20. LAND LAW

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Co-ownership

Severance of joint tenancy

20.1 In *Tien Choon Kuan v Tien Chwan Hoa*,[1] the plaintiff and defendant had purchased a Housing & Development Board ("HDB") flat as joint tenants. Later, the plaintiff severed the joint tenancy to create a tenancy in common in equal shares. Subsequently, the plaintiff applied by way of originating summons ("OS") for an order to rectify the land register to reflect the manner of holding in unequal shares based on the parties' relative contributions to the flat, namely, 94.4% to the plaintiff and 5.6% to the defendant. The application was dismissed given its potentially contentious nature and the plaintiff was ordered to convert the OS into a writ action so that the relevant evidence could be adduced in court.[2]

20.2 The present application for judgment in default of the defendant's appearance and defence was also dismissed by the High Court. It was not satisfied that the plaintiff's claim was properly served on the defendant. In addition, several issues raised by the plaintiff had to be ventilated at trial which the court ordered.

20.3 In directing that the plaintiff's action proceed to trial, the court made some pertinent observations on the severance of a joint tenancy. The plaintiff had argued that he made a "mistake" when he severed the joint tenancy as tenants in common in equal shares. This was rejected by the court as the law in s 53(6) of the Land Titles Act[3] ("LTA") only permitted him to sever the joint tenancy unilaterally into tenants in common in equal shares. There was, thus, no "mistake" on the plaintiff's part. To allow the plaintiff's application to reflect the manner of holding in unequal shares would unfairly vary the proprietary interest of the

1 [2016] SGHC 16.
2 *Tien Choon Kuan v Tien Chwan Hoa* [2015] SGHC 155.
3 Cap 157, 2004 Rev Ed.

defendant unilaterally, contrary to s 53(6). This must be correct as the other co-owner might not have a chance to dispute the matter.[4]

20.4 While s 53(7) of the LTA empowers a court to declare that the co-owners hold the property in shares proportionate to their initial contributions to the purchase price in equity, there are issues of law to be addressed, such as that pertaining to the "relevance of a resulting trust in the case of a HDB property, where social and legislative policies may contradict the use of a resulting or any trust".[5] As the court correctly pointed out, these issues cannot be dealt with in an application for default judgment.

Sale in lieu of partition

20.5 The Court of Appeal in *Su Emmanuel v Emmanuel Priya Ethel Anne*[6] ("*Su Emmanuel*") laid down several helpful guidelines on whether a court should order a sale of property in lieu of partition under s 18(2) read with para 2 of the First Schedule to the Supreme Court of Judicature Act ("SCJA").[7]

20.6 The appellant and the second respondent, who were wife and husband respectively, purchased the property in question with a bank loan and the property was registered in their joint names. The appellant did not contribute towards the acquisition of the property nor service the mortgage. Later, the second respondent lost his job and started falling behind in mortgage repayments, His sister, the first respondent, was prepared to assist him on this. She purchased 49% from the second respondent's share of the property. As a result, the interest of the parties in the property as reflected in the certificate of title were 50%, 49%, and 1% in favour of the appellant, first respondent, and second respondent respectively. Clause 10 of the sale and purchase agreement between the first and second respondents, in essence, provided that the first respondent would not evict the appellant and her children from the property. Subsequently, the first respondent applied, *inter alia*, for an order that the property be sold, which was granted by the High Court and the appellant appealed.

4 *Singapore Parliamentary Debates, Official Report* (25 July 2001), vol 73 at col 1919 (Ho Peng Kee, Minister of State for Law).
5 *Tien Choon Kuan v Tien Chwan Hoa* [2016] SGHC 16 at [12].
6 [2016] 3 SLR 1222.
7 Cap 322, 2007 Rev Ed.

20.7 After reviewing the authorities on the court's power to order a sale in lieu of partition, the Court of Appeal laid down the following helpful guidelines:[8]

> (a) In deciding whether it is necessary or expedient for a sale to be ordered in lieu of partition, the court conducts a balancing exercise of various factors, including (i) the state of the relationship between the parties (which would be indicative of whether they are likely to be able to co-operate in the future); (ii) the state of the property; and (iii) the prospect of the relationship between the parties deteriorating if a sale was not granted such that a 'clean-break' would be preferable.
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> (b) Regard should be had to the potential prejudice that the various co-owners might face in each of the possible scenarios, namely, if a sale is granted and if it is not granted.
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> (c) A sale would not generally be ordered if to do so would violate a prior agreement between the co-owners concerning the manner in which the land may be disposed of.

20.8 Applying these guidelines to the facts, the court found that the appellant and the first respondent were not on speaking terms for more than a decade, making it difficult for the parties to co-operate if they remained co-owners of the property. In addition, the prejudice to the first respondent if the property was not sold would outweigh that which the appellant would suffer if the property were sold. The first respondent had expended a substantial amount of her income and savings on the property and would almost certainly be made a bankrupt if she was unable to realise any value from the property. This was because she was facing difficulties in meeting the loan repayments as she could no longer use the moneys in her CPF account. In the appellant's case, she did not stand to suffer comparable prejudice. With the sale, she would be able to realise her value in the property and look for alternative accommodation. Furthermore, she might be able to get assistance from her older two children who were working. In light of the foregoing, the first respondent was *prima facie* entitled to an order for sale of the property.

20.9 In regard to cl 10 of the sale and purchase agreement, the court was of the view that it was not concerned with the circumstances or manner in which the property could be disposed of. Instead, it dealt with the separate question as between the appellant and the first respondent of the occupation of the property by the appellant and her children. As the court explained: "cl 10 was drafted and inserted into the SPA, not to address any question of the *sale* of the Property, but rather to assuage [the appellant]'s fear that the first respondent would attempt to

8 *Su Emmanuel v Emmanuel Priya Ethel Anne* [2016] 3 SLR 1222 at [57].

evict her and her children from the property and attempt to take possession of it once the first respondent became a co-owner" [emphasis in original].[9] The court had also correctly observed that if the first respondent were to be adjudged a bankrupt, cl 10, even on the basis of the appellant's interpretation, would not have prevented the official assignee from seeking an order for the sale of the property in order to meet the claims of the first respondent's creditors.[10] The appellant's subjective and mistaken belief that she would be able to block any sale of the property by her insistence on holding a half-share of the property was not relevant to the exercise of the court's discretion as to whether it should grant a sale in lieu of partition. In the circumstances, the first respondent would not be acting in a manner inconsistent with her contractual obligations by seeking an order for sale.

20.10 The decision in *Su Emmanuel* can also be seen to highlight the point that the court will not ordinarily make an order which will effectively override or modify the terms of an agreement that has been struck between the parties. Accordingly, where a co-owner seeks an order for sale of a property in circumstances where this will be contrary to terms that the parties have already agreed on, the existence of such an agreement must at least be a weighty consideration for the court in determining whether a sale ought to be granted.

20.11 The guidelines laid down in *Su Emmanuel* noted above were adopted in the following two High Court cases.

20.12 In *Foo Jee Boo v Foo Jee Seng*,[11] the court had earlier established that the plaintiff's and defendant's legal and beneficial interests in the property, which they held as tenants in common, were 44% and 56% respectively. Having regard to the facts, the court found that neither party was residing in the property. The relationship between the parties was acrimonious. Hence, it was difficult for the parties to co-operate in respect of matters concerning the property. As it was fair for the property to be sold, the court ordered so accordingly, and that, *inter alia*, the proceeds of sale be divided in the proportion of their respective interests of 44% and 56% in the property.

20.13 In *Cheong Woon Weng v Cheong Kok Leong*,[12] the court had held that the oral agreement entered into between the plaintiff and the defendant 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 in

9 *Su Emmanuel v Emmanuel Priya Ethel Anne* [2016] 3 SLR 1222 at [63].
10 *Su Emmanuel v Emmanuel Priya Ethel Anne* [2016] 3 SLR 1222 at [74].
11 [2016] SGHC 225.
12 [2016] SGHC 263.

equal shares. In ordering the property to be sold pursuant to s 18(2) of the SCJA read with para 2 of the First Schedule thereto, the court took into consideration the principles in *Su Emmanuel*. The court was of the view that the order for sale was in accordance with the parties' oral agreement that the property be sold a few years after its purchase to realise their investment. The defendant's refusal to abide by the parties' agreement in this respect contributed to a deterioration of their relationship, such that they could no longer co-operate with each other. In addition, there was no serious prejudice to the defendant as he could use the proceeds of the sale to purchase another property.

Leases

Right of forfeiture

20.14 Various established principles in respect of the right of forfeiture were reiterated by the High Court in *Syed Ahmad Jamal Alsagoff v Harun bin Syed Hussain Aljunied*.[13] The plaintiffs had brought proceedings against the defendants, claiming that they were the beneficial owners of the leasehold interests in the three properties in question. The defendants, claiming as trustees of the properties, contended that the lease had been terminated on account of, *inter alia*, non-payment of rent by the plaintiffs and their predecessors in title. The relevant clause in the lease contained, *inter alia*, an obligation to pay rent which, if unpaid for three months after it was due, entitled the landlord to re-enter and levy rent on the goods found on the properties or sell part of the premises.

20.15 The plaintiffs had argued that the obligation to pay rent was not a condition of the lease, but only a covenant. It was further contended that the provision did not operate as a forfeiture clause as it only provided for re-entry to levy distress. The defendants, on the other hand, argued that they had the right of forfeiture under the lease on non-payment of rent and that valid notice of re-entry had been given. The lease was, thus, terminated and the reversionary interest was free of the claimed leasehold interests.

20.16 The High Court found that non-payment of rent did not in itself give the defendants a right to forfeit. Forfeiture could only be done if either the payment of rent was specified to be a condition of the lease or the right of forfeiture for non-payment of rent was specifically expressly provided for under the terms of the lease, neither of which was present in the instant case. In addition, the term "condition" was not

13 [2017] 3 SLR 386.

present in the lease. Properly interpreted, the relevant clause only provided for a right of re-entry that was specifically limited for the purpose of distraining goods to make good the arrears in rent. The fact that the lease tied re-entry to distraining for unpaid rent also pointed against non-payment of rent as being a condition of the lease. In the circumstances, the lease claimed by the plaintiffs continued to subsist.

20.17 It should be noted that, even if there was a right of forfeiture, formal demand would be required to forfeit the lease, unless provided otherwise therein. While s 93(1)(*d*)(i) of the LTA does provide for re-entry without formal demand by way of implied power conferred in a lessor, the present case was not governed by the said statute.

Easements

20.18 The Court of Appeal decision on implied easement in *Muthukumaran s/o Varthan v Kwong Kai Chung*[14] was discussed in a previous review.[15]

Indefeasibility of title

Effect of registration

20.19 In *Chia Hang Kiu v Chia Kwok Yeo*[16] ("*Chia Hang Kiu*"), the defendants were husband and wife who held the property as tenants in common in equal shares. This came about as a result of various transfers effected earlier by the husband and the plaintiffs, who were his siblings. In the present action, the plaintiffs claimed that the defendants held two-thirds of the property on trust which arose in their favour.

20.20 The High Court correctly held that as registered proprietors, the defendants had *prima facie* indefeasibility of title in respect of the property. Accordingly, the burden of proof was on the plaintiffs who were asserting an unregistered interest against the defendants' registered title to "prove the exceptional circumstances in the LTA, as a result of which the presumption of indefeasibility of title is displaced".[17] As a result, the plaintiffs failed to discharge the burden of showing that they had a beneficial interest in the property under constructive and/or resulting trust and their claims were, accordingly, dismissed.

14 [2016] 1 SLR 1273.
15 (2015) 16 SAL Ann Rev 540 at 542–544.
16 [2016] SGHC 198.
17 *Loo Chay Sit v Estate of Loo Chay Loo, deceased* [2010] 1 SLR 286 at [14].

Exceptions to indefeasibility

20.21 The various statutory exceptions to indefeasibility in the LTA were considered in *Peh Kah Chan v Tan Chong Realty (Pte) Ltd*.[18] The plaintiff had earlier purchased two shophouses which were situated on part of a larger property in question. The plaintiff did so after the vendors had allegedly assured him that his purchase included the land at the front and at the rear of the two shophouses. Subsequently, the defendant came to own the whole of the said property. The defendant acknowledged the plaintiff's interest as purchaser and equitable owner of the two shophouses on the property. After the subdivision of the property, the defendant became the owner of the frontage and backyard of the two shophouses. In proceedings brought by the plaintiff against the defendant, the former made a claim to the frontage and backyard of his two shophouses.

20.22 The High Court had no hesitation in dismissing the plaintiff's claim for adverse possession as it was statute-barred under s 9(3) of the Limitation Act.[19] In addition, s 50 of the LTA had abolished such claims in 1993.

20.23 As the frontage and backyard of the two shophouses were now vested in the defendant, the plaintiff, in order to succeed on his claim, had to show that the relevant statutory exceptions to indefeasibility in the LTA applied. The statutory exception in s 46(2)(*a*) of the LTA, pertaining to fraud, was inapplicable. The court found that there was no evidence to suggest that the defendant was guilty of any fraud which rendered it unconscionable for the defendant to retain ownership of the frontage and backyard of the two shophouses.

20.24 As for the statutory exception pertaining to contract in s 46(2)(*b*) of the LTA, the court held that the plaintiff had no privity of contract with the defendant that would, under s 46(2)(*b*), enable him to enforce against the defendant any representations that were allegedly made to him by the vendors. As a result, the plaintiff's claim was dismissed.

20.25 It would be pertinent to note that the scope of the contract exception is of much wider application as it does not necessarily only apply to a situation involving the immediate parties to a contract. A third party need not be a party to the contract in question and yet can enforce it against the registered proprietor so long as the latter is a party

18 [2016] SGHC 135.
19 Cap 163, 2004 Rev Ed.

thereto. This brings to mind the remedy of a third party at general law conferred pursuant to the Contracts (Rights of Third Parties) Act.[20]

20.26 In *Chia Hang Kiu* discussed above, the High Court had commented that even if the plaintiffs could prove that a trust arose in their favour, there remained the question whether the trust proven came within the exceptional circumstances in the LTA, such as to be legally capable of defeating the defendants' registered title. This brings into focus the trust statutory exception to indefeasibility provided in s 46(2)(*c*) of the LTA. The issue is whether resulting trusts and constructive trusts similarly come within the ambit of the provision. This is complicated by the ruling in the Court of Appeal decision in *United Overseas Bank Ltd v Bebe bte Mohammad*[21] that s 46(2)(*c*) only applies to express trusts. Bebe had also expressed its dislike for the application of personal equities existing outside the LTA, such as constructive trusts, as this goes against the policy objectives of the LTA to reduce uncertainty and to give finality in land dealings.[22]

Strata title

Action in tort by management corporation: defence of independent contractor; non-delegable duties

20.27 The issue pertaining to the defence of an independent contractor, among others, arose for consideration again in *Management Corporation Strata Title Plan No 3322 v Mer Vue Developments Pte Ltd*[23] ("*Mer Vue Developments*"). The plaintiff management corporation ("MC") sued the defendants (comprising the developer, the main contractor, the architects, and the engineers) in tort for defects in the common property of the condominium. To save time and costs, the High Court heard, *inter alia*, the preliminary issue of the independent contractor defence relied upon by the defendants.

20.28 In allowing the independent contractor defence, the court took the view that the general principle is that an employer is not vicariously liable for the negligence of an independent contractor, his workmen, or agents in the execution of his contract. The extent of the control exercised by the employer is no longer the sole determining factor. The overarching and fundamental test is whether the contractor is

20 Cap 53B, 2002 Rev Ed.
21 [2006] 4 SLR(R) 884.
22 See also Teo Keang Sood, "The Trust Statutory Exception to Indefeasibility in the Singapore Torrens System" (2017) SJLS 151.
23 [2016] 2 SLR 793; see also ch 7.

performing services as a person of business on his own account. In addition, the employer still has the duty to exercise proper care in appointing an independent contractor.[24]

20.29 In regard to non-delegable duties, the court opined that a new category for construction professionals premised on a risk-based justification is not necessary as this is already statutorily provided for in the Building Control Act[25] ("BCA").[26] Accordingly, if no allegations of a lack of compliance with any approved plans, building regulations, or provisions of the BCA were proven in relation to the defects claimed, the defence of independent contractor would still stand.

20.30 Having regard to the facts and evidence, as the defendants had exercised proper care in their appointments of their respective independent contractors, the court ruled that the defence was available to them.

20.31 The defence of independent contractor had also been considered in the earlier Court of Appeal decision in *Management Corporation Strata Title Plan No 2297 v Seasons Park Ltd*,[27] where a similar outcome as that in *Mer Vue Developments* was obtained. The defence of the independent contractor is justified as developers need to rely on competent and suitably qualified professionals and licensed contractors to fulfil their obligations to purchasers. This explains the reluctance of the courts to disallow the defence in this area of the law. However, certain limitations may have to be placed on this defence and for developers to be held to higher standards of responsibility. This is to ensure that the defence of independent contractor does not impact negatively on future strata developments, with developers cutting on costs and resulting in more faulty constructions which affect unit owners, both financially and physically.[28]

20.32 The MC in *Mer Vue Developments* appealed in *Management Corporation Strata Title Plan No 3322 v Tiong Aik Construction Pte Ltd*[29] where proceedings were brought against the first respondent (main contractor) and the second respondent (architect). The defects in question were caused by their subcontractors' negligence. The issue was

24 *Management Corporation Strata Title Plan No 3322 v Mer Vue Developments Pte Ltd* [2016] 2 SLR 793 at [15].
25 Cap 29, 1999 Rev Ed.
26 *Management Corporation Strata Title Plan No 3322 v Mer Vue Developments Pte Ltd* [2016] 2 SLR 793 at [26].
27 [2005] 2 SLR(R) 613.
28 See also Teo Keang Sood, "Management Corporation: Common Property and Structural Defects" (2016) 149 SJLS at 163–164 and 165; see further ch 7.
29 [2016] 4 SLR 521; see also chs 7 and 26.

whether the respondents owed the MC non-delegable duties to ensure that the common property were designed and built with reasonable care.

20.33 The Court of Appeal noted that even though the respondents contracted with the developer only and not with the MC, there was, nevertheless, a degree of proximity and assumption of responsibility in the relationship between the MC and the respondents. Relying on the case of *RSP Architects Planners & Engineers v Management Corporation Strata Title Plan No 1075*,[30] the court was of the view that:

> (a) The respondents assumed responsibility toward the developer because the latter relied on their exercise of reasonable care and skill.
>
> (b) The MC was the successor to the developer with respect to common property.
>
> (c) The respondents knew that the MC would come into existence, manage the common property, and whatever duty the respondents owed to the developer would be transmitted to the MC.

While this was sufficient to establish an ordinary tortious duty of care which RSP Architects Planners & Engineers was concerned with, it was not so for establishing a non-delegable duty of care.[31]

20.34 On the issue of non-delegable duty of care, the Court of Appeal concluded, thus:[32]

> On the whole, therefore, we did not think that the MCST had made out a case for the imposition of the Proposed Non-Delegable Duty on the Main Contractor and/or the Architect. Furthermore, given the increasing specialisation in the construction industry, which necessitates subcontracting, it would be excessively onerous to impose legal liability on the respondents for defective building works which they might not even be equipped or qualified to undertake and/or supervise.

Private right of action under the Building Maintenance and Strata Management Act for breach of statutory duty

20.35 In *Mer Vue Developments*, the facts of which have been given above, the High Court also considered the preliminary issue of the availability of a private right of action under the Building Maintenance

30 [1999] 2 SLR(R) 134.

31 See ch 26.

32 *Management Corporation Strata Title Plan No 3322 v Tiong Aik Construction Pte Ltd* [2016] 4 SLR 521 at [90].

and Strata Management Act[33] ("BMSMA") against the first defendant (the developer, Mer Vue Developments Pte Ltd). Specifically, the issue was whether an alleged breach of the statutory duty to maintain the common property of developments under ss 16, 17, and 21 of the BMSMA gave rise to a civil right of action against the first defendant as the owner developer of the development.

20.36 As correctly stated by the High Court, the general rule is that where criminal sanctions are provided for a breach of statutory duty, there is no private right of action (citing, *inter alia*, *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd*).[34] In this regard, relevant criminal sanctions are not provided in ss 16 and 17 of the BMSMA.

20.37 At the same time, the court noted that alternative remedies are provided in ss 6, 19, and 88 of the BMSMA for the enforcement of the relevant statutory duty. As the court further observed:[35]

> Although s 88 entitles subsidiary proprietors to apply to the court for remedies against breaches of Pt V of the BMSMA (that does include ss 16 and 17), the remedy provided under s 88 targets only breaches of provisions in Pt V by a *management corporation or subsidiary management corporation*, and is thus not relevant to alleged breaches of ss 16 and 17 by *owner developers*. Importantly, there is no express provision in the BMSMA equivalent to s 88 that entitles the subsidiary proprietors to apply to the court for remedies against *owner developers*. [emphasis in original]

20.38 Sections 6 and 19, on the other hand, enforce the owner developer's obligation to maintain the common property through the Commissioner of Buildings ("Commissioner"). Furthermore, under s 6(5), the duty of a building owner or the owner of the common property to maintain the common property is also enforceable by criminal proceedings.

20.39 Notwithstanding that an alternative remedy to enforce the owner developer's duty to maintain the common property of the development is provided in the BMSMA as noted above, it does not detract from the inference that the Parliament intends for the statutory duty to be enforced under the relevant framework through the Commissioner and does not intend to confer a private right of action. Accordingly, having regard to this regulatory framework and the

33 Cap 30C, 2008 Rev Ed.

34 [2009] 4 SLR(R) 788, [2009] 4 SLR(R) 788 at [210].

35 *Management Corporation Strata Title Plan No 3322 v Mer Vue Developments Pte Ltd* [2016] 2 SLR 793 at [129].

presence of the criminal sanction in s 6(5) of the BMSMA, the breach of the duty to maintain common property under the BMSMA did not give rise to a private right of action by the plaintiff against the owner developer, that is, the first defendant.

By-laws

20.40 In *Management Corporation Strata Title Plan No 3667 v Chong Tack Chuan*,[36] the plaintiffs, the management corporation of the strata development in question, commenced proceedings against the defendants, the unit owners, for breaching the condominium's by-laws and for, *inter alia*, an order that the latter remove all offending glass panels installed in the balcony and yard area of their unit. Earlier, pursuant to the plaintiff manager's approval, the defendants had installed glass panels enclosing their balcony and yard area to protect against strong wind and heavy rain.

20.41 Having regard to the evidence, the District Court held that the renovation work undertaken was in breach of the relevant condominium's by-laws. In particular, the installation of the glass panels in the manner stated above was not in compliance with the Urban Redevelopment Authority's ("URA's") performance criteria. Further, it had the effect of increasing the gross floor area ("GFA") of the defendants' unit and that of the condominium.

20.42 In determining whether to exercise its discretion to grant a mandatory injunction, the District Court correctly applied the principle that the court 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, *inter alia*, *Management Corporation Strata Title Plan No 1378 v Chen Ee Yueh Rachel*[37] and *Choo Kok Lin v Management Corporation Strata Title Plan No 2405*.[38] The court will grant a mandatory injunction to redress a breach which is already accomplished, unless:[39]

> (a) the plaintiff's own conduct would make it unjust to do so; or
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> (b) the breach was trivial or had caused no damage or no appreciable damage to the plaintiff and a mandatory injunction would

36 [2016] SGDC 30.
37 [1993] 3 SLR(R) 630.
38 [2005] 4 SLR(R) 175 at [55]–[56].
39 *Choo Kok Lin v Management Corporation Strata Title Plan No 2405* [2005] 4 SLR(R) 175 at [56].

> impose substantial hardship on the defendant with no counter-balancing benefit to the plaintiff.

20.43 Applying the above principles to the facts of the case, the District Court found that the plaintiff's conduct did not make it unjust to grant the orders sought. The fact that the plaintiff had granted approval for the installation work to be undertaken did not excuse the defendants from ensuring that the renovation work was in full compliance with the laws and regulations, as well as the condominium's by-laws. The breach in question was not trivial as it undermined the planning permission and GFA regime that constitutes the cornerstone of URA's regulation of the intensity of land use in Singapore. To allow retention of the glass panels would be tantamount to condoning the commission of possible regulatory breaches, which would severely undermine the plaintiff's ability and authority to manage the condominium by ensuring that unit owners comply with URA's regulations and the condominium's by-laws.

20.44 The mere fact that the defendants would have to bear the cost of removing the unauthorised installations did not necessarily preclude the 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. As a result, the order sought was granted.

20.45 The grant of a mandatory injunction in respect of the breach of by-laws was also considered in *The Management Corporation Strata Title Plan No 3405 v Raffles Place Bistro Pte Ltd*.[40] The defendant operated an eatery at the premises of a unit which it occupied in the strata development consisting of residential and commercial units. The defendant placed chairs, tables, and other objects on the pedestrian walkway (common property of the development) immediately outside the premises for use by its patrons. The plaintiff, the management corporation of the development, brought proceedings against the defendant to, *inter alia*, have the furniture removed from the common property.

20.46 Both parties agreed that the defendant was in breach of by-law 3 prescribed in the Second Schedule to the Building Maintenance (Strata Management) Regulations 2005[41] and by-law 19 of the management corporation. The prescribed by-law 3 provides that: "[a] subsidiary proprietor or an occupier of a lot shall not obstruct the lawful use of

40 [2016] SGDC 247.
41 S 192/2005.

the common property by any person, except on a temporary and non-recurring basis."

20.47 The only issue was whether the applicable test for the grant of a mandatory injunction, noted above in para 20.42, was satisfied. It is clear that the two limbs of the test are disjunctive, whereas the requirements in the second limb of the test are conjunctive.

20.48 In allowing the plaintiff's application, the District Court found that neither limb of the test was made out. Having regard to the evidence, the plaintiff's own conduct did not make it unjust to grant the mandatory injunction. Apart from potential fire hazard and safety issue that the encroachment created, the operation of the defendant's food and beverage business on the common property exposed the plaintiff to legal liability in respect of accidents that could occur. Taking all the factors into consideration, the breach of the by-laws could not be considered trivial and amounted to appreciable damage to the plaintiff.

20.49 Even if the defendant could prove that there would be losses incurred by the grant of a mandatory injunction, this would only be a result of the defendant's own breach. The original tenancy agreement provided for the defendant to sell only takeaway food and serving dine-in food at the common property was never in the agreement between the parties. In addition, there were counterbalancing benefits to the plaintiff in granting the mandatory injunction. First, the plaintiff would avoid being exposed to continuing liability in general law and to the authorities for accidents that might occur on the common property. Second, the plaintiff would have the ability to exercise its statutory powers and enforce the by-laws of the development.

20.50 The District Court opined that:[42]

> [T]his is a situation where it is especially appropriate to grant an injunction given that it would enable parity of treatment amongst all the occupiers and other subsidiary proprietors by ensuring that all persons are bound by the by-laws and that a consistent message is sent to the parties that the plaintiff will not be condoning the unregulated use of the common property.

42 *The Management Corporation Strata Title Plan No 3405 v Raffles Place Bistro Pte Ltd* [2016] SGDC 247 at [38].

Conveyancing

Delay in completion

20.51 The issue of delay in completion was considered in *Unique Lucas Pte Ltd v Wong Kim Peck*.[43] The plaintiff had sued the defendant for late completion interest. It was alleged that the defendant breached the terms in the option to purchase exercised by the plaintiff on 7 February 2013 to buy the property from the defendant. Completion took place on 8 July 2013, about 21 weeks (or five months) after the option was exercised. The plaintiff alleged that the delay in completion was caused solely by the defendant or her agent. The defendant's agent had represented to the plaintiff, which turned out to be untrue, that as there were no unauthorised renovations or alterations done to the property, HDB would grant its approval to the resale and transfer of the property without any reservations. Instead, HDB only gave in-principle approval to the transaction as there were unauthorised infringements on the property.

20.52 The District Court had to determine first the date of scheduled completion of the sale pursuant to the option. Clause 11 provided that the sale and purchase of the property shall be completed within:[44]

> (a) twelve (12) weeks from the date of exercise of the Option by the Purchase; or
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> (b) seven (7) days upon the receipt of HDB's approval; or
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> (c) in the event that provisional approval is granted by the HDB, within fourteen (14) days upon receipt of the HDB's letter confirming that all unauthorised works in the Property [have] been rectified by the Vendor, provided all rectification works must be completed by the Vendor within one (1) month from the date of the HDB's provisional approval,
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> *whichever date is the latest*. [emphasis by the District Court in *Unique Lucas Pte Ltd v Wong Kim Peck*]

20.53 The District Court reasoned that cl 11(b) could not have applied. This was because it would seem odd that if HDB's approval was not obtained at the onset, a party could delay completion by taking his time to perform the rectification works or obtain HDB's approval since one would not be in breach of cl 11(b) so long as completion of the sale was done within seven days from the receipt of HDB's approval. Although the option did not contain a "best endeavours" clause, if the

43 [2016] SGDC 131.
44 *Unique Lucas Pte Ltd v Wong Kim Peck* [2016] SGDC 131 at [36].

seller could not perform his contractual undertaking within the agreed time, he would have to show that he had done everything reasonably in good faith that he could in order to obtain HDB's approval.

20.54 Clause 11(c) was also not applicable because no rectification works were done in this instance as approval to retain the unauthorised works was subsequently obtained from HDB.

20.55 Clause 11(a) was the only applicable clause, which meant that the scheduled completion date for the sale of the property should have been on 2 May 2013, which was within 12 weeks from the date of exercise of the option by the plaintiff. Since completion of the sale was only done on 8 July 2013, there was a delay in completion.

20.56 Having regard to the evidence, the defendant was held to be responsible for the delay in completion. She should have done all things necessary to either proceed with the rectification of the unauthorised works within one month from HDB's letter of conditional approval or obtain the approval from HDB to retain the unauthorised works prior to the date of scheduled completion on 2 May 2013. However, the defendant did neither and the completion could not take place as scheduled.

The court's inherent powers to order registration of transfer

20.57 In *Peter Edward Nathan v De Silva Petiyaga Arther Bernard*,[45] the plaintiff had purchased a flat from the defendants. Prior to this, the first defendant became mentally incapable of managing his own affairs. As his committee of person and estate, X executed the documents of sale of the flat on behalf of the first defendant. X was so appointed under the then Mental Disorders and Treatment Act,[46] which was the predecessor of the Mental Capacity Act.[47]

20.58 It turned out that X had no authority to execute the documents of sale on behalf of the first defendant. As the documents had not been properly executed, the transfer could not be lodged for registration. The plaintiff applied, *ex parte*, for an order that the transfer be registered.

20.59 The High Court did not render its decision immediately and, instead, adjourned the proceedings to see if the matter could be resolved in a manner that would balance the interests of all the parties involved. The matter was complicated by the fact that X had since passed away.

45 [2016] 3 SLR 361.
46 Cap 178, 1985 Rev Ed.
47 Cap 177A, 2010 Rev Ed.

However, the various attempts to find the best solution for all the parties involved came to naught.

20.60 In proceeding to hear the plaintiff's application, the court held that rectification, being an equitable remedy, could not be ordered. The fact that X had no authority to execute the sale documents was not a mere technicality. Instead, it went to the basis of the transaction as the signatory of the documents had no power to execute and deal with the property.

20.61 The court was of the view that, although it was not expressly stated in the plaintiff's application, it appeared that he was asking the court to invoke its inherent powers to order the registration of the transfer. This had to be so as the court did not have a specific statutory power to order the registration of an instrument of transfer in such a situation. The court also noted that the grant of a declaration was discretionary. In the instant case, the first defendant was neither able to act for himself as he did not have the requisite mental capacity nor was he represented by any deputy who could properly consider the issue and exercise properly granted powers to act on his behalf. In the circumstances, the court did not exercise its discretion in favour of the plaintiff.

Compulsory acquisition

Valuation; costs of appeal to the board

20.62 A number of issues pertaining to land acquisition were considered by the Court of Appeal in *Novelty Dept Store Pte Ltd v Collector of Land Revenue*.[48] The appellant's land, which was owner-occupied and had a purpose-built four-storey detached industrial development on it, was acquired by the respondent. The appellant appealed to the Land Acquisition Appeals Board ("Board") against the compensation of S$13.2m awarded to it. Later, the respondent made a supplementary award of S$1m, bringing the total compensation to S$14.2m. Despite this, the appellant proceeded with its appeal to the Board, which affirmed the revised award made by the respondent.

20.63 In its appeal against the Board's decision, the appellant argued, *inter alia*, that the Board erred in finding that comparable sales involving sale and leaseback arrangements were unsuitable for valuing its land and awarding costs to the respondent.

48 [2016] 2 SLR 766.

20.64 Before dealing with the substantive merits of the appellant's appeal, the Court of Appeal dealt with a preliminary matter, namely, whether the issues raised by the appellant involved questions of law as required by s 29(2) of the Land Acquisition Act[49] ("LAA"). The appellant argued that the valuation issue raised a question of law because the Board had erred in law by failing to consider the highest, best, and most probable use of the appellant's land and so had failed to value it within the terms of s 33(5)(*e*) of the LAA. The respondent submitted otherwise, contending that the determination of the proper method of valuing the appellant's land was purely a matter of valuation and did not raise any question of law.

20.65 The Court of Appeal adopted the reasoning in *Ng Eng Ghee v Mamata Kapildev Dave*[50] that a broader definition of "questions of law" should be preferred where appeals against statutory tribunals were concerned since such appeals would generally affect the wider public interest and the court should have greater oversight over such tribunals so as to accord due protection to private rights.[51] In the context of compulsory acquisition of land, it is unlikely that the Parliament intends to preclude the courts from adjudicating on errors of law in valuation matters. Accordingly, the valuation issue was susceptible to appeal under s 29(2) of the LAA as it involved a matter of statutory interpretation which qualified as a "question of law".

20.66 On the substantive valuation issue, the appellant had argued that the Board had erred in excluding sales involving sale and leaseback arrangements when assessing the value of the appellant's land. In the same acquisition exercise, an award of S$29.2m was made in favour of another company, Cambridge Industrial Trust, for the acquisition of its land, which was subject to an existing sale and leaseback arrangement. In rejecting the appellant's argument, the court was of the view that the market values of properties that have subsisting sale and leaseback arrangements tend to be higher than those of properties not subject to such arrangements primarily because of the favourable lease terms, including the recurring stream of income that they come with. In seeking compensation by reference to comparables that featured a sale and leaseback arrangement, which the appellant's own land was not subject to, the appellant was effectively seeking an unjustified windfall. The court also noted that there were fundamental difficulties that stood in the way of an owner-occupier, whose land was not subject to a sale and leaseback arrangement but who sought to have it valued on the

49 Cap 152, 1985 Rev Ed.
50 [2009] 3 SLR(R) 109.
51 *Ng Eng Ghee v Mamata Kapildev Dave* [2009] 3 SLR(R) 109 at [100]–[101].

basis that it was subject to a notional or imaginary sale and leaseback arrangement.

20.67 The court also rejected the appellant's contention that the Board erred in excluding transactions involving the sale of Jurong Town Corporation standard factories. In the opinion of the court, standard factories were more adaptable to a wide range of industrial uses as compared to purpose-built factories and were, consequently, more in demand and commanded higher rent. In other words, they were two different types of factories altogether for the purpose of valuation. As a result, the Board had not erred on the valuation issue.

20.68 For the foregoing reasons, the court was also of the view that the Board did not violate the appellant's constitutional right to equal protection, which required like to be treated alike and was not the case here.

20.69 In regard to the costs issue, the court noted that the respondent had made an upward revision to the compensation payable to the appellant. This was on account of a sale that had been used as a comparable in its valuer's expert valuation, which might not accurately reflect the market value of the appellant's land. In view of this concession made by the respondent's valuer, the court reasoned that the appellant was at least notionally entitled to a slight upward adjustment of the amount of compensation. In the circumstances, the appellant should not be made to bear the costs of the appeal to the Board and the court varied the Board's costs order accordingly.

20.70 By way of *obiter*, the court expressed the view that "whilst the practice of issuing supplementary awards [by the respondent] has not been expressly legislated for in the statutory framework, there appears to be no reason to doubt the legal status of such awards".[52] The court referred to the speech by the then Minister for Law and National Development,[53] which suggested that the "Parliament appears to be cognisant of the practice of issuing supplementary awards and has implicitly endorsed it".[54]

52 *Novelty Dept Store Pte Ltd v Collector of Land Revenue* [2016] 2 SLR 766 at [43].
53 *Singapore Parliamentary Debates, Official Report* (11 December 1967), vol 26 at col 524 (E W Parker, Minister for Law and National Development).
54 *Novelty Dept Store Pte Ltd v Collector of Land Revenue* [2016] 2 SLR 766 at [44].