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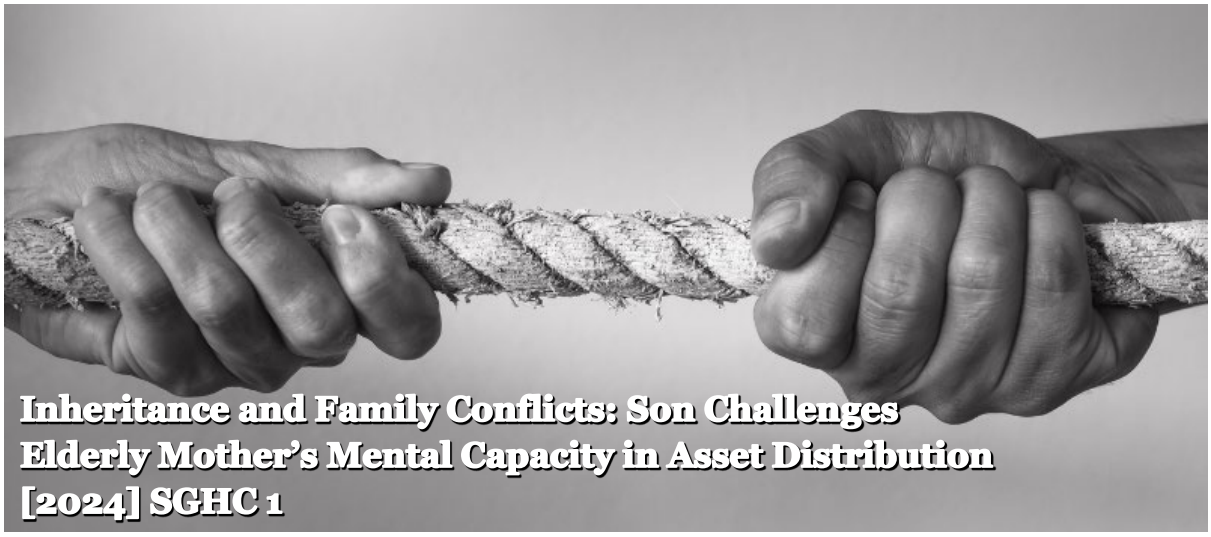

Inheritance and Family Conflicts: Son Challenges Elderly Mother's Mental Capacity in Asset Distribution [2024] SGHC 1

INTRODUCTION

An article published in the Straits Times (on 22 December 2024) carried the headline: "*When a son fought his elderly mother's move to split family assets*". The titular son had applied to the General Division of the High Court of Singapore to invalidate a special resolution to wind up the family business, alleging that his own mother lacked the mental capacity to sign the papers for the winding up. This was the case of ***Goh Tze Chien v Tan Teow Chee and another*** **[2024] SGHC 1** (the "**Judgment**"), where we successfully represented the executor (of the deceased's estate in Singapore, which assets included shares in the said family business) in resisting the son's application, as well as the son's subsequent appeal to the Appellate Division of the High Court.

BRIEF FACTS

When Mr Goh Swee Boh (the "**Father**") passed away, he left a will for his assets in Singapore (the "**Singapore Will**"). The Father's wife (the "**Mother**"), his two daughters and his son (the "**Son**") (collectively, the "**Goh Siblings**") and his granddaughter were beneficiaries of the Singapore Will. Under the Singapore Will, the Father named the Mother and his close friend ("**1st Respondent**") as executors and trustees. However, the Mother gave up that right. Therefore, the 1st Respondent was appointed the sole executor and trustee of the estate of the late Father (the "**Singapore Estate**").

One of the assets that formed part of the Singapore Estate was the Father's shares in the family business (the "**Company**"). At the time of his death, the Father held 36% of the shares of the Company, the Mother held 19%, while the Goh Siblings each held 15%. The Father, the Mother, the Son and one of the Father's daughters were directors of the Company.

The 1st Respondent took steps to administer the Singapore Estate after being appointed as executor and obtaining the grant of probate. While the Son (together with the rest of the Goh Siblings) was initially cordial and cooperated with the 1st Respondent, he had a sudden change of heart after the 1st Respondent, in the course of administering the Singapore Estate, broached the topic of selling property belonging to the Father (which the Son and his family were living in at the time). The Son began to allege that the Mother was incapable of giving her legal consent. In response to this allegation, one of the daughters brought the Mother to have her mental capacity assessed by a neuropsychiatrist, who confirmed that the Mother possessed testamentary capacity and had the capacity to instruct solicitors.

A few days before the Father's unexpected demise, he had told the 1st Respondent that he intended to shut down the Company's operations. The 1st Respondent therefore proceeded to take steps to wind up the Company after his appointment as executor. The necessary board and member resolutions for a voluntary winding up were passed. In the process, the Mother also signed various documents in her capacity as a director and shareholder of the Company ("**Relevant Documents**").

The Son subsequently filed HC/OA 637/2023 ("**OA 637**") on 22 June 2023, contending that the resolutions to wind up the Company and appoint the liquidator of the Company were invalid. The Son did not dispute that the relevant statutory provisions relating to the winding up and the appointment of the liquidator had been complied with; his primary contention was that the Mother lacked mental capacity when she signed the Relevant Documents leading up to the winding up of the Company. On 24 July 2023, the Son filed HC/SUM 2196/2023 ("**SUM 2196**") in OA 637, seeking among other things an order for the assessment of the mental capacity of the Mother.

THE HIGH COURT'S DECISION

After hearing parties, the Honourable Justice Valerie Thean ("**Thean J**") dismissed the application in OA 637 and SUM 2196. She found that "*the relevant evidence did not support [the Son's] assertion that the Mother lacked mental capacity when she signed the [Relevant Documents]*". Even though OA 637 was not an application under the Mental Capacity Act 2008 (2020 Rev Ed) ("**MCA**"), the statutory principles and legal tests remain relevant (see [31] of the Judgment). The following general principles of law under the MCA were affirmed:

(a) Under the MCA, "*a person lacks capacity in relation to a matter if at the material time the person is unable to make a decision for himself or herself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain*." As set out in the Court of Appeal decision in ***Re BKR* [2015] 4 SLR 81 at [134]**, this comprises a functional and clinical component – the functional aspect is that the individual must be unable to make a decision, and the clinical aspect is that this inability must be caused by a mental impairment (see [33] of the Judgment).

(b) A lack of capacity cannot be established merely by reference to a person's age or appearance, or a condition of the person, or an aspect of the person's behaviour (section 4(3) of the MCA). In particular, the Code of Practice: Mental Capacity Act 2008 (Office of the Public Guardian, 3rd Ed, 2023) ("***Code of Practice***") lists some conditions that may cause a lack of capacity, including dementia and mental health problems, but emphasises that "*it must not be assumed that a person who suffers from any of these conditions necessarily lacks mental capacity*" (see [36] of the Judgment). Therefore, proof of a certain physical condition alone is not determinative of a lack of mental capacity.

(c) A person must be presumed to have capacity unless it is established that the person lacks capacity – the burden of proof thus lies on the party asserting that a person lacks capacity (*i.e.* the Son, in this case) (as set out in *Wong Meng Cheong and another v Ling Ai Wah and another* [2012] 1 SLR 549 at [30]). This presumption was explained by Dr Vivian Balakrishnan, Minister for Community Development, Youth and Sports at the Second Reading of the Mental Capacity Bill (Bill No 13/2008) with specific reference to the tendency of the mental capacity of patients to "*wax and wane*". In particular, *"[a patient] may be capable of making a decision on this specific topic today, but [the patient] may not be tomorrow, or [he/she] may recover the day after*" (Singapore Parliamentary Debates, Official Report (15 September 2008) vol 85 at col 153) (see [35] of the Judgment).

The Son relied on his own observations of the Mother and various medical reports by doctors in support of his application in OA 637. Thean J rejected the Son's arguments:

(a) Insofar as the Son relied on his own observations of the Mother's confusion, the MCA states that a lack of capacity cannot be established merely by reference to a person's age, appearance or behavior (see [40] of the Judgment); and

(b) None of the medical reports that the Son relied upon demonstrated the impact of the Mother's dementia on her decision-making or cognitive abilities. One particular report was by an occupational therapist, who would not be the most relevant expert to address the test on mental capacity. The Montreal Cognitive Assessment ("**MoCA**") test scores were also not definitive of the issue (see [44] of the Judgment).

On the contrary, the medical report prepared by the neuropsychiatrist who examined the Mother following the Son's allegation of lack of capacity stated that the Mother's cognitive test scores were in the "*normal range*". Various tests conducted by the neuropsychiatrist on the Mother also indicated normal scores. He concluded that the Mother *"[was] judged to possess the capacity to instruct her solicitors with regard to her estate*" and "*possessed testamentary capacity that was confirmed during the 16 December 2022 assessment*". Thean J noted that the neuropsychiatrist's examination was the nearest in time to the Mother's signing of the Relevant Documents, and it was clear that he had considered the Mother's history and conducted a scan of his own or used previous scans which reflected her brain lesions. Thean J therefore concluded that there was "*no reason to doubt the veracity of the [report]*".

Thean J also dismissed SUM 2196, *i.e.* the Son's application for the Mother to undergo a medical assessment to determine her "*current mental capacity*". She held that SUM 2196 was "*misconceived*" because section 18 of the Supreme Court of Judicature Act 1969 ("**SCJA**") (read with paragraph 19 of the First Schedule of the SCJA) provides that the General Division's *"[p]ower to order [a] medical examination of a person in a proceeding only arises if that person is a party to the proceedings*". The Mother was not a party to the proceedings and thus no order for a medical assessment could be made against her in the proceedings.

THE APPELLATE COURT'S DECISION

Unhappy with Thean J's decision in OA 637, the Son appealed to the Appellate Division of the High Court. His appeal in AD/CA 119/2023 was dismissed by the Appellate Division – while no written grounds of decision were rendered, the LawNet Editorial Note for the Judgment states that the Appellate Division agreed with the decision and reasoning of Thean J and, in particular, her finding that the Son had failed to prove that the Mother lacked mental capacity at the relevant time.

KEY TAKEAWAYS

The Judgment affirms legal principles that are often engaged in inheritance disputes. While such matters may not come to mind when a loved one is facing a medical condition that potentially impairs their mental capacity, a little prudence may go a long way to avoiding (or at least defusing) family disputes in the future. Some practical steps include the following:

(a) Consider arranging for a person (against whom allegations of a lack of mental capacity may be made) to be certified to be mentally fit by properly qualified medical professionals before they make a significant decision in relation to their estate (*e.g.* when they sign their will). In this particular case, the fact that the Mother was assessed by a neuropsychiatrist following the Son's allegation of a lack of mental capacity and was judged to possess the requisite capacity was a significant factor in the Court's dismissal of the Son's application in OA 637.

(b) When making key management decisions regarding a company (such as winding it up), ensure that the relevant statutory rules and the company's Constitution are complied with, and that such compliance is properly documented. If in doubt, you may wish to obtain legal advice before embarking on an such an endeavour.

(c) Where it is suspected that a person lacks mental capacity and is about to make or has made an important decision, and there is a need to challenge this decision, you may wish to obtain legal advice before taking any steps (such as commencing proceedings in court). Litigants in person are still subject to the courts' rules and procedures; forging ahead without legal counsel may attract certain consequences. For example, an otherwise meritorious application to Court may turn out to be defective because of procedural errors. Further, the threshold to succeeding in an application for a declaration of a lack of mental capacity under the MCA is a high one, and one should ensure that sufficient evidence is on hand before commencing proceedings in court.

CONCLUSION

The decision by the General Division of the High Court affirms the relevant legal principles under the MCA. Parties who wish to allege a lack of mental capacity continue to face a high bar and rightly so: as noted by the Singapore courts, a declaration of the lack of mental capacity is one of the most fundamental orders that can possibly be made against a person, because it is an encroachment upon the autonomy of an individual given that the individual has lost his or her ability to make a choice.

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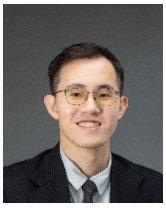

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