IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2019] SGHCF 1

HCF/Suit No 6 of 2017
(Registrar's Appeals Nos 2 and 3 of 2018)

Between

(1) URF
(2) URG

… *Plaintiffs*

And

URH

… *Defendant*

JUDGMENT

[Family Law] — [Family Court]

[Family Law] — [Procedure]

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URF and another
v
URH

[2019] SGHCF 1

High Court — HCF/Suit No 6 of 2017 (Registrar's Appeals Nos 2 and 3 of 2018)
Tan Puay Boon JC
10 October 2018; 26 October 2018

8 January 2019 Judgment reserved.

Tan Puay Boon JC:

1 Registrar's Appeals Nos 2 and 3 of 2018 ("RA 2" and "RA 3") are two appeals that arise out of a suit concerning the estate of [X], who passed away in 2017. RA 2 is the plaintiffs' appeal against certain specific discovery orders made by the assistant registrar ("the AR") below. RA 3 is the defendant's appeal against a bifurcation order made by the AR.

The parties

2 The first plaintiff was [X]'s personal assistant who worked with him at his company, [Z] Pte Ltd, since at least the 1980s.[1] The precise relationship between [X] and the first plaintiff is keenly disputed in this action.

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[1] Defence and Counterclaim (Amendment No 1) dated 2 February 2018 ("Defence") at para 6; Reply and Defence to Counterclaim (Amendment No 1) dated 20 February 2018 ("Reply") at para 16.

3 The second plaintiff is the son of the first plaintiff's sister. According to him, the first plaintiff has cared for and raised him as her son since he was about a few weeks old, and he regards her as his mother.[2]

4 The defendant is the only child of [X] and [X]'s wife, [Y].[3] He resides in Spain. The defendant has lived overseas for several years. While [X] was alive, he would return to Singapore about once or twice each year.[4]

The undisputed facts

5 On 25 April 2005, [X] and [Y] made two wills whose provisions mirror each other. The first plaintiff was a witness to these wills. I will refer to the will executed by [X] as "the 2005 Will". The 2005 Will provided as follows:[5]

(a) [X] appointed [Y] as the executrix of the will albeit that if [Y] predeceased him or died within two weeks of his death, the defendant was to be appointed as the executor of the will;

(b) [Y] was named as the sole beneficiary of [X]'s estate albeit that, if [Y] predeceased [X], the defendant was to be the sole beneficiary.

6 On 12 January 2007, [Y] passed away.[6]

7 On 12 November 2008, [X] allegedly executed a will ("the 2008 Will"). Under the terms of the 2008 Will:[7]

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2 2nd plaintiff's affidavit dated 13 April 2018 at para 11.

3 Defendant's affidavit dated 13 April 2018 at para 4.

4 Defence at para 9; Reply at para 9 and 10(h).

5 2nd plaintiff's affidavit dated 13 April 2018 at paras 17–18 and pp 15–19.

6 2nd plaintiff's affidavit dated 13 April 2018 at para 8.

7 2nd plaintiff's affidavit dated 13 April 2018 at paras 19–20 and pp 21–23.

(a) All former wills made by [X] were revoked;

(b) [X] appointed the plaintiffs to be the executors of the will;

(c) [X] gave his house and certain office premises to the plaintiffs in joint tenancy; and

(d) [X] gave his residual estate to the plaintiffs and the defendant in the following proportions: 40% to the first plaintiff, 30% to the second plaintiff and 30% to the defendant.

8 On 14 May 2017, [X] passed away.[8]

9 On 22 June 2017, the plaintiffs applied for a grant of probate of the 2008 Will.[9]

10 On 29 June 2017, the defendant's solicitors lodged a caveat on his behalf against the grant of probate ("the Caveat").[10]

11 On 3 July 2017, the plaintiffs filed a Warning to Caveator requiring the defendant to file an Appearance to Warning setting out his alleged interest in [X]'s estate.[11]

12 On 11 July 2017, the defendant filed an Appearance in respect of the Warning to Caveator, claiming that he had an interest in [X]'s estate as the sole beneficiary to and intended administrator of [X]'s estate. The defendant alleged that the 2008 Will was invalid on the grounds of undue influence and/or lack of

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8 2nd plaintiff's affidavit dated 13 April 2018 at para 6.

9 2nd plaintiff's affidavit dated 13 April 2018 at para 21.

10 2nd plaintiff's affidavit dated 13 April 2018 at para 22 and p 24.

11 2nd plaintiff's affidavit dated 13 April 2018 at para 23 and pp 26–27.

testamentary capacity due to [X]'s medical condition at the material time.[12]

13 On 31 August 2017, the plaintiffs commenced this suit ("Suit 6") in the Family Division of the High Court ("the Family Division").[13]

The parties' cases in Suit 6

14 The plaintiffs' case, pared down to its essentials, is as follows:

(a) First, the 2008 Will is valid: the defendant's claims that it was procured by undue influence and that [X] lacked testamentary capacity at the material time (see [18(a)] below) are untrue.[14]

(b) Second, the defendant's allegations regarding the validity of the 2005 Will and transfers which [X] allegedly made to the plaintiffs ("the Alleged Transfers") (see [18(b)]–[18(c)] below) are also untrue.[15]

15 The plaintiffs accordingly seek, among other reliefs, an order that the Caveat be removed and a grant of probate of the 2008 Will.[16]

16 More broadly, the plaintiffs aver as follows:

(a) The first plaintiff and [X] had a romantic relationship spanning 40 years; they were constant companions until his passing. [X] cared for the plaintiffs as if they were his wife and son; the trio were for all intents and purposes a family unit. Although [X] and [Y] remained married,

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12 2nd plaintiff's affidavit dated 13 April 2018 at para 24 and pp 28–29.

13 Writ of summons dated 31 August 2017.

14 Statement of claim dated 31 August 2017 ("Statement of claim") at para 7.

15 Reply at paras 75–81.

16 Statement of claim at p 3.

they led largely separate lives. [Y] knew of [X]'s relationship with the first plaintiff, and did not show resentment towards the plaintiffs.[17]

(b) The defendant had a fractious relationship with his parents, [X] and [Y]. [X] had often shared with the plaintiffs his disappointment with and disapproval of the defendant, whom he regarded as selfish.[18]

(c) In or around 2006, [X] was diagnosed with Parkinson's disease. However, this did not cause [X] to suffer from any significant cognitive impairment. It was only in August 2009 (that is, after the 2008 Will was executed) that [X]'s health took a turn for the worse.[19]

17 Importantly, on the plaintiffs' own case, the first plaintiff was heavily involved in [X]'s life and personal affairs, and there was "love, mutual trust and confidence" between them.[20] [X] "entrusted the [first plaintiff] with his personal and company affairs".[21] More specifically, according to the plaintiffs:[22]

(a) the first plaintiff and [X] "practically spent all of their time together";

(b) [X]'s cars were available for the first plaintiff's use;

(c) the first plaintiff signed the necessary papers to authorise surgery on [X] after he fell into a coma in August 2009; and

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17 Reply at paras 16–20.

18 Reply at paras 10–11.

19 Reply at paras 24–25, 29 and 56.

20 Reply at para 63.

21 Reply at para 64(c).

22 Reply at paras 17(a), 19(g), 29, 33 and 33(c)

(d) the first plaintiff managed or primarily supervised [X]'s care from August 2009 to 2017, and would go to his home "*practically every day to attend to [X] and the affairs of [Z] Pte Ltd*" [emphasis added].

18 The defendant's case is as follows:

(a) First, the 2008 Will is invalid because:[23]

(i) it was purportedly executed at a time when [X] lacked testamentary capacity due (primarily) to illness; and

(ii) further, or alternatively, the 2008 Will was procured by undue influence exerted by the first plaintiff over [X].

(b) Second, [X]'s last will is the 2005 Will and under that will, the defendant is the executor and also the sole beneficiary of [X]'s estate.[24]

(c) Third, [X] made *inter vivos* transfers to the first plaintiff and/or the second plaintiff under undue influence exerted by the plaintiffs, and/or these transfers were made when [X] lacked mental capacity.[25]

19 The defendant seeks the following reliefs among others:[26]

(a) a declaration that the 2008 Will is invalid and of no effect;

(b) a declaration that the 2005 Will is proved in solemn form of law and a grant of probate of the 2005 Will;

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23 Defence at paras 12 and 19.

24 Defence at paras 33A–33B.

25 Defence at para 34.

26 Defence at pp 16–17.

(c) an order that the plaintiffs render an account of assets which they received from [X] or [X]'s estate from 2008;

(d) a declaration that the transfer of [X]'s properties and/or assets to the plaintiffs from 2008 be set aside, as having been procured by the undue influence of the plaintiffs over [X]; and

(e) a declaration that the plaintiffs hold the properties and/or the assets and/or [X]'s estate as constructive trustees for the defendant.

20 More broadly, the defendant makes the following claims:

(a) [X] did not have a romantic relationship with the first plaintiff, but "always maintained a purely professional working relationship" with her.[27] This is a case of "an employee-cum-personal assistant … seeking to enrich herself with the assets of her deceased employer … [through] scheming and systematic control of [his] mind, person and property".[28]

(b) He had a close relationship with [X] which became stronger after [Y] passed away.[29]

(c) [X] had been suffering from Parkinson's disease since 1999. His health deteriorated rapidly around 2007 to 2008, after the death of [Y]. At this point, the first plaintiff "seized the opportunity to systematically assume full control, influence and dominion over the old and infirm [X] and all of his personal finances and business affairs".[30] She procured the

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27 Defendant's affidavit dated 1 June 2018 at para 3.

28 Defence at para 1.

29 Defence at para 9.

30 Defence at para 21.

execution of the 2008 Will, prevented him from changing the 2008 Will when he wanted to in 2011 and procured transfers of monies to herself.[31]

The proceedings and decisions below

21 On 13 April 2018, the parties filed the following applications:

(a) First, the plaintiffs applied for an order that the plaintiffs' claim and that part of the defence and counterclaim relating to the validity of the 2008 Will ("the Preliminary Issue") be tried first, with all other parts of the defence and counterclaim to be stayed and dealt with, if necessary, after the determination and disposal of the Preliminary Issue.[32] I will refer to this application as "the Bifurcation Application".

(b) Second, the defendant applied for specific discovery of certain documents ("the Specific Discovery Application").[33]

22 On 20 July 2018, the AR dealt with both applications. She granted the Bifurcation Application, ordering that the Preliminary Issue be tried first ("the Bifurcation Order").[34] She also granted the Specific Discovery Application in part, ordering the plaintiffs to provide specific discovery of various documents ("the Specific Discovery Order").[35]

23 The AR gave brief oral grounds for the Bifurcation Order:[36]

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31 Defence at paras 19, 24, 29 and 35–37.

32 HCF/SUM 125/2018.

33 HCF/SUM 123/2018.

34 HCF/ORC 278/2018.

35 HCF/ORC 292/2018.

36 Notes of Evidence dated 20 July 2018.

(a) The AR accepted that the evidence on the plaintiffs' receipt of assets from 2008 would bear on the validity of the 2008 Will. However, she did not agree that there was a significant overlap of issues requiring all of the issues to be heard at the same time. The determination of which will should be recognised was a preliminary exercise that could proceed in a timely way, and would have a significant impact on how the parties proceeded thereafter. If all issues were heard at once, this would "labour the parties in terms of cost and time". The Bifurcation Application was thus allowed on "a balance of justice and convenience".

(b) The AR added that in her view, the Family Division had jurisdiction to hear all of the matters in Suit 6. The decision of the Court of Appeal in *UDA v UDB and another* [2018] 1 SLR 1015 ("*UDA*") when read in the context of the provisions of the Family Justice Act 2014 (Act 27 of 2014) ("the FJA") did not militate against that view.

24 I turn first to RA 3.

RA 3 – The Bifurcation Order

25 RA 3 is the defendant's appeal against the Bifurcation Order.

The parties' submissions

26 The defendant makes the following submissions:

(a) First, this court has jurisdiction to hear the defendant's claims regarding the Alleged Transfers ("the *Inter Vivos* Claims") under s 22(1)(*b*) of the FJA read with the Family Justice (Family Proceedings before Family Division of High Court) Order 2014 (S 822/2014) ("the

2014 Order"). Further, in any event, the court has jurisdiction to hear the *Inter Vivos* Claims under s 25 of the FJA.[37]

(b) Second, the AR erred in making the Bifurcation Order. There was no basis for that order because the Preliminary Issue is not a succinct knock-out point capable of being decided after a relatively short hearing but will require extensive inquiry into the facts, cannot be divorced from the *Inter Vivos* Claims, does not involve the straightforward construction of documents; and however it is decided, will save little time or expense because the *Inter Vivos* Claims will still have to be tried.[38]

27 The plaintiffs submit as follows:

(a) First, this court does not have jurisdiction to hear the *Inter Vivos* Claims, because the claims do not fall within the jurisdiction of the Family Division as delineated under ss 22 and 25 of the FJA.[39]

(b) Second, in any case, the AR did not err in making the Bifurcation Order. Bifurcation is justified because:[40]

(i) it will facilitate or increase the prospects of settlement of the *Inter Vivos* Claims, which would lead to very substantial savings of costs and resources;

(ii) there is no significant overlap in the issues raised by the Preliminary Issue and the *Inter Vivos* Claims; and

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37 Defendant's submissions for RA 3 at paras 43, 55(a) and 56; Defendant's further submissions for RA 3 at para 123.

38 Defendant's submissions for RA 3 at para 81.

39 Plaintiff's submissions for RA 3 at paras 114(d)–(e) and 121–122.

40 Plaintiff's submissions for RA 3 at paras 50, 55 and 82.

(iii) more generally, bifurcation would lead to substantial savings in costs and time.

The issues

28 The parties' arguments are joined over two issues:

(a) First, does this court have jurisdiction over the *Inter Vivos* Claims ("the Jurisdiction Issue")?

(b) Second, if the court has jurisdiction over the *Inter Vivos* Claims, did the AR err in making the Bifurcation Order ("the Bifurcation Issue")?

29 The Bifurcation Issue only arises if this court has jurisdiction over the *Inter Vivos* Claims. I therefore turn first to the Jurisdiction Issue.

The Jurisdiction Issue

30 In the landmark decision of *UDA*, the Court of Appeal made several important pronouncements on the jurisdiction of the Family Division. Having considered the relevant provisions of the FJA in the light of *UDA*, along with the parties' submissions, I have come to the view that this court does not have jurisdiction over the *Inter Vivos* Claims.

31 I begin with s 22(1) of the FJA, which states:

> **Original civil jurisdiction of High Court exercisable through Family Division**
>
> **22.**—(1) The part of the civil jurisdiction of the High Court which shall be exercised through the Family Division shall consist of —

> (*a*) the jurisdiction conferred on the High Court by *sections 17(a), (d), (e) and (f) and 17A of the Supreme Court of Judicature Act* (Cap. 322); and
>
> (*b*) such other jurisdiction *relating to family proceedings as is vested in or conferred on the High Court by any written law.*
>
> [emphasis added]

32 I first discuss s 22(1)(*a*) of the FJA.

Section 22(1)(a) of the FJA

33 It is clear, and undisputed, that this court does not have jurisdiction over the *Inter Vivos* Claims under s 22(1)(*a*) of the FJA. This is because sections 17(1)(*a*), 17(1)(*d*), 17(1)(*e*) and 17(1)(*f*) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("the SCJA") provide as follows:

> **Civil jurisdiction — specific**
>
> **17.**—(1) Without prejudice to the generality of section 16, the civil jurisdiction of the High Court shall include —
>
> (*a*) jurisdiction under any written law relating to divorce and matrimonial causes;
>
> …
>
> (*d*) jurisdiction to appoint and control guardians of infants and generally over the persons and property of infants;
>
> (*e*) jurisdiction to appoint and control guardians and keepers of the persons and estates of idiots, mentally disordered persons and persons of unsound mind; and
>
> (*f*) jurisdiction to grant probates of wills and testaments, letters of administration of the estates of deceased persons and to alter or revoke such grants.
>
> [emphasis added]

34 The *Inter Vivos* Claims plainly fall outside the scope of these provisions. (I note in passing, however, that it is undisputed that this court has jurisdiction

over the parties' respective claims for a grant of probate of the 2005 and 2008 Wills ("the Probate Claims") under s 17(1)(*f*) of the SCJA.[41])

35 Further, s 17A of the SCJA, which concerns the High Court's concurrent jurisdiction with the Syariah Court in certain matters, is not applicable.

36 I therefore conclude that this court does not have jurisdiction over the *Inter Vivos* Claims under s 22(1)(*a*) of the FJA.

Section 22(1)(b) of the FJA

37 Under s 22(1)(*b*) (see [31] above), the Family Division has jurisdiction:

(a) vested in or conferred on the High Court by any "written law",

(b) which relates to "family proceedings".

38 The defendant argues that this court has jurisdiction over the *Inter Vivos* Claims under s 22(1)(*b*) of the FJA read with the 2014 Order (see [26(a)] above) as follows:

(a) First, the 2014 Order is "written law" that confers jurisdiction over the *Inter Vivos* Claims on the Family Division. The defendant cites s 2(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) ("the Interpretation Act") which defines "written law" to include subsidiary legislation.[42]

(b) Second, the jurisdiction conferred on the High Court by the 2014 Order relates to "family proceedings". In this connection, the defendant

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41 Plaintiff's submissions for RA 3 at para 114(c); Defendant's further submissions for RA 3 at para 114.

42 Defendant's further submissions for RA 3 at para 55.

submits that the definition of 'family proceedings" is not confined to the definition set out in s 2(1) of the FJA.[43]

39 The plaintiffs argue to the contrary as follows:

(a) First, the 2014 Order is subsidiary legislation and thus, it cannot expand the jurisdiction of the court.[44]

(b) Second, even if the 2014 Order confers jurisdiction on this court, the *Inter Vivos* Claims do not fall within the scope of the 2014 Order because they do not involve administration actions or proceedings.[45]

(c) Third, any jurisdiction which the High Court has over the *Inter Vivos* Claims does not relate to "family proceedings", which term is exhaustively defined in s 2(1) of the FJA, and therefore is not devolved to the Family Division under s 22(1)(*b*) of the FJA.[46]

40 In my judgment, this court does not have jurisdiction over the *Inter Vivos* Claims under s 22(1)(*b*) of the FJA read with the 2014 Order.

41 First, the 2014 Order is not "written law" that vests jurisdiction in the High Court. The 2014 Order is a piece of subsidiary legislation, whereas it is well-established that the jurisdiction of a court can only derive from statute: see *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 at [14] and [20]. In *UDA*, the Court of Appeal reiterated this position at [48] as follows:

> Further, *it is a fundamental tenet of statutory interpretation that subsidiary legislation like rules of procedure cannot create*

43 Defendant's further submissions for RA 3 at para 71.

44 Plaintiff's submissions for RA 3 at paras 120–121.

45 Plaintiff's further submissions for RA 3 at paras 53.

46 Plaintiff's further submissions for RA 3 at paras 25–51.

> *substantive rights*. Rule 353 is a procedural rule permitting parties with an interest in proceedings to be added to those proceedings but only where the court has jurisdiction to determine that issue between the intervener and the original parties in those same proceedings. *It cannot be used to confer jurisdiction on the court since jurisdiction can only be derived from statute.* [emphasis added]

42 Since the jurisdiction of a court can only derive from statute, the phrase "written law" in s 22(1)(*b*) of the FJA, in my judgment, refers only to statute. Notwithstanding that s 2(1) of the Interpretation Act defines "written law" to include subsidiary legislation, that provision also provides that the definitions set out thereunder do not apply if "there is something in the subject or context inconsistent with such construction …". In my judgment, the subject and context of s 22(1)(*b*) of the FJA (the conferral of jurisdiction) is inconsistent with construing the phrase "written law" to include subsidiary legislation.

43 Second, on a plain reading of the 2014 Order, it does not purport to vest any jurisdiction in the High Court. The material portions of the 2014 Order state:

> *In exercise of the powers conferred by* ***section 26(4) of the [FJA]***, I, Sundaresh Menon, Chief Justice, hereby make the following Order:
>
> …
>
> **Family proceedings to be heard and determined by Family Division of High Court**
>
> **2.** The following classes of family proceedings ***shall be heard and determined*** by the Family Division of the High Court:
>
> …
>
> (c) *any proceedings for the administration of the estate of a deceased person*, where the amount or value of the estate, excluding what the deceased was possessed of or entitled to as a trustee and not beneficially, but without deducting anything on account of the debts due or owing from the deceased, is believed, at the time of commencement of those proceedings, by the plaintiff or applicant to exceed $5 million…
>
> [emphasis added]

44 Section 26 of the FJA states:

> **Jurisdiction of Family Courts**
>
> **26.**—(1) …
>
> (2) Subject to subsections (4), (5) and (6), a Family Court shall have —
>
> (*a*) all the civil jurisdiction of the High Court referred to in section 22(1)(*a*) and (*b*);
>
> (b) when exercising any jurisdiction referred to in section 22(1)(*a*) or (*b*), all the powers of the High Court in the exercise of the original civil jurisdiction of the High Court; and
>
> (*c*) such other jurisdiction relating to family proceedings as is conferred on a Family Court by any written law.
>
> …
>
> (3A) If any family proceedings may be heard and determined by a Family Court or by the Family Division of the High Court, those proceedings must in the first instance be commenced in a Family Court.
>
> (4) *Despite subsections (2), (3) and (3A), the Chief Justice may by order published in the Gazette direct that any class or description of family proceedings specified in the order shall be heard and determined by the Family Division of the High Court.*
>
> …
>
> [emphasis added]

45 I make the following points about the 2014 Order and s 26 of the FJA:

(a) The 2014 Order does not purport to vest any jurisdiction in the High Court. The word "jurisdiction" is not used in the 2014 Order at all.

(b) This is unsurprising. The 2014 Order was made "in exercise of the powers conferred by [s 26(4)] of the [FJA]", and s 26(4) clearly does not empower the Chief Justice to vest jurisdiction in the High Court.

(c) Instead, s 26(4) empowers the Chief Justice to direct that certain family proceedings be heard and determined by the Family Division,

> notwithstanding that a Family Court may have jurisdiction over those proceedings under s 26(2), and the general rule in s 26(3A) that family proceedings that may be heard and determined by a Family Court or the Family Division must in the first instance be commenced in the former.

46 Third, I agree with the plaintiffs that any jurisdiction that the High Court has over the *Inter Vivos* Claims does not relate to "family proceedings", and is therefore not devolved to the Family Division under s 22(1)(*b*) of the FJA.

47 The term "family proceedings" is defined in s 2(1) of the FJA as follows:

> **2.**—(1) In this Act, unless the context otherwise requires —
>
> …
>
> "family proceedings" means —
>
> (a) any civil proceedings under section 53 of the Administration of Muslim Law Act (Cap. 3);
>
> (b) any civil proceedings under the Adoption of Children Act (Cap. 4);
>
> (c) any civil proceedings under the Guardianship of Infants Act (Cap. 122);
>
> (d) any civil proceedings under the Inheritance (Family Provision) Act (Cap. 138);
>
> (e) any civil proceedings under the International Child Abduction Act (Cap. 143C);
>
> (f) any civil proceedings for the distribution of an intestate estate in accordance with the Intestate Succession Act (Cap. 146);
>
> (g) any civil proceedings under the Legitimacy Act (Cap. 162);
>
> (h) any civil proceedings under section 10 of the Maintenance of Parents Act (Cap. 167B);
>
> (i) [*Deleted by Act 16 of 2016 wef 01/01/2017*]
>
> (j) any civil proceedings under the Maintenance Orders (Reciprocal Enforcement) Act (Cap. 169);

> (k) any civil proceedings under the Mental Capacity Act (Cap. 177A);
>
> (l) any civil proceedings under the Mental Health (Care and Treatment) Act (Cap. 178A);
>
> (m) any civil proceedings under the Status of Children (Assisted Reproduction Technology) Act 2013 (Act 16 of 2013);
>
> (n) any civil proceedings under section 17A(2) of the Supreme Court of Judicature Act (Cap. 322);
>
> (o) any civil proceedings under the Voluntary Sterilization Act (Cap. 347);
>
> (p) any civil or quasi-criminal proceedings under the Women's Charter (Cap. 353);
>
> (q) on or after the date specified under section 47(11), any civil proceedings under the Probate and Administration Act (Cap. 251); and
>
> (r) on or after the date of commencement of section 7(c) of the Statutes (Miscellaneous Amendments) Act 2016, any civil proceedings under the Wills Act (Cap. 352);
>
> …

48 The plaintiffs submit that the *Inter Vivos* Claims do not fall within the scope of any of the proceedings set out in paragraphs (*a*) to (*r*) of the definition of "family proceedings" in s 2(1) of the FJA.[47] The defendant does not contend otherwise. I accept the plaintiffs' submission. Further, although s 2(1) of the FJA states that the definitions set out thereunder do not apply if "the context otherwise requires", the context of s 22(1)(*b*) of the FJA does not, in my judgment, require a meaning to be accorded to the phrase "family proceedings" in s 22(1)(*b*) which is different from that set out in s 2(1). I therefore conclude that any jurisdiction that the High Court has over the *Inter Vivos* Claims does not relate to "family proceedings".

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47 Plaintiff's further submissions for RA 3 at paras 28–51.

49 For the aforementioned reasons, I conclude that this court does not have jurisdiction over the *Inter Vivos* Claims under s 22(1)(*b*) of the FJA read with the 2014 Order. It is therefore not necessary for me to express a view on the plaintiffs' submission that in any event, the *Inter Vivos* Claims do not fall within para 2(*c*) of the 2014 Order as they do not involve "proceedings for the administration of the estate of a deceased person" (see [39(b)] above).

50 I note in passing that the defendant also refers to the Trustees Act (Cap 337, 2005 Rev Ed) ("the TA") in his further submissions in RA 3. Although a sentence in those submissions may be interpreted as suggesting that the TA vests jurisdiction over the *Inter Vivos* Claims in this court,[48] I do not understand this to be the defendant's position. Rather, the defendant's position appears to be that the TA *affirms* the "equity jurisdiction" of the Family Justice Courts (by empowering those courts to exercise certain powers and grant certain reliefs).[49]

51 In any case, I am satisfied that the TA does not confer jurisdiction over the *Inter Vivos* Claims on this court. The defendant did not draw my attention to any relevant jurisdiction-conferring provision in the TA, and I am satisfied that there is no such provision.

52 I now turn to s 25 of the FJA.

Section 25 of the FJA

53 Section 25 of the FJA states:

> **Family Division may exercise entire jurisdiction of High Court**

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48 Defendant's further submissions for RA 3 at para 111.

49 Defendant's further submissions for RA 3 at paras 102–105 and 123.

> **25.** For the avoidance of doubt, the Family Division of the High Court may exercise the entire original and appellate civil and criminal jurisdiction of the High Court under the Supreme Court of Judicature Act (Cap. 322) and under any other written law.

54 In *UDA*, the Court of Appeal stated the following on s 25 at [45]:

> In the light of the way that *s 22 plainly delineates the jurisdiction conferred on the Family Division*, the purpose of s 25 is to be a *gap-filling provision for the purpose of assisting the Family Division in exercising its primary jurisdiction*. It confirms that the Family Division has *power to deal with civil issues when they arise in the course of matters in which the Family Division's jurisdiction has been properly invoked*. …
>
> [emphasis added]

55 Thus, s 25 of the FJA is a "gap-filling provision" that enables the Family Division to deal with civil issues arising in the course of matters in which the Family Division's primary jurisdiction under s 22 of the FJA is invoked.

56 The *Inter Vivos* Claims do not "arise in the course of" the Probate Claims (regarding which the Family Division's primary jurisdiction under s 22(1)(*a*) of the FJA read with s 17(1)(*f*) of the SCJA has been invoked). They are claims that are independent of the Probate Claims. It is unnecessary to determine the *Inter Vivos* Claims to dispose of the Probate Claims. The defendant could have brought the Probate Claims without bringing the *Inter Vivos* Claims, and *vice versa*. I therefore find that this court does not have jurisdiction over the *Inter Vivos* Claims pursuant to s 25 of the FJA.

Conclusion

57 I conclude that this court does not have jurisdiction over the *Inter Vivos* Claims. It follows that the Bifurcation Issue – whether the AR erred in ordering the Preliminary Issue to be tried before the other issues raised by the pleadings in Suit 6 – does not arise, since this court may only hear the Preliminary Issue

and may not determine the other issues. It also follows the defendant's appeal in RA 3 must fail: the court cannot hear the *Inter Vivos* Claims together with the Preliminary Issue, because it cannot hear the *Inter Vivos* Claims to begin with.

58 I therefore dismiss RA 3.

RA 2 – The Specific Discovery Order

59 RA 2 is the plaintiffs' appeal against the Specific Discovery Order. More specifically, the appeal is against the AR's decision to grant specific discovery of the following documents ("the Documents"):[50]

> (a) the account opening documents and quarterly bank statements in respect of the joint account(s) held by [X] and the first plaintiff from 2008 to date, including but not limited to a United Overseas Bank fixed deposit account;
>
> (b) the account opening documents and quarterly bank statements in respect of the joint account(s) held by [X] and the second plaintiff from 2008 to date;
>
> (c) the account opening documents and quarterly bank statements for [X]'s sole accounts and joint accounts from 2008 to date; and
>
> (d) the account opening documents and quarterly bank statements for the first plaintiff's sole accounts and joint accounts from 2008 to date insofar as it relates to [X]'s accounts.

60 The notice of appeal in RA 2 did not initially state that the plaintiffs were appealing against the AR's decision to grant specific discovery of the account

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[50] Plaintiff's submissions for RA 2 at para 1.

opening documents referred to in [59(c)]–[59(d)] above. However, during the hearing, counsel for the plaintiffs made an oral application to amend the notice of appeal to insert reference to the relevant documents, explaining that he had inadvertently omitted them from the notice of appeal. After hearing the parties' submissions, I granted the oral application.

The parties' submissions

61 The plaintiffs, the appellants in RA 2, make the following submissions:

(a) First, the defendant has not made out a *prima facie* case that the plaintiffs have possession, custody or power over all of the Documents, in particular the documents pertaining to [X]'s sole accounts and [X]'s joint accounts with parties other than the plaintiffs.[51]

(b) Second, the Documents are not relevant to the Probate Claims. Nor are they relevant to the *Inter Vivos* Claims.[52]

(c) Third, discovery of the Documents is not necessary. Nor does discovery conduce to the fair disposal of the matter, since it would be tantamount to ordering an account, that is, granting the defendant one of the reliefs he seeks in Suit 6 (see [19(c)] above).[53]

62 The defendant submits as follows:

(a) First, the plaintiffs clearly have (had) possession, custody or power over the Documents.[54]

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51 Plaintiff's submissions for RA 2 at paras 9–11.

52 Plaintiff's submissions for RA 2 at paras 12–42.

53 Plaintiff's submissions for RA 2 at paras 43–54.

54 Defendant's submissions for RA 2 at paras 20–23.

(b) Second, the Documents are relevant to both the Probate Claims and the *Inter Vivos* Claims,[55] even if the Bifurcation Order is upheld.[56]

My decision

The law

63 The Specific Discovery Application was made pursuant to r 466 of the Family Justice Rules 2014 (S 813/2014) ("the FJR"), which states:

> **Order for discovery of particular documents**
>
> 466.—(1) Subject to rule 468, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating —
>
> (*a*) whether any document or class of document specified or described in the application is, or has at any time been, in the other party's possession, custody or power; and
>
> (*b*) if that document or class of document is not then in the other party's possession, custody or power, when he parted with it and what has become of it.
>
> …
>
> (3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power, the document, or class of document, specified or described in the application and that it falls within one of the following descriptions:
>
> (*a*) a document on which the party relies or will rely;
>
> (*b*) a document which could —
>
> (i) adversely affect his own case;
>
> (ii) adversely affect another party's case; or
>
> (iii) support another party's case;

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55 Defendant's submissions for RA 2 at paras 10–19.

56 Defendant's submissions for RA 2 at paras 24–34.

> (*c*) a document which may lead the party seeking discovery of it to a train of inquiry resulting in his obtaining information which may —
>
> (i) adversely affect his own case;
>
> (ii) adversely affect another party's case; or
>
> (iii) support another party's case.

64 Rule 466 of the FJR is *in pari materia* with O 24 r 5 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). In the recent case of *EQ Capital Investments Ltd v Sunbreeze Group Investments Ltd and others* [2017] SGHCR 15 ("*EQ Capital*"), the court succinctly summarised the law governing specific discovery under O 24 r 5 at [46], distilling the principles established in *Bayerische Hypo- und Vereinsbank AG v Asia Pacific Breweries (Singapore) Pte Ltd and other applications* [2004] 4 SLR(R) 39, *Dante Yap Go v Bank Austria Creditanstalt AG* [2007] SGHC 69, *The Management Corporation Strata Title Plan No 689 v DTZ Debenham Tie Leung (SEA) Pte Ltd and Another* [2008] SGHC 98 and *CIFG Special Assets Capital I Ltd (formerly known as Diamond Kendall Ltd) v Polimet Pte Ltd and others* [2016] 1 SLR 1382 as follows:

> (a) The court's *jurisdiction* to grant an order for specific discovery is enlivened when (i) there is sufficient evidence to show that the requested documents are in the possession, custody or power of the requested party and (ii) the requested documents are relevant: see [the] decision of the Singapore High Court in *The Management Corporation Strata Title Plan No 689 v DTZ Debenham Tie Leung (SEA) Pte Ltd and another* [2008] SGHC 98 ("*DTZ Debenham*") at [29] and [30].
>
> (b) A deposition in an affidavit to the effect that the requested documents are in the possession, custody or power of the requested party is normally sufficient to constitute "sufficient evidence" of the same: see *DTZ Debenham* at [30].
>
> (c) The "relevance" of a document must be determined by reference to the pleaded cases of the parties (see the decision of the Singapore High Court in *Dante Yap Go v Bank Austria Creditanstalt AG* [2007] SGHC 69 ("*Dante Yap Go*") at [20]) and can take one of two forms:

> (i) A document is directly relevant if it is one on which the party relies or will rely; where it could adversely affect his own or another party's case; or where it supports another party's case: see O 24 rr 5(3)(*a*) and (*b*) of the Rules and *Dante Yap Go* at [18].
>
> (ii) A document is indirectly relevant if may lead the applicant to a "train of inquiry resulting in his obtaining information which may" adversely affect his or another party's case or which may support another party's case: see O 24 r 5(3)(c) of the Rules and *Dante Go Yap* at [29].
>
> (d) If discovery is sought of a *class* of documents rather than a specific document, relevance must be shown in relation to the entire class described as a class, and not only some parts of the class (see the decision of the Singapore High Court in *CIFG Special Assets Capital I Ltd (formerly known as Diamond Kendall Ltd) v Polimet Pte Ltd and others* [2016] 1 SLR 1382 at [24]).
>
> (e) Even after the court's jurisdiction has been engaged, the court still retains a *discretion* to decide whether or not to make the order for specific discovery. A court may refuse to give the order or make it only in part if it is satisfied that "discovery is not necessary either for disposing fairly of the cause or matter or for saving costs": see O 24 r 7 of the Rules and the decision of the Singapore High Court in *Bayerische Hypo- und Vereinsbank AG v Asia Pacific Breweries (Singapore) Pte Ltd and other applications* [2004] 4 SLR(R) 39 ("*Bayerische* ") at [38]).
>
> [emphasis in original]

65 I accept that these principles also apply to specific discovery under r 466 of the FJR. I now apply these principles to the facts.

Possession, custody or power

66 In my judgment, there is sufficient evidence that the Documents are or have been in the possession, custody or power of the plaintiffs.

67 I note at the outset that the plaintiffs do not seem to dispute, and rightly so, that they have possession, custody or power over *some* of the Documents: namely, the documents relating to the joint accounts held by [X] and the plaintiffs, and the first plaintiff's accounts (see [59(a)]–[59(b)] and [59(d)]

above). Their case appears to be that they do not have possession, custody or power over any documents relating to [X]'s sole accounts and [X]'s joint accounts with parties other than the plaintiffs (see [59(c)] and [61(a)] above).

68 In his supporting affidavit for the Specific Discovery Application, the defendant deposed that (all of) the Documents are in the plaintiffs' possession, custody or power.[57] As stated in *EQ Capital* at [46(b)], such a deposition usually amounts to "sufficient evidence" of the same. Further, this statement was not a bare assertion but based on, among other factors, the fact that the plaintiffs' *own case* is that the first plaintiff was heavily involved in [X]'s personal life and was entrusted with his personal affairs. I have detailed the relevant portions of the plaintiffs' pleadings at [17] above. In the premises, I am satisfied that there is sufficient evidence that the plaintiffs, in particular the first plaintiff, have (had) possession, custody or power over all of the Documents, including those relating to [X]'s sole accounts and [X]'s joint accounts with parties besides the plaintiffs.

Relevance

69 I have concluded that this court does not have jurisdiction over the *Inter Vivos* Claims (see [57] above). Thus, the relevance of the Documents must be assessed with reference to the pleadings regarding the Probate Claims.

70 The plaintiffs contend that the Probate Claims raise two main issues: (i) whether [X] had testamentary capacity to make the 2008 Will and (ii) whether the 2008 Will was procured by undue influence exerted by the first plaintiff. Account opening documents and bank statements are not relevant to testamentary capacity at all. The defendant also has not shown a link between

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[57] Defendant's affidavit dated 13 April 2018 at p 5 (Heading B) and para 9.

the Documents and the issue of whether the 2008 Will was procured by undue influence; further, documents from November 2008 onwards are not relevant to that issue because the 2008 Will was executed in November 2008.[58]

71 The defendant contends that the Documents are relevant because they would show the financial arrangements between [X] and the plaintiffs, and this is relevant to whether the plaintiffs exercised undue influence over [X]. Further, although the 2008 Will was executed in November 2008, the defendant relies on *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 ("*Tan Yok Koon*") to contend that the conduct of the parties subsequent to an event is relevant to the parties' intentions regarding that event. Therefore, the documents from 2008 to date would be relevant.[59]

72 I accept the plaintiffs' submission that the Probate Claims raise two main issues: (i) whether [X] had testamentary capacity to make the 2008 Will and (ii) whether the 2008 Will was procured by undue influence exerted by the first plaintiff. Notably, the defendant does not claim that the Documents are relevant to the issue of [X]'s testamentary capacity to make the 2008 Will. His case is that they are relevant to the issue of undue influence.

73 In my view, bank account opening documents and statements would be relevant to the issue of undue influence. Information such as the date on which bank accounts were opened, transfers of monies and the frequency and pattern of such transfers (if any) might indicate whether [X] was under undue influence at or around the time the 2008 Will was executed.

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58 Plaintiffs' submissions for RA 2 at paras 15–23.

59 Defendant's submissions for RA 2 at paras 13–17 and 26.

74 However, the 2008 Will was executed in November 2008. It is difficult to see how the financial documents sought by the defendant relating to periods *after 2008* would be relevant to whether *the 2008 Will* was procured by undue influence exerted by the first plaintiff. In this regard, in my view, *Tan Yok Koon* is distinguishable. There, one issue was whether the father had gifted certain shares to his children from 1968 to 1985. In that connection, the Court of Appeal considered whether statements and documents executed by the parties (after 1985) were admissible as evidence of the father's intentions. The court decided that such subsequent evidence was relevant, opining at [110] that there were strong policy reasons to depart from the rule in *Shephard v Cartwright* [1955] AC 431 under which subsequent evidence on the transferor's intentions in the transferor's favour was generally inadmissible as evidence. In this context, the court stated at [110] that "there is often relevant subsequent conduct in property disputes involving a deceased transferor". The defendant relies on this dictum.

75 However, these remarks were not made in connection to a claim that a will was procured by undue influence. Further, in *Tan Yok Koon*, the subsequent statements referred to were *not* account opening documents and statements, but affidavits, wills, statements, letters and deeds containing *declarations as to the parties' property interests* – which plainly had some bearing on whether the father had gifted the shares. For these reasons, *Tan Yok Koon* is distinguishable from the facts here and does not assist the defendant.

76 In sum, not all of the Documents are relevant to the Probate Claims. Only those documents set out in [59(a)]–[59(d)] above which pertain to the year of 2008 ("the 2008 Documents") are relevant.

Necessity

77 In my view, specific discovery of the 2008 Documents is necessary. The plaintiffs' case on necessity was largely based on their being ordered to provide specific discovery of documents for a period of 10 years.[60] However, in the light of my conclusion that only the 2008 Documents are relevant, the plaintiffs' contention that specific discovery is unnecessary loses its force, because the plaintiffs would only be required to provide specific discovery of documents for 2008. Given my view that they would be relevant to the issue of undue influence (see [73] above), I also do not accept that ordering specific discovery of the 2008 Documents would be tantamount to ordering an account at this stage.

Conclusion

78 In conclusion, I allow RA 2 to the extent that I order that the plaintiffs are to provide specific discovery of only the 2008 Documents.

79 I will hear the parties on costs.

Tan Puay Boon
Judicial Commissioner

Foo Hsiang Howe Roger and Gan Jhia Huei (Genesis Law Corporation) for the plaintiffs;
Tay Wei Loong Julian and Ong Hui Xian, Andrea (Lee & Lee) for the defendant.

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60 Plaintiffs' submissions on RA 2 at para 49.