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Consent and Signatures in the Fog: Proving Mental Capacity in LPA Execution

***XKG v XKF* [2025] SGHCF 66**

4 February 2026

LEGAL UPDATE

In this Update

XKG v XKF [2025] SGHCF 66 is an appeal heard by the High Court concerning the validity of a Lasting Power of Attorney ("**LPA**") made by an elderly lady ("**P**") when she was suffering from moderate dementia. P's son was not involved in the process of P's execution of the LPA.

The High Court upheld the decision that P lacked the requisite mental capacity to execute the LPA as P could not appreciate what an LPA was, could not understand how the LPA related to her own circumstances, and could not grasp the consequences of executing the LPA. This case update discusses the legal test on the mental capacity required to execute an LPA.

03
INTRODUCTION

03
BACKGROUND

04
DECISION OF THE APPELLATE COURT

04
COMMENTARY

INTRODUCTION

XKG v XKF [2025] SGHCF 66 is an appeal heard by the General Division of the High Court (Family Division) ("**Appellate Court**") concerning the validity of a Lasting Power of Attorney ("**LPA**") made by an 87 year old lady ("**P**") when she was suffering from moderate dementia. P's son was not involved in the process of P's execution of the LPA; instead, P's 91 year old brother and his son who resided in the United States made the arrangements for P to execute the LPA in which they were appointed as P's donee and replacement donee respectively.

The General Division of the High Court (Family Division) upheld the decision that P lacked the requisite mental capacity to execute the LPA as P could not appreciate what an LPA was, could not understand how the LPA related to her own circumstances, and could not grasp the consequences of executing the LPA. This case update discusses the legal test on the mental capacity required to execute an LPA.

BACKGROUND

P was diagnosed with dementia in 2020 after functional decline was observed the same year. Her home was unsanitary and cluttered, she faced difficulty with basic tasks and could not manage her financial and administrative tasks (such as banking, filing of income tax and the renewal of her vehicle's road tax). She was unable to remember banking transactions such as the opening of a joint account and the transfer of funds performed in 2022.

In July 2023, P was diagnosed by a geriatrician to have moderate dementia. On 24 August 2023, P executed an LPA appointing her 91 year old brother ("**Appellant**") and his son as donee and replacement donee respectively. While the Appellant and his son reside in the United States, they had returned to Singapore for the first time since 2010 and made arrangements for P to execute the LPA during this visit without involving P's son.

P's only son ("**Respondent**") discovered the existence of the LPA during his visit to P in December 2023. According to the Respondent, when he asked P about the LPA, she was unable to recall any details. By the time the matter was heard by the District Judge in November 2024, P had lost mental capacity.

The District Judge held that P lacked mental capacity at the time of executing the LPA on 24 August 2023. The District Judge found that P had no knowledge of her directorship or shareholding in a company and lacked sufficient understanding of the extent of her own estate which was large and diverse. Consequentially, P lacked knowledge of the powers she was vesting in the Appellant in appointing him as a donee under the LPA. The District Judge held that while P had indicated her decision for the Appellants to be her donee to the certificate issuer in the process of making

the LPA, mere trust in a potential donee was insufficient and it was imperative for P to have some awareness of the assets which would be entrusted to a donee to manage.

The Appellant filed an appeal challenging the District Judge's finding that P lacked mental capacity at the time of executing the LPA. The Appellant argued that P's inability to recall the full extent or the majority of her assets did not mean that she lacked capacity to execute the LPA. The Appellant argued that it was sufficient for P to choose who she wanted to make decisions on her behalf when she was no longer able to do so.

DECISION OF THE APPELLATE COURT

The Appellate Court upheld the District Court's decision and held that P lacked mental capacity at the time of executing the LPA.

The Appellate Court reiterated that capacity is presumed under the Mental Capacity Act, and the party challenging capacity must prove lack of capacity on a balance of probabilities. A person lacks capacity in relation to the LPA decision if, at the material time, they are unable to make that decision because of an impairment of, or a disturbance in the functioning of, the mind or brain. The test has both (i) a clinical component requiring medical evidence of an impairment; and (ii) a functional component on a person's ability to understand, retain, use or weigh, and communicate the information relevant to that decision, in order to make the particular decision.

The Appellate Court found that P's poor memory impacted her ability to decide on the execution of the LPA. P was not orientated to time and place. Her attention and working memory was impaired to the extent that she had no knowledge and awareness of the extent of her assets. The Appellate Court held that the quality of P's memory affected her ability to retain information long enough to use or weigh the information relevant to the decision-making process for the execution of an LPA.

COMMENTARY

(1) Decision-making process required to execute an LPA

This case has clarified the decision-making process which has to be undertaken by a donor before executing an LPA. The Appellate Court recognises that the execution of an LPA is not as simplistic as choosing a trusted donee. It is imperative for a donor to undertake a decision-making process in making various choices for the LPA which has important implications.

The Appellate Court held that a donor must address his or her mind on the following decisions before executing an LPA:

i. The donor must decide on the powers to be granted, namely, whether to confer powers relating to personal welfare only, powers relating to property and affairs only, or both categories of powers.
ii. The donor must select donee(s) by evaluating the trustworthiness and suitability (such as the donee's competence and familiarity with the wishes and preferences of the donor) of potential donee(s) for the specific powers being conferred.
iii. For each category of powers selected, the donor must consider and decide how the donees' appointment will work, *eg*, determining whether to appoint a single donee or an additional donee for each set of powers, and if more than one donee is chosen, whether they should act jointly or jointly and severally.
iv. The donor must consider and decide on the limitations to be placed on the powers granted to the donee(s) under the LPA; including specific questions on particular aspects of the authority to be conferred as stated in the LPA.
v. The donor must decide whether to appoint any replacement donee in case the original donee(s) become unable or unwilling to act.

Therefore, in circumstances where the donor is unable to undertake the decision-making process or fails to appreciate the questions and choices to be made in the LPA with the implications of such choices, the validity of the LPA may be challenged.

(2) Assessing requisite mental capacity for the specific purpose of executing an LPA

The Appellate Court in *XKG v XKF* recognised that a person suffering from a neurodegenerative disease does not necessarily lack mental capacity to make specific decisions. The pertinent question is ***the degree*** in which such person's mental functioning is compromised as a result of the neurodegenerative disease.

In circumstances where a person suffers from a mental impairment wishes to execute an LPA, the donor should demonstrate sufficient ability to understand, retain, and use or weigh information pertaining to:

i. the nature and purpose of an LPA as a legal instrument that operates only upon the donor's future lack of capacity;
ii. the legal effect of conferring authority on the donee(s);
iii. the scope of authority being granted, and
iv. the reasonably foreseeable consequences of executing the LPA (and of granting the specific authority to the named donee(s)).

The Appellate Court in *XKG v XKF* also held that limited awareness of assets and gaps in knowledge of specific assets are not sufficient in and of themselves to establish incapacity to execute an LPA. The Court acknowledged that limited awareness may reflect the donor's lack of engagement with financial matters or the lack of financial literary or dependence on others which is not associated with the lack of capacity. However, the Appellant Court recognised that when the donor's impairment

is of some severity, a donor's knowledge deficiencies regarding his financial assets and circumstances may indicate an inability to undertake the decision-making process to make an LPA and/or understand the consequences of executing an LPA. Ultimately, the assessment of capacity is highly fact-sensitive and dependent on the context and specific circumstances.

(3) Impact of asymmetry of information on the validity of an LPA

In *XKG v XKF,* the LPA was executed by P without any involvement of the Respondent who was P's only son. The Appellate Court took the view that P only had the opportunity to discuss the LPA with the Appellant. As P only received one perspective from the Appellant to assist her in the decision-making process of making the LPA, there was an asymmetry of information given to P which would have affected her decision-making process.

While there is no statutory requirement for donors to involve all relevant family members in the decision-making process of the LPA, the exclusion of relevant family members may deprive a donor, in particular vulnerable persons, of information and diverse perspectives which are necessary to make an informed decision before executing an LPA. Consequently, such a factor may be considered in assessing the validity of an LPA executed by a vulnerable person even when no allegation of undue influence or duress is made.

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