IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 154

Originating Claim No 94 of 2022

Between

DCA

… *Claimant*

And

DCB

… *Defendant*

JUDGMENT

[Tort — Negligence — Duty of Care]

DCA
v
DCB

[2024] SGHC 154

General Division of the High Court — Originating Claim No 94 of 2022
Choo Han Teck J
6,7 May 2024; 28 May 2024

14 June 2024 Judgment reserved.

Choo Han Teck J:

Introduction

Background

1 In August 2013, Mdm X, then aged 89, instructed the Defendant, a law firm, to draft her will as well as other matters relating to her estate. Mdm X had four children:

(a) Ms A, born in 1951;

(b) Ms B, born in 1954;

(c) Mr C, born in 1958; and

(d) Ms D, the claimant in this action, born in 1966.

2 At that time, Mdm X and the claimant were living in Toronto, Canada, having emigrated there with Mdm X's husband around 1987 after their eldest daughter was adjudged bankrupt in Singapore. For reasons which it is unnecessary for me to set out in detail, the claimant, who was living in Australia in 1987, was not pleased to emigrate to Canada. She thought that her siblings had no regard for the well-being of Mdm X and her husband. According to the claimant, her relationship with her siblings continued to deteriorate, which saw her assume the primary caregiving role to her parents, including their medical and daily needs.

3 A letter of engagement was signed by Mdm X on or around 15 August 2013 and witnessed by Ms Y (Mdm X's best friend, who was aged 82 at that time) appointing the defendant to act for Mdm X. Ms Y presently lacks mental capacity and is unable to testify in this action. The solicitor on record acting for Mdm X was Ms S, who was at that material time an advocate and solicitor of 23 years standing and a partner with the defendant.

4 Shortly after the signing of the letter of engagement, Ms S arranged with the claimant to speak to Mdm X on 28 August 2013 through the telephone. During the call, Mdm X told Ms S that she wanted to make a new will, and a gift of S$2.5 million to the claimant. She spoke to Ms S of her worries regarding the conflicts and unhappiness within the family, and in particular between Mdm X and the three older children. Mdm X feared that they may challenge the distribution of the assets in her estate. These concerns were reiterated at a meeting between Mdm X and Ms S in a hotel in New York on 17 September 2013. The claimant was not present at this meeting. On the same day, on the advice and recommendation of Ms S, Mdm X agreed to be examined by one Dr K, a psychiatrist in New York, who certified that she possessed the requisite

mental capacity. Ms S then returned to Singapore and prepared the documentation based on Mdm X's instructions.

5 On 6 December 2013, Mdm X signed and executed her will (the "Will"), a deed of gift for the S$2.5 million cash gift to the claimant, and a letter to her children (the "2013 Documents"). The execution of these documents were formally witnessed by Ms Y and one Ms J, a former associate of the defendant. Dr K was also present when the documents were signed. The contents of the 2013 Documents are not material in this action, save for clauses 12 to 15 of the Will, which were intended to deter Mdm X's children from contesting any gifts or transfers made during her lifetime (the "no-contest clause"). Mdm X came to Singapore in March 2014, and was certified by a psychiatrist here to have the requisite mental capacity. She then reaffirmed the 2013 Documents previously executed in New York. The reaffirmation of the 2013 Documents was handled by an associate of the defendant, Ms N, an advocate and solicitor of two years standing at the material time. Shortly thereafter, Mdm X returned to Toronto.

Circumstances leading up to the action

6 In January 2015, Mdm X suffered a stroke. Despite her physical limitations, she was mentally sharp and was able to give instructions to Ms N by telephone on 23 September 2015 on matters not relevant to these proceedings. Subsequently, in April 2016, Mdm X, who was then 92 years old, told Ms Y that she wanted to make another cash gift to the claimant. In June 2016, Mdm X (through Ms Y) instructed the defendant to assist her with the transfer of US$1.5 million to the claimant (the "Gift"). The defendant, through Ms N, agreed to act for Mdm X. Mdm X instructed Ms N to prepare a deed of gift similar to the previous one in 2013.

7 Mdm X died in December 2016 before the deed of gift could be executed. Between June and December 2016 there were protracted correspondence on the matter between Ms N and Ms Y. After Mdm X's death, a dispute arose between the claimant and the trustee of Mdm X's estate as to the claimant's entitlement to the Gift as a debt of the estate. The General Division of the High Court dismissed the claimant's claim against the estate of Mdm X (the "HC Decision"). That decision was affirmed on appeal to the Appellate Division of the High Court.

8 The claimant then commenced this action, HC/OC 94/2022, on 23 June 2022 against the defendant, for the sums of US$1.5 million and S$161,979.30, being the Gift and the legal fees incurred in the HC Decision. The claimant's pleaded cause of action is in the tort of negligence. In particular, she asserts that the defendant breached a duty of care owed to her at common law:

> (a) by its failure to progress the matter concerning the Gift with reasonable diligence, in particular, failing to progress it within a reasonable time after being instructed;
>
> (b) by erroneously advising Mdm X that she needed to undergo a mental capacity assessment so that the executed deed of gift cannot be challenged by the other children; and
>
> (c) by failing to advise Mdm X to sign the deed of gift before the psychiatric assessment, despite the urgency of the matter owing to Mdm X's advanced age and medical history.

9 The claimant has also pleaded that there was a breach of an implied term in Mdm X's retainer with the defendant that the defendant would carry out

Mdm X's instructions with reasonable diligence, and that the defendant owed Mdm X and the claimant a duty to exercise reasonable skill and care in performance of their duties pursuant to the said retainer. However, the claimant did not pursue this point at trial, and no submissions on this point were made. The defendant accepts that it owed a duty of care to Mdm X, but denies that it owes any such duty at common law or in contract to the claimant. Further, or in the alternative, the defendant's case is that:

(a) it progressed Mdm X's matter with reasonable diligence and within a reasonable time;

(b) the no-contest clause did not have the effect of preventing a challenge from the defendant's children; and

(c) there was no urgency in the manner pleaded by the claimant, and further, that the delay was attributable to Ms Y and not the defendant.

Issues for determination

10 The claimant has not pursued the argument concerning the no-contest clause in her closing submissions. Accordingly, only the following issues arise for my determination, namely:

(a) Did the defendant owe the claimant a duty of care in common law?

(b) If so, was the defendant in breach of this duty of care by:

(i) failing to advise Mdm X of the equally feasible options available to her to make the Gift; and/or

(ii) failing to appreciate and act upon the urgency in perfecting the Gift, which caused considerable to the making of the Gift.

Duty of care

11 The nub of the dispute is whether there was sufficient proximity between the claimant and the defendant that entitles the former to sue the latter. The claimant's counsel, Mr Francis Chan, relies on *Anwar Patrick Adrian and another v Ng Chong & Hue LLC and another* [2014] 3 SLR 761 ("*Anwar Patrick Adrian*") at [146] that:

> Where a solicitor's instructions from a client include or has as its effect the conferment of a benefit or negativing a detriment to a third party, and the solicitor undertakes to the client to fulfil that instruction, he would have brought himself into a direct relationship with the third party, even if the latter may not have personal knowledge of the transaction or the solicitor.

12 Counsel for the defendant, Mr Chua Sui Tong, submitted in reply that Mdm X did not instruct the defendant to transfer the Gift to the claimant, but rather, merely wanted legal advice on how to protect the Gift from challenge — which he says was fulfilled when the defendant advised Mdm X to undergo a mental capacity assessment and execute a deed of gift thereafter. Accordingly, Mr Chua claims that there was no benefit directly conferred on the claimant and no sufficiently proximate relationship arose to impose a duty of care in those circumstances.

13 I am unable to agree with Mr Chua's submission, which is in my view, an overly narrow interpretation of Mdm X's instructions to the defendants. When Ms Y first wrote to the defendant in June 2016, the exact words in her email were that Mdm X's "wish is to award $1.5 million for [the claimant]'s

hardwork…". The defendant immediately proposed the mode to transfer the gift, which in this case, was a deed of gift which the defendant was also instructed to prepare. Seen in this light, the defendant's role was not limited to the dispensation of advice on how to protect the Gift from challenge. Ensuring that the Gift is protected from challenge is a necessary part of any advice in the circumstances. For this reason, I am of the view that Mdm X's instructions to the defendant conferred a benefit on the claimant, and accordingly, sufficient proximity exists for the imposition of a duty of care. As to the scope of this duty, the parties do not dispute that the duty owed to the claimant is the same duty owed to the client, *ie,* to take reasonable care in performing the solicitor's original undertakings to the client: *Anwar Patrick Adrian* at [119]. Mr Chan says that this duty was breached in two ways which I shall examine in turn.

Breach of duty

Alleged failure to advise on alternatives to a deed of gift

14 Mr Chan submits that the defendant breached its duty by not advising Mdm X of the option of a cash transfer, and, instead gave Mdm X the impression that a deed of gift was necessary. Mr Chan sought to draw a distinction between the 2013 Documents and the Gift – he says that whereas Mdm X was primarily concerned about challenges to her decisions in 2013, that concern was not a live one when she approached the defendant through Ms Y. The crux of his submission is that Ms S and Ms N both erroneously assumed that Mdm X wanted the Gift to be effected by a deed of gift.

15 Mr Chan says that had the defendant advised Mdm X to transfer the money directly to the claimant, Mdm X would have done so. In Mr Chan's words, Mdm X "would not have done anything if it was not condoned by the

lawyers". I am unable to accept this submission as it is contradicted by the claimant's own concessions on the stand, that at the material time, Mdm X had retained her lawyer in Toronto, and that if Mdm X's true intent was to make a cash transfer, Ms Tso could have facilitated it. Further, Ms N consistently cited the concern about a potential challenge to the Gift as the premise for her advice. If this concern was truly a non-issue, as Mr Chan suggests, to Mdm X, Ms Y (who was her proxy) would have told Ms N so. Thus, I am of the view that the defendant did not breached its duty in the manner as Mr Chan submits. It was appropriate for the defendant to take into account the acrimonious relationship among Mdm X's family in dispensing advice on the Gift.

Alleged failure to appreciate the urgency of the matter and delay caused

16 The next ground, which is the main thrust of the claimant's case against the defendant, is that the defendant breached its duty when it failed to appreciate and act on the urgency of perfecting the Gift, thereby resulting in considerable delay to the making of the Gift. This allegation must be scrutinised against the contents of the correspondence between Ms Y and Ms N in the tele-conferences and emails.

The correspondence between Ms Y and Ms N during the material period

17 The first email from Ms Y to Ms N was written on 25 June 2016, with the relevant portions reproduced below:

> Dear Ms N,
>
> …
>
> I have been visiting Mdm X regularly and find that her health has improved a lot.
>
> In preparation for their move to Singapore, Mdm X and her youngest daughter Ms D had reached out to a few relatives

> …
>
> Mdm X appreciates Ms D and would like to express her gratitude for Ms D's devotion and sacrifices. At the moment Mdm X has nothing but money to show her appreciation and her wish is to award $1.5 million for Ms D's hardwork and further sacrifices since Mdm X's stroke.

18 On 30 June 2016, Ms N requested a video call with Mdm X to confirm her instructions. She advised that "it would be prudent for Mdm X to undergo a mental capacity assessment so that the executed [d]eed of [g]ift cannot be challenged by Mdm X's other children in future on grounds of alleged [lack of] mental capacity". Ms N suggested that "since Mdm X is returning to Singapore in early August, we can arrange for the mental capacity assessment to be conducted in Singapore soon after her return".

19 Ms Y agreed to the video call but owing to logistical difficulties, the call only took place two months later on 26 August 2016. A summary of the correspondence in the lead up to the call is as follows:

(a) By an email dated 5 July 2016, Ms Y informed Ms N that it would be impossible for Mdm X to take the call at her house owing to four big steps at her entrance which was not wheelchair friendly. She informed Ms N that she would have to be at home a lot during the period owing to repair works scheduled for the summer months. It was in this email that Ms Y informed Ms N that their return to Singapore would be postponed to September.

(b) Ms N replied on 11 July 2016, stating that the call can be held at any place convenient, and that if it was inconvenient for Ms Y to accompany Mdm X, that she could speak with Mdm X directly and liaise with the claimant on the administrative details of the video call.

However, Ms N cautioned that given that the claimant was the recipient of the gift, this alternative would be less than ideal.

(c) Ms Y replied on 15 July 2016 suggesting the public library or Mdm X's rehabilitation centre as potential locations for the video call and that the call be scheduled at 11am Toronto time.

(d) Ms N replied on 4 August 2016, indicating that 11am Toronto time would be unsuitable and counter proposed 8pm Toronto time.

(e) Ms Y replied on 5 August 2016 (Toronto time), saying that the public library would be closed at 8pm, but suggested taking the call at Mdm X's retirement home instead.

(f) Ms N replied on the same day, confirming that there should be no issue with taking the call at the retirement home, provided that the claimant excuses herself from the retirement home during the call.

(g) Ms Y wrote back on 8 August 2016 requesting a test call, which Ms N agreed in her reply on 15 August 2016.

(h) Ms Y wrote again on 16 August 2016, indicating that she would be away on August 18. Ms Y also told Ms N that she would be away on holiday in Seattle toward the end of August and would not be in Toronto at that time.

20 Finally, the call took place on 26 August 2016 (presumably before Ms Y's holiday), as evidenced by the attendance notes taken by Ms N. As Ms N's attendance notes formed the subject of some scrutiny in cross-examination, it is worth setting out the relevant excerpts of these notes:

> Want to give Ms D $1.5m. (US$).
>
> Want to give the money <u>now</u>.
>
> Prepare the draft & send to Ms Y who will discuss the draft with you.
>
> In front of a notary public.
>
> …
>
> Ms N: when do you want to give $: now or later?
>
> Clt: I am old, getting tired
>
> Yes
>
> …
>
> Ms N: We will prepare e draft, send to Ms Y, Ms Y will discuss w you.
>
> Sign in Toronto or when come back to S'pore?
>
> Clt: Anywhere.
>
> Ms N: Have to sign in front of notary public in Toronto.
>
> [emphasis in original]

21 On 14 September 2016 (Canada Time), Ms Y wrote to Ms N, informing her that she had returned from her holiday in Seattle. Ms N replied that same day, attaching a copy of the draft deed of gift with comments for Mdm X's instructions. In that email, Ms N also wrote:

> …
>
> As mentioned in our earlier emails, <u>before</u> Mdm X executes the Deed of Gift, it would be prudent for her to undergo a mental capacity assessment so that the executed deed of gift cannot be challenged…Kindly let us know if Mdm X's preference is for the assessment to be conducted in Toronto or in Singapore so that we can make the necessary arrangements.
>
> [emphasis in original]

22 Ms Y replied on 18 September 2016, answering Ms N's queries on the draft. In particular, Ms Y wrote:

> As far as I know, they have already purchased Singapore Airline plane tickets to depart from New York on October 6.
>
> …
>
> As for where Mdm X should be assessed, since you already have a history of paying Dr K in New York as the psychiatric specialist, do you think you can do the same this time?
>
> I don't think I will be able to accompany Mdm X to see Dr K this time because I still feel tired from my Seattle trip. Since Mdm X and Ms D will have to travel to New York to catch their flight to Singapore on October 6, maybe Dr K can assess Mdm X again this time?
>
> …
>
> By the way, I wonder if you have taped Mdm X's video call with you last month? I felt that during that call, Mdm X expressed her wishes and fear of imminent death with much emotion.

23 Ms N wrote on 4 October 2016 with the following response:

> To avoid future allegations against Ms D, it would be prudent not to have Ms D bring Mdm X to see Dr K for the assessment. Given that Mdm X is returning to Singapore, we would propose that we make arrangements for Mdm X to be assessed by a psychiatrist in Singapore instead.
>
> …
>
> We did not record the video call with Mdm X; however, we did keep a written record of the video call with Mdm X.

24 Ms Y replied the next day on 5 October, stating that:

> Mdm X and Ms D have postponed their date of departure for about a month. As Mdm X is wheelchair bound, will you be able to bring Mdm X to see the psychiatrist without Ms D's help in Singapore? Alternatively, do you know of a psychiatrist in Toronto so I can bring her?

25 Ms N wrote back on 20 October 2016 to say that she was not familiar with psychiatrists in Toronto and that she would be able to accompany Mdm X to see the psychiatrist in Singapore without the claimant being present at the appointment.

26 Two days later, Ms Y replied saying that (relevant parts reproduced):

> I thought you mentioned in your email of September 15 that it is possible for you to make arrangements for psychiatric assessment in Toronto.
>
> Let me remind you that Mdm X is a 93-year-old stroke patient. The long flight to Singapore may adversely affect Mdm X's condition as it would any normal person.

27 Ms N replied on 8 November 2016, stating that:

> We can make arrangements for a psychiatric assessment in Toronto, but we would not be aware as to the competence of the psychiatrist, as we are not familiar with psychiatrists in Toronto. In contrast, we have worked with a number of psychiatrists in Singapore and will be more assured as to their competence. Nonetheless, we note your concern regarding the long flight to Singapore. If this remains the preference, we can arrange for an appointment with a psychiatrist in Toronto. We would be grateful for you confirmation and if so, kindly let us have a range of preferred dates and timing for the appointment, thanks.

28 Ms Y provided confirmation on 10 November 2016 that it would be better for Mdm X to have her psychiatric assessment done in Toronto. In the same email she expressed the following:

> I want to confirm that it would be better for Mdm X to have her psychiatric assessment done in Toronto because for a person in her condition, there is the possibility that the long journey might render her mentally incompetent. Of course, once Mgm Ng [*sic*] safely arrives in Singapore, she can be assessed a second time by Singapore psychiatrists familiar to you.
>
> …
>
> I am not sure what assessment methods the Toronto psychiatrist would use, but it would only be fair to expand the realm of mental intelligences to include Mdm X's sharp ability to detect unspoken social slight. For example, Mdm X complained to me in private back in August 2016 while she was still staying at the retirement home about a particular caregiver who would always snub serving Mdm X's table in the dining room. It was something quite subtle yet Mdm X was able to perceive it. Mdm X is also sharp enough to capture irony and

> humor for instance she would laugh out loud when a caregiver would check her diaper and ask whether Mdm X had a special present for her that day, referring to excrement in Mdm X's diaper.

29 The lengthy excerpt reproduced above is relevant insofar as it speaks to the state of Mdm X's health as represented by Ms Y at that material time. Ms Y's instructions on the place of the psychiatric assessment was acknowledged by Ms N on 18 November 2016. On 21 November 2016, Ms Y wrote back with further amendments the wording of the draft deed of gift, which Ms N acknowledged by her email dated 2 December 2016, wherein she also proposed bringing Mdm X to a psychiatrist in Toronto named Dr L.

30 However, Ms Y replied on 5 December 2016, informing that:

> I appreciate that you put a lot of efforts [*sic*] into finding a psychiatrist in Toronto. However I am sorry to say that I will not be able to help in the month of December. I think I mentioned to you that I was available in November.
>
> I recall that I first wrote to you about this matter about half a year ago and it is a pity that it had to be dragged on for so long.
>
> If you can find somebody to take Mdm X to the New York psychiatrist, then Mdm X can settle this matter before her long flight to Singapore on December 17.
>
> Otherwise we will just have to keep our fingers crossed that Mdm X will survive the long journey to Singapore with no adverse effects.

31 Ms N replied the same day to inquire if Ms Y would have any mutual friends who would be able to assist Mdm X. However, Ms Y replied the next day on 6 December 2016 that it was unlikely that someone would be willing to assist on such short notice. In the circumstances, Ms Y stated that:

> I think the N.Y psychiatrist may be a better solution… Because someone of Mdm X's age deteriorates from month to month. I can already see a difference in Mdm X now compared to how

> she was able to articulate to me the reason which led to my June 2016 original e-mail to you about this matter.

32 This was the first-time which Ms Y expressly raised the deterioration of Mdm X's condition to Ms N. Ms N picked up on this in her reply to Ms Y on 7 December 2016, wherein she proposed that the claimant bring Mdm X to be assessed by Dr K in New York. She also attached the clean copy of the confirmed deed of gift for Mdm X's execution.

33 It transpired however that Dr K's office was closed for the month of December and would only re-open on 10 January 2017, according to Ms Y in her email dated 8 December 2016 where she also expressed that "[she] wonder[s] what will happen if Mdm X's condition deteriorates after this long journey that she cannot pass the psychiatric evaluation in Singapore." Ms N replied on the same day to inform Ms Y that it was not essential for Mdm X to consult Dr K, but that any psychiatrist in New York would suffice.

34 Ms Y wrote with a further query on 9 December 2016 in the following terms:

> Even if Mdm X fails the Singapore psychiatric evaluation after arrival, is it not better for you to execute the Deed with your Notary Public based on the August Skype call than what you are proposing for Ms D to find a New York psychiatrist and a New York Notary Public to execute the Deed?

35 This triggered Ms N to speak with Ms Y on the phone on 13 December, and as Ms N correctly pointed out in her email following their telephone conversation that day, that what Ms Y had suggested was not advisable as a matter of legal principle. This was the final correspondence between Ms N and Ms Y, for Mdm X died on 16 December 2016 in New York before her scheduled flight back to Singapore the next day.

My decision on the issue of breach

36 Mr Chan says that the defendant, and in particular, Ms N, failed to appreciate that Mdm X was 92 years old then and had recently suffered a stroke in 2015. Mr Chan says that the defendant ought to have been aware of the urgency by 26 August 2016 when Mdm X allegedly expressed a fear of imminent death. Mr Chan also says that there was actual considerable delay caused by the defendant in four ways: (a) in failing to confirm Mdm X's instructions; (b) in preparing the first draft of the deed of gift; (c) in finalising the deed of gift; and (d) in arranging for the mental capacity assessment for Mdm X.

37 First, I am unable to agree with the Mr Chan that Mdm X had a "fear of imminent death". Although Mdm X's old age and medical history are relevant factors to be considered in assessing the time urgency of the matter at hand, this must be seen in the light of Ms Y's specific comment to Ms N in her first email dated 25 June 2016 that "I have been visiting Mdm X regularly and found that her health has improved a lot." Further, as late as on 10 November 2016, Ms Y assessment of Mdm X was that she continued to possess a "sharp ability to detect unspoken social slight" which she justified with several anecdotal observations of Mdm X, including that Mdm X was "sharp enough to capture irony and humor" (sic). This is not evidence consistent with a fear of imminent death that Mr Chan says should have been appreciated by the defendant. Mr Chan relies on Ms Y's statement in her email of 18 September 2016 where she wrote that "I felt that during the call [on 26 August 2016], Mdm X expressed her wishes and fear of imminent death with much emotion", which he says is corroborated by a further email from Ms Y dated 19 June 2017 where Ms Y allegedly recalled that Mdm X said that "I may die any time".

38 The difficulty with this argument is that Ms Y's evidence is hearsay – seeing that she was not fit to give evidence at the trial. Even if I were to disregard this point, the exact words in Ms Y's email dated 18 September 2016 was that she "felt" that Mdm X had said those words. In other words, it was an opinion or an impression of Ms Y's, as opposed to a recollection of Mdm X's exact words. Yet, according to Ms Y in her 19 June 2017 email, Mdm X said these words over the video call:

> "I am already so old. What can I do? I may die any time. I cannot do anything for my youngest daughter except to help her with my money.""

39 In this context, and in the light of the objective correspondence between Ms Y and Ms N which I have set out at length above, I am of the view that the phrase "I may die any time" was a realistic insight into her own frailty. However, it is clear to me that Ms N was fully aware of Mdm X's age and frailty. The real issue is whether, having been so aware, Ms N failed to act with reasonable speed. I am therefore unable to agree with Mr Chan in his argument assuming such neglect on Ms N's part.

40 The only consistent concern Ms Y had throughout the correspondence over the six months was not one of death, but merely a deterioration in Mdm X's mental capacity which may result from the long flight back from Toronto to Canada. Since the long flight was the only potential cause for concern raised, there was no basis for the defendants to infer that there was a fear of imminent death while rendering advice before Mdm X was scheduled to board her flight.

41 The first hint of Mdm X's physical deterioration surfaced in the email of 6 December 2016 where Ms Y stated that "someone of Mdm X's age deteriorates from month to month" and that she could "already see a difference

in Mdm X now compared to [June 2016].” As I had noted above (at [32]), Ms N picked up on this in her reply, where she changed her advice to have Mdm X assessed in New York as opposed to in Singapore.

42 Mr Chan also relies on Ms N’s attendance notes of their 26 August 2016 call wherein she underlined the word “now”, suggesting that she appreciated the urgency of the situation. When Ms N was asked on the stand, she explained that the word “now” was a reference to Mdm X’s instructions to give the Gift during her lifetime as opposed to a testamentary disposition.

43 I am inclined to accept Ms N’s explanation. I find her to be a forthcoming witness. Mdm X’s indication to Ms N that she did not have a preference whether to sign the deed of gift in Toronto or Singapore corroborates Ms N’s account. If Mdm X had used the word “now” with immediacy on her mind, it would not have been consistent with her answer that she was happy with executing the deed “anywhere”. She would have wanted the gift signed immediately. Although the defendant was given to understand that Mdm X would relocate back to Singapore in early August 2016, the video call took place at the end of August and there had been no confirmation as to when Mdm X would return to Singapore.

44 In the circumstances, I am of the view that the defendant was not negligent in its assessment of the urgency of the situation as suggested by Mr Chan. The correspondence between Ms Y and Ms N shows that Mdm X, despite her age, was mentally sound and alert. I find that the first indications of her physical deterioration came late in December 2016, which Ms N noted and responded in a reasonable way. For this reason, I am of the view that the defendant did not breach its duty in this manner.

45 Finally, I turn to address Mr Chan's allegation that the defendant had caused actual delay to Mdm X. The first period of delay which Mr Chan points to is the delay from the initial instructions as conveyed in Ms Y's email of 25 June 2016 to the confirmation of Mdm X's instructions *via* teleconferencing on 26 August 2016. Mr Chan says that the main cause of the delay was in Ms N's tardiness in replying to Ms Y's messages. For example, that it took 20 days for Ms N to reply to Ms Y's email dated 15 July 2016, and that, generally, it took an average of one week for Ms N to reply.

46 First, as I had stated above, the assessment of the reasonableness of the time taken for Ms N to reply must be informed by the circumstances as conveyed by Ms Y at the material time. Prior to the teleconference on 26 August 2016, the defendant was working off the basis of Ms Y had been visiting Mdm X regularly and found that her health had improved a lot. Given this crucial piece of information, while Ms N's replies could certainly have been swifter on hindsight, it was not unreasonable in the circumstances.

47 Secondly, and as Mr Chan concedes, part of the two-month delay was attributed to Ms Y and the logistical challenges in setting up the teleconference. Among other things, Ms Y informed Ms N that the teleconference would also have to be planned around her packed schedule owing to the repair works taking place at her home and her request for a test call before the actual teleconference. I am of the view that the two-month time period was attributed to a confluence of factors — logistical difficulties, Ms Y's own schedule and the time taken for the defendant to reply, and not to any negligence on the part of the defendant.

48 The second period of delay alleged by Mr Chan was the time it took for the preparation of the first draft of the deed of gift, which was circulated on

16 September 2016. Ms N's evidence was that the draft was prepared and cleared in advance, but was not sent until Ms Y had returned from her holiday on 15 September 2016. Mr Chan says that there was no basis for Ms N to infer that Ms Y did not wish to receive the draft during this period. However, it was not unreasonable for Ms N to hold off sending the draft when Ms Y expressly told her that she would be on holiday during that period. This is further reinforced by the fact that when Ms Y returned from holiday, she wrote to Ms N to tell her so. I therefore do not accept Mr Chan's submission on this point.

49 The third instance of delay alleged by Mr Chan is the time it took for Ms N to finalise the deed of gift. It was not disputed that the finalisation of the draft was delayed because there was some back and forth from 22 October 2016 until 5 December 2016 concerning the Ms Y's query of the inclusion of the phrase "various health crisis" in one of the recitals.

50 Mr Chan says that this comment, though raised by Ms Y, was a relatively minor query which did not require push back from Ms N and should have been incorporated without question. However, what Mr Chan submits is not borne out on the evidence. First, Ms Y's initial query on 22 October 2016 was one which called for Ms N to provide professional advice on whether the inclusion of the phrase was necessary. Ms Y herself suggested that the phrase "can later be argued in court as dementia, [Alzheimer], etc." Ms N assuaged Ms Y's concern in that these challenges would be moot if a psychiatric assessment was completed. On 21 November 2016, Ms Y further asserted that it would not be factually accurate to include that phrase. Accordingly, Ms N replied to confirm whether it was Mdm X's intentions for the phrase to be deleted.

51 Mr Chan takes issue with Ms N's confirmation, saying that it was unnecessary given that Mdm X has always dealt through Ms Y as her proxy. However, given the phrasing of Ms Y's email, I find that Ms N's actions were not unreasonable. Ms Y's queries and comments which included phrases such as "is it necessary to include … because Mdm X has no other health issues" and "I would like to point out that since Mdm X does not have any other health issues…it would not be fair to include…" may have been questions originating from Ms Y's personal opinion as opposed to Mdm X's instructions. Ms N acted correctly in making sure. Mr Chan's arguments on this point are therefore unfounded.

52 Finally, I turn to the fourth instance of delay alleged by Mr Chan*, ie* that there was a delay in arranging for Mdm X's mental capacity assessment. Mr Chan says that there are two aspects to this avenue of delay — first that the defendant vacillated between Toronto and Singapore as the recommended place for the assessment; and second that there was considerable delay in arranging for the assessment in Toronto itself after it was decided.

53 On the first point, Mr Chan submits that the defendant made an about turn in their advice rendered between 16 September 2016 where Ms N queried Ms Y as to Mdm X's preference for where the assessment should be conducted, and Ms N's email of 20 October 2016 where she stated that the defendant was not familiar with psychiatrists in Toronto.

54 A change in advice in itself is not evidence of negligence. It is abundantly clear from Ms N's notes during the teleconference on 26 August 2016, that Mdm X did not express a preference for the location of the signing. It was thus reasonable for Ms N to seek clarification on where Mdm X wanted

to undergo the assessment on 16 September 2016. Ms Y replied on 18 September that Mdm X planned to depart New York for Singapore on 6 October. Specifically, although Ms N's query was for Ms Y to express a preference between Singapore and Toronto, Ms Y only answered that query by suggesting that Mdm X be assessed by Dr K and that she would not be able to accompany Mdm X.

55 Ms N recommended that it would not be advisable for the claimant to accompany Mdm X, but instead advised that the assessment should be done in Singapore. Mr Chan submitted that this was inconsistent with the advice rendered in relation to the 2013 Documents where the claimant directly liaised with Dr K and accompanied Mdm X. What Mr Chan omitted to mention was that Mdm X was also accompanied in 2013 by an independent witness, Ms J, and Ms Y, and not the claimant (see above at [5]).

56 Up till this point on 4 October 2016, given the premise of Mdm X's scheduled flight back to Singapore on 6 October 2016, it was not unreasonable for Ms N to advise as she did. However, circumstances again changed on 5 October 2016 when Ms Y informed Ms N that their return to Singapore would be delayed. Nevertheless, Ms Y's email continued to leave open the possibility of the assessment in Singapore, querying if Ms N could accompany Mdm X if she were to undergo the assessment in Singapore. It was only in this email that she asked Ms N if she knew of a psychiatrist in Toronto.

57 Given the chronology of events set out above, I do not think that the defendant was to blame for the change in advice. The duty of a solicitor is to render competent advice based on the client's circumstances — it is not to make a decision on the client's behalf. Given the change in Mdm X's plans and the

framing of Ms Y's questions, the change in the defendant's advice ought not to be held against it. Instead, this in my view demonstrates the situational awareness which a competent solicitor is expected to possess.

58 Turning to Mr Chan's submission that there was considerable delay in arranging for a mental capacity assessment in Toronto, Mr Chan says that given Mdm X's lack of preference, reasonable steps ought to have been taken to locate psychiatrists in both countries. I am of the view that this is unreasonable in the circumstances. The logical thing to do, which the defendant did, was to confirm where the assessment to be done before looking for the psychiatrist. To do as Mr Chan suggested would incur unnecessary costs and would not be a prudent use of time. Further, it is pertinent that Ms Y did not even acknowledge Toronto as an option when she suggested visiting Dr K in her reply on 18 September 2016. For all intents and purposes, the possibility of Toronto proposed by Ms N was ignored by Ms Y and only revisited when New York was ruled out as a possibility on 5 October 2016.

59 Mr Chan further submits that after Ms N's confirmation on 8 November 2016 that arrangements can be made for assessment in Toronto, that she only replied on 2 December 2016, proposing Dr L. First, it was only confirmed by Ms Y on 10 November 2016 that the assessment should take place in Toronto. Although Ms N admitted on the stand that she could have been quicker in finding Dr L, what is a reasonable time for finding a psychiatrist must be assessed against the state of Mdm X's health at the material time. In this regard, Ms N was informed on 10 November 2016 that Mdm X continued to be mentally sharp and it was Ms Y's specific request that the Toronto psychiatrist should be apprised of this fact. Crucially, it was only on 6 December when the defendant was first informed of Mdm X's physical deterioration. In the circumstances,

therefore, I do not find on balance that there was an unreasonable delay amounting to negligence.

60 I am of the opinion that the defendant had acted reasonably throughout and was not negligent in the manner in which it advised on Mdm X's affairs in relation to the Gift. Accordingly, the claim is dismissed with costs payable to the defendants. Parties have tendered their respective costs schedules which are largely symmetrical. Costs of the action is therefore fixed at $100,000 with reasonable disbursements.

- Sgd -
Choo Han Teck
Judge of the High Court

Francis Chan Wei Wen and Kenneth Loh Ding Chao (Titanium Law Chambers LLC) for the claimant;
Chua Sui Tong and Russell Ng Tse Jun (Rev Law LLC) for the defendant.