstrably false or wholly incredible. Save for undisputed facts, I have not accepted evidence of his, which is not corroborated or supported by contemporaneous documents.

21. Fortunately for the Plaintiff, the most significant piece of rebuttal evidence is the January 1998 episode, which is corroborated by Kwong Ling.

22. Kwong Ling stated in his affidavit of evidence-in-chief that in January 1998, the Plaintiff handed him P7 together with the message that his father wished to see him. He noticed that P7 was a will having seen the word "Will" and recognized the deceased's signature. Kwong Ling said he did not read the whole of P7. He returned P7 to the Plaintiff after having two photostat copies made.

23. A day or two later, he together with his wife visited the deceased as requested. The Defendant did not challenge this visit. The Defendant agreed that the deceased would discuss important matters with his brothers.

24. During this visit, a conversation solely between Kwong Ling and the deceased went on in the following way. The deceased asked him in Hokkien "*wa eh wee cheok hoh boh*". A literal English translation of the question is: 'Is my will good?", to which Kwong Ling replied "yes".

25. Kwong Ling believed that the deceased had wanted his opinion on the disposition of the residue of his estate in P7 when that question was asked. Again, he believed that the deceased in showing him P7 had wanted to let his brothers know that he had made a will.

26. Kwong Ling's oral testimony is that before visiting the deceased, he met his brothers and told them about the will. At this meeting, he showed his brothers a photostat copy of the will. His brothers looked at it and decided that it was the deceased's personal matter.

27. He admitted to making an error in 8 of his affidavit evidence-in-chief. In 8, he referred to a meeting with his five brothers to discuss the will after visiting the deceased. In the witness stand, he said that the meeting was before the visit.

28. Kwong Ling later made three or four other visits to the deceased. During those subsequent visits, they never talked about the will. Neither was the whereabouts of the original will disclosed.

29. Lim Choon Ling (PW4) is the Plaintiff's sixth uncle.

30. Lim Choon Ling ("Choon Ling") did not see P7 or a photostat copy made from it. It was Kwong Ling who told him about it. No copy of the will was passed around at the meeting with his brothers to discuss the will.

31. Kwong Ling, 70, came across as a sincere and honest witness who, within the limits of his memory, was doing his best to give fair and accurate evidence. He was forthright with his answers. He readily volunteered information about the deceased's joint investments with his brothers. There is no justification for drawing any adverse inference from the close working relationship the Plaintiff enjoys with his two uncles.

32. Choon Ling's evidence is relevant in that it corroborates Kwong Ling's testimony that the deceased's brothers did discuss the will and they decided that it was a private matter. The inconsistencies in Kwong Ling's testimony when compared with that of Choon Ling as to timing and circulation of a photocopy of the will at the meeting with the brothers are immaterial.

33. Choon Ling initially said that when the deceased was still alive, the brothers knew nothing of the will; so there was nothing to discuss. He later corrected this evidence as he had made a mistake. I accept Choon Ling's explanation that he was tensed during the start of cross-examination and misunderstood the question.

34. The Plaintiff said that two months after the January 1998 episode, his father had told him to see a lawyer after his death about the will. Thereafter, his father would occasionally remind him of that. According to the Plaintiff, he went to see Mr. Chua on his own volition and on the instructions from his father. I reject this oral evidence as untruthful. Not only was this material evidence not contained in his affidavit of evidence-in-chief, his oral testimony contradicts an earlier affidavit affirmed on 16 November 1999 in respect of previous proceedings on the same subject matter. In the November

affidavit, he deposed:

> "8. *[A]fter the death of my late father on 6.10.98 and* ***as I (sic) not close to my stepmother I decided to approach the lawyer Mr Chua Chong Hong*** *who acted for my late father and who signed as one of the witnesses of the will of my late father for advice.*" [emphasis added]

35. I infer from the January 1998 episode that, at any rate, up to then the deceased knew that he had made the will, was conscious of it and intended that it should take effect.

36. The January 1998 episode alone points to a continued intention to adhere to the will. I have not found any cogent evidence to suggest that the deceased changed his mind after the January 1998 episode. Nothing in the way of cogent evidence happened or occurred or which could reasonably be supposed to have occurred in the eight months, which preceded his death, to restore, as it were, the presumption, that the original will was taken out and destroyed.

37. I find that the deceased was lucid, at least up to end July 1998. He was mentally alert enough to have sought his mother's permission before becoming a Christian. He was baptized on 3 March 1998. Between 2 and 25 July 1998, he was still able to attend at least ten physiotherapy sessions at Balestier Hospital.

38. Choon Ling said that the deceased had telephoned him a few times for his personal mail and belongings at the office. The last time he called was in June or July 1998 with instructions to hand over to the Plaintiff his personal belongings. He handed three photo albums to the Plaintiff.

39. According to the Defendant, the deceased had also given her instructions for his funeral.

40. I have no doubt that the deceased knew that death was imminent. He had time and opportunity to carry out his intentions, if he had wanted to provide more for his wife and adopted daughter.

41. It seems highly improbable that the deceased, who was a man of careful and meticulous disposition, would simply have destroyed his will without first seeking legal advice, as he did when he made his will in 1969, if he had intended to change the disposition of the residue of his estate. After all, that would be what he, as an astute and successful businessman would have reasonably done. It is not likely that the deceased would have favoured intestacy. There is evidence from Mr. Chua that the deceased was aware of the implications of dying without a will when he saw him in 1969 in connection with his will.

42. Counsel for the Defendant submits that there are several factors that would support the presumption of destruction.

43. The first factor is the CPF nomination of 30 August 1992 whereby the deceased nominated the Defendant to receive 50% of his CPF money and 25% each to the Plaintiff and Joycelyn. The CPF nomination is not disputed. The Defendant contends that this nomination is a reflection of the fairness with which the deceased had treated his wife and children in his lifetime. The Plaintiff refutes any such equality in treatment.

44. I accept Counsel for the Plaintiff's argument that the CPF nomination does not assist the Defendant. The CPF nomination was made in August 1992, some five years before the January 1998 episode. The CPF nomination is a record of the deceased's wishes as regards his CPF money, which is separate and distinct from a testamentary disposition of the residue of his estate. I view and treat

the CPF nomination as an instance of the deceased's disposition of one of his assets during his lifetime, but not as a reflection of the final testamentary intentions of the deceased.

45. If indeed he had wanted to change his will to bring it in line with his CPF nomination, I would have expected the deceased to make a new will or codicil. It would be out of character for the deceased to tear up his will without apparently telling anyone or consulting his brothers or lawyer.

46. The second factor relates to various conversations the Defendant and the deceased have had after he was diagnosed as suffering from colon cancer in September 1996. They ranged from the need for financial independence in the context of children abandoning their aged parents to the deceased's assurances that there would be sufficient savings for both of them.

47. The Defendant in 87 (b) of her written testimony stated:

> *"(b) When my late husband became ill, I was also very worried as I had depended on him totally all my life, not having worked a single day. I had voiced my concern to my late husband on several occasions and he had told me not to worry. He told me that there would be enough savings for both of us since the children are all grown up and had their own family."*

48. I cannot see how the deceased's assurances can be a factor in support of the presumption. The operative word there is "savings". The deceased was talking about his "savings" which is but a portion of his wealth. The anxiety on this score was that of the Defendant. I cannot see how the deceased's assurances could possibly be said to lend any support to the notion that he had destroyed his will.

49. There is no cogent evidence to suggest that the deceased had some deep-seated malaise, arising from his terminal illness and sizeable medical bills, which would have led him or could reasonably be thought to have led him to destroy his will and instead opt for intestacy in order to provide for his family.

50. Counsel for the Defendant contends that there are several reasons that might have influenced the deceased or caused him to change his mind and to tear up his will without consulting or telling anybody. His argument centred on changes in circumstances and the effluxion of time since the will was executed.

51. The will was executed some 29 years ago. At the time the deceased executed the will on 22 September 1969, he had lived with the Defendant as husband and wife for nine years. The Plaintiff was then only twelve years old. Joycelyn was four years old then and was not yet legally adopted by the deceased and Defendant. She was legally adopted on 20 April 1970. At that time, the choice of the Defendant as trustee and executrix was natural. The will was then necessary to provide for Joycelyn.

52. Since then, the children have grown up and have their own families. Counsel for the Defendant argues that as at October 1998 the deceased no longer had to be concern about the Plaintiff's future in the same way he did when the Plaintiff was still a child. He had already through lifetime gifts adequately provided for the Plaintiff.

53. At time of death, the Defendant and deceased had been married for 37 years. During his illness, the Defendant was the primary care giver for 25 months until his death. I find nothing in that which suggests a reason as to why the deceased having executed his will and having sought his brother's opinion on his will in January 1998 should seek to change it. Such evidence in my view is irrelevant

and does not support the presumption. The deceased probably expected from his wife the care she had given him.

54. Counsel's argument that the will seems obsolete given the assets amassed over the years is misplaced. The will is in simple and clear terms, prepared like most wills to be timeless in application.

55. The Defendant's evidence is that she did not know about the will before 22 October 1998. I accept her Counsel's submission that as trustee and executrix of the will, she should at least be told about this. But it is quite clear that the deceased was reticent with his wife when it came to such matters in the same way he kept from her the existence of the POSB joint account with his son and safe deposit box no. 172A.

56. Her husband's reticence about his testamentary intentions is evidence against the application of the presumption. This reticence could be because he may have been merely trying to stop any questioning or discussion. It is no indication that the will was not his last testamentary intentions or that the deceased had made a will but had revoked it.

57. In these circumstances, I hold that the presumption of destruction *animo revocandi*, is rebutted and I order that the duplicate will be admitted to probate.

58. The Defendant's Counterclaim is accordingly dismissed.

59. On the question of costs for the main action, I order that costs payable to the Plaintiff be taxed and paid out of the estate. This trial was necessary because of the missing original will. The Defendant, who has little formal education, was not told that the deceased had made a will in 1969 until after 22 October 1998. The January 1998 episode was raised for the first time in the Plaintiff's affidavit of evidence-in-chief, just 2 months before the trial of this action. In my view, the Defendant, in the circumstances, had acted reasonably in defending the action.

60. Save for the relief sought in the Counterclaim, the issues in the main action are the same as the Counterclaim. They overlap and were tried at the same time. Therefore, I make no order as to costs on the Counterclaim.

Sgd:

BELINDA ANG SAW EAN
JUDICIAL COMMISSIONER