IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2025] SGHCF 4

District Court Appeal No 22 of 2024

Between

XAT

… *Appellant*

And

(1) XAU
(2) XAV

… *Respondent*

JUDGMENT

[Succession and Wills — Testamentary capacity]

XAT
v
XAU and another

[2025] SGHCF 4

General Division of the High Court (Family Division) — District Court Appeal No 22 of 2024
Choo Han Teck J
27 November; 11 December 2024

21 January 2025 Judgment reserved.

Choo Han Teck J:

1 The appellant's husband ("the deceased") died on 2 September 2015. In his Will dated 17 August 2015 ("the Will"), he did not bequeath any of his assets to the appellant. The deceased expressly declared in para 6 of the Will, that:

> I DO NOT wish to give any of my property or personal properties to my wife … as I merely 'marry' her (*sic*) to help her extend her stay as an accompanying person to her child who is studying in Singapore. We are unable (*sic*) to consummate our marriage.

2 Instead, the deceased bequeathed all the property and proceeds from his residuary estate to the second respondent, who is the deceased's half-sister. The first respondent, who is the deceased's nephew, was appointed executor and trustee of the Will. The first respondent is one of the deceased's sisters' children — he is not the second respondent's child. Grant of probate for the deceased's estate was issued to the first respondent on 26 January 2016. The appellant

commenced proceedings challenging the validity of the Will. The District Judge ("the DJ") dismissed the appellant's claim. This is the appellant's appeal against that decision, which I dismiss for the following reasons.

3 The appellant, a Chinese national, came to Singapore under a Long-Term Visit Pass to accompany her daughter who was studying here. The deceased owned a three-room flat in his sole name. In 2011 the appellant became his tenant in the flat. The appellant married the deceased on 16 October 2013 and continued living in his flat.

4 In October 2014, the appellant and the deceased were interviewed by reporters from a local Chinese newspaper regarding their marriage. Two articles were published the following day in the same newspaper. In the first article, the deceased had reportedly claimed that "not only did both parties not consummate their marriage, they never held hands nor did he know [the appellant's] Chinese name, and only addressed her as 'Miss'. They barely spoke more than a few words to each other every day. He claimed that the appellant had asked him whether he could register the marriage with her, and out of sympathy, he agreed. The deceased went on to claim that two days after the marriage was registered, she chased out the deceased's other tenant, refused to pay rental and utility bills, and even took away his "mother's relics". Subsequently, he could no longer tolerate her behaviour and suggested to her several times that he wanted to annul the marriage. The appellant, however, allegedly refused to accept his suggestion.

5 The appellant, in turn, was reported in that article as saying that the deceased had "never mentioned anything about annulling the marriage, and that she got along very well with the deceased. She said she was truly in love with him, he gave her a sense of home, and without her, "he will not be able to live

[much] longer". Finally, the newspaper article reported that she had asked the reporters why she needed to pay rent as the deceased's wife.

6 The second newspaper article contained much of the same contents as the first. However, the article also reported the deceased as saying that they had slept separately. The appellant, in turn, told the reporters that she intended to buy a double bed to move into the same room as the deceased, but the room was infested with bedbugs and thus remained empty since. She ended up sleeping with her daughter, with the deceased sleeping in the storeroom. She said that she used her own money to engage pest exterminators to exterminate the worms, and even personally patched up the wall that was damaged by the worms. Lastly, she was reported as saying that she framed up the marriage certificate and hung it on the wall in the flat "out of anger" because the deceased "did not dare to acknowledge that he was married". To be fair to the appellant, her evidence in court was that she had wanted to sleep in the same room as the deceased, but he chose to sleep in the storeroom because he had a frequent urination issue, and the toilet was nearer to the storeroom. He also wished to rent out the room, and considered that as a diabetic, he would fill the room with the smell of urine if he stayed in the room, which would make it hard to rent the room out. He thus decided to sleep in the storeroom.

7 L, who testified at the trial below, claimed to be a friend of the deceased and his family. He said that he arranged for the reporters, at the deceased's request, to interview the deceased and the appellant. The appellant gave conflicting accounts on what happened that day. In her affidavit of evidence in chief ("AEIC"), she said that the deceased's younger sister and his nephew brought "two unknown young females" to the flat unannounced. She was under the impression that they were relatives, and "earnestly introduced" the marriage process to them. Only later during the visit did the appellant discover they were

reporters. She then allowed the photographer, who was outside the house at the time, to come into the house. After the interview, all of them left but the two female reporters returned to the flat. They told her that if she agreed to give up on the inheritance of the flat, the interview article would not be published. She rejected their demand. The next day, when the article was published, the deceased told her that the reporters were patrons who often visited the hawker store owned by the same younger sister and nephew present during the interview, and the reporters came as requested by the two. He told her that if she did nothing wrong, she did not have to worry.

8 At the trial, however, she admitted that the deceased himself, together with his younger sister, brought the reporters into the flat. She said that "from start until the end" the reporters did not mention that they were reporters. When the appellant was telling them about how she was killing the insects and bedbugs in the house, they asked her to write a note saying that she did not want the flat. When the two articles were published the next day, she asked the deceased why he brought the reporters to the flat. He said that the reporters were talking nonsense, and that if she had not done anything wrong, there was nothing to worry about.

9 The appellant was deeply distressed by the newspaper articles. She began to pay the deceased rent of $400 a month in November and December 2014. In return, the deceased issued the appellant receipts which he signed, certifying that he had received payment of $400 from the appellant as "payment for the water and electricity bills, taxes and other miscellaneous charges". The receipts further stated that "[the appellant] is responsible for the daily living activities of [the deceased], including laundry, cooking, housekeeping, hygiene and accompanying him to his medical examination and other matters".

10 On 18 December 2014, the deceased signed a receipt, certifying that the appellant had "fully settled all the rents, leaving no arrears" for the period of August 2011 to October 2013, *ie*, the period before they were married. On the same day, he also signed a letter authorising the appellant to rent out one of the rooms in the flat. That same letter also stated that the appellant shall:

(a) be responsible for all matters relating to the room rental;

(b) bear all expenses related to the repairs, renovations, interior decorations and additional furniture and equipment in the rental room;

(c) pay the deceased $600 every month with effect from the date the room was rented out;

(d) be responsible for the water and electricity bill and taxes every month; and

(e) continue to be responsible for his daily living activities including laundry, cooking, housekeeping, hygiene, accompanying him to his medical examination and other matters.

11 The appellant duly rented out the room from January 2015 onwards at $1,800 and paid $600 per month. The payments of $600 per month were recorded in receipts, which also stated that the appellant was responsible for the deceased's daily living activities (including the matters listed at [7] above) and was responsible for the repairs of the room, the water and electricity bill, taxes and purchase of various utensils. From November 2014 to July 2015, the deceased took no steps to annul the marriage or divorce the appellant. According to L, this was because the deceased lacked money, and the appellant had also begged him for forgiveness.

12 In July 2015, when the deceased was feeling breathless, the appellant took him to Tan Tock Seng Hospital ("TTSH") where he was admitted until 6 August 2015. He was transferred to a community hospital on 6 August 2015 but returned to TTSH when his condition worsened.

13 The following is L's testimony. Sometime after the deceased was admitted into TTSH, he asked L to visit him. L claimed he knew the deceased for more than 45 years, and the deceased would approach L for help from time to time regarding issues that the deceased encountered. This time, the deceased allegedly wanted L to help him get discharged from the hospital. L was unable to persuade the hospital to discharge the deceased because L was not a next-of-kin. The deceased told L that the appellant did not visit him during the period of his hospitalisation. Realising that the appellant did not care for him, the deceased told L that his marriage to the appellant was a sham, and he did not wish to leave his flat to the appellant. He then instructed L to prepare the Will. L claimed that although the second respondent was the deceased's half-sister, the deceased cared more for and treated her better than his other full-blooded sister. Because the second respondent had gone through a hard life and was financially poorer than the rest of the deceased and his siblings, the deceased wanted to leave her with his flat.

14 On the deceased's request, L then contacted the first respondent to inform him that the deceased had appointed him as executor of the Will. He requested the first respondent to find two persons to witness the execution of the Will and an interpreter to explain the Will to the deceased. The two witnesses were J, the first respondent's brother, and I, J's friend. C, who is the wife of the first respondent's and J's eldest brother, was chosen as the interpreter as she is well-versed in English and mandarin Chinese.

15 L brought the Will to TTSH for the deceased to sign. C explained the contents of the Will in mandarin to the deceased who confirmed he understood the contents of the Will before executing it in J and I's presence. J and I then signed the Will in front of the deceased. L then kept the Will on the deceased's behalf. The appellant did not know of the Will until the deceased had died.

16 The appellant initially claimed that she only knew about the Will on 16 February 2016 but conceded on the stand that she first learnt of the Will on 4 September 2015, a few days after his death. She received a call from L requesting that they meet at Tan Tock Seng mortuary to discuss matters concerning the deceased's funeral. At the time, she did not know who L was. At that meeting, L told the appellant about the Will but did not produce it. The deceased's siblings also threatened to report her to the Immigrations and Checkpoint Authority and deport her back to China. In spite of the obvious animosity, the family agreed to let the appellant make the funeral arrangements.

17 Afterwards, the appellant closed the deceased's bank account and withdrew the remaining sum of $3,222.45 from the account as cash, which she retained. She also successfully claimed the deceased's CPF moneys which amounted to $39,989.76.

18 On 26 January 2016, the first respondent was issued the grant of probate. He and another of the deceased's nephews showed up at the deceased's flat on 16 February 2016, telling the appellant to vacate by 5 March 2016 as the court had purportedly ordered the flat to the second respondent. When the appellant asked them to produce proof, they were unable to do so. A few days later, the first respondent returned with, according to the appellant, the first page of the Will. The first respondent, however, claims that he brought the complete Will with him and gave a copy to the appellant.

19 The appellant claims that she engaged solicitors to request for a copy of the Will from the respondent, but to no avail. She also requested through her solicitors to be given until 1 July 2016 to move out of the flat. Subsequently, she obtained a certified true copy of the Will and the Grant of Probate from the Family Justice Courts. According to her, this was the first time she saw the Will in its complete form. She claimed that para 6 of the Will was untrue, and that the signature on the Will was not the deceased's. She thus commenced proceedings to invalidate the Will, alleging that the deceased did not have the requisite capacity to sign the Will, that the Will was forged, and/or that he was under undue influence when he signed the Will.

20 Before beginning my analysis, it bears emphasising that the threshold for appellate intervention is high. An appellate court will not overturn the trial judge's finding of fact unless that finding is plainly wrong or against the weight of evidence: *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 at [41].

21 I now turn to the law on testamentary capacity. The party who propounds or puts forth a will bears the burden of proving that the testator, had testamentary capacity when he signed the will. The essential requisites of testamentary capacity are:

(a) the testator understands the nature of the act and what its consequences are;

(b) he knows the extent of his property of which he is disposing;

(c) he knows who his beneficiaries are and can appreciate their claims to his property; and

(d) he is free from an abnormal state of mind that might distort feelings or judgments relevant to making the will.

22 Testamentary capacity is *prima facie* established when the will is executed in ordinary circumstances where the testator was not shown to be suffering from any mental disability. The party challenging the will may rebut this presumption by adducing evidence to the contrary, such as evidence that the testator was suffering from a mental illness which would affect the requisites of testamentary capacity. When testamentary capacity is established, a rebuttable presumption arises that the testator knew and approved of the contents of the will. This presumption, however, does not arise if there are circumstances that raise a well-grounded suspicion that the will (or some provision in it) did not express the mind of the testator: *Chee Mu Lin Muriel v Chee Ka Lin Caroline (Chee Ping Chian Alexander and another, interveners)* [2010] 4 SLR 373 ("*Muriel Chee*") at [40] and [46]. In this regard, where the will is irrational having regard to its terms and the identities of the beneficiaries, it might indicate that the testator lacked testamentary capacity, and also indicate surrounding suspicious circumstances. The ultimate inquiry is whether the court is satisfied that the contents of the will do truly represent the testator's testamentary intentions: *George Abraham Vadakathu v Jacob George* [2009] 3 SLR(R) 631 at [67] and *Muriel Chee* at [49].

23 The DJ found that the deceased was not suffering from mental disability, and that the contents of the Will were rational on its face. Hence, the deceased was presumed to have testamentary capacity. In so concluding, the DJ referred to the medical report dated 20 September 2018 from TTSH, which established that the deceased was able to consent to anaesthesia and surgery to amputate his left forefoot. The surgery was necessary because the deceased had gangrene with osteomyelitis on his left toe. He was not heavily sedated and was

given peripheral nerve block anaesthesia for the surgery on 12 August 2015. The medical records showed that he was alert, comfortable, oriented to time, place and person and with stable vital signs on 17 August 2015, *ie*, the date on which the Will was dated. He was not critically ill and did not suffer from any temporary incapacity.

24 The appellant had argued at trial, and now on appeal, that the Will was not executed in ordinary circumstances. The Will was allegedly signed five days after the deceased's operation to amputate his left forefoot. The appellant contended that five days after the amputation, the deceased would not have had testamentary capacity, and in any event would not have been in the right frame of mind to know or approve of the Will's contents. The DJ did not consider this point in her GD, so I now examine this argument.

25 I agree with the appellant that this was not a situation where the court could presume that the deceased had testamentary capacity when he purportedly signed the Will. In this regard, soundness of mind and testamentary capacity are not the same – see the essential requisites of testamentary capacity at [21] above. Nor could the court presume that the deceased had known or approved of the Will's content when he purportedly executed the Will. On the respondents' own case, the deceased was made to execute the Will five days after his left forefoot was amputated. The deceased may likely still have been affected by the physical and emotional pain of losing his forefoot. It would not be unreasonable to think that the deceased might not have been in the right frame of mind to make testamentary decisions, or to focus on the contents of a will in those circumstances. To use the language of the law, the Will was not executed in "ordinary" circumstances. Instead, the present circumstances raise a suspicion that the Will did not express the deceased's mind.

26 The burden is thus on the respondents to prove the deceased's testamentary capacity, and to prove that the deceased knew and approved of the Will's contents. The simplest method would have been to get a doctor to certify, right before the execution of the Will, that the deceased met the essential requisites of testamentary capacity and was in the right frame of mind to approve of the Will's contents. The respondents, however, did not do this.

27 As far as expert evidence is concerned, the respondents are left with the medical report dated 20 September from TTSH (see [23] above). The appellant points out that one of the doctors who wrote this report admitted on the stand that he did not personally treat the deceased, or know about the deceased's medical conditions or state or mind in 2015. He also did not witness the purported signing of the Will. Instead, the doctor was only assigned to prepare a medical report on the deceased in September 2018, based solely on the hospital notes and records of the deceased kept by TTSH, which he only saw in September 2018. On the stand, the doctor admitted that he was unable to comment on whether the deceased was of sound mind, memory and understanding when he made the Will. He also had no comment on whether the deceased could understand the nature and the act of signing the Will, and the extent of the property he was disposing under the Will. The appellant also argued correctly that just because the deceased signed consent forms for anaesthesia and surgery did not mean that he had testamentary capacity when he executed the Will. The doctor who wrote the report was not called as witness, nor were any of the doctors who had actually treated the deceased called. The DJ did not address any of these points in her GD. In my view, although not all the conclusions in the medical report may be relied upon, the medical report nonetheless did refer to medical records on the deceased dated 17 August 2015, which showed that he was alert, comfortable, oriented to time, place and person

and with stable vital signs. That would point towards the deceased having testamentary capacity, even if it does not unequivocally establish it.

28 The above is also corroborated by the DJ's finding that that the respondents have shown that the deceased had testamentary capacity. I would not disturb that finding. The first respondent, C, J, I and L testified on the stand that the deceased was alert, able to recognise them and spoke normally with them. L also claimed that the deceased had instructed him to prepare the Will and its contents sometime when the deceased was hospitalised. C testified that she interpreted and read out the Will line by line to the deceased, and that he nodded in response to each line. I am not prepared to find, on appeal, that the five of them were lying. They do not appear to have anything to gain from the Will – the beneficiary is the second respondent, who is not directly related to any of these five people. The appellant accuses these five people and the second respondent of criminally conspiring to seize the flat, but that accusation is unsupported. In the circumstances, I do not think that the DJ was wrong to find that the deceased had testamentary capacity to make the Will.

29 I also cannot fault the DJ for finding that the Will was not irrational on its face. The DJ may have mistakenly considered the contents of the newspaper article, which constitute inadmissible hearsay evidence as the reporters did not testify in the trial. Nonetheless, the burden lay on the appellant to show that the Will was irrational. She could prove that by showing either (a) that she had no need to marry the deceased to extend her stay or (b) that the marriage was not a sham.

30 For (a), the appellant claimed she had no need to extend her stay in Singapore because she could stay until 2018 under her Long-Term Visit Pass. The appellant has not shown, however, that the DJ was wrong to conclude that

she had no need to marry the deceased to extend her stay. After all, the appellant could have been looking to stay beyond 2018 — marrying the deceased could have increased her chances. More indirectly, her daughter was not yet a Singapore Permanent Resident ("PR") or citizen in 2013, and so marrying the deceased could have increased the chances of her daughter getting PR status, which in turn could help her extend her stay in Singapore too.

31 For (b), the appellant has not produced objective evidence or sufficient testimony to show that her marriage was not a sham. She relied on her two friends' evidence regarding how the appellant and the deceased interacted before and on the marriage day, but did not mention how they interacted after marriage. Their evidence thus does not assist the appellant. On the contrary, L and the first respondent testified that the deceased told them that his marriage to the appellant was a scam.

32 Additionally, the deceased himself had accompanied the reporters into the flat, and did not introduce them to the appellant. The DJ did not believe that the deceased would bring someone into his flat without knowing who they were or why they were there. The DJ was entitled to draw that conclusion. As for the receipts signed by the defendant which recorded payment of rent and the appellant's duties towards the deceased (see [9] above), I find that to be a neutral factor, consistent with both the appellant's account that the receipts were meant for her benefit and with the DJ's findings that the receipts evinced a contractual relationship between the appellant and the deceased.

33 On balance, the DJ was not plainly wrong in accepting L's and the first respondent's evidence. Hence, the Will is rational on its face, and inclines the court towards the finding that the deceased having testamentary capacity, and that the deceased knew and approved the Will.

34 As for the appellant's allegation that the Will was forged, the burden is on her to prove her allegation. In my view, she has not done so. In 2018, the appellant had applied and paid for the original Will to be examined by the Health Sciences Authority ("HSA"). She requested the respondents to surrender the original Will to HSA for forensic examination. The respondents' solicitors replied that they would not give the original Will unless the appellant obtained an Order of Court for such production to HSA. When the appellant did obtain such an order, the first respondent claimed that he had lost the original Will. He claimed that he last recalled passing it to the paralegal of the solicitor who helped him obtain grant of probate. As a result, the appellant could only submit the certified true copy of the Will to HSA. HSA's handwriting expert found that the signature on the Will bore some similarities and differences with the deceased's other signatures. The authenticity of the signature on the Will was "inconclusive", and the HSA's expert asked for the original Will to re-evaluate the signature.

35 The first respondent did not recall receiving the copy of the original Will from that solicitor or the paralegal. That solicitor had tendered an affidavit, saying that he could not find the original Will and that the paralegal who had handled the original Will died on 30 July 2020. The first respondent claimed that he believed that the certified true copy of the Will was the original Will until his solicitor in these proceedings informed him otherwise. On one hand, it seems strange that one would be unable to tell the difference between an original will and a certified true copy. After all, an original will would bear the wet-ink signatures of the deceased and the witnesses, while a copy of the will would not. On the other hand, it would not be unreasonable for the first respondent to assume, as a layperson, that whatever he got back from the courts *via* the paralegal sufficed to serve as the original. Thus, I do not think that there is sufficient evidence to find that the respondents had forged the Will. All I am

left with in terms of evidence is the HSA's forensic report which says that the handwriting analysis of the signature on the Will is inconclusive. Hence, the appellant has not shown that the respondents had forged the Will.

36 As for the appellant's arguments on undue influence, the appellant has to show that the deceased was not merely persuaded but pressured into losing his freedom of choice, or that the deceased was coerced into doing that which he did not desire to do: *ULV v ULW* [2019] 3 SLR 1270 at [68]. I agree entirely with the DJ that apart from making a stab in the dark with bare allegations, the appellant has failed to provide any evidence to show that L, the first respondent or the deceased's siblings had exercised undue influence over the deceased in the execution of the Will.

37 The entire narrative on both sides has peculiar aspects which ought to have been more fully explored by counsel or the parties, but were not. Consequently, the respondents' conduct and their case appear to have a cloak of furtiveness about them. They had the deceased execute the Will with only L and the other witness. They ought to have had a doctor present to, for instance sign on the Will as a witness, or have him certify that the deceased had testamentary capacity. This was in a hospital and doctors were readily available.

38 The first defendant also claimed that he could not tell the difference between an original will and a certified true copy — which is plausible but not entirely convincing. The respondents are fortunate that the evidence was insufficient to show that the DJ's findings of fact were plainly wrong. In any case, much trouble and uncertainty could have been avoided if the respondents had procured a doctor to serve as an independent witness to a testator who was recovering from a major surgery. Moreover, drawing up one's will without professional help, especially at one's deathbed, is not wise. In this case, the

deceased could and ought to have sought professional help, since his reason for excluding the appellant from the Will had been clear to him months before he executed the Will.

39 Notwithstanding my misgivings above, the appeal is dismissed. I will hear the parties on costs if they are unable to agree on costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Rajwin Singh Sandu (Rajwin & Yong LLP) for the appellant;
Xu Daniel Atticus (Exodus Law Corporation) for the respondents.