Soon Ah See and another
v
Diao Yanmei

[2016] SGHC 185

High Court — Suit No 69 of 2014
Edmund Leow JC
10–13, 17 May; 14, 29 July 2016

Family law — Void marriage

Statutory interpretation — Construction of statute

Succession and wills — Revocation — Marriage

6 September 2016

Edmund Leow JC:

Introduction

1 When Soon Chwee Guan ("the deceased") died after suffering spontaneous massive intracerebral haemorrhage (a type of stroke) on 31 August 2013, he left behind more than $170,000 in his Central Provident Fund ("CPF") accounts ("the CPF monies"). While he was alive, he had nominated his sisters, Soon Ah See and Soon Ah Choon ("the first plaintiff" and "the second plaintiff", collectively "the plaintiffs") as his beneficiaries in January 2009. But when the plaintiffs visited the CPF Board on 3 September 2013, they discovered that the deceased's nomination had been automatically revoked. The reason: he had gotten married without their knowledge on 12 October 2011. The marriage

meant that the CPF monies fell to be distributed in accordance with the Intestate Succession Act (Cap 146, Rev Ed 2013), which prescribes, *inter alia*, that one-half of the intestate's estate goes to the surviving spouse if the deceased left behind a spouse and children. The wrinkle in the tale is that no one in the family even knew about the existence of the deceased's spouse, Diao Yanmei ("the defendant"), until after he died. Convinced that this was a sham marriage, the plaintiffs went to court in a bid to prevent the defendant from obtaining a share of the CPF monies.

2 This case raises interesting questions. There is first the relatively settled question of whether a marriage, if it is indeed a marriage of convenience or a sham marriage, is void under the Women's Charter (Cap 353, Rev Ed 2009). But even if a sham marriage is a valid marriage for the purpose of matrimonial jurisdiction, the question is whether it will necessarily result in the automatic revocation of the deceased's prior nomination under the Central Provident Fund Act (Cap 36, Rev Ed 2013) ("the CPF Act"). After due consideration, I answer the first question in the negative (although Parliament's intervention would have changed this from 1 October 2016) and the second question in the negative as well.

Facts

3 The deceased was born on 31 May 1961. He married his first wife in 1987. They had two daughters. On 21 October 1993, the deceased nominated his daughters as beneficiaries of his CPF monies.

4 However, the deceased and his first wife divorced in August 2005. The first wife was granted sole custody of and care and control of their children, with reasonable access to the deceased. In addition, the deceased was ordered to pay $150 a month as maintenance for the first wife, and $200 a month as

maintenance for each child. According to the first plaintiff, the deceased had a strained relationship with his first wife and children "for they never visited him or kept in contact with him after the divorce". The two daughters are now in their mid-20s.

5 On 27 October 2006, the deceased made a will through which he bequeathed his property to his mother and elder sister, who is the first plaintiff. On 5 January 2009, the deceased made a fresh CPF nomination ("the nomination"): he nominated the plaintiffs to receive his CPF monies in equal shares. In doing so he therefore revoked his previous nomination in favour of his two children on 21 October 1993.

6 On 12 October 2011, the marriage between the deceased and the defendant, who was born on 27 January 1969, was registered. This had the effect of revoking the nomination in favour of the plaintiffs.

7 The deceased was admitted to hospital on 27 August 2013 and died four days later on 31 August 2013. Before his death, he had been living in Bukit Batok with his mother and the second plaintiff, his younger sister.

8 After his death, the first plaintiff discovered from the deceased's friend that the deceased was married. It is not disputed that the marriage took place on 12 October 2011. However, the first plaintiff alleges that "it was a sham marriage to one lady from China, whom neither my family nor I were aware of. We were shocked on hearing the news for none of us in our family knew that my late brother had married". The first plaintiff asserts that at all material times, the deceased lived with their mother and the second plaintiff. In the course of the 22 months from his marriage until his death, the first plaintiff claims that the family had met the deceased many times but no one was aware or told of the

marriage. Also, no one who claimed to be the deceased's wife attended his funeral.

9 On 3 September 2013, the first plaintiff went to the CPF Board to ask about the status of the deceased's CPF monies, but she was apparently told that the nomination in the plaintiffs' favour had been invalidated on account of the deceased's marriage. To prevent the defendant from laying claim to the deceased's CPF monies, the first plaintiff wrote to the CPF Board on the same day as follows:

> …
>
> We would like to stop the collection of the CPF money of my brother … who had passed away on 31st August 2013. During this few days, we had discovered that he had another marriage on the year 2011 (*sic*). Thus we would like to stop this collection and allow our lawyer to investiage (*sic*) this before any procedure done. Previously he had done a nomination to me and my sister … As marriage will revoke his nomination, we believe that we are the rightful nominees. Therefore we are taking legal action for this matter. We have supporting documents to prove that it is not a legal marriage.

10 While the plaintiffs attempted to locate the defendant, they sought an interim injunction in the High Court to restrain the Board from releasing any monies in the deceased's CPF account. This was granted by Choo Han Teck J on 17 September 2013, and extended on 20 January 2014 until further order. The plaintiffs went to the High Court after they were informed by a district judge that the lower court was constrained by the High Court decision in *Toh Seok Kheng v Huang Huiqun* [2011] 1 SLR 737 ("*Toh Seok Kheng*"), to which I shall return later.

11 After the plaintiffs started Suit No 69 of 2014 on 17 January 2014, the defendant sought to strike out the action. On 1 August 2014, the assistant registrar found that *Toh Seok Kheng* remained good law and that the plaintiffs'

lawsuit disclosed no reasonable cause of action. The plaintiffs appealed the striking out. I heard the parties on 5 December 2014 and allowed the appeal. Parties thereafter proceeded to trial.

The parties' positions

12 The plaintiffs' position is apparent from the facts as described above. They seek a declaration that the marriage between the defendant and the deceased is null and void, with the necessary consequential orders.

13 The defendant's side of the story is as follows. She was a divorcee – her first marriage in China had been dissolved – with one child from her previous marriage when she met the deceased through a mutual friend known as Xue Feng. She first came to Singapore in 2004 as a "study mama", *ie*, to accompany her son for his secondary school education. Her son returned to China after completing his education in 2012. However, she remained in Singapore and worked as a spa therapist. On occasions both before and after her marriage to the deceased, the deceased related that he, too, was a divorcee with two daughters from a previous marriage. The deceased spoke often of his mother, sisters, daughters and divorce. According to the defendant's affidavit of evidence-in-chief ("AEIC"), he also told her "numerous details" such as his mother's age, and about his divorce and his two daughters. Shortly after they met, they fell in love and had intimate relations. He proposed and she accepted his proposal. However, the defendant averred that the deceased told her that it was "not convenient" for her to live with him until they had either rented or bought a Housing & Development Board ("HDB") flat. Hence, the deceased continued to live in Bukit Batok while she stayed at various locations including in Ang Mo Kio. The defendant also stated that the deceased was "very filial" and wanted his mother to live with them once they got their own place.

Therefore, they went to the HDB on a few occasions, including on 13 June 2013, to enquire about the purchase of an HDB flat. It was for this purpose that the deceased printed out his CPF statement and even subscribed to HDB's e-alert service. The defendant stated that they were alerted by the HDB of a new flat being available in July 2013. However, they did not take up the offer of a two-room flat as they wanted a three-room flat so that the deceased's mother could live with them. While they lived apart, they would meet almost every Thursday and have dinner, on occasion with "mutual friends". They would also be intimate when the opportunity arose. On other days, they kept in touch by phone calls and text messages. The deceased also met some of her colleagues while waiting for her to knock off.

14 The last time she heard from the deceased was 13 August 2013, when he sent her a text message in Chinese "that he was going to jail". She said that she tried to ask him for details but he sounded depressed and refused to say anything. Phone calls went unanswered. It was only in December 2013 when she realised, through a friend of the deceased known as Neo Seng Kiat ("Neo"), that her husband had died.

The issues

15 I first resolve the factual issue that is central to these proceedings – whether the marriage is a sham marriage or a marriage of convenience. If I find this to be so on the balance of probabilities, the question is whether a sham marriage is a valid or void marriage under the Women's Charter. Even if it is valid for the purpose of matrimonial jurisdiction, the next question is whether it will necessarily mean an automatic revocation of a nomination which had been made under the CPF Act.

The factual issue

16 Having heard from both sides, the evidence clearly weighs in favour of a finding that the marriage was of such a nature that it can only be described as a sham marriage or marriage of convenience, which had been entered into so that the defendant could live and work in Singapore. At no point was there any genuine relationship between the deceased and the defendant.

17 The essence of the plaintiffs' testimony, which I find credible, was that the sisters shared a close bond with the deceased, who was also very close to his mother. Despite this, none of them knew of the marriage; the deceased continued living with the second plaintiff and his mother until he died. Given his relationship with his family, it is surprising that he never told them that he had tied the knot in the 22 months after he married the defendant. I note that the defendant herself had asserted that the deceased was "very filial", which begs the question of why he did not tell his mother about the marriage.

18 Buttressing the plaintiffs' case were two close friends of the deceased, Lee Hock Hoo ("Lee") and Yow Kok Kway ("Yow"). Lee, 71, professed to be the deceased's close friend and drinking buddy who had known him for more than five years. The deceased regarded him as a "big brother". They would hang out at a coffee shop near Bukit Batok East Avenue 4, where the deceased lived with his mother and sister. Lee stated that the deceased told him about the marriage only after it was registered. Lee sensed that the marriage was not genuine, as the deceased would not have been so secretive otherwise. Moreover, the deceased had a girlfriend, who was about 61 years old, at that time. True to his hunch, Lee stated that the deceased told him in January 2012 that he had entered into a sham marriage. Lee testified that he told the deceased that this was wrong but the latter said that the arrangement would enable him to have

some money to spend every month as he was unemployed. Lee stated that the deceased said that he would be paid $4,000 by the defendant and a monthly sum of $400. The marriage would enable the defendant to stay in Singapore, work here and eventually attain permanent residence. Before the deceased got an ATM card in 2013, he was paid in cash. Lee claimed that the deceased said that he would collect the monthly payments from the defendant at her home in Ang Mo Kio or her workplace, where she worked either as a hairstylist or massage therapist.

19 Yow, 62, also stated in his AEIC that he had a "very close" relationship with the deceased. They got to know each other some 15 years ago at a coffee shop in Clementi Avenue 5, where the deceased was a regular patron for beer in the afternoons and evenings. The drinking buddies spent a lot of time together at the coffee shop, discussing a range of topics from personal experiences to politics. He said that while he met the deceased several times, both before and after the date of the marriage, he had never met the defendant. Neither had the deceased ever mentioned that he was getting married. Yow clarified during the trial that the deceased had never told him that he was in a sham marriage (his AEIC was inaccurate in that respect). However, Yow testified that the deceased had told him about a "lobang" or opportunity, whereby Yow could get commissions if he recommended individuals who wanted to enter into sham marriages. Yow did not know that the deceased had actually gotten married even at the time he went for his wake. Yow was of the view that the deceased would have told if him he had really wanted to get married because he was his "best friend".

20 Against the weight of the plaintiffs' evidence, the defendant's evidence could not stand up to scrutiny. The defendant made various assertions in her AEIC but was unable to substantiate them at trial. Neither did she appear as a

credible witness during cross-examination. In short, the defendant's evidence simply does not suggest that the relationship was anything like what she claimed it was.

21 In the course of cross-examination, she said that she met the deceased through a friend at a coffee shop opposite Ang Mo Kio MRT station. Thereafter, the two of them started dating. She professed to have had feelings for the deceased, which was why she married him:

> Q: Okay. Please tell us, what you found in him that appeal to you?
>
> A: He's like a man. Yes
>
> …
>
> Q So I'm surprised. Why should you want to marry someone like Soon Chwee Guan?
>
> A There's no why. I just like him. I just like him, I just love him. Why? Is there anything wrong?
>
> Q: Well, I'm putting it to you, Mdm Diao, that in respect of this sham marriage, you would be prepared to marry anyone so long as they agreed to marry you for financial consideration.
>
> A: I disagree. That's your position, not my position. It's just like everybody might like Andy Lau, but I like---but I might like Chow Yun-fat. Don't---don't you understand this analogy?

22 I was prepared to go along with her, but as the cross-examination wore on, it also became painfully apparent that for all her professed affection, she did not know rather basic personal details about the deceased. The sum total of her evidence only goes to show that she was in anything but a genuine marriage with the deceased, from the start of the marriage until he died. For example, she did not know how many siblings he had. She did not even know that the second plaintiff was his twin sister born just two minutes apart. She did not know which schools he attended or his highest educational level. She did not know if he had

served national service. She did not even know what he did for a living. She claimed to know that he smoked and drank but she did not know the brand of cigarettes he smoked or which brand of beer he preferred. When she tried to supplement her answers, she was caught out, as this exchange illustrates:

> Q: Do you know what is your husband's favourite food or what was your husband's favourite food?
>
> A: I don't know. But when he's together with me, we would eat---we---we would eat a lot of vegetables. And I know we often eat fish. But I don't know whether he liked fish.
>
> Q: You say, "We would often eat fish", but you do not know whether he likes fish?
>
> A: We try not to eat meat. We try to eat fish.
>
> Q: Well, Ms Diao, I'm putting it to you that you are lying for as a fact, your husband does not consume fish or vegetables and he is also allergic to seafood.
>
> A: No, really---we really sat down together to eat.

23 In their submissions, the plaintiffs have also laid out in some detail how the defendant's evidence was lacking. The defendant stated in her AEIC that she met the deceased almost every week and kept in touch on other days through the phone. Despite this, the fact remains that her last communication with the deceased that is in evidence was on 13 August 2013, about a fortnight before he was taken to hospital. And it was only in December 2013 when she realised that he had died. This discovery came through Neo, who did not give evidence. The defendant claims that her phone calls in the interim went unanswered. Assuming she made the phone calls to the deceased, the question arises as to why she did not make a police report or make further efforts to locate the deceased, given the purported closeness of their relationship and her claim that the deceased had sounded depressed when they last communicated. No effort was made to ascertain if he had indeed gone to jail and if he did, whether he had been released. Under cross-examination, the defendant attempted to burnish her

evidence by making the further claim that she had attempted to find Neo twice but he was not at home. She went as far as to claim that she went to the vicinity of the deceased's home in Bukit Batok to look for him (which, if true, revealed that she did not even know his address). These assertions were not in her AEIC and were clearly afterthoughts. I accept the plaintiffs' submission that the defendant was "simply making things up along the way when confronted with difficult questions testing her credibility".

24 While the defendant asserted in her AEIC that the deceased spoke often of his mother, sisters, daughters and divorce, the defendant did not seem to know that the deceased had an elder sister, apart from a younger one. The defendant could not give any credible explanation for why the deceased had not introduced her to his family members, especially his mother, who was supposed to live with them once they acquired an HDB flat. Even if the deceased had his reasons for not wanting the defendant to meet his family, there was little reason for the defendant to keep the fact of her marriage from her family. While the defendant's son was in Singapore, he never met nor spoke to the deceased purportedly because he was "rebellious" and would not accept it if he found out that his mother had remarried. The defendant said that she finally told her son, who did not give evidence, about her marriage about a year ago "because he has grown up". But then, neither did she tell her siblings in China. She claimed that she did tell her mother and in doing so, had not requested her to keep mum about the marriage. But when she was then asked about the prospect of her mother blurting out the news to her son, the defendant backtracked and said that she "did remind my mother not to disclose it to my son because my son has a foul temper". The defendant was simply changing her evidence as she went along, which undermined the veracity of her evidence.

25 The defendant had little by way of documentary evidence. She had no photographs to, as the plaintiffs put it, "preserve the memory of her marriage". She claimed that she did not take photographs with her mobile phone as her son might find out about the marriage. This was unconvincing. In any case, she could not properly explain why she did not ask the deceased to take photographs on his mobile phone instead. She claimed that she and the defendant went to HDB on a few occasions, including 13 June 2013, to enquire about the purchase of an HDB flat. It was for this purpose that the deceased printed out his CPF statement and even subscribed to HDB's e-alert service. She tendered a copy of an acknowledgment slip from HDB which showed that the deceased had successfully registered for the e-alert service, such that he would be notified via SMS of sales launches. However, such evidence could not assist the defendant. HDB's letter dated 2 June 2015 stated that it did not "have any records of flat application made by [the defendant]". In any event, this evidence is not determinative. The intended procurement of a flat may well be in furtherance of some plan between the parties which is not inconsistent with a sham marriage.

26 As for the text message disclosed by the defendant, that was the only text message which she could produce from their relationship. The sender of this message was reflected in the defendant's phone as "husband". In the message, the sender said that he was going to jail. On its own, the text message is unable to assist the defendant. Among other things, it would have been an easy task for the defendant to simply change the name of the deceased on her phone before taking a photograph of the said message on her phone. Based on the court's direction in May 2015, the defendant did try to seek records from the telecommunications provider, but she was informed that records were only kept for the preceding 12 months. Nevertheless, the fact remains that the defendant did not retain any other messages, if any, which were transmitted between her and the deceased.

27 There are several other aspects of the defendant's evidence that are troubling. This includes the defendant's fudging of details when she was asked to disclose where she had conjugal relations with the deceased. She said she had "no idea where those places were", except that they were "somewhere cheap", "near Geylang" and that one of these places seemed "like a residential house". She said they did not go to a hotel but nevertheless recalled that there was a counter where the deceased would pay someone $10 or $20 before proceeding to a room after they were given the room number. The defendant's evidence lent weight to the plaintiffs' assertion that she was refusing to provide details of the locations to prevent an ascertainment of whether visits had indeed occurred based on the hotel records. And even though she had said in her AEIC that they would be intimate when the opportunity arose, she testified that they only had conjugal relations "two to three to four times" after marriage.

28 The defendant put forward two witnesses in support of her evidence but their evidence was similarly unconvincing. Ow Sing Fatt ("Ow"), her employer, said that he was introduced by her to the deceased in February 2012. He said that sometime near the end of February 2012, he was at the defendant's workplace at Thomson Plaza until closing time at 9.30pm. When he reached the ground level, he saw the defendant with a man. They were holding hands and she introduced him as her "boss" to the man. In response, the man introduced himself as the defendant's husband. The defendant's other witness was Qu Yanan, who claimed to have met the deceased twice. On the second occasion in August 2012, she had dinner with the couple and passed him a mobile phone since the defendant wanted to buy the deceased a new mobile phone and Qu had one to spare. Both witnesses asserted that the defendant's husband was the same person whose photograph was on the deceased's NRIC. I was unconvinced by their evidence. For example, Ow was clearly interested in the outcome of the case – he turned out to be the person who had helped the defendant to prepare

her AEIC and that of her witnesses. It is pertinent to note that despite this, the defendant had sought to disassociate herself from him, by claiming that it was a friend, Jeremy, who had helped her with the legal documents. What she failed to disclose was that Jeremy was in fact Ow.

29 In view of the above, I accepted the plaintiffs' submission that the defendant and the deceased had not entered into a genuine marriage. They had entered into what can only be termed a sham marriage or marriage of convenience. This was probably done so that the defendant could bolster her chances of staying on in Singapore and working here. It is no coincidence that just a little over a week after the marriage, the defendant applied for a work permit. The stated occupation was as a spa therapist for $800 a month. The defendant was successful; she came to be hired as a spa therapist accordingly at Chen Kang Wellness on 1 November 2011 for a stated salary of $1,000. Ow said that whether she was married to a Singapore citizen or not had no bearing on her employability. However, in the "application for a work permit" dated 1 November 2011, the authorities required the particulars of the foreign worker's spouse to be filled in. The applicant was asked whether she was married to a Singapore citizen or permanent resident, as well as the details of that person. To the applicant, the marital status of the defendant would seem to be a material fact to be taken into consideration for the purpose of securing a work pass.

30 Given the intention evinced from the deceased's will and CPF nomination, and based on the relationship he had with his mother and sisters, I see no reason why he would have failed to provide for his family, including his mother who suffered from cancer and died shortly after him. In the premises, I accept that while the deceased knew that CPF nominations could be made and revoked, he must not have been aware that a marriage also had the effect of revoking a nomination (the effect of which I shall go on to discuss). Pertinently,

despite the marriage, the deceased's CPF statement of account continued to state: "You made a nomination on 05 JAN 2009". He would not have been put on notice. Having resolved the factual issue in favour of the plaintiffs, I move on to discuss whether a marriage of such a nature as arising from the facts, which I term a sham marriage or a marriage of convenience, is void under the Women's Charter.

Whether a sham marriage is void under the Women's Charter

31 The plaintiffs have made many arguments on this issue. After considering them carefully, I am unable to agree that a marriage is void under the Women's Charter just because it was not entered into with a genuine intention to live a life as a married couple.

32 It is apropos to lay out some of the relevant statutory provisions in the Women's Charter. Under s 105 of the Women's Charter, the grounds on which a marriage is void are exhaustive:

> **Grounds on which marriage is void**
>
> **105.** A marriage which takes place after 1st June 1981 shall be void on the following grounds only:
>
> (*a*) that it is not a valid marriage by virtue of sections 3(4), 5, 9, 10, 11, 12 and 22; or
>
> (*b*) where the marriage was celebrated outside Singapore, that the marriage is invalid —
>
> (i) for lack of capacity; or
>
> (ii) by the law of the place in which it was celebrated.

33 Section s 105(*a*) refers to s 22, which is of relevance in the present case. Section 22 states:

> **Requirements for valid marriage**

> **22.**—(1) Every marriage solemnized in Singapore shall be void unless it is solemnized —
>
> > (*a*) on the authority of a *valid marriage licence* issued by the Registrar or a valid special marriage licence granted by the Minister; and
> >
> > (*b*) by the Registrar or a person who has been granted a licence to solemnize marriages.
>
> (2) Every marriage shall be solemnized in the presence of at least 2 credible witnesses.
>
> (3) No marriage shall be solemnized unless the person solemnizing the marriage is satisfied that both the parties to the marriage freely consent to the marriage.
>
> [emphasis added]

34 Section 17(2) of the Women's Charter states:

> **Registrar to issue marriage licence on proof of conditions by statutory declaration**
>
> …
>
> (2) The Registrar shall not issue a marriage licence until he has been satisfied by statutory declaration made by each of the parties to the proposed marriage —
>
> (a) that, where any party to the intended marriage is not a citizen or permanent resident of Singapore, at least one of the parties has been physically present in Singapore for a period of at least 15 days preceding the date of the notice;
>
> (*b*) that —
>
> > (i) each of the parties is 21 years of age or above, or, if not, is divorced or is a widower or widow or has had his or her previous marriage declared null and void, as the case may be; or
> >
> > (ii) if either party is a minor who has not been previously married — the consent of the appropriate person mentioned in the Second Schedule has been given in writing, or has been dispensed with, or the consent of the court has been given in accordance with section 13;
>
> (c) that neither party is below the age of 18 years;
>
> (d) *that there is no lawful impediment to the marriage*;

> (e) that neither of the parties to the intended marriage is married under any law, religion, custom or usage to any person other than the person with whom such marriage is proposed to be contracted; and
>
> (f) that, where any party to the intended marriage is a person to whom section 17A applies, both parties have attended and completed a marriage preparation programme.
>
> [emphasis added]

35 From what I understand of the plaintiffs' arguments, the plaintiffs submit that the marriage is void as the marriage licence was procured by "fraud or deception". They refer me to s 17(2), pursuant to which the registrar cannot issue a marriage licence until he has been satisfied by the statutory declarations of each party that, *inter alia*, there is no "lawful impediment to the marriage". In a sham arrangement, any such statement in the statutory declarations would be false, and the registrar would be deceived into issuing the marriage licence; the plaintiffs submit that such a marriage, procured and tainted by illegality, would be *void ab initio*. The plaintiffs then say that s 17 is significant as s 22 prescribes that a marriage is void unless solemnised on the authority of a "valid marriage licence" issued by the registrar or a valid special marriage licence granted by the minister. A marriage which is invalid from its inception does not become legitimate by virtue of the mere fact of registration (the plaintiffs refer to s 33 in this regard). With the foregoing in mind, the plaintiffs point to s 105(*a*), which declares that a marriage is void where it is "not a valid marriage" under s 22.

36 The plaintiffs seek to persuade me to depart from, in particular, the decision of *Toh Seok Kheng*. The facts of that case are reminiscent of that of the present case. In *Toh Seok Kheng*, the plaintiff was the mother of the deceased who died intestate in June 2009. The deceased had married the defendant, a Chinese national, without informing his family although he was close to them

and had been living with his parents for more than 40 years (at [2]). He did not live with the defendant even after the marriage. The plaintiff applied for a grant of letters of administration for the deceased's estate but the defendant lodged a caveat in court as she too intended to apply for such a grant. The plaintiff then applied to the High Court for a declaration that the marriage was a sham. Among the arguments of the plaintiff was that the purpose of the marriage was to facilitate an application for Singapore permanent residency for the defendant. In her judgment, Judith Prakash J (as she then was), held that "even assuming all the allegations and assertions made by the plaintiff were true, Singapore law does not recognise any creature as a 'sham marriage'" (at [5]). In so far as the plaintiff was relying on the argument that a sham marriage was a ground to invalidate the marriage, Prakash J held that the position was both "clear and settled" – the court could not declare a marriage void on a ground other than those provided for in s 105 of the Women's Charter. She referred to *Tan Ah Thee and another (administrators of the estate of Tan Kiam Poh (alias Tan Gna Chua), deceased) v Lim Soo Foong* [2009] 3 SLR(R) 957 ("*Tan Ah Thee*"), a decision in which she found that the grounds for holding a marriage to be void are set out exhaustively in s 105. She held (at [12] of *Toh Seok Kheng*):

> Those grounds do not include annulling a marriage because it was entered into pursuant to motives which some might consider improper and may therefore render it a sham marriage in their eyes. Nor do they include annulling a marriage in which spouses continue to conduct their respective lives as though they were unmarried.

Although there were cases where parties had been convicted of corruption for entering into "sham marriages", Prakash J explained that those cases were not relevant (at [16]–[18]):

> 16 … Those cases are not authority for the proposition that the *validity* of a marriage, which must be determined solely according to the Charter's precepts, can be affected by the motives of the spouses for entering into marriage. Those cases

> did not hold that contracting such a "sham marriage" in itself offends against general public policy and, *a fortiori*, nor did they hold that it rendered the marriages in question void. The tenor of those cases was that when parties used their validly constituted marital status to obtain something available only to authentically married couples, they might be in breach of *specific* laws which uphold *specific* public policies, which in those cases were immigration policies. The outcome in those cases depended on whether the elements of those laws were satisfied, and not on whether there was a sham marriage *per se*. The label of "sham marriage" attached to those objectionable transactions served merely a descriptive function in the course of analysis of whether those laws were breached.
>
> 17 As the discussion above indicates, while judges have used the term sham marriage, it is not a term of art and does not create any legal implications in and of itself. Whether or not there are actionable consequences flowing from a putative sham marriage would depend on the existence of other laws which prohibit its incidents. Even then, unless the particulars of the sham marriage involved the requirements stipulated by s 105 of the Charter, the *validity* of the marriage would remain unaffected.
>
> 18 Hence, the deceased's reasons for entering into the marriage and how he behaved after marriage, even if they were proved to be as the plaintiff asserted, were irrelevant in considering whether the marriage was valid or not. The argument of a sham marriage to invalidate the marriage therefore failed.
>
> [emphasis in original]

37 The plaintiffs seek to distinguish *Toh Seok Kheng* on, *inter alia*, the basis that Prakash J did not consider the significance of s 17 read with s 22. However, the learned judge had in fact considered s 17 in *Tan Ah Thee*, which was the preceding decision in which she had held that s 105 was exhaustive. In that case, one of the arguments raised was that two local cases in the 1990s, *Lim Ying v Hiok Kian Ming Eric* [1991] 2 SLR(R) 525 ("*Lim Ying*") and *Valberg Kevin Christopher v Heran binte Abdul Rahman*, (unreported) (Originating Summons No 1274 of 1990) ("*Valberg*"), showed that s 105 (then s 99) was not exhaustive. In *Valberg*, the judge had granted a declaration that the marriage was both null and void as both parties were Muslims. In *Lim Ying*, the judge held that the

petitioner was entitled to a decree of nullity as the parties were both female. Prakash J maintained that the Women's Charter was a "complete code on the law of civil marriage in Singapore and marriages celebrated in Singapore cannot therefore be declared void on any ground that is not reflected in s 105 thereof" (at [43]). She explained that on a deeper analysis of those cases, the decisions could be justified in terms of s 105 although that provision (then s 99) was not referred to in those cases. Prakash J referred to s 17(2), which provides, *inter alia*, that the registrar shall not issue a marriage licence until he is satisfied by the parties' statutory declaration that there is no lawful impediment to the marriage. Noting that one of the grounds in which a marriage would be void under s 105 would be where it had not been solemnised on the authority of a "valid marriage licence" (*ie*, the requirement in s 22), Prakash J said that the reference to a "valid marriage licence" must be read as meaning a marriage licence issued by the registrar when he was "correctly satisfied that all the requirements of s 17(2) had been met" (at [45]). This would be the case where the statutory declarations correctly stated that there was no lawful impediment to the marriage – otherwise, the wrongful declaration would have the effect of invalidating the marriage licence as it would have then be issued on a wrong basis. Seen in this light, the decisions could be rationalised on the basis that there were, in fact, lawful impediments to the unions. In *Valberg*, the law prevented marriages between Muslims from being solemnised or registered under the Women's Charter through s 3. Since both parties were Muslim when they procured the issue of the marriage licence, the declaration made by the husband that he was Catholic was false, which in effect invalidated the licence. Since the marriage was not solemnised on the authority of a valid licence, the marriage would have been void on a ground that was included in s 99 (the present s 105).

38 Prakash J said that in *Lim Ying*, too, the fact that the parties were of the same gender was a lawful impediment despite the absence of a specific provision so promulgating (at [50]). This was because the Women's Charter was promulgated on the basis that marriage was a legal relationship that could only be entered into between a male and female – this was obvious from the use of gender specific terms in the Women's Charter. Therefore, being of the same gender was a lawful impediment such that the licence issued would have been invalid and the marriage would be a void marriage.

39 The plaintiffs submit that if the parties make their statutory declarations "falsely declaring that there was no lawful impediment to the marriage, when in fact they do not intend to be genuinely married or have ulterior motives and intentions to get married other than for genuine reasons for the purposes of establishing a union of husband and wife, the consequent marriage should be void". Where parties enter into a sham marriage with "ulterior intent and motive, or without any intention to enter into a genuine marriage, then this would constitute a lawful impediment". Having studied the legislation and authorities, as well as the arguments brought by the plaintiffs in relation to them, I find that in order for a marriage to be void, at least one ground in s 105 must be satisfied. In this regard, the only argument open to the plaintiffs is that no valid marriage licence had been issued (see s 22) due to the false declaration that there was no lawful impediment to the marriage (see s 17). Nevertheless, I am not persuaded that there is any lawful impediment to the marriage which has the effect of rendering the marriage void under s 105. The fact that parties had intended to enter into a sham marriage certainly does not qualify as one, notwithstanding that they might have breached other laws in the process. Notwithstanding the various reasons, policy-related or otherwise, submitted by the plaintiffs, it is sufficiently clear to me that on the current version of the Women's Charter, there is no such idea as a marriage being void as a sham

marriage. In Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) ("*Elements of Family Law in Singapore*") at p 40, Professor Leong Wai Kum, referring to *Toh Seok Kheng* and *Tan Ah Thee*, has also commented:

> The High Court twice made it clear that, as the Women's Charter is a code of solemnization of non-Muslim marriage in Singapore, there is no additional idea or rule apart from its prescriptions that invalidate formation of marriage. In particular, there is no such idea as a marriage being void as a sham marriage.

40 In the context of the Women's Charter, I agree with Prakash J's statement in *Tan Ah Thee* (at [56]) that "the law desists from identifying what are the 'proper' motives of marriage and does not allow the parties' private motives to undermine the validity of the marriage." Prakash J cited the English case of *Vervaeke (formerly Messina) v Smith* [1983] AC 145 ("*Vervaeke*"). It is worthwhile to recall the facts of this case. In *Vervaeke*, the appellant, a Belgian woman, had married a British man in 1954 ("the first marriage"). However, this was purely a marriage of convenience as the appellant simply wanted to apply for British nationality so she could keep working as a prostitute without being deported. In 1970, the appellant married again while the first marriage was subsisting, this time in Italy to a man who was part of the organisation for which she worked ("the second marriage"). However, this man died on the same day of this marriage. He left behind a significant amount of property. Whether the appellant could inherit any of it depended on whether the second marriage was valid. The second marriage would be void if it was bigamous but effective if the first marriage was a nullity. The appellant thus took steps to impugn the first marriage. The House of Lords, however, held (at 152) that as "horrible and sordid" the first marriage was, this marriage was valid.

41 The plaintiffs submit that there were various considerations in *Vervaeke* that explained the decision of the law lords. Among other things, the peculiar facts were such that the appellant had sought to gain an unconscionable advantage by seeking to declare the first marriage void so that she could benefit from the second marriage. Moreover, the court did not wish to facilitate the abuse of the process of the courts by the wife for her selfish gains, and "did not want the wrongdoer to benefit from her wrongs". In other words, the plaintiffs seem to be saying that one takeaway from *Vervaeke* ought to be that a wrongdoer should not benefit from the wrong to the detriment of the innocent beneficiaries. In other words, justice was not on the appellant's side. Transposed to the facts of the present case, this must mean that the court must consider the negative impact on the plaintiffs if the marriage between the deceased and the defendant is validated. While this argument is attractive at first glance, I am of the view that the House of Lords was laying down a statement of general principle when they held (at 152) (see also *Tan Ah Thee* at [56]):

> … in the English law of marriage there is no room for mental reservations or private arrangements regarding the parties' personal relationships once it is established that the parties are free to marry one another, have consented to the achievement of the married state and observed the necessary formalities. …

42 As Prakash J observed in *Tan Ah Thee* (at [57]), this perspective can also be seen in the Court of Appeal's decision in *Kwong Sin Hwa v Lau Lee Yen* [1993] 1 SLR(R) 90, which approved P Coomaraswamy J's statement in *Ng Bee Hoon v Tan Heok Boon* [1992] 1 SLR(R) 335, as follows (at [49]):

> In my view, if a man and a woman (who are not barred from marrying each other) exchange consents to marry with due formality before a person lawfully authorised to solemnise a marriage under the Charter, intending to acquire the status of married persons, it is immaterial that they intend the marriage to take effect in some limited way or that one or both of them may have been mistaken about, or unaware of, some of the incidents of the status which they have created. *To hold otherwise would impair the effect of the whole system of law*

> *regulating marriage in Singapore, and gravely diminish the value of the system of registration of marriages on which so much depends*. Marriage status is of very great consequence and the enforcement of the marriage laws is a matter of great public concern. …
>
> [emphasis in original]

43 Having reviewed the relevant authorities such as *Toh Seok Kheng*, I fully agree with the underlying rationale that under the Women's Charter, the validity of a marriage should not be lightly impugned. A person's marriage status is certainly of signal importance, and brings about numerous implications at law and in life. Therefore, it cannot be open to two individuals to enter into a marriage and then say, perhaps months or even years down the road, that the marriage was void all along merely because they did not have the requisite intention to enter into a genuine marriage. It is for this reason that the grounds in s 105 of the Women's Charter need to be tightly construed.

44 The above being said, I do appreciate the force of the countervailing policy concerns brought up by the plaintiffs. The plaintiffs submit that all along it has been recognised that a marriage is an important social institution, with widespread legal implications, affecting the provisions of the Wills Act (Cap 352, 1996 Rev Ed) ("the Wills Act") and the CPF Act, among other written laws. Given that marriage has such an "important magnitude", it could not have been the intention of the legislature when it enacted the Women's Charter that "sham or fake marriages" should be accorded legal recognition. After all, parties who entered into marriages of convenience have been charged under the Immigration Act (Cap 133, 2008 Rev Ed) for making false statements in obtaining immigration facilities. For marriages registered from 19 December 2012, a new s 57C of the Immigration Act specifically makes it an offence to enter into marriages which are entered into for the purpose of illegally obtaining an immigration advantage:

Marriage of convenience

57C.—(1) Any person who contracts or otherwise enters into a marriage —

(*a*) knowing or having reason to believe that the purpose of the marriage is to assist one of the parties to the marriage to obtain an immigration advantage; and

(*b*) where any gratification, whether from a party to the marriage or another person, is offered, given or received as an inducement or reward to any party to the marriage for entering into the marriage,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 10 years or to both.

(2) Any person who arranges or otherwise assists in arranging a marriage between 2 other persons, with the intention of assisting one of the parties to the marriage to obtain an immigration advantage, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 10 years or to both.

(3) This section shall apply to a marriage entered into whether in Singapore or outside Singapore.

(4) In any proceedings for an offence under subsection (1) or (2), it shall be a defence for the person charged with the offence to prove that, although one purpose of the marriage was to assist a party to the marriage to obtain an immigration advantage, the defendant believed on reasonable grounds that the marriage would result in a genuine marital relationship.

(5) For the purposes of subsection (4), what constitutes a genuine marital relationship is a question of fact and the court shall have regard to all the circumstances of the case in determining the question.

(6) In this section —

"gratification" includes —

(*a*) money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable;

(*b*) any office, employment or contract;

(*c*) any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part; and

> (*d*) any other service, favour or advantage of any description whatsoever;
>
> "immigration advantage", in relation to a party to a marriage, means the grant or extension of the validity of any visa, pass, permit or re-entry permit under this Act or the regulations or any order made thereunder for that party or for a child or parent of that party.

45 The plaintiffs submit that s 57C of the Immigration Act serves to emphasise that a marriage contracted other than for genuine reasons or marital considerations will not be considered a genuine marriage, and that the element of "intent" or "motive" behind the marriage is relevant in assessing whether marriage is genuine. While I accept that Parliament takes a dim view of sham marriages entered into for immigration purposes, without more, I do not think that there is any effect on the validity of the marriage under the Women's Charter. The fact that Parliament has seen fit to provide penal consequences for those found to be involved in marriages of convenience does not *ipso facto* mean that such marriages are void for the purposes of the matrimonial jurisdiction. The grounds provided in s 105 of the Women's Charter must still be satisfied in order for the marriage to be void: see *Toh Seok Kheng* at ([16]–[17]). In any event, on the facts of the present case, s 57C came into effect after the marriage between the deceased and defendant had been entered into.

46 However, it has been brought to my attention that Parliament has gone further by moving to explicitly render a sham marriage void under the Women's Charter. During the second reading of the Women's Charter (Amendment) Bill, Mr Tan Chuan-Jin, the Minister for Social and Family Development, introduced amendments to the Women's Charter that have the effect of making a sham marriage for immigration purposes void (*Singapore Parliamentary Debates, Official Report* (29 February 2016) ("the 2016 Women's Charter amendments"):

> Earlier, I mentioned that there are more marriages between Singaporeans and non-Singaporeans. The numbers of marriages between Singaporeans and non-residents have been increasing from 5,411 in 2004, and a decade later in 2014, 6,686.
>
> The vast majority of such marriages are genuine. But there are instances where parties enter into a sham marriage for immigration purposes. In 2012, MHA introduced a provision in the Immigration Act criminalising such marriages for immigration advantage. Parties convicted can be fined or imprisoned, or both, with their immigration facilities revoked. As of 2015, 218 parties have been convicted.
>
> It is an offence for parties to abuse marriage laws for immigration advantage. *It follows therefore that such marriages should be void. The new Section 11A will now make a marriage void if one party to the marriage is convicted of the marriage of convenience offence under the Immigration Act.* …
>
> [emphasis added]

47 The amendments take effect from 1 October 2016, with s 105 of the Women's Charter to include a s 105(*aa*). According to s 105(*aa*), a marriage solemnised on or after the date of commencement of s 6 of the Women's Charter (Amendment) Act 2016 will now be void if it is not a valid marriage by virtue of s 11A. Section 11A states:

> **Avoidance of marriages of convenience**
>
> **11A.**—(1) A marriage solemnized on or after the date of commencement of section 6 of the Women's Charter (Amendment) Act 2016, whether in Singapore or elsewhere, is void if —
>
> (*a*) a party to the marriage contracts or otherwise enters into the marriage knowing or having reason to believe that the purpose of the marriage is to assist the party or the other party to the marriage to obtain an immigration advantage; and
>
> (*b*) any gratification, whether from a party to the marriage or another person, is offered, given or received as an inducement or reward to any party to the marriage for entering into the marriage.
>
> (2) However, a marriage is not void under subsection (1) if it is proved that both parties to the marriage believed on reasonable

> grounds, when contracting or entering into the marriage, that the marriage would result in a genuine marital relationship.
>
> (3) A marriage solemnized on or after the date of commencement of section 6 of the Women's Charter (Amendment) Act 2016 is deemed to be void under subsection (1) if either party to the marriage is convicted of an offence under section 57C(1) of the Immigration Act (Cap. 133) in respect of the marriage.
>
> (4) In this section, "gratification" and "immigration advantage" have the same meanings as in section 57C(6) of the Immigration Act.

48 These 2016 Women's Charter amendments take effect from 1 October 2016 and thus do not affect the present proceedings. I note that the Minister said that since it is an offence for parties to abuse marriage laws for immigration advantage (as provided for by s 57C of the Immigration Act), "[i]t follows" that such marriages should be void. This suggests that prior to the introduction of s 57C of the Immigration Act, there was no clear Parliamentary intention that such sham marriages should be void. The deceased and the defendant entered into the marriage even before that. I should also mention that during the second reading of the Immigration (Amendment) Bill of 2012 by the Second Minister for Home Affairs S Iswaran (*Singapore Parliamentary Debates, Official Report* (13 August 2012), there was no suggestion that the validity of marriages would be affected by the criminalisation of marriages of convenience to obtain an immigration advantage. It was only upon the introduction of the 2016 Women's Charter amendments that there was a clear sign that Parliament intended that sham marriages should be void. In introducing these amendments, the Minister noted that 218 parties had been convicted under s 57C of the Immigration Act over a three-year period from 2012, when the penal section was introduced. While he did not make this explicit, the statistic might have been one factor in the decision to go further to legislate that sham marriages should not be valid under the Women's Charter. For the sake of argument, even if a sham marriage

was intended to be void even before the 2016 Women's Charter amendments, such that Parliament was merely making its stance explicit, there would have been no legal test that the courts can apply in order to determine if an allegedly sham marriage should be declared void. Otherwise, Parliament would not have had to set out guidance in s 11A of the Women's Charter so that the courts can determine if an impugned marriage is void for the purposes of the Women's Charter. Therefore, on the law as it now stands, I find no way to hold that the marriage between the deceased and the defendant is void under the Women's Charter. This is notwithstanding my finding, on the balance of probabilities, that the facts of the present case do not disclose a genuine marital relationship.

49 Before I depart from this section, I should briefly discuss the suggestion of the plaintiffs that certain false declarations in the course of the marriage registration process have the effect of making the subsequent marriage void, on top of constituting a criminal offence. This assertion is in addition to the plaintiffs' argument that the entry into a sham marriage leads to a false declaration that there is no "legal impediment" to the marriage – an argument which I have already rejected above. The plaintiffs allege that in the notice of marriage dated 26 July 2011, the deceased, with the knowledge of the defendant, made a false statement by listing his occupation as a director when he was unemployed at all material times. The deceased also made false declarations in his statutory declaration dated 11 October 2011, by stating that he did not owe maintenance arrears. I make two points. First, the evidence is not conclusive that the alleged declarations were false. Even if they were, these statements would not have the effect that the plaintiffs contend. At the highest, the deponent would only be subject to penal sanctions. The form for the statutory declaration clearly states that the deponent makes the declaration "by virtue of the Oaths and Declarations Act (Cap. 211), and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously

believing the statements contained in the declaration to be true in every particular". The validity of the marriage must remain unaffected.

Whether a valid marriage will always result in the automatic revocation of a CPF nomination?

50 Even if the marriage is valid, the question is whether it can still fall foul of, specifically, s 25(5)(*a*) of the CPF Act. This section states that marriage revokes a CPF member's nomination. If there is no valid nomination, the CPF monies, which are not covered by wills, will be distributed in accordance with the intestacy laws for non-Muslims. While it is taken for granted that the revocation of a CPF nomination arises automatically by operation of law upon marriage, I was of the view that this deserves greater scrutiny. The relevant section states:

> **Moneys payable on death of member**
>
> 25.—(1) Subject to such conditions as may be prescribed by the Board, any member of the Fund who is at least 16 years of age may, by a memorandum executed in such manner as may be prescribed by the Board, nominate any person to receive in his own right —
>
> …
>
> (2) Subject to subsection (2A), where, at the time of the death of a member of the Fund, no person has been nominated by him under subsection (1), the total amount payable on his death out of the Fund shall be paid to the Public Trustee for disposal in accordance with —
>
> > (a) the Intestate Succession Act (Cap. 146), if the member is not a Muslim at the time of his death; or
> >
> > (b) section 112 of the Administration of Muslim Law Act (Cap. 3), if the member is a Muslim at the time of his death.
>
> …
>
> (5) Any nomination made by a member of the Fund under subsection (1) shall be revoked —

> (a) *by his marriage*, whether the marriage was contracted before, on or after 15th May 1980; or
>
> (b) in such other circumstances, and in such manner, as the Board may prescribe.

[emphasis added]

51 The intention for providing for automatic revocation by marriage was elucidated during the second reading of the Central Provident Fund (Amendment No 2) Bill in 1978 (*Singapore Parliamentary Debates, Official Report* (31 July 1978) vol 37 at cols 1626 – 1630 (Mr Ong Pang Boon, Minister for Labour):

> Mr Speaker, Sir, under section 13 of the CPF Act, a member of the Fund may nominate any beneficiary to receive his CPF savings in the event of his death before withdrawing from the Fund. We have found that this system of disposal does not adequately meet the interest of the immediate family of the deceased CPF member. Hon. Members will recall an incident in January of this year when the aged widow of a deceased member was deprived of means of support because her deceased husband nominated another person, his employer in fact, to be the beneficiary of his CPF savings. Despite her efforts, which included taking the case to court, she was not successful. The case has now been referred to the Legal Aid Bureau which has filed an appeal to the High Court. This is not an isolated case. Many hon. Members in the course of their constituency work have been confronted with family tragedies compounded by loss of CPF benefits. The immediate family needs the CPF savings for the daily necessities of life. In cases where the deceased member owns a flat which is still mortgaged to the Housing and Development Board and the Jurong Town Corporation, the family will also need the savings to make further payments for the flat. From these cases, it is clear that there is a need to improve the present system of nomination so that despite the failure of members to make provisions for their immediate family, they would not suffer as a result. …
>
> The number of payments to nominees of deceased members is not large. In 1977, out of a total of 15,736 withdrawal payments, 2,147 were made on the ground of death. Of these 2,147, there were 98 payments which were not made to the members of the immediate family of the deceased members. However, the consequent hardship to these dependants cannot be measured in terms of statistics. …

> … The second change to the system of nomination is the provision for revocation of the nomination upon the marriage of the member. Regular notices reminding members to update their nominations are printed on the members' statements of accounts sent out each year. The CPF Board has gone as far as making nomination forms freely available at the Registry of Marriages, although I might add that this was not always welcome on so auspicious an occasion. In addition, the Board provides assistance at its offices to help members complete nomination forms. Despite these measures, the problem of ensuring that members of the Fund update their nomination remains. Furthermore, many workers in Singapore start work before they are married. The beneficiaries they nominate at the start of their working careers were often left unchanged. *If they subsequently marry and die before reaching 55 years, members of their immediate family will be deprived of the CPF savings of the deceased CPF member*. In the interest of caring for the young, aged and needy in Singapore, the Government cannot avoid the responsibility of ensuring that the workers' hard earned savings in the Fund are used to benefit *those who are most likely to be adversely affected by their untimely death. It is, therefore, necessary to introduce the invalidation of nomination as a result of marriage. It is not a new concept as a similar provision exists in the Wills Act*.
>
> The proposed amendments to the system of nomination is of public interest. I therefore propose to refer the Bill to a Select Committee so that it can be examined in great detail.

52 From the parliamentary proceedings, it is clear that the legislative intervention was targeted at preventing a situation where the "immediate family" (and there are multiple references to this) of a CPF member are left without financial provision due to the inadvertent failure of the member to update his nomination before his untimely demise. It was to avoid such family tragedies that Parliament introduced s 25(5)(*a*) to protect the immediate family of a CPF member. Quite clearly, a surviving partner in a marriage where there is no genuine marital relationship is no member of the deceased's immediate family. This suggests to me that the meaning of "marriage" in s 25(5)(*a*) of the CPF Act ought to be read down to exclude a marriage such as that in the present case, and this would not go against Parliamentary intention. On the facts of this case, the defendant is by no stretch a member of the deceased's immediate

family. It follows that their marriage, while formally valid, is not the sort of marriage that falls within the meaning of "marriage" in s 25(5)(*a*) of the CPF Act.

53 In his Parliamentary speech, Mr Ong referenced the Wills Act, which he said contained a similar provision. The Wills Act has been in force since 1938. Historically, this is said to be based on an Indian Act XXV of 1838 which was in turn, drawn from the English Wills Act 1837 (c. 26) (Kok Lee Peng, Molly Cheang and Chee Juan Tsee, *Mental Disorders and the Law* (Singapore University Press, 1994) at p 259). Like s 13(1) of our Wills Act, s 18 of the Wills Act 1837 provides that every will made by a man or woman shall be revoked by his or her marriage. The rationale behind automatic revocation is the "need to ensure that adequate provision is made for the new spouse" (Rebecca Probert, *Family Law in England and Wales*, Kluwer Law International, 2011) at p 220). In a 1996 paper, New Zealand's Law Commission noted that the reasons to retain the general rule of revocation upon marriage in s 18 of the Wills Act 1837 include the fact that marriage represents a change of circumstances for the testator, which is associated with "new personal and financial responsibilities which may not be reflected in the earlier will". Moreover, the revocation of an earlier will protects "the intentions, or the probable intentions, of the testator and dispositions to spouse and children from oversight, mistake or misjudgement on the part of the testator": Law Commission (New Zealand), Succession Law: Wills Reforms (NZLC MP2, 1996) at para 123. Therefore, it is also clear that the automatic revocation provision in the Wills Act is designed to ensure that the wife and children of a testator are not left bereft of financial provision. But this will not be of concern where there is no genuine marital relationship to speak of.

54 In my judgment, therefore, I am sufficiently clear that for the purpose of s 25(5)(*a*) of the CPF Act, Parliament's intention did not extend to making financial provision for a surviving party to a marriage of convenience or sham marriage, for which it cannot be said that a genuine marital relationship ever existed. In such a situation, s 25(5)(*a*) cannot have the effect of revoking the CPF member's nomination. On the facts of this case, I am satisfied that the deceased had no intention of benefiting the defendant with his CPF monies. The defendant makes the point that if the deceased had entered into the marriage to make money, he would have made another nomination after the marriage as he clearly knew how to make a nomination. Therefore, he intended his CPF monies to be shared by the defendant and his two children. However, I am persuaded that the deceased simply had no idea that marriage would have the effect of revoking the nomination. As I noted at [30] above, despite the marriage, the deceased's CPF statement of account continued to state: "You made a nomination on 05 JAN 2009". Further, there is no evidence that the deceased had fallen out with his intended beneficiaries; in fact, the evidence weighs heavily to the contrary.

Conclusion

55 In conclusion, I decline to declare that the marriage between the deceased and defendant is null and void and of no legal effect. However, I grant the declaration that the nomination made by the deceased on 5 January 2009 had not been revoked and is therefore valid. It follows that the CPF monies should be released in accordance with the nomination made in favour of the plaintiffs. I order the interim injunction dated 17 September 2013 to be discharged if no appeal is filed by the expiry of one month. If an appeal is filed, the injunction will continue until further order.

56 The plaintiffs have substantially prevailed, and so they should also be entitled to their costs, to be taxed if not agreed.

Edmund Leow
Judicial Commissioner

A Rajandran (A Rajandran) for the plaintiffs;
the defendant in person.