Published on e-First 12 June 2018

# 20. LAND LAW

**TEO** Keang Sood
*LLM (Harvard), LLM (Malaya);*
*Advocate and Solicitor (Singapore and Malaya);*
*Professor, Faculty of Law, National University of Singapore.*

## Co-ownership

### *Whether joint tenant's interest can be taken in execution under writ of seizure and sale*

20.1 In *Chan Lung Kien v Chan Shwe Ching*[1] ("*Chan Lung Kien*"), the plaintiff had registered a writ of seizure and sale ("WSS") against the land in question which the judgment debtor held as a joint tenant together with her husband, the other joint tenant. The question was whether the judgment entered against the debtor for the payment of money could be enforced in this manner.

20.2 In deciding against the plaintiff, the High Court rejected the proposition laid down in the earlier High Court case of *Chan Shwe Ching v Leong Lai Yee*[2] that although a joint tenant does not have an undivided share, his interest can be seized under a WSS because it will be converted into an undivided share when the joint tenancy is subsequently severed. The High Court in *Chan Lung Kien*, following the decision in *Malayan Banking Bhd v Focal Finance Ltd*,[3] reasoned as follows:

> (a) First, pursuant to the proposition, what is seized by the WSS is the interest of a tenant in common, not that of a joint tenant. Thus, the proposition implicitly acknowledges that, given that each joint tenant's interest in the property is not distinct and identifiable, there is nothing for the WSS to bite onto when the court makes an order for a WSS to be issued.[4]
>
> (b) Second, the court must be satisfied that the interest that is sought to be seized under the WSS is capable of being so seized. Thus, following from the first reasoning, "it cannot be an answer to say that upon a *subsequent* severance, the joint tenant's interest will be converted into that of a tenant in

1 [2017] SGHC 136.
2 [2015] 5 SLR 295.
3 [1998] 3 SLR(R) 1008.
4 *Chan Lung Kien v Chan Shwe Ching* [2017] SGHC 136 at [32].

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

common which can be seized under a WSS" [emphasis in original].[5]

(c) Third, the proposition is premised on the ability to sell the property following a seizure of the debtor's interest, which is different from seizure of a joint tenant's interest under a WSS. In any event, the sheriff cannot sell the property without the agreement of all the joint tenants.[6] It is respectfully submitted that the decision in *Chan Lung Kien* must be correct given that no one joint tenant holds any specific or distinct share of the property. The interest of each joint tenant is identical and all the joint tenants together own the whole property.

20.3 The High Court in *Chan Lung Kien* also noted correctly that the joint tenancy had not been severed when the plaintiff obtained his WSS. The service of the instrument of declaration by the judgment debtor's husband did not sever the joint tenancy. As registration of the instrument had yet to be completed under s 53(6) of the Land Titles Act[7] ("LTA"), there was no severance which affected third parties like the plaintiff. This is reinforced by s 53(8) of the LTA, which removed the basis of the decision in *Diaz Priscillia v Diaz Angela*,[8] such that the doctrine of severance acting only *inter partes* is no longer part of Singapore law.[9]

20.4 It was also made clear in *Chan Lung Kien* that service of a unilateral declaration of intention to sever does not effect severance. The High Court referred to the Court of Appeal decision in *Sivakolunthu Kumarasamy v Shanmugam Nagaiah*[10] which clearly settled the law in Singapore in this respect.[11]

20.5 The decision of the High Court in *Chan Lung Kien* that a joint tenant's interest in immovable property cannot be taken in execution under a WSS has been followed in the later High Court case of *Peter Low LLC v Higgins, Danial Patrick*.[12]

5 *Chan Lung Kien v Chan Shwe Ching* [2017] SGHC 136 at [33].
6 *Chan Lung Kien v Chan Shwe Ching* [2017] SGHC 136 at [34].
7 Cap 157, 2004 Rev Ed.
8 [1997] 3 SLR(R) 759.
9 *Chan Lung Kien v Chan Shwe Ching* [2017] SGHC 136 at [54].
10 [1987] SLR(R) 702.
11 *Chan Lung Kien v Chan Shwe Ching* [2017] SGHC 136 at [60].
12 [2017] SGHCR 18 at [39].

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

## Contracts which must be evidenced in writing

20.6 In *Cheong Kok Leong v Cheong Woon Weng*,[13] the High Court[14] had earlier held that the oral agreement entered into between the appellant and the respondent provided for the latter to be the legal owner of the property but for him to hold it on trust for both parties as tenants in common with an equal share. On appeal, the appellant submitted that the oral agreement pursuant to which the respondent had an interest in the property was inadmissible under, *inter alia*, s 6(*d*) of the Civil Law Act[15] ("CLA").

20.7 In dismissing the appeal, the Court of Appeal perceptively observed that what was regulated by s 6(*d*) was a "contract for the *sale* or other *disposition* of immovable property, or any interest in such property" [emphasis in original].[16] Given that the oral agreement appeared to have been concluded even before the appellant purchased the property, there might have been a possible issue as to whether or not s 6(*d*) was applicable in the first place. However, assuming that the oral agreement was such a contract within the provision, it only required that such a contract be evidenced in writing, while the contract itself need not be in writing. A related written agreement titled, "Collateral Agreement", which was signed by the appellant and which specified the identity of the parties, the share of the respondent in the property, and the consideration paid by the respondent for such a share, constituted a sufficient memorandum of the oral agreement for the purposes of s 6(*d*).[17]

20.8 In any event, the doctrine of part performance, which was not abolished by s 6(*d*) as decided in *Joseph Mathew v Singh Chiranjeev*,[18] applied in equity in favour of the respondent. As there was part performance of the oral agreement by the respondent who had advanced $200,000 to the appellant, he could therefore enforce it.[19]

13 [2017] SGCA 47.
14 *Cheong Woon Weng v Cheong Kok Leong* [2016] SGHC 263.
15 Cap 43, 1999 Rev Ed.
16 *Cheong Kok Leong v Cheong Woon Weng* [2017] SGCA 47 at [6].
17 *Cheong Kok Leong v Cheong Woon Weng* [2017] SGCA 47 at [7].
18 [2010] 1 SLR 338 at [61] and [63].
19 *Cheong Kok Leong v Cheong Woon Weng* [2017] SGCA 47 at [8].

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

## Leases

### *Oral agreement for lease*

20.9 In *Mumtaz Enterprise Pte Ltd v Kaki Bukit Developments Pte Ltd*,[20] a dispute arose between the parties as to whether there was an alleged oral agreement for a purported ten-year lease of the premises concerned. The defendant landlord had built a dormitory for foreign workers and had invited tenders for the lease of its premises at the dormitory. The plaintiff tenant's tender to lease the premises was successful. A two-year tenancy was entered into between the parties under which the plaintiff was required to give a written request of their intention to renew the tenancy at least two months before it expired. This, the plaintiff failed to do. The defendant later extended the lease for three months with an option to extend for a further three months under the second written agreement. The defendant subsequently invited a fresh tender in which the plaintiff was unsuccessful. In the present suit, brought against the defendant for breach of an oral agreement, the plaintiff claimed that the defendant orally agreed to lease premises on the dormitory to the plaintiff for ten years.

20.10 In dismissing the plaintiff's claim, the High Court held that the terms of the written lease entered into between the parties contradicted any oral agreement that might have been made. There was no evidence that the parties relied on verbal agreements in their correspondence or negotiations.[21] In addition, the plaintiff's conduct did not support a finding of an oral agreement. There was no reason for the plaintiff to have participated in the second tender if there was indeed an oral agreement between the parties. The court was of the view that the two written tenancy agreements were conclusive of the terms of the lease, which made it clear that the lease was for an initial term of two years and was later extended for a three-month period, with an option to extend for a further three months under the second written agreement. Accordingly, pursuant to s 94 of the Evidence Act,[22] the oral agreement, if any, between the parties could not be admitted to contradict the terms of the said written tenancy agreements.[23]

20.11 Even if an oral agreement is established between the parties, it is submitted that that is not the end of the matter as there is still the issue

20 [2017] 5 SLR 898.
21 *Mumtaz Enterprise Pte Ltd v Kaki Bukit Developments Pte Ltd* [2017] 5 SLR 898 at [7].
22 Cap 97, 1997 Rev Ed.
23 *Mumtaz Enterprise Pte Ltd v Kaki Bukit Developments Pte Ltd* [2017] 5 SLR 898 at [8].

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

of enforceability of the agreement to consider. Given that the agreement is an oral one, the formalities at law stipulated in s 6(*d*) of the CLA would not be satisfied. The alternative position in equity would have to be considered, namely, whether there was sufficient act of part performance on the part of the plaintiff, the party who is seeking to enforce the oral agreement.

### *Covenants*

20.12 In *iHub Solutions Pte Ltd v Freight Links Express Logisticentre Pte Ltd*,[24] a service agreement was entered into between the defendant and the plaintiff whereby the defendant agreed to let the plaintiff use certain warehouse spaces on the second and third floors of the premises for a period of three years. The service agreement was subsequently extended on a number of occasions. The last extension included an option to the plaintiff to extend or renew the agreement for yet another three years. The plaintiff brought a claim for damages in respect of alternative premises which the plaintiff alleged it had to acquire in view of the defendant's failure to expeditiously confirm the renewal of the existing agreement between the parties of the current premises and the defendant's acts of hindrances. The plaintiff argued that the defendant was in breach of the implied terms of expeditious renewal and quiet enjoyment.

20.13 The High Court found that the defendant had accepted at the trial that was an implied term for it to revert reasonably expeditiously to confirm the renewal, unless there was valid reason not to do so. There was also no dispute that there was an implied term of quiet enjoyment for the plaintiff under the service agreement.[25]

20.14 The court was of the view that the question of reasonably expeditious renewal should not be considered solely in the context of when the defendant reverted but all the circumstances of the case, for example, did the defendant take steps towards confirming the renewal in the meantime. The alleged acts of hindrances also shed light as to whether the defendant was taking steps to confirm the renewal or the opposite. Some of the pleaded acts of hindrances were in respect of restriction of car parking spaces for the plaintiff, improper parking of container by the defendant which obstructed the plaintiff's access to the spaces, preventing the plaintiff from charging electrical material handling equipment at the usual designated charging point and

---

24 [2017] SGHC 6.

25 *iHub Solutions Pte Ltd v Freight Links Express Logisticentre Pte Ltd* [2017] SGHC 6 at [22] and [23].

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

cessation of lorry parking for the plaintiff.[26] Having regard to the evidence, the court found that the defendant had engaged in these acts of hindrances to pressurise the plaintiff to agree to a higher rate instead of taking reasonably expeditious steps to confirm the renewal. As such, the defendant had breached the implied term to act reasonably expeditiously to confirm the renewal. The court also found that the acts of hindrances amounted to a breach by the defendant of the implied term of quiet enjoyment by the plaintiff.

20.15 However, the court held that the plaintiff was not entitled to claim damages notwithstanding the defendant's wrongful conduct. The plaintiff had continued to use the current premises of the defendant until the expiry of a renewed term for the premises which was eventually granted to it. In addition, the other premises acquired by the plaintiff from another landlord was not in truth alternative premises but rather additional premises for which the costs associated with its acquisition could not be claimed. The plaintiff's claim for damages was, accordingly, dismissed.

### *Right of forfeiture*

20.16 The High Court decision on the right of forfeiture in *Syed Ahmad Jamal Alsagoff v Harun bin Syed Hussain Aljunied*[27] was discussed in a previous review.[28]

### *Renewal*

20.17 In *Ngee Ann Development Pte Ltd v Takashimaya Singapore Ltd*,[29] the appellant landlord had entered into an agreement to lease premises belonging to it to the respondent tenant for an initial term of 20 years. The respondent sought to exercise its option to renew the lease for a further ten-year term. Under the lease, the parties were to endeavour to agree on the "prevailing market rental value of the Demised Premises" which would be the renewal rent for the option period, failing which the prevailing market rental value was to be determined by a licensed valuer. A dispute arose between the parties as to whether the prevailing market rental value should be determined in accordance with the existing configuration of the premises or a hypothetical configuration reflecting the highest and best use. The High Court[30] found in favour of the

26 *iHub Solutions Pte Ltd v Freight Links Express Logisticentre Pte Ltd* [2017] SGHC 6 at [32].
27 [2017] 3 SLR 386.
28 See (2016) 17 SAL Ann Rev 565 at 569–570.
29 [2017] 2 SLR 627.
30 *Ngee Ann Development Pte Ltd v Takashimaya Singapore Ltd* [2016] SGHC 194.

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

respondent, holding that the prevailing market rental value should be determined in accordance with the existing use of the Demised Premises.

20.18 In dismissing the appeal, the Court of Appeal found it clear from the evidence that the parties' relationship was not a typical landlord–tenant relationship, but rather a collaborative long term commercial enterprise, akin to a joint venture, with the appellant providing the respondent with prominent and accessible premises at the heart of Orchard Road. The respondent, in turn, would contribute its expertise to operate a large-scale prestigious department store which would enhance, as a whole, the reputation of Ngee Ann City, where the Demised Premises were located.

20.19 In addition, the court found that the parties intended that the respondent be afforded a wide margin of contractual freedom to manage the Demised Premises as it saw fit in order to allow the appellant to leverage on the respondent's expertise in this area. Thus, it was improbable, given the parties' relationship, that the respondent would be required to pay rent at the highest possible rate which would effectively erode its freedom under the terms of the lease to decide the configuration to be used.[31]

20.20 The court also had regard to the parties' conduct in relation to previous rent reviews to better understand how the valuation was to be carried out. In this respect, the court found that, in past valuations, the appellant never intended or desired that some hypothetical configuration other than the existing configuration should be used for valuation purposes.[32]

### *Subleases*

20.21 In *Kim Seng Orchid Pte Ltd v Lim Kah Hin*,[33] the defendant had obtained a sublease of part of the plaintiff's premises. Clause 6(b) of the sublease agreement provided the mechanism for renewal or extension of the sublease. The defendant had not sought to renew or extend the sublease pursuant to cl 6(b) by the time the sublease expired. Instead, the defendant simply remained in occupation and began plying the plaintiff with cheques for purported payment of rental and property tax, none of which the plaintiff accepted or encashed. The plaintiff then

31 *Ngee Ann Development Pte Ltd v Takashimaya Singapore Ltd* [2017] 2 SLR 627 at [80].
32 *Ngee Ann Development Pte Ltd v Takashimaya Singapore Ltd* [2017] 2 SLR 627 at [90].
33 [2018] 3 SLR 34.

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

commenced legal action to repossess the occupied premises and the defendant argued that it was entitled to continue in occupation because there was an implied agreement by conduct between the parties for renewal of the sublease. Summary judgment was granted in favour of the plaintiff and the defendant appealed.

20.22 In dismissing the appeal, the High Court found that the plaintiff had succeeded in establishing a *prima facie* case and that the assistant registrar had not erred in making the same finding. None of the defendant's arguments were, in the court's view, likely to succeed at trial.

20.23 The court rejected the defendant's argument, among others, that there was an implied agreement for renewal of the sublease. The plaintiff's conduct made it clear beyond doubt that it did not agree to renew the sublease. This was evident from the fact that the plaintiff returned the first four cheques for purported payment of rental and property tax to the defendant, and never encashed any of the cheques for purported payment of rental and property tax.[34] The court also found the defendant's reference to cll 7(c) and 7(e) in the sublease agreement to be misguided as they were express terms governing the obligations of the lessee within a lessor–lessee relationship and not express terms governing the renewal or extension of the sublease agreement. There was no evidence that the parties intended to ignore or do away completely with the mechanism provided in cl 6(b) pertaining to the renewal or extension of the sublease.

20.24 Having regard to *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd*[35] and *Chiam Heng Luan v Chiam Heng Hsien*,[36] the court also held that there was no proprietary estoppel which precluded the plaintiff from seeking to repossess the subleased premises. There was nothing on the facts to suggest that the plaintiff acted unconscionably in representing that the defendant was entitled to continue his occupation on the subleased premises.[37]

20.25 It is trite that for proprietary estoppel to arise, (a) the representation or assurance would need to have been sufficiently clear and unequivocal, (b) the reliance by the claimant would need to have been reasonable in all the circumstances, and (c) the detriment would need to have been sufficiently substantial to justify the intervention of

34 In doing so, the court distinguished the three cases of *Midlink Development Pte Ltd v The Stansfield Group Pte Ltd* [2004] 4 SLR(R) 258, *Min Hong Auto Supply Pte Ltd v Loh Chun Seng* [1993] 1 SLR(R) 642 and *Long Foo Yit v Mobil Oil Singapore Pte Ltd* [1997] SGHC 323.

35 [2007] 1 SLR(R) 292.

36 [2007] 4 SLR(R) 305 at [78].

37 *Kim Seng Orchid Pte Ltd v Lim Kah Hin* [2018] 3 SLR 34 at [74].

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

equity.[38] In the instant case, the elements of representation, reliance and detriment were not present and the defendant's argument on proprietary estoppel, accordingly, failed.

## Indefeasibility of title

### *Exceptions to indefeasibility*

20.26 In *Harun bin Syed Hussain Aljunied v Abdul Samad bin O K Mohamed Haniffa*,[39] the issue for consideration of the High Court was whether the registered title of the first defendant to the property was indefeasible. K had conveyed the property in 1879 to one J. The property subsequently came to be owned by the Aljunied Trust in 1894. In 1895, K conveyed the property to the Hindoo Temple Trustees. The Hindoo Temple Trustees then conveyed the property to the second defendant for valuable consideration in 1977. Parties to the conveyance were advised by common solicitors. In 1991, the second defendant bought the property under the LTA and became registered as owner of the property. In 2000, the second respondent transferred the property to his son, the first defendant, for a sum of $930,000. The plaintiffs, who were trustees of the Aljunied Trust, brought proceedings against the defendants, seeking rectification of the land register in Aljunied Trust's favour. The plaintiffs argued, *inter alia*, that the defendants had procured the property fraudulently. The defendants sought to strike out the plaintiffs' claim. The asst registrar found in favour of the defendants and the plaintiffs appealed.

20.27 The High Court, in dismissing the appeal, found that the exception of fraud in s 46(2)(*a*) of the LTA, was not made out. First, on the authority of the Court of Appeal decision in *United Overseas Bank Ltd v Bebe bte Mohammad*,[40] there must be either an actual intent to deceive or to be dishonest, or there must be wilful blindness in the sense that the defendants' suspicions were aroused but they did not take steps to find out more for fear of discovering the truth. Negligence will not suffice.[41] Second, the fraud must have been perpetrated by the registered proprietor or his agent.[42] Finally, s 160 of the LTA, relied on by the

38 *Thorner v Major* [2009] 1 WLR 776 at [15].
39 [2017] SGHC 248.
40 [2006] 4 SLR(R) 884.
41 *United Overseas Bank Ltd v Bebe bte Mohammad* [2006] 4 SLR(R) 884 at [22] and [34].
42 *United Overseas Bank Ltd v Bebe bte Mohammad* [2006] 4 SLR(R) 884 at [15], citing the Privy Council decision of *Assets Co Ltd v Mere Roihi* [1905] AC 176 at 210.

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

plaintiffs, only gives the power to rectify the land register, the grounds for which are provided by s 46(2) of the LTA alone.[43]

20.28 In the instant case, the plaintiffs did not adduce any evidence to show that there was fraud involved when K made the transfer to the Hindoo Temple Trustees in 1895. That the common solicitors failed to conduct title searches would not be fraud but merely negligence. Even if K's conveyance to the Hindoo Temple Trustees was tainted by fraud, there was no evidence that the second defendant knew of or participated in the fraud. There was also no wilful blindness on his part, which could lead to an inference of fraud, as the plaintiffs could not show that there was any suggestion of impropriety that had been specifically brought to the second defendant's attention.

20.29 By not looking into the historical conveyances of the property, the second defendant would at most be guilty of negligence or lack of due diligence which did not amount to fraud. As there was no fraud on the part of the second defendant, the plaintiffs would similarly fail against the first defendant. The upshot was that both defendants were *bona fide* purchasers of the property.[44] In light of this finding, the court could also have referred to s 157(1) of the LTA to reinforce the position of both defendants. What is clear about this provision is that it stands on its own and its operation is not affected by any other provisions in the LTA in light of the opening phrase, "[notwithstanding] anything in this Act". This would mean that a *bona fide* "purchaser" for valuable consideration cannot be defeated under s 46(2) of the LTA in regard to the plea that his vendor or predecessor in title may have acted in bad faith.

20.30 In *Cristian Priwisata Yacob v Wibowo Boediono*,[45] the plaintiffs sued the defendants for fraudulently conveying the property (a condominium unit) belonging to the former to the first defendant's father. As the property had since been sold to a third party at a mortgagee's auction, the plaintiffs claimed damages for the loss of the property.

20.31 In allowing the plaintiffs' claim, the High Court held that they had discharged the legal burden of proving that the conveyancing documents were the product of a fraud by the defendants. The

43 *Harun bin Syed Hussain Aljunied v Abdul Samad bin O K Mohamed Haniffa* [2017] SGHC 248 at [67].

44 *Harun bin Syed Hussain Aljunied v Abdul Samad bin O K Mohamed Haniffa* [2017] SGHC 248 at [78].

45 [2017] SGHC 8. The plaintiffs had also brought negligence claims against the solicitors involved in the transfer of the property.

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

defendants had alleged that the first plaintiff was indebted to the first defendant's father and this was to be satisfied by the transfer of the property to the latter. Having considered all the facts and evidence, the court found that the first plaintiff was not so indebted as alleged.

20.32 The court was also of the view that the transfer of the property had been effected without the knowledge of the plaintiffs and on the basis of documents, such as the sale and purchase agreement, the transfer deed, the statutory declarations, *etc*, which (a) had not been signed by them, or (b) they were tricked into signing.[46] As for the first defendant's father, given his involvement in the many aspects relating to the property, the court found that he was a knowing participant in the fraud perpetrated by the defendants.

20.33 Hence, the plaintiffs were entitled to recover the value of the property that had been misappropriated. In the absence of submissions on the methodology and date to be used in assessing the value of the misappropriated property, the appropriate basis was to make the assessment based on the market value at the date of the appropriation.

20.34 Given that this was a case involving Torrens fraud, it is surprising that there was no discussion of the case law on the meaning of actual fraud so as to defeat the registered title of the first defendant's father. There was also no reference to the statutory exception of fraud in the LTA. This would have made the judgment more complete in this respect.

## Adverse possession

20.35 In *Ahmad Kasim Bin Adam v Moona Esmail Tamby Merican s/o Mohamed Ganse*[47] ("*Ahmad Kasim Bin Adam*"), the applicant had applied for a declaration that, *inter alia*, he and/or his father had, by way of adverse possession, acquired title to the land in question. Except for the fact that the land was initially acquired by the first respondent in 1888 and mortgaged to the second respondent in the same year, there were no other recorded transactions in relation to the land until it was formally vested in the State in September 1988 pursuant to compulsory acquisition. The first and second respondents were deceased and were not represented in the proceedings. The third respondent (the Singapore Land Authority) and fourth respondent (the Attorney-General) contended that the elements of adverse possession were not satisfied as

46 *Cristian Priwisata Yacob v Wibowo Boediono* [2017] SGHC 8 at [124].
47 [2017] SGHC 19.

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

the applicant and/or his father did not have physical possession of the land and did not intend to exclude the world at large from the land.

20.36 The High Court, in dismissing the application, found that there was no adverse possession of the land before the compulsory acquisition was completed in 1988 as the essential elements were not made out. In the first place, there was no factual possession of the land. The applicant failed to show that he and/or his father was in possession of the land for 12 continuous years. The applicant could not definitively identify the point at which his and/or his father's alleged adverse possession started. It is respectfully submitted that the court correctly ruled on this element of *factum possidendi* given the fragmentary and inconsistent nature of the applicant's evidence.

20.37 As for the element of *animus possidendi*, the applicant failed to show that he and/or his father had the intention to exclude the world at large from the land. Taken in its totality, a letter which the applicant sent to the then Member of Parliament for the constituency concerned clearly demonstrated that the applicant and his father laid no claim to the land by adverse possession.[48]

## Caveats

### *Caveatable interest*

20.38 In *PACC Offshore Services Holdings Ltd v Kensteel Engineering Pte Ltd*[49] ("*PACC Offshore Services*"), the plaintiff and defendant had earlier entered into a sale and purchase agreement for the purchase of the latter's leasehold interest in the land for $38m. The defendant had leased the land from the Jurong Town Corporation ("JTC"). When JTC declined to grant approval of the sale of the defendant's leasehold interest, the plaintiff terminated the agreement and demanded the return of the deposit it had paid the defendant. The plaintiff also voluntarily removed the earlier purchaser's caveat it had lodged over the land pursuant to the sale and purchase agreement and, in its place, lodged a caveat to protect its claim to a purchaser's lien over the land on account of the deposit it had paid.

20.39 One of the issues for the High Court to consider, assuming the plaintiff was entitled to the return of the deposit, was whether that entitlement would give rise to a caveatable interest. The Court of Appeal

48 *Ahmad Kasim Bin Adam v Moona Esmail Tamby Merican s/o Mohamed Ganse* [2017] SGHC 19 at [21] and [22].
49 [2017] SGHC 175.

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

decisions in *Chip Thye Enterprises Pte Ltd v Development Bank of Singapore Ltd*[50] and *Bestland Development Pte Ltd v Manit Udomkunnatum*[51] were followed for the proposition that a purchaser's lien comes into existence despite specific performance being unavailable. The Court of Appeal had approved of this proposition laid down in the English Court of Appeal case of *Whitbread & Co Ltd v Watt*.[52] The High Court in *PACC Offshore Services* explained the rationale for this proposition thus:[53]

> To sum up the position in *Whitbread (CA)*, the purchaser's lien is a security interest that equity has invented because it would be unfair to the purchaser under a rescinded or terminated sale agreement if such a lien did not exist, given that the purchaser has a right to claim the sum paid towards the sale of the property. In fact, the situation in which a purchaser's lien becomes relevant is when the contract for sale has been rescinded or terminated, and specific performance of the contract is no longer available. Given that practical reality, it would be illogical for a purchaser's lien to be dependent on the availability of specific performance because that would deprive the device of the purchaser's lien of all utility.

20.40 Having regard to the above principles, the High Court was of the view that the plaintiff was right that if it was entitled to the return of the deposit, it also necessarily had a purchaser's lien over the defendant's leasehold interest for that part of the purchase money. Such a purchaser's lien would obviously constitute a caveatable interest in relation to the caveat lodged in the purchaser's capacity as a lienholder arising out of its entitlement to a refund of purchase money. It would have been different in regard to the earlier purchaser's caveat that was lodged given the termination of the sale and purchase agreement.

### *Maintenance/removal of caveat*

20.41 In *PACC Offshore Services*,[54] the defendant had applied for the plaintiff's caveat to be removed. The issue before the court was whether the caveat should be maintained for the time being in order to preserve the *status quo* pending the resolution of the suit commenced by the defendant against the plaintiff seeking, *inter alia*, a declaration that the defendant was entitled to forfeit and retain the deposit.

50 [1994] 2 SLR(R) 68.
51 [1997] 1 SLR(R) 177.
52 [1902] 1 Ch 835 at 838.
53 *PACC Offshore Services Holdings Ltd v Kensteel Engineering Pte Ltd* [2017] SGHC 175 at [19].
54 See paras 20.38–20.40 above.

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

20.42 Having regard to *Eng Mee Yong v V Letchumanan s/o Velayutham*,[55] a decision of the Privy Council which was endorsed and applied by the High Court in *Tan Yow Kon v Tan Swat Ping*,[56] the following issues arose for the decision of the court: (a) does the plaintiff's claim to a purchaser's lien raise a serious question to be tried; (b) if so, is the balance of convenience tilted in favour of cancelling or maintaining the caveat? If the answer is in the affirmative to both questions, the caveat should be allowed to remain.

20.43 The question of whether there was a serious question to be tried had to be considered in two parts. For the first part, the court had ruled, as discussed above, that the plaintiff's purchaser's lien constituted a caveatable interest in relation to the caveat lodged. Without a caveatable interest, there would be no necessity to go further. As for the second part, the court found that there was a serious question to be tried as to the plaintiff's entitlement to a return of the deposit and arising out of that, to a purchaser's lien over the defendant's leasehold interest. The issue was whether the circumstances of the non-approval by JTC and/or termination were such as to deprive the plaintiff of the right to a refund of the deposit. And, if a trial was necessary to resolve the dispute as to the plaintiff's actual entitlement to an interest in the property in question, that was a reason in favour of maintaining the caveat, not lifting it.

20.44 On the question of balance of convenience, a critical consideration was the relative financial status of the parties.[57] The court found that the plaintiff was in a secure financial position, being a publicly listed company with assets exceeding $1.2bn. Accordingly, it would suffice to require an undertaking in damages from the plaintiff and that security for those damages was unnecessary.[58] The same could not be said of the defendant. It had sold its leasehold interest to a third party at a vastly lower sale price of $13.5m. This could not be explained by a fall in the market value or any depreciation of the lease. There was also a mortgage of the lease for about $8.4m with interest still accruing. The circumstances seemed to suggest that the defendant might be in dire straits, such that it felt compelled to accept the third party's offer even though it was drastically lower. The court also noted the existence of winding-up applications as well as other ongoing actions against the defendant brought by diverse parties, some of which appeared to have resulted in default judgments against the defendant. Further, the fact

55 [1980] AC 331.
56 [2006] 3 SLR(R) 881.
57 Reference was made to *Tan Yow Kon v Tan Swat Ping* [2006] 3 SLR(R) 881 at [90].
58 *PACC Offshore Services Holdings Ltd v Kensteel Engineering Pte Ltd* [2017] SGHC 175 at [40].

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

that the trial of the defendant's suit was imminent meant that the added delay of the sale to the third party would be relatively short.

20.45 All things considered, the court held that the balance of convenience was in favour of maintaining the caveat. However, to balance the interests of the parties, the court gave the defendant the option of putting up security for the plaintiff's claim; in which case, the caveat would be removed.[59]

## Strata title

### *Common property*

20.46 The meaning of "common property" as defined in the Building Maintenance and Strata Management Act[60] ("BMSMA"), s 2(1) was considered and explained in the High Court case of *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645*[61] ("*Sit Kwong Lam*"). The appellant, a unit owner, had undertaken unauthorised installation involving, *inter alia*, the replacement of the fixed glass panels bordering two areas of his unit with sliding panels and the installation of timber decking on two wide ledges beyond those panels outside the unit. The respondent, the management corporation, demanded that the appellant remove the works and/or obtain the requisite approval as it took the position that the works had been installed on common property in breach of various by-laws. The appellant's application to the Strata Titles Board ("the Board") for, *inter alia*, a declaration that he had not breached the by-laws by installing the works and in the alternative, an order that the respondent consent to the works, was dismissed.

20.47 On appeal to the High Court, the issue of central importance was whether the works were situated on common property. First, having regard to legislative history and case law,[62] the High Court rightly held that the two limbs in the definition of "common property" in s 2(1) of the BMSMA are to be read conjunctively. Second, the proper application of the second limb of the definition was to ask whether the area or installation in question was for the exclusive use of the occupier of the unit in question rather than whether it was for the use of the occupiers of two or more units. There was a subtle but significant purpose to

59 *PACC Offshore Services Holdings Ltd v Kensteel Engineering Pte Ltd* [2017] SGHC 175 at [44].
60 Cap 30C, 2008 Rev Ed.
61 [2017] SGHC 57.
62 Reference was made to *Management Corporation Strata Title Plan No 367 v Lee Siew Yuen* [2014] 4 SLR 445 at [27] and *Lee Lay Ting Jane v Management Corporation Strata Title Plan No 3414* [2015] SGSTB 5 at [31].

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

reading the second limb in this manner. The fact that the area or installation could not be used by the occupiers of two or more units did not *a fortiori* mean that it was intended for the exclusive use of a single unit. It may not in fact be intended for the direct use of any occupier at all.[63]

20.48 A clear illustration of this were the wide ledges on which the works were located. The wide ledges were not accessible to any unit owners, the appellant included. While adjoined to the unit, they were clearly not intended for the appellant's personal use as they were originally sealed off from the unit by fixed glass panels. It was not surprising, then, that access had been blocked, as the ledges did not appear to have been safe for use. They were not meant to serve as balconies for the unit given the height of the parapet and the fact that they were not reflected as part of the unit in the strata title plan.

20.49 The High Court, in dismissing the appeal, was of the view that the appellant's argument would leave areas or installations which could not be used by the occupiers of two or more units, but which were not meant for the exclusive use of a unit, in a state of uncertainty as they would neither be common property nor form part of a unit.[64] The requirement of exclusive use was inherent in the second limb of the definition of "common property" in s 2(1) of the BMSMA and represented the true legislative intention.[65] There is much to be said for the High Court adopting the exclusive use approach in the interpretation of the second limb in the definition of "common property" in s 2(1) as it removes any uncertainty as to ownership and responsibility for maintenance.

20.50 In *The Management Corporation Strata Title Plan No 393 v China Commodity Shopping Centre Pte Ltd*[66] ("*China Commodity*"), which is discussed in greater detail below,[67] the plaintiff management corporation had sought a mandatory injunction against the defendant, a tenant and occupier of a unit, for the removal of two signboards

63 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2017] SGHC 57 at [82].

64 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2017] SGHC 57 at [85].

65 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2017] SGHC 57 at [83]. In this regard, reference was also made to the decisions in *Tsui Sai Cheong v Management Corporation Strata Title Plan No 1186* [1995] 3 SLR(R) 713, *Re Faber Garden (Strata Titles Plan No 1047)* [1993] SGSTB 1, *Management Corporation Strata Title Plan No 367 v Lee Siew Yuen* [2014] 4 SLR 445 and *Sujit Singh Gill v Management Corporation Strata Title Plan No 3466* [2015] SGSTB 2.

66 [2017] SGDC 272.

67 See paras 20.68–20.72 below.

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

erected in the balcony area of its unit. The plaintiff alleged that the defendant had breached, *inter alia*, the additional by-law 44, which prohibited a unit owner or occupier from, among other things, installing any signboard in or at any common property or at any part of the exterior wall of the subdivided building without obtaining the prior approval of the plaintiff.

20.51 In holding that the signboards were not erected on common property, the District Court was of the view that in light of the definition of "common property" in s 2(1) of the BMSMA, interpreted in *Sit Kwong Lam*,[68] the parapet wall on which the glass panels and the signboards were affixed, was not common property. From the strata title plan of the subdivided building, the external wall or the parapet wall would be part of the unit. There was also no question that the unit owner or occupier had exclusive use of the parapet wall.

20.52 This view was reinforced by s 2(9) of the BMSMA, which provides that all windows of a unit that are located on any exterior wall thereof, being either louvres, casement windows, sliding windows or windows with any movable part, will be regarded as part of the unit and not common property. In the instant case, the glass windows that were installed by the previous occupier would be considered part of the unit and not common property.

20.53 However, the defendant was in breach of the by-law, given its wider ambit, as the signboards should not be installed at any part of the exterior wall of the subdivided building. The parapet wall would form part of the exterior wall of the building.

20.54 In *The Management Corporation Strata Title Plan No 4131 v Elly*[69] ("*Elly*"), also discussed in greater detail below,[70] an order for a mandatory injunction was also sought for by the plaintiff management corporation. The order against the defendants, who were unit owners, was for the removal of an unauthorised installation, namely, a swing door connecting the defendants' roof terrace and the wall in question and to reinstate the said wall to its original state and condition. The defendants had erected the swing door at the wall surrounding the roof terrace.

20.55 One of the issues considered was whether the wall concerned was common property. The District Court correctly took the view that s 29(1)(*b*)(ii) of the BMSMA was irrelevant as it does not define what

68 See paras 20.46–20.47 above.
69 [2017] SGDC 295.
70 See para 20.73 below.

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

was common property. It merely sets out what a management corporation should or could do in respect of property, specifically in relation to certain fixtures or fittings. The same goes for r 41 of the Boundaries and Survey Maps (Conduct of Cadastral Surveys) Rules[71] ("Rule 41"), which is ultimately a rule which is in relation to defining boundaries for the purposes of conducting cadastral surveys. It is not a rule about defining what constitutes common property.

20.56 The definition of "common property" in s 2(1) of the BMSMA, as interpreted in *Sit Kwong Lam*, was the relevant provision as it defines what constitutes common property and where the two requirements stipulated therein are conjunctive. It was clear that even if s 29(1)(*b*)(ii) of the BMSMA, and/or Rule 41 were to be considered, that would at most satisfy the first of the two conjunctive requirements under the definition of "common property", namely, that the wall was not comprised in the defendants' unit. In light of the limited ways in which the wall concerned could be accessed, and taking into account the fact that no occupier other than the defendants would need to use or cross the wall, the court held that the wall was not used or capable of being used or enjoyed by occupiers of two or more units. Accordingly, the second limb in the definition of "common property" was not satisfied. Therefore, the court ruled that the wall was not common property.

### *By-laws*

20.57 In *Sit Kwong Lam*, the appellant had also, without approval of the respondent management corporation, installed timber decking on the flat roof outside his unit. It covered the flat roof entirely, including the floor trap and drainage system, making it difficult for the respondent to properly upkeep the area. The flat roof, which was demarcated as common property in the strata title plan, was accessible to all unit owners in the condominium via a common staircase. In addition, the appellant had installed an air-conditioning ventilation unit on the external wall enclosing the unit, also without approval of the respondent management corporation.

20.58 The issue for consideration was whether these works fell within statutory by-law 5(3)(*c*) in the Second Schedule to the Building Maintenance (Strata Management) Regulations 2005[72] ("BMSMR"). The High Court held that the works did not fall within the said statutory by-law. As the High Court elaborated:[73]

71 Cap 25, R 5, 2007 Rev Ed.
72 S 192/2005.
73 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2017] SGHC 57 at [99].

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

> [By-law 5(3)(*c*)] must properly be construed as allowing a subsidiary proprietor to erect a structure or device that is necessary to prevent harm to the children residing with him in his lot, rather than children generally residing in the development. Whether the common property of the strata development poses a risk to the safety of children in general is the responsibility of the management corporation and a matter for its assessment and action. By-law 5(3)(*c*) cannot be a licence for individual occupiers to take matters into their own hands and reconstruct parts of common property to a standard of safety that they find satisfactory, simply because their children are amongst the possible users of those parts.

20.59 It is respectfully submitted that the High Court was correct in its observations. On the evidence, it could not be said that the works undertaken were intended to prevent harm to the appellant's children. In regard to the installation of the timber decking, access to the flat roof was intended only for maintenance purposes by the respondent's staff and there was hence no reason for the appellant's children to frequent it for play. As for the air-conditioning unit, there was insufficient evidence of a direct correlation between its installation and the prevention of harm to the appellant's children. No evidence was adduced to suggest that the air quality within the unit posed a risk of harm to the appellant's children or that the installation of the air-conditioning unit removed this risk.

20.60 Having regard to case law,[74] the High Court also held that the installation of the air-conditioning ventilation unit amounted to exclusive use of the common property within the meaning of s 33 of the BMSMA,[75] which requires the passing of the requisite resolution. Section 58(4)(*a*) of the same Act was also of no assistance to the appellant as it restricts the council of the management corporation from taking decisions which may only be made, *inter alia*, by the management corporation in a general meeting.[76] A by-law conferring exclusive use not exceeding one year under s 33(1)(*a*), which must be passed by ordinary resolution, is thus a restricted matter. Parliament clearly chose

74 See *Mark Wheeler v Management Corporation Strata Title Plan No 751* [2003] SGSTB 5, *Anne Lee Heng t/a Tian Hup Chan Warehousing v Management Corporation Strata Title Plan No 1360* [2011] SGSTB 1 and *Yap Sing Lee v Management Corporation Strata Title Plan No 1267* [2013] SGSTB 10.

75 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2017] SGHC 57 at [105].

76 Section 2(2) of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) provides that a motion is passed by ordinary resolution if it is passed at a "duly convened general meeting" of the management corporation with the requisite proportion of votes. An ordinary resolution must therefore be taken at a general meeting of the management corporation, and is hence a "restricted matter" within s 58(4) of the same Act.

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

not to allow the management council to unilaterally convert common property to the exclusive use of individual unit owners by retaining a procedural safeguard for the making of exclusive use by-laws not exceeding one year in duration.

20.61 The High Court also perceptively noted that, just because an installation did not result in exclusive use of common property, it did not automatically mean that the work was authorised or permitted as the written approval of the respondent was still required under statutory by-law 5 and the relevant additional by-laws.[77] In other words, the absence of exclusive use did not in itself create an entitlement to install works on common property. This is because whether or not an installation results in exclusive use only goes to whether a by-law conferring such exclusive use is required under s 33 of the BMSMA.

20.62 In *The Management Corporation Strata Title Plan No 3250 v Yan Wen Ting*,[78] the plaintiff, the management corporation of the strata development (property) in question, commenced proceedings against the defendant, an occupier of a unit therein, seeking a mandatory injunction to have the defendant's dog removed from the property. This was on the ground that the defendant's dog caused annoyance to the owners or occupiers of other units and the defendant was thereby in breach of the plaintiff's by-laws. The two issues for determination were: (a) whether the defendant was in breach of by-law 14 of the Second Schedule of the BMSMR; and (b) if the answer to (a) was in the affirmative, whether a mandatory injunction should be granted in the circumstances.

20.63 The District Court took the view that the statutory by-law 14, pertaining to the keeping of animals in a unit or on the common property, be accorded an objective interpretation. This would prevent by-law 14 being abused or misused by unreasonable unit owners or those with particular sensitivities, phobias or aversions towards certain animals. Some of the considerations to take into account in determining if by-law 14 has been breached (with the touchstone being that of reasonableness) would include (a) the type of animal in question and the particular characteristics, behavioural traits and habits of the animal, (b) whether the owner of the animal has acted reasonably and responsibly towards ensuring that it does not cause annoyance to other unit owners and occupiers, (c) the extent to which the animal has actually caused annoyance to other unit owners and occupiers, and (d) the idiosyncrasies of the complainant and in particular, whether the

77 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2017] SGHC 57 at [120].

78 [2017] SGDC 175.

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

complainant has any particular sensitivities, phobias or aversions towards the animal in question.[79]

20.64 On the evidence, the District Court held that the defendant had not breached by-law 14. The defendant had taken steps to be a more responsible dog-owner. This included engaging an Agri-Food and Veterinary Authority-accredited dog-trainer to teach her how to better manage the dog and ensuring that her dog is leashed in common areas. Apart from the complainant's family, there was no evidence that other unit owners or occupiers of the property had complained about the defendant's dog.

20.65 In any event, the District Court did not think it was appropriate for a mandatory injunction to be granted in the present case. The court correctly applied the principle that it is required to balance the interests of the parties, taking into account the benefits and burdens to both sides, in order to achieve a fair and equitable result having regard to all the circumstances of the case. For the applicable case law, the court had regard to *Choo Kok Lin v Management Corporation Strata Title Plan No 2405*[80] ("*Choo Kok Lin*") for the principle that the court will grant a mandatory injunction to redress a breach which is already accomplished, unless (a) the plaintiff's own conduct would make it unjust to do so; and (b) the breach was trivial or had caused no damage or no appreciable damage to the plaintiff and a mandatory injunction would impose substantial hardship on the defendant with no counterbalancing benefit to the plaintiff.

20.66 Applying the above principles to the facts of the case, the District Court found that the plaintiff's application appeared to be based entirely on the complaints made by one unit owner's family. The complaints appeared to be motivated by the acrimony between the two neighbours and lack objectivity. The defendant had proposed that parties meet to amicably resolve the issues between them but was ignored. The plaintiff or the complainant's family had suffered no appreciable damage. In addition, the defendant had since taken reasonable and positive steps towards improving the situation. The grant of a mandatory injunction to remove the defendant's dog from the property would be disproportionate to the alleged complaints as such. In light of this reasoning, the plaintiff's application was dismissed.

20.67 The mere fact that the defendants would have to bear the cost of removing the unauthorised installations did not necessarily preclude the

---

79 *The Management Corporation Strata Title Plan No 3250 v Yan Wen Ting* [2017] SGDC 175 at [27].

80 [2005] 4 SLR(R) 175 at [55]–[56].

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

grant of a mandatory injunction. The expenses, in financial terms, to dismantle the glass panels did not amount to substantial hardship to the defendants. Ultimately, a balancing exercise was undertaken in weighing the hardship to the defendants against the benefits to the plaintiff. And, consequently, the order sought was granted.

20.68 The grant of a mandatory injunction in respect of the breach of by-laws was also considered in *China Commodity*. The defendant had erected two signboards in the balcony area of its unit. The signboards were directly above two large JCDecaux billboards. The plaintiff management corporation commenced proceedings seeking a mandatory injunction that the defendant removed the signboards. The plaintiff alleged that the signboards were erected without the plaintiff's approval and ran afoul of its additional by-laws and governmental regulations.

20.69 The District Court found that the defendant was in breach of a number of the plaintiff's additional by-laws. The defendant's refusal to remove the signboards amounted to a continuing breach of by-law 24, which required a unit owner or occupier to obtain the plaintiff's prior approval in respect of any renovation, addition or alteration works carried out to the unit. In addition, the defendant was in breach of reg 3(1)(*b*) of the Building Control (Outdoor Advertising) Regulations[81] ("BCA Regulations"), which required the defendant to have a licence from the Building and Construction Authority ("BCA") to erect the signboards.

20.70 The defendant was also in breach of the plaintiff's additional by-law 33(1)(*b*) pertaining to any addition or installation within a unit in a manner which would affect the façade of the subdivided building. The word "affect" would encompass any situation where the addition or alteration has an effect on or made a difference to the external façade of the building. There was no question that the addition of two signboards would have changed the appearance of the external façade given that they were prominent, conspicuous and were plainly visible from a distance.

20.71 In light of the defendant's breaches of the by-laws above, the court went on to consider whether a mandatory injunction should be granted to compel the defendant to redress the same applying the principles noted above.[82]

20.72 In allowing the plaintiff's application, the District Court found that neither limb of the test laid down in *Choo Kok Lin* was made out.

81 Cap 29, Rg 6, 2004 Rev Ed.
82 See para 20.65 above.

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

Having regard to the evidence, the plaintiff's own conduct did not make it unjust to grant the mandatory injunction. There was no delay by the plaintiff in the conduct of the matter. As soon as the plaintiff discovered the signboards, it wrote to the defendant to raise its objections. Overall, the plaintiff's conduct did not deserve reproach such that it should be denied the mandatory injunction sought. By refusing to remove the signboards, the defendant continued to be in breach of the BCA directions and Regulations which could not be considered trivial. Owing to the erection of the signboards by the defendant, the plaintiff was potentially in breach of its agreement with JCDecaux, which could result in financial losses to the plaintiff. The defendant would not suffer any substantial hardship if the mandatory injunction was granted as any prejudice to the defendant would be limited to the expenses that would have to be incurred in removing the signboards. The counter-balancing benefit to the plaintiff would be the recognition of the plaintiff's authority and powers to enforce its additional by-laws and to control the appearance of the external façade of the building.

20.73 In *Elly*, there was also a breach of additional by-laws and the court had to consider whether a mandatory injunction should be granted. The plaintiff had commenced proceedings against the defendants for an order that the latter remove the unauthorised installation, namely, a swing door connecting the roof terrace of the defendants' unit and the common property and to reinstate the common property to its original state and condition. The District Court found that the defendants had breached the additional by-laws in not seeking approval from the plaintiff before carrying out renovation works, even if the proposed works would be carried out within the defendants' unit. However, the plaintiff's claim for a mandatory injunction was dismissed by the court. Notwithstanding that the erection of the swing door was a breach of the additional by-laws, the court found it caused no or no appreciable damage to the plaintiff and the granting of the mandatory injunction would impose substantial hardship on the defendants with no counter-balancing benefit to the plaintiff. Even if there was any counter-balancing benefit that the plaintiff might enjoy, that could be adequately addressed by the indemnity provided by the defendants. As a result, the court ordered the defendants to indemnify the plaintiff against, *inter alia*, losses relating to the common property on the roof, owing to the installation of the swing door.

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

### *Jurisdiction of Strata Titles Board with respect to consents affecting common property*

20.74 In *Sit Kwong Lam*, the appellant had submitted that s 111(*a*) of the BMSMA allowed the Board to order the respondent to retrospectively consent to works, discussed above,[83] that had already been carried out without consent. The High Court, while of the view that the provision operates prospectively, nevertheless, agreed with the approach adopted in *Proprietors of Strata Plan No 1627 v Schultz*[84] and opined that an appellant could avail himself of the provision where the works had been carried out without prior approval. However, the court:[85]

> [Must] approach the application as if the work in question had not been carried out instead of accepting the work as a *fait accompli*. The court must freshly consider the merits of the application without attributing any weight whatsoever to the fact that resources have already been expended on carrying out the work, since it was undertaken without sanction.

As the court further elaborated:[86]

> After all, it would be a needless waste of resources to require the subsidiary proprietor to first dismantle the installations before presenting a second application to the Board, only for the Board to then order the management corporation to consent to the works. It is far more sensible for the Board to consider the proposal *de novo*, without regard to any financial hardship that would be occasioned to the subsidiary proprietor in the event that consent is withheld.

20.75 Having regard to the evidence, the respondent had not acted unreasonably in withholding consent to the works carried out by the appellant. For example, as noted above, the installation of timber decking on the flat roof made it difficult for the respondent to properly upkeep the area as it obstructed the floor trap and drainage system. In regard to the replacement of the fixed glass panels by the appellant, they were not meant to be removed and the ledges not meant to be accessed. They were fixed for a purpose, namely, to prevent access by the occupants of the unit, presumably for safety reasons. In addition, the general body of unit owners had withheld its support for the appellant's intended use of the property during an annual general meeting.

83 See para 20.46 above.

84 (1978) 2 BPR 9443.

85 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2017] SGHC 57 at [123].

86 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2017] SGHC 57 at [127].

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

### *Improvements and additions to units*

20.76 In *Sit Kwong Lam*, the appellant had also submitted that the Board had erred in finding that the respondent could not authorise the works carried out as they were not improvements "in or upon" the appellant's unit within the meaning of s 37(4) of the BMSMA. In rejecting the appellant's contention, the High Court held that the provision was not intended to regulate improvements to common property and should be restricted to improvements within a given unit or within areas for the exclusive use of the appellant's unit although not comprised in any unit which would not constitute common property. Given the scope of the provision, it was clear that, as it did not apply to works on common property, the Board could not have under the BMSMA ordered the respondent to consent to the unauthorised works carried out by the appellant.

### *Duty of member of council*

20.77 In *Fu Loong Lithographer Pte Ltd v Mok Wing Chong*[87] ("*Fu Loong Lithographer*"), the plaintiffs, who were unit owners in the strata development, commenced proceedings against the defendant, alleging breach of duties on his part as the chairman and a member of the Council of the management corporation. This was in respect of, *inter alia*, certain works undertaken by the management corporation as well as the appointment of MH Asia as managing agent without having been authorised to do so and without disclosing his pecuniary interest in MH Asia.

20.78 The High Court dealt with the preliminary issue of whether the plaintiffs were the proper plaintiffs to bring the action against the defendant. The plaintiffs' submitted that the action was a personal one which they were bringing in their own names against the defendant. The court ruled that the claims by the plaintiffs were properly within the remit of the management corporation, and not the plaintiffs, to prosecute. If the personal action by the plaintiffs were permitted, there was the risk of double recovery in respect of the defendant's alleged breach of duty.[88] On the facts and in the circumstances of the case, the court also held that the plaintiffs had not established their entitlement to maintain a derivative action against the defendant on behalf of the management corporation. Nevertheless, in the event that it was wrong in its conclusions as to the plaintiffs' *locus standi* to prosecute the action,

---

87 [2017] SGHC 97.

88 *Fu Loong Lithographer Pte Ltd v Mok Wing Chong* [2017] SGHC 97 at [77].

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

the court went on to consider if the plaintiffs had established their claims in the action.

20.79 Having regard to the facts of the case, the court found that all the unit owners in the management corporation acquiesced in the procedural deficiencies in the meetings of the Council and raised no objections to the decisions made by the Council on works to the development. Hence, the fact that the unit owners were provided with inadequate notice of certain meetings of the Council did not invalidate the decisions of the Council made at those meetings.[89] In other words, the works were in fact authorised or at the very least agreed to by the unit owners of the management corporation. There was also no unequal treatment of the plaintiffs in relation to these works. Further, the court also found that the unit owners in passing the ratification resolutions had ratified the expenditure on the works set out in the audited financial reports, which amounted to a ratification of the individual expenditure items therein.

20.80 However, in relation to the appointment of MH Asia, the court held that the defendant had a material interest therein[90] as he was, *inter alia*, a director of MH Asia. In addition, he was a shareholder of MH Asia (and MH Realty before that) as well as chairman of the management corporation. Yet, he neither placed the appointment of MH Asia before nor declared his interest in MH Asia to either the Council or the unit owners in a general meeting. Instead, he appointed MH Asia unilaterally and kept the Council and the unit owners in the dark. Further, he procured the retrospective payment of $6,000 to MH Asia for work done.[91] He, thus, used his position to gain, directly or indirectly, an advantage for himself or MH Asia, which was a breach of duty under ss 60 and 61 of the BMSMA as well as at common law.[92] In the result, the court granted the declaration sought by the plaintiffs that the defendant breached his duty as chairman in the appointment of MH Asia.

### *Managing agent or agent simpliciter?*

20.81 In *Fu Loong Lithographer*,[93] another issue for consideration of the High Court concerned the status of MH Asia – was it appointed by the management corporation as a managing agent or employed as an

89 *Fu Loong Lithographer Pte Ltd v Mok Wing Chong* [2017] SGHC 97 at [133].
90 *Fu Loong Lithographer Pte Ltd v Mok Wing Chong* [2017] SGHC 97 at [227].
91 *Fu Loong Lithographer Pte Ltd v Mok Wing Chong* [2017] SGHC 97 at [229].
92 See *Re Steel v The Conveyancing (Strata Titles) Act, 1961* (1968) 88 WN (Pt 1) (NSW) 467 at 470.
93 See paras 20.77–20.80 above.

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

agent *simpliciter* to carry out tasks on the management corporation's behalf under r 12 of the BMSMR?[94] If it was the former, approval of the Council or a general meeting was required[95] but not for the latter. Much would depend on the nature of the powers, duties, and functions delegated. Having regard to the evidence, the court, in rejecting the plaintiffs' contention, was of the view that MH Asia was not appointed as a managing agent as it performed only administrative and book-keeping services for the management corporation. Further, the payment vouchers made out to MH Asia reflected the provision of only administration and book-keeping services.

### *Collective sales*

20.82 In *Ramachandran Jayakumar v Woo Hon Wai*,[96] the appellants objected to the collective sale of Shunfu Ville (the property) in which they were unit owners. The property had initially been put up for sale by public tender followed by a second one both at $688m but failed to attract any formal bids. It was subsequently sold by private treaty to a developer for $638m. The High Court had approved the sale[97] and the appellants appealed. The two main reasons on which the appeal was grounded were (a) the collective sale was not conducted in good faith, taking into account the sale price that was obtained having regard to s 84A(9)(*a*)(i)(A) of the Land Titles (Strata) Act[98] ("LTSA"), and (b) the collective sale committee ("CSC") had acted *ultra vires* in making the collective sale application.

20.83 In dismissing the appeal, the Court of Appeal held that the transaction was conducted in good faith. The entire circumstances of the transaction, taking into account the factors set out in *Ng Eng Ghee v Mamata Kapildev Dave*,[99] had to be considered holistically. No one factor in and of itself is indicative of wrongdoing. A collective sale transaction is less likely to be refused approval in the absence of any improper motives, conflict of interest or unfairness towards the unit owners.[100]

20.84 In regard to the "best price" to be obtained, this is a fact-sensitive inquiry, namely, whether the price was appropriate in the

---

94 S 192/2005.
95 Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) s 66(1).
96 [2017] 2 SLR 413.
97 *Woo Hon Wai v Ramachandran Jayakumar* [2017] 4 SLR 74.
98 Cap 158, 2009 Rev Ed.
99 [2009] 3 SLR(R) 109.
100 *Ramachandran Jayakumar v Woo Hon Wai* [2017] 2 SLR 413 at [61(a)] and [61(b)].

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

circumstances. The appellants, who sought to show that the price obtained was not an appropriate one, should particularise the steps that should have been but were not taken and explain how the taking of those steps would have realised a better price.[101] This, the appellants failed to do as no evidence was led to show that the sale price of $638m concluded by the CSC with the developer was inappropriate or reflected an undervalue in the prevailing circumstances.[102] The LTSA did not require a private treaty sale to be preceded by a public tender at the same price.[103]

20.85 That the CSC committed to negotiating exclusively with the developer was not indicative of a breach of duty on the part of the former to achieve the best price reasonably obtainable given that this was dependent on the facts. For the CSC to do otherwise did not guarantee that a better offer would come along. It would also have resulted in the loss of the developer's offer.[104]

20.86 The CSC also did not act *ultra vires* in making the collective sale application. The Court of Appeal rejected the contention that the 80% majority consent had not been obtained within the permitted period laid down in the LTSA[105] and this rendered the collective sale agreement ("CSA") null and void. The requisite 80% majority consent had been obtained by then, just that the CSA was subsequently varied in accordance with its own provisions in order to obtain a fresh mandate for a new reserve price.[106] There was, thus, no issue of non-compliance with the provisions of the LTSA. It is respectfully submitted that the Court of Appeal's interpretation in this regard is to be welcomed as otherwise, it would give rise to greater inconvenience to the unit owners, especially where there remain sufficient support for the sale, to begin afresh the collective sale process. As the Court of Appeal had observed,[107] there was nothing in the relevant parliamentary debates and legislative materials to suggest that the legislative purpose of the LTSA would be undermined if such an interpretation were to be adopted.

20.87 The Court of Appeal agreed with the appellants' contention that the group of unit owners who made the application for collective sale must come from the very same group who had signed the CSA within

101 *Ramachandran Jayakumar v Woo Hon Wai* [2017] 2 SLR 413 at [61(c)].
102 *Ramachandran Jayakumar v Woo Hon Wai* [2017] 2 SLR 413 at [73].
103 *Ramachandran Jayakumar v Woo Hon Wai* [2017] 2 SLR 413 at [67]; see also Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) Third Schedule, para 11.
104 *Ramachandran Jayakumar v Woo Hon Wai* [2017] 2 SLR 413 at [76].
105 See Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) First Schedule, paras 1(*a*) and 2(1)(*a*)(i) and 2(1)(*a*)(ii).
106 *Ramachandran Jayakumar v Woo Hon Wai* [2017] 2 SLR 413 at [79].
107 *Ramachandran Jayakumar v Woo Hon Wai* [2017] 2 SLR 413 at [83].

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

the permitted period. However, where the CSA itself contained a contractual provision that permitted the application to be brought on behalf of a differently constituted group of unit owners than the group which signed the original CSA, there was no basis for holding that such an arrangement would be contrary to the scheme envisaged by the LTSA.[108] That being so, the CSC did not act *ultra vires* in the collective sale application.

## Sale of land under court order

20.88 In *Krishnamal d/o Rajoo v Sucila d/o Rajoo*,[109] the plaintiff applied for the sale of the property of which she was the joint owner with the defendant, her sister, and for an equal share of the net sale proceeds. The application was made under s 18(2) of the Supreme Court of Judicature Act[110] ("SCJA") read with para 2 of the First Schedule to the SCJA. The defendant contended that the plaintiff had no share in the property as the latter had agreed to divest her interest therein after the defendant had repaid the plaintiff $50,000 as her contribution towards the purchase of the property. The plaintiff denied that the parties had entered into any such agreement. She also denied that the defendant had repaid her contribution.

20.89 The High Court, in allowing the application, found that the parties had purchased the property on the agreed basis that the plaintiff would be a joint owner and obtain a half share in the property when it was sold. In other words, there was no agreement that the plaintiff's interest was limited to her contribution in the purchase of the property. If it was the understanding that the plaintiff was not to have a share in the property, it was difficult to comprehend why the defendant allowed the plaintiff to make any financial contribution towards the purchase price when the defendant had sufficient funds to make the purchase on her own.[111]

20.90 The court also found that the defendant did not repay the plaintiff her financial contribution towards the purchase of the property. There was no documentary evidence to support any repayment. In this regard, the court did not accept the defendant's evidence and preferred the plaintiff's evidence which was clear and consistent.

---

108 *Ramachandran Jayakumar v Woo Hon Wai* [2017] 2 SLR 413 at [85].
109 [2017] SGHC 173.
110 Cap 322, 2007 Rev Ed.
111 *Krishnamal d/o Rajoo v Sucila d/o Rajoo* [2017] SGHC 173 at [19].

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

## Compulsory acquisition

20.91 In *Ahmad Kasim Bin Adam*,[112] the applicant had also applied for a declaration that the award under s 10 of the Land Acquisition Act[113] ("LAA") was invalid and to be set aside for being null and void. The third and fourth respondents had argued that the award was properly made and the applicable legislation was that as amended up to 27 November 1987 (the date of the declaration in the Government Gazette) – that is, the LAA 1987.

20.92 The High Court was in agreement that the applicable legislation was the LAA 1987, given that the land was declared in the Government Gazette as being required for a public purpose on 27 November 1987. Further, the court was satisfied that the Collector of Land Revenue had duly complied with all the relevant provisions thereunder. Since the applicant and his father never made a claim on the land or for compensation at the material time, there was no requirement to serve the award on the applicant and his father. As the award was final under s 11(1) of the LAA 1987, no suit shall be brought to set aside the award as provided in s 53 of the LAA 1987. On that account, the application was dismissed.

112 See paras 20.35–20.37 above.
113 Cap 152, 1985 Rev Ed.

© 2018 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.