

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF  
GUYANA  
CIVIL JURISDICTION

2019-HC-DEM-CIV-SOC-221

BETWEEN:



**SUE YING KHAN**, in her capacity as the Executrix and a beneficiary named in the Last Will and Testament of TUSI YOK KEI CHEE FOOK LEM also known as TSUI UOK KEI CHEE FOOK LEM also known as TSUI YOK KEI known as CHEE KEE, deceased, dated the 9<sup>th</sup> of October, 2015, represented herein by her duly constituted attorney RICARDO DAVID, by virtue of a Limited Power of Attorney executed on the 10<sup>th</sup> of October, 2018 and registered in the Deeds Registry, Georgetown on the 15<sup>th</sup> of October, 2018 and numbered 8956 of 2018.

Claimant

-and-

1. **PARASAR SINGH**, personally and in his capacity as the Named Executor in the purported Last Will and Testament of TUSI YOK KEI CHEE FOOK LEM also known as TSUI UOK KEI CHEE FOOK LEM also known as TSUI YOK KEI known as CHEE KEE, deceased, dated the 8<sup>th</sup> of August, 2017.
2. **SATTIE SINGH**, personally and in her capacity as a beneficiary in the purported Last Will and Testament of TUSI YOK KEI CHEE FOOK LEM also known as TSUI UOK KEI CHEE

FOOK LEM also known as TSUI YOK KEI  
known as CHEE KEE, deceased, dated the 8<sup>th</sup> of  
August, 2017.

Defendants

The Honourable Justice Navindra A. Singh, Puisne Judge


Mr. Manoj Narayan for the Claimant

Mr. George Thomas for the Defendants

**Delivered November 19<sup>th</sup> 2021**

## DECISION

### BACKGROUND



The Claimant is a daughter of TUSI YOK KEI CHEE FOOK LEM also known as TSUI UOK KEI CHEE FOOK LEM also known as TSUI YOK KEI known as CHEE KEE, deceased, who died on August 4<sup>th</sup> 2018 [hereinafter referred to as Chee Kee][**Exhibit “SYK 25”**].

The Claimant claims that Chee Kee executed his Last Will and Testament on October 9<sup>th</sup> 2015 and appointed her the Executrix of the Will [**Exhibit “SYK 21 - 22”**][hereinafter referred to as the First Will].

The Second Named Defendant [SND] was the reputed wife of Chee Kee at the time of his death and the First Named Defendant [FND] is the SND's son.

The Defendants contend that Chee Kee executed his Last Will and Testament on August 8<sup>th</sup> 2017 and appointed the FND the Executor of the Will [**Exhibit “SYK 23 - 24”**][hereinafter referred to as the Second Will].

At the time of his death Chee Kee was the owner of property situate at Lot 38 First Avenue, Bartica, Essequibo, Guyana evidenced by County of Essequibo Transport No. 72 of 2017 [**Exhibit “SYK 26 - 29”**][hereinafter referred to as the Property].

In the First Will, the Property is devised to the Claimant, the SND and Sue Fong Khan, who is another daughter of Chee Kee.

In the Second Will, the Property is devised solely to the SND.

The Claimant claims that Chee Kee purchased the Property in the year 2000, however, in the year 2006, the person from whom he bought the Property transferred the Property to a third party and as a result ten years of litigation ensued in order for Chee Kee to secure his interest in the Property.

The Claimant claims that Chee Kee sought financial assistance from her to finance the litigation and as a result she and her husband financed the litigation and, in addition, paid off the balance of the purchase price of the Property, based upon the common understanding and agreement with Chee Kee, that he will convey the Property to the Claimant in consideration for all the monies that they would have expended.

The Claimant paid off the balance of the purchase price by lodging the sum of US\$55,601.00 (fifty five thousand six hundred and one dollars United States of America [US] currency) with the Registrar of the Supreme Court.

The Claimant claims that Chee Kee subsequently executed a promissory note in favour of her husband, David Peter Bernard Khan, for the sum of US\$61,000.00 (sixty one thousand dollars US currency), as security for her and her husband lodging the balance of the purchase price with the Registrar of the Supreme Court.

The Claimant claims that it was intended that the promissory note would be cancelled upon the Property being conveyed to her.

The Claimant claims that the SND was present during all of the discussions regarding her funding of the litigation, payment of the balance of the purchase price and Chee Kee conveying the Property to her in return.

The Claimant claims that due to pressure from the SND, Chee Kee subsequently informed her [the Claimant] that he would repay the money that she loaned him to pay off the balance of the purchase price and convey the Property to her [the Claimant], Sue Fong Khan and the SND in equal shares.

The Claimant claims that to this end Chee Kee had his lawyers prepare the First Will.

The Claimant claims that when she attempted to probate the First Will in early 2019 she discovered that the FND had applied for probate of the Second Will.

It is at this juncture that she first became aware of the existence of the Second Will.

The Claimant claims that the Second Will is a forged Will since the signature that appears on the Second Will is not Chee Kee's signature and further he did not possess the requisite testamentary capacity to execute a Will at the time that Second Will was executed.

The Claimant further claims that Chee Kee was incapable of reading written English and therefore could not have known the contents of the Second Will.

The Claimant claims that, alternatively, if the Second Will was executed by Chee Kee, he did so as a result of undue influence, duress and pressure from the SND and her relatives.



The FND contends that though he was named as the Executor of the Second Will, he was not present when Chee Kee executed the Second Will and was not part of any discussion regarding the making or the execution of the Second Will.

The FND further contends that Chee Kee was fluent in English and having seen Chee Kee on the morning of August 8<sup>th</sup> 2017 he can testify that he did possess the requisite testamentary capacity on that date.

The SND contends that Chee Kee was repaying the monies borrowed from the Claimant and her husband and it was as a result of the Claimant's husband instituting High Court Action No. 2017-HC-DEM-CIV-FDA-522 against Chee Kee claiming a half share in the Property, despite the repayments, that Chee Kee executed the Second Will.

The SND contends that the Claimant's husband instituted two other High Court Actions against Chee Kee seeking judgment for the monies loaned to him and so it cannot be true that the Property was going to be transferred to the Claimant in lieu of such repayment.

The SND denies that any such discussion ever occurred in her presence.

The SND further contends that Chee Kee was fluent in English and did possess the requisite testamentary capacity on August 8<sup>th</sup> 2017 to execute a Will and did in fact personally instruct his Attorney to prepare the Will, executed it voluntarily and lodged it at the Probate Registry of the Supreme Court.



### **ISSUE I**

Was the execution of the Second Will in accordance with the Laws of Guyana.

### **LAW**

Section 4 of the Wills Act; CAP 12:02 of the Laws of Guyana, which provides;

*“No will made in Guyana shall be valid unless it is in writing and executed in manner hereinbefore mentioned, that is to say, it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, and the signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and those witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.”*

**FACTS & ANALYSIS**

Marria Singh testified that she is married to the FND and the SND is her mother-in-law.

She testified that Chee Kee would usually travel from Bartica and stop over by her and the FND's home in Cornelia Ida, West Coast Demerara whenever he had to conduct business in Georgetown.

It is noted by the Court, as a matter of public knowledge, that it is usual for a person travelling from Bartica to Georgetown, to take a boat to Parika, East Bank Essequibo, then travel overland through the West Coast Demerara to Georgetown.

She testified that she shared a good relationship with Chee Kee and she conversed with him in English.

She testified that on August 8<sup>th</sup> 2017 Chee Kee and the SND were by her in Cornelia Ida and Chee Kee asked her to accompany him to his lawyer's office in Georgetown, which she did.

She testified that the FND had already left home when Chee Kee made this request and the SND did not accompany them to the lawyer's office because she was not feeling well.

When they arrived at the lawyer's office she remained outside of the lawyer's chambers and sometime after, Chee Kee come out of the lawyer's chambers with documents which he appeared to be reading.



The lawyer, George Thomas, then came out of his chambers and asked Chee Kee if he wanted the document read over to him again and Chee Kee told the lawyer that this is what he wants.

She testified that Chee Kee then asked her and the lawyer's secretary to witness his Will, which is when she realised that the documents Chee Kee was holding was his Will.

The secretary then read the Will over to Chee Kee in her presence, after which Chee Kee signed the Will on the secretary's desk, in her and the secretary's presence.

She then signed her name in Chee Kee's and the secretary's presence and thereafter the secretary signed her name in her [Marria Singh] and Chee Kee's presence.

She testified that she and Chee Kee conversed going to the lawyer's office and on the way back to her home and he appeared to be his usual self.

The Court found that Marria Singh's evidence was not impeached in any way when she was cross examined.

Carlton Charles was deemed to be an expert in the field of handwriting analysis and he testified that he compared the signature on the Second Will [from a photocopy thereof] with five other documents that he testified contained the known signature of Chee Kee.



The documents that Mr. Charles used for comparison and analysis were;

1. a photocopy of the First Will [**Exhibit “SYK 21 - 22”**].
2. a photocopy of Transport No. 72 of 2017 [**Exhibit “SYK 26 - 29”**]
3. a photocopy of an Affidavit of Identity dated April 12<sup>th</sup> 2017 [**Exhibit “SYK 114 - 115”**]
4. a photocopy of an Affidavit filed in Court proceedings dated June 8<sup>th</sup> 2016 [**Exhibit “SYK 119 - 122”**]
5. a photocopy of an Affidavit filed in Court proceedings dated April 19<sup>th</sup> 2017 [**Exhibit “SYK 116 - 118”**]



Mr. Charles testified that he concluded that the signature on the Second Will was not authored by the same person that authored the signatures on the other documents.

According to his testimony [**Exhibit “SYK 102”** paragraph 24 (a)], he specifically found that the formation of the letter “T” in “Tsu” was materially different in the Second Will as compared to the other documents, in that, in the Second Will the right side of the crossbar is longer than the left side whereas the opposite is true for the other documents.

While this appears to be so, Mr. Charles failed to record that the slant and the ends of the said “T” appear to be similar to the formation in the other documents and even further the said “T” in all of the other documents bear slight variations when those documents are compared to each other.

In fact, the crossbar's connection to the down stroke of the "T" in the Second Will is similar to Document 3 above **but** none of the other documents match those.

According to his testimony [Exhibit "SYK 102" paragraph 24 (b)], he specifically found that the letters "y", "e" and "i" in the names "Yok" and "Kei" were disproportionate, [which he explained means different], in the Second Will compared to the other documents.

Disproportionate has to do with size in the context of comparing letters in a handwriting sample.

Since Mr. Charles did not testify as to the size of the letters on the documents he examined and he in fact did not have the original documents, which would have in any event made such a comparison difficult and conclusions therefrom unreliable, the Court will accept his testimony that he meant different when he used the word disproportionate.

Upon an examination of the various documents, the Court found that the letters "y", "e" and "i" in the names "Yok" and "Kei" on all six of the documents used in the examination bore several similarities and differences.

In fact the letter "y" is different on all six documents.

The letter "e", while slightly different, has the same stroke formation in all of the documents and even further the letter "e" appears 20 times in the six documents

since it appears in other names other than “*Kei*” and they appear to all have variations, a fact that Mr. Charles failed to either observe or address.

Contrary to Mr. Charles’ opinion the Court found that the formation of the letter “*i*” in the name “*Kei*” in the Second Will is consistent with the formation of the letter “*i*” in the name “*Kei*” in all of the other documents **except** the First Will.

According to his testimony [Exhibit “SYK 102” paragraph 24 (c)], he specifically found that the letter “*A*” in “*AK*” and the letters “*C*” and “*k*” in the names “*Chee*” and “*Yok*” were vastly different in the Second Will compared to the other documents.



The Court found that the letters “*C*” and “*k*” in the names “*Chee*” and “*Yok*” were different in the Second Will compared to the other documents but noted that “*AK*” was not part of Chee Kee’s signature.

Mr. Charles also testified that the characteristics that he identified on the five documents which were not found on the Second Will were peculiar to the author of the signatures and he therefore concluded that the signature on the Second Will was not authored by the same person that authored the signatures on the other documents.

The Court finds that the fact that Mr. Charles did not address his mind to similarities between the signatures on the documents and the Second Will that were peculiar to the author of the signatures, which are evident to the untrained

eye, displays a bias in the analysis which makes the report unreliable and unacceptable.

The examination ought not to have been focused only on perceived differences, which were six in number based on his evidence in chief.

He, in fact, testified,

*“Suggestion: You didn’t check for similarities.*

*Answer: The purpose of the examination is to check for similarities and differences.*

*Suggestion: You made no record of similarities you observed.*

*Answer: If that is so, it is because the differences outnumbered the similarities.”*

These answers demonstrate that either the analysis was biased or the examination was not sufficiently detailed because there are certainly more than six similarities identifiable in the signatures.

Handwriting analysis is not an exact science and so an analysis must be balanced, considering the differences **and** similarities between samples and arriving at a conclusion by balancing those findings, since it is a notorious fact that a person’s signature will not be identical every time he/ she signs, but certain key stroke characteristics will inform the analyst whether it is possible that questioned documents were or were not authored by a person.

Mr. Ameer Mohamed was also deemed an expert in the field of handwriting analysis by the Court and he testified that he compared and analysed nine

documents bearing signatures of the name “Tsui Yok Kei Chee Fook Lem”, which included the First Will and the Second Will, and concluded that the signatures on all of the documents, **except** the First Will, were authored by the same person.

Mr. Mohamed created a chart [Exhibit “PS 54”] showing the similarities and differences between the various signatures that he examined and upon an examination of that chart the Court discovered that the Second Will that Mr. Mohamed examined was not the copy of the Second Will that was admitted for probate. It is noted that Mr. Charles examined the copy of the Second Will that was admitted for Probate.



Mr. Mohamed testified that the documents that he examined were provided by Mr. George Thomas, the Attorney-at-law for the Defendants and the Attorney-at-law that prepared the Second Will for Chee Kee.

Marria Singh testified:

*“I signed more than one document at the office.*

*It was more than one copies of the same document.*

*Chee Kee kept one and you kept the rest.”*

In addition the SND testified that although the Will was lodged with the Registry, she found a copy at home and Mr. Thomas had a copy.

It is obvious that Mr. Thomas provided Mr. Mohamed with a copy of the Second Will from his office file and not the copy that was lodged with the Probate

Registry, which is the copy that would subsequently have been used in the application for Probate.

In this regard Mr. Mohamed's testimony is not helpful with respect to an analysis of the signature on the Second Will.

Notwithstanding this, the Court found the chart prepared by Mr. Mohamed to be helpful in the Court's analysis of the authenticity of the signature on the Second Will since it is clear he conducted a thorough examination of the documents given to him, in stark contrast to the Court's view of Mr. Charles' examination.



Simply observing the copy of the Second Will that Mr. Mohamed examined as another document that purportedly contains the signature of Chee Kee, it can be seen that it contains numerous similarities with the signatures on the other documents.

#### **CONCLUSION**

The Court rejects the evidence of Mr. Charles with respect to the signature of Chee Kee on the Second Will and accepts the evidence of Marria Singh with respect to the execution of the Second Will.

In addition, the Court finds that the signature on the second Will was authored by Chee Kee based on comparisons, by the Court, to other documents in evidence that have been accepted to contain his known signature.

The Court therefore finds that the Second Will was executed by Chee Kee in accordance with the laws of Guyana.

## **ISSUE II**

Did Chee Kee lack testamentary capacity at the time of execution of the Second Will.

## **FACTS**

In addition to the facts already stated, the evidence in the case shows the following;

1. The Claimant's husband instituted two High Court Actions against Chee Kee in 2017, one in April and one in September.
2. Chee Kee provided his Attorney with detailed instructions to enable him to file defences to these actions, in May and in September 2017.
3. Chee Kee issued a receipt to his previous Attorney, now the Claimants' Attorneys on August 7<sup>th</sup> 2017 [**Exhibit "PS 66"**].
4. He appeared before the Registrar of Deeds on February 20<sup>th</sup> 2017 to sign for the Transport for the Property.

## **FACTS & ANALYSIS**

The Claimant claims that Chee Kee had severe medical complications since eighteen months prior to his death, which would be around December 2016, which were physically and mentally debilitating to him.

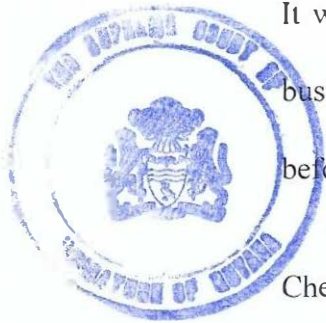


Other than her testimony, the Claimant did not provide any evidence of these medical complications.

The Claimant's evidence that Chee Kee had severe medical complications was rejected by the SND and Marria Singh whose testimony of their close connection with Chee Kee was not challenged or impeached.

Further, the Court finds it difficult to reconcile the fact that the Claimant's spouse would be instituting contentious High Court Actions, against his father-in-law, who was supposedly very ill both physically and mentally.

It would be equally disturbing that his previous Attorneys would be transacting business and disbursing large sums of monies to this very sick person the day before the Second Will was executed.



Chee Kee was clearly of sound mind and possessed enough strength in his body to make his way to Georgetown to give his Attorney instructions and attend Court whenever the matters instituted by the Claimant's husband were being heard.

### **CONCLUSION**

The Court finds that the Claimant's claim that Chee Kee had severe medical complications to be wholly unsubstantiated and further her claim that he lacked testamentary capacity on August 8<sup>th</sup> 2017 to be speculative and mendacious.

The Court finds that Chee Kee possessed the requisite testamentary capacity to make and execute the Second Will on August 8<sup>th</sup> 2017.



### ISSUE III

Whether Chee Kee knew and approved of the contents of the Second Will.

### FACTS

The Claimant claims that Chee Kee was **completely** unable to read or understand the written English language.

The Claimant testified that she travelled to Guyana to assist in giving instructions to his lawyers and prepare him for trial in the case involving the Property because he barely knew English.

### ANALYSIS

The Court is unable to accept the Claimant's assertions in light of the fact that Chee Kee testified in the High Court Action concerning the Property **without** an interpreter and was sufficiently proficient in English to provide instructions to Mr. Thomas to enable him to prepare defences in two High Court Actions in 2017, without the assistance of the Claimant.

Further, it is clear from reading the judgement of the Caribbean Court of Justice in the High Court Action concerning the Property [**Exhibit "SYK 38 - SYK 64"**] that Chee Kee conducted the business of purchasing the Property and discerned that he was being defrauded, without the Claimant's assistance.

Chee Kee clearly understood the nature of the Claims brought against him by the Claimant's husband, after being served with the documents filed in the High



Court Registry, sufficiently well to determine that it was advisable that he retained an Attorney that was not familiar with the Claimant or her husband to defend those Claims, and this, he again did, without the Claimant's assistance.

The Court accepts Marria Singh's evidence that no one accompanied Chee Kee into the Attorney's chambers when he instructed the Attorney on the preparation of the Second Will and therefore it is clear that the Second Will was prepared solely on the basis of Chee Kee's requests and instructions to Mr. Thomas.

### **CONCLUSION**

The Court finds that Chee Kee not only knew and approved of the contents of the Second Will when he signed it, but he solely instructed the Attorney on what he wanted in the Will.

### **ISSUE IV**

Was Chee Kee subjected to undue influence, duress and pressure to make and execute the Second Will.

### **FACTS & ANALYSIS**

The particulars of undue influence, duress and pressure as pleaded [paragraph 37 of the Claim] have not been established by any evidence independent of the Claimant's testimony.

The Court finds that it is somewhat duplicitous for the Claimant, who testified that she had to assist Chee Kee with preparation of the Court cases and interacting

with his Attorneys, now asserts, for the purposes of this **ISSUE**, that the SND handled all of Chee Kee's business and personal affairs, in an effort to establish that the SND was in a position to exercise great authority, control and influence over Chee Kee.

Apart from the fact that there is no evidence that the SND did in fact handle all of Chee Kee's business and personal affairs, assuming that this was indeed so, it would still be pure speculation to conclude that as a result of that, she improperly influenced or pressured him into doing something he did not want to do.

Counsel for the Claimant submitted that the Court ought to consider as suspicious the fact that the Second Will was prepared by Attorney-at-Law, Mr. George Thomas, although Chee Kee was successfully represented through many years of litigation by the law firm of Mohabir A. Nandlall and Associates.

This submission completely and purposely neglects to take all of the surrounding circumstances in to consideration.

The sequence of events are thus; the litigation, with respect to the Property, having come to an end, the Claimant's husband instituted a Claim against Chee Kee and, Chee Kee, being aware that the law firm of Mohabir A. Nandlall and Associates essentially represented all of them throughout that case, decided that it was prudent and sensible to retain a different Attorney for this new Claim.

Chee Kee then retained Mr. Thomas and in fact continued with Mr. Thomas when the Claimant's husband instituted a second Claim against him.



Mr. Thomas was his only retained Counsel in August 2017, at the time that he decided to execute the Second Will.

It is disingenuous for Counsel for the Claimant to suggest that Chee Kee simply left a firm that was successful in their representation of him to go to another Attorney to make a Will.

Further, and just as obvious, Chee Kee may very well have harboured ill feelings towards the Claimant after the Claimant's husband filed suit against the him.

It is after the first Claim was instituted that Chee Kee decided to make a Will devising his Property to the SND, someone he probably felt cared about him, particularly, if he believed, as can be garnered from his defence in that Action, that he was being taken to Court for monies, most of which he had already repaid.

### CONCLUSION

There is no evidence to suggest that the SND or anyone else exerted undue influence, duress or pressure on Chee Kee to make the Second Will.

In the circumstances, the Claim is dismissed in its entirety with Costs to the Defendants against the Claimant in the sum of \$1,200,000.00 which cost shall be paid on or before December 24<sup>th</sup> 2021.

The Court Declares that the Will executed by Tusi Yokkei also known as Chee Kee on August 8<sup>th</sup> 2017 is the Last Will and Testament of Tusi Yokkei, deceased ,who died on August 4<sup>th</sup> 2018.

  
Justice N. A. Singh

