Published on e-First 16 September 2026

21. LAND LAW

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I. Introduction

21.1 In so far as the legal development of Singapore land law is concerned, 2025 has proven to be a fulfilling year. In the reported cases, readers will find important judicial pronouncements on the topics of option to purchase, forfeiture of lease, ouster of a co-owner, caveatable interest, and implied easements. Also included are cases whose fact patterns raise interesting points of law even though the courts were not required to resolve them.

II. Option to purchase

21.2 Most transactions involving the sale and purchase of land begin with the grant of an option to purchase. An option contract is formed when the purchaser pays an option fee, which typically amounts to 1% of the purchase price. The seller then issues an option – an irrevocable offer to sell – which is exercisable by the purchaser before the expiry of the option period. If the option is exercised, a contract for the sale and purchase of the land comes into existence. However, if left unexercised, the seller is entitled to retain the option fee. Although most options are in standard form, the parties are generally free to vary the terms of an option to suit their specific needs. A number of recent disputes involved options in non-standard forms, with peculiar features such as extended option periods and the requirements on the purchaser's part to pay an "option fee" as well as "further payments" before the option can be exercised.[1] The sum of these payments far exceeds the standard amount for an option fee. This raises the question about how such further payments are to be characterised, which has important bearing on whether they can be retained by the seller in the event that the purchaser decides not to proceed with the purchase.

1 See especially *TG Master Pte Ltd v Tung Kee Development (Singapore) Pte Ltd* [2024] 1 SLR 690; and *Li Jialin v Wingcrown Investment Pte Ltd* [2024] 2 SLR 372. Both cases were discussed in Tham Chee Ho & Tan Zhong Xing, "Contract Law" (2024) 25 SAL Ann Rev 334 at paras 13.127–13.143.

21.3 The most recent of such cases is *Kwon Do Hyeong v Covenson Pte Ltd*[2] ("*Kwon Do Hyeong*") where the purchaser abandoned the purchase of a luxury penthouse at Sculptura Ardmore priced at $38.8m. At first, the parties agreed to an option period of four weeks and an option fee of $1.94m (*ie*, 5% of the purchase price). Before the agreement was finalised, the Singapore Government announced an increase in the additional buyer's stamp duty (ABSD) chargeable on foreign purchasers from 20% to 30% of the purchase price. In light of this cooling measure, the purchaser (a foreigner) proposed a longer option period of 18 months, during which he hoped to obtain permanent residency before exercising the option so as to reduce the payable additional buyer's stamp duty (ABSD). The seller agreed to the extended option period subject to the purchaser making the following payments: (a) an option fee of $388,000 (*ie*, 1% of the purchase price); (b) the first further payment of $1.552m (*ie*, 4% of the purchase price); and (c) the second further payment of $16.82m (*ie*, 43.35% of the purchase price). These payments were spaced over a period of three months, well before the expiry of the option.

21.4 The purchaser duly made these payments, which amounted to 48.35% of the purchase price. Thereafter, the option was exercised with the payment of an option exercise fee of $1,000. However, the purchaser eventually decided against completing the purchase and demanded the return of the two further payments amounting to $18.37m (*ie*, 47.35% of the purchase price). Following the decision of the Appellate Division of the High Court ("Appellate Division") in *TG Master Pte Ltd v Tung Kee Development (Singapore) Pte Ltd*,[3] Philip Jeyaretnam J held that the further payments were essentially option fees and were therefore irrecoverable from the seller. In arriving at this conclusion, the learned judge chose to downplay the significance of the labels the parties had chosen to describe the payments. Although the payment of $388,000 was expressly referred to as the "Option Fee", this did not preclude the characterisation of the further payments as parts of the "True Option Fee".[4] Instead, the real question was which payment(s) constituted the consideration for the grant of the option.[5] In this regard, it is important to note that the option period was extended from four weeks to 18 months, which exposed the seller to increased risks if the purchaser eventually decided against exercising the option. In particular, the market value of the property could fall, or it could have become more difficult to sell the property if new cooling measures were introduced. Against this background, it is clear

2 [2025] SGHC 212.
3 [2024] 1 SLR 690.
4 The reference to a "True Option Fee" can be found in the judgment of the Appellate Division of the High Court in *TG Master Pte Ltd v Tung Kee Development (Singapore) Pte Ltd* [2024] 1 SLR 690 at [74].
5 *Kwon Do Hyeong v Covenson Pte Ltd* [2025] SGHC 212 at [27]–[30].

that the seller would not have granted the option unless the purchaser paid more than the originally proposed option fee of 5%. In fact, if the labels the parties had chosen to use were taken seriously, it would have led to the absurd conclusion that the seller agreed to a lower option fee (from 5% to 1%) for a much longer option period (from four weeks to 18 months). In short, it is reasonable to characterise the further payments as parts of the true option fee. Importantly, this characterisation did not change whether or not the option had been exercised, and therefore the legal issue in *Kwon Do Hyeong* was indistinguishable from that in *TG Master Pte Ltd v Tung Kee Development (Singapore) Pte Ltd*.[6]

21.5 On the whole, the courts have adopted a commercially sensible approach by identifying what amounts to the option fee, with due regard to the specific context of each case. In principle, the refusal to place much weight on labels should work in either direction. Just as how an additional payment may be characterised as an option fee even though it is not labelled as such, an additional payment labelled as an option fee may not be taken seriously if there is nothing on the facts to justify the increase in option fee. However, in *Kwon Do Hyeong*, the court expressed difficulty in allocating a payment made before the exercise of an option to a contract for the sale of land that had yet to come into existence.[7] Despite this uncertainty, one would expect the market to regulate itself. In unexceptional circumstances, purchasers would likely object to paying more than the amount of the option fee established under industry norm.

III. Landlord and tenant

A. Tenant's repudiatory breach of orally created periodic lease

21.6 The dispute in *FXA Investment Holdings Pte Ltd v Tan Wei Cheong*[8] concerned an oral sublease granted by the landlord, FXA Investment Holdings Pte Ltd ("FXA"), to the tenant, Fusionex Pte Ltd ("Fusionex"). For background, the parties were sister companies who shared the same director. FXA was incorporated solely for the purpose of obtaining an office space for Fusionex's business operations. Towards this end, FXA managed to obtain a three-year lease of an office space in 1 George Street that commenced on 1 November 2022. Pursuant to an oral agreement, Fusionex was allowed to take possession of the office space from December 2022, subject to the payment of rent and other

6 [2024] 1 SLR 690, cited in *Kwon Do Hyeong v Covenson Pte Ltd* [2025] SGHC 212 at [33].

7 *Kwon Do Hyeong v Covenson Pte Ltd* [2025] SGHC 212 at [31].

8 [2025] SGHC 23.

expenses incurred under the head lease and an administrative fee of $1,500 *per* month. These payments were consistently paid by Fusionex to FXA from December 2022 after taking possession of the office space. However, from December 2023, Fusionex ceased to make these payments. It was wound up on 26 January 2024. FXA submitted a proof of debt to the liquidators, claiming rental arrears from December 2023. However, the liquidators denied the existence of the sublease mainly because there was no written agreement.

21.7 Despite the absence of any written agreement, Audrey Lim J had no difficulty in finding that the parties were in a contractual relationship. This was inferred mainly from the conduct of the parties, in particular the fact that Fusionex had, between December 2022 and November 2023, made payments to FXA, which was consistent with the existence of the alleged agreement.[9] The absence of a written agreement was explicable by the close relationship between the two companies.[10] The sole shareholder of FXA was also the sole director of both companies. Interestingly, the learned judge assumed that the sublease agreement was enforceable without considering whether it was sufficiently evidenced by some notes or memoranda signed by Fusionex.[11] In any event, it is clear that the doctrine of part performance would have applied to allow FXA to sidestep the statutory formality requirements. As to the nature of the sublease, the learned judge was convinced that it was a month-to-month lease as FXA had described to the liquidators.[12] That the parties had intended such a periodic lease was corroborated by the available evidence which showed that Fusionex was unable to obtain its shareholders' approval for a three-year lease and the owner of the office space would not have agreed to a short-term lease.

21.8 The learned judge eventually found that Fusionex had abandoned the lease, which constituted a repudiatory breach of the lease agreement. FXA accepted the repudiatory breach when it repossessed the premises and informed Fusionex of its efforts to find a replacement tenant.[13] In short, the sublease was terminated. In assessing the loss suffered by FXA, the learned judge took cognisance of the nature of the lease, specifically that Fusionex was entitled to give a month's notice to quit.[14] This meant that FXA was not allowed to claim loss of rental for the remaining duration of the head lease. For the purposes of loss assessment, it must

9 *FXA Investment Holdings Pte Ltd v Tan Wei Cheong* [2025] SGHC 23 at [12(e)].
10 *FXA Investment Holdings Pte Ltd v Tan Wei Cheong* [2025] SGHC 23 at [13].
11 Civil Law Act 1909 (2020 Rev Ed) s 6(*d*).
12 *FXA Investment Holdings Pte Ltd v Tan Wei Cheong* [2025] SGHC 23 at [16] and [20]–[21].
13 *FXA Investment Holdings Pte Ltd v Tan Wei Cheong* [2025] SGHC 23 at [30]–[32].
14 *FXA Investment Holdings Pte Ltd v Tan Wei Cheong* [2025] SGHC 23 at [32].

be assumed that Fusionex would have given a notice to quit, and upon its expiration the sublease would stop extending itself. However, it remained a fact that the sublease was terminated for repudiatory breach and not determined by a notice to quit. This is reflected in FXA's successful claim for the cost of hiring a property agent to relet the premises, which is properly characterised as the reasonable cost in mitigating the loss.[15] It is accurate to speak of *loss*, and its mitigation, only if the sublease has been terminated due to the tenant's repudiatory breach. Had the sublease been determined by Fusionex by the giving of a notice to quit, there would be no loss of future rental to speak of, which means that mitigation is irrelevant.

B. Forfeiture of lease

21.9 The decision of the General Division of the High Court ("General Division") in *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd*,[16] which touched on a range of issues arising from a landlord's attempt at forfeiture of a lease, was discussed in the past issue of this review.[17] In this case, where the building was let solely for the operation of a hotel business, the landlord served a notice specifying several breaches on the tenant's part: breaches of the occupancy limits; failure to clean, upkeep and maintain the premises; failure to turn on air-conditioning in common areas; permitting smoking at non-smoking places; and permitting motorcycles to park indiscriminately in car parking lots, *etc*. The first notice of breach was served a week after a joint inspection of the premises during which a number of concerns were raised with the tenant. A week later, the landlord purported to terminate the lease by issuing a notice of termination. This particular notice, which set out a "non-exhaustive list"[18] of breaches and required the tenant to rectify other breaches "whether listed or not",[19] was held to be invalid because it was insufficiently particularised. Although the second notice of breach was found to be valid, the learned judge held that the tenant's payment of rent to the landlord amounted to a waiver of the tenant's breach. However, because the breach was a continuing one, this entitled the landlord to terminate the breach with the commencement of an action for possession, following which the tenant was liable for holding over.

15 *FXA Investment Holdings Pte Ltd v Tan Wei Cheong* [2025] SGHC 23 at [35].
16 [2024] SGHC 108.
17 Teo Keang Sood, "Land Law" (2024) 25 SAL Ann Rev 637 at 639–647.
18 *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd* [2024] SGHC 108 at [9].
19 *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd* [2024] SGHC 108 at [9].

21.10 On appeal, the Appellate Division reversed certain aspects of the decision of the General Division.[20] The court held that the first notice of breach was valid, and no waiver could be inferred from the circumstances. However, upholding the original outcome, it was held that liability for double rent did not arise until the lease was forfeited by the commencement of an action for possession. On the whole, the judgment of the Appellate Division has provided the clearest guidance thus far on the law of forfeiture.

(1) Valid notice

21.11 Where the tenant breaches a covenant in a lease other than a covenant to pay rent, an important restriction on the enforcement of a landlord's right of forfeiture is found in s 18(1) of the Conveyancing and Law of Property Act 1886[21] ("CLPA"), which states:[22]

> **18.**—(1) A right of re-entry or forfeiture under any provision or stipulation in a lease, for a breach of any covenant or condition in a lease, shall not be enforceable, by action or otherwise, unless the lessor serves on the lessee a notice specifying the particular breach complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

21.12 A valid notice must sufficiently specify the breach on which the right of forfeiture is founded. The breach must be sufficiently particularised so that the tenant knows what needs to be done to remedy the breach to avoid forfeiture. If there are multiple breaches by the tenant, the landlord need not specify every breach nor particularise every breach. Section 18(1) merely requires the landlord to specify "the particular breach complained of". In *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd*,[23] ("*Campbell Hospitality*"), the Appellate Division confirmed that it is sufficient if "at least one of the specified breaches is sufficiently particularised and remains unrectified".[24] Of course, this assumes that the

20 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816.
21 2020 Rev Ed.
22 This statutory restriction does not apply to the breach of a covenant to pay rent: s 18(9) of the Conveyancing and Law of Property Act 1886 (2020 Rev Ed). What this means is that the landlord need not provide the tenant with an opportunity to remedy the breach before enforcing the right to forfeit.
23 [2025] 1 SLR 816.
24 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [29], overruling *Lee Tat Realty Pte Ltd v Limco Products Manufacturing Pte Ltd* [1998] 2 SLR(R) 258.

specified breach is sufficient on its own to ground a right of forfeiture, which is usually the case where the landlord relies on a broadly worded express forfeiture clause.[25] The concern that the tenant may be prejudiced by this approach does not arise because the landlord may enforce his right of forfeiture only in respect of breaches that have been sufficiently particularised in the notice.[26] This development is to be welcomed for striking a fair balance between the interests of both parties. The landlord need not fear being penalised by having the entire notice invalidated merely because one (or some) of the specified breaches have not been sufficiently particularised. At the same time, the tenant could, for the purpose of avoiding forfeiture, give priority to remedying such breaches that have been sufficiently particularised in the notice.

(2) Reasonable time

21.13 Where the breach is capable of remedy, the tenant must be given a reasonable time to remedy it. To be more specific, a reasonable time must have elapsed between the giving of the notice and the enforcement of the right of forfeiture.[27] What amounts to a reasonable time necessarily depends on the nature of the breach. In *Campbell Hospitality*, the duration between the giving of the first notice of breach and the purported termination was merely a week. Despite this relatively short duration, the court did not find fault with the landlord's compliance with s 18(1) of the CLPA, not only because the tenant was made aware of the breaches a week before the notice was given but also because the required remedial actions were "not necessarily highly complex or exceedingly difficult to manage".[28]

(3) Forfeiture

21.14 While a regular contract can be terminated by notice alone, something more is required to effect forfeiture of a lease.[29] As forfeiture operates to extinguish a property right, it is all the more important that the landlord's intention to forfeit is manifested with a higher degree of finality such that the tenant is left in no doubt that he is no longer holding under the lease.[30] To forfeit a lease, the landlord is required to do something that signifies his unequivocal and final intention to bring

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25 *Fox v Jolly* [1916] 1 AC 1 at [18]: "Each breach working a forfeiture must be taken by itself, and the statement in the notice dealing with it be taken by itself."
26 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [29].
27 *Billson v Residential Apartments Ltd* [1992] 1 AC 393 at 508 (*per* Sir Nicholas Browne-Wilkinson VC).
28 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [33].
29 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [56].
30 *Jones v Carter* (1846) 15 M &W 718 at 726.

the lease to an end, either by physically re-entering the premises or commencing an action for possession.[31] The latter is also referred to as notional re-entry[32] because it has the same effect as physical re-entry.[33] In *Campbell Hospitality*, the landlord's issuance of a notice of termination was held to not amount to forfeiture. Instead, the lease was forfeited only when the landlord commenced and served an original claim to recover possession of the premises.[34]

(4) Waiver

21.15 If the landlord has, either through words or conduct, intimated a clear and unequivocal intention to treat the lease as continuing, any right of forfeiture that has arisen from the tenant's breach is considered waived and therefore no longer enforceable. The most frequently encountered example of an implied waiver is where the landlord, despite being aware of the tenant's breach, accepts or demands a payment of rent that is due after the breach.[35] An acceptance of payment under such circumstances constitutes a waiver even if the landlord clearly does not intend to waive, *eg*, having stated that the acceptance or demand is without prejudice to the landlord's right to forfeit.[36] However, not every receipt of a payment amounts to an acceptance of rent. In the first place, acceptance implies an active conduct whereas mere receipt does not. Where the tenant pays directly into the landlord's bank account without demand, such as through an electronic transfer, the landlord cannot be said to have accepted the payment, let alone received the payment as rent. In *Campbell Hospitality*, the tenant, after having been served a notice of termination by the landlord, made payments into the landlord's bank account.[37] Although these payments were clearly intended to be payments of rent as they matched the amount, timing and payment method as required under the lease agreement, the unilateral nature of the tenant's conduct meant that the landlord could not be regarded as having received these

31 *Billson v Residential Apartments Ltd* [1992] 1 AC 393 at 534. Although a landlord would usually choose between the two methods of forfeiture, he is not precluded from using both methods at the same time: *Protax Co-operative Society Ltd v Toh Teng Seng* [2001] SGHC 84 at [94].

32 *Protax Co-operative Society Ltd v Toh Teng Seng* [2001] SGHC 84 at [59].

33 *Billson v Residential Apartments Ltd* [1992] 1 AC 393 at 534.

34 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [61].

35 *Leivest International Pte Ltd v Top Ten Entertainment Pte Ltd* [2006] 1 SLR(R) 888 at [36]–[43].

36 *Leivest International Pte Ltd v Top Ten Entertainment Pte Ltd* [2006] 1 SLR(R) 888 at [36]–[43]; *Protax Co-operative Society Ltd v Toh Teng Seng* [2001] SGHC 84 at [24]. See also *Matthews v Smallwood* [1910] 1 Ch 777 at 786–787; *Segal Securities Ltd v Thoseby* [1963] 1 QB 887 at 897–899; and *Central Estates (Belgravia) Ltd v Woolgar (No 2)* [1972] 1 WLR 1048.

37 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816.

payments as rent.[38] As the court explained, the landlord's receipt "would amount to mere inaction or passivity at best".[39]

(5) *Relief against forfeiture*

21.16 For breaches to which s 18 of the CLPA applies, the tenant's entitlement to ask for relief against forfeiture has been codified in s 18(2). The court may grant or refuse relief as it thinks fit, taking into consideration all relevant circumstances including the conduct of the parties.[40] The same considerations apply, whether the court is exercising its statutory or equitable jurisdiction. However, where the tenant has been served a notice and given an opportunity to remedy the breach pursuant to s 18(1), the extent to which the tenant has attempted to remedy the breach will be a relevant consideration.[41] This is because there is a clear relationship between the notice requirement and relief against forfeiture. The purpose of the notice requirement is to give the tenant the opportunity to do such things that, prior to the introduction of the notice requirement, would justify the court's grant of a relief against forfeiture. It follows that if the tenant has failed to remedy the breach within a reasonable time despite having been given an opportunity to do so, this is an important consideration that weighs against the granting of relief. In *Campbell Hospitality*, the court's decision to deny relief was reinforced by the fact that even when the trial commenced, which was about 22 months after the second notice of breach was given, no reliable documentary evidence had been adduced to show compliance with the occupancy limit.[42] However, because the broad scheme of s 18 is such that a tenant is given two opportunities to avoid forfeiture – after being served a notice of breach and after the right of forfeiture is enforced – the tenant's failure to avail himself of the first opportunity should not automatically deprive him of the second opportunity. Relief against forfeiture may still be granted if the tenant can show good reasons for his earlier failure or inability to remedy the breach.

21.17 Where the landlord forfeits the lease by action on account of the tenant's non-payment of rent, s 18A of the CLPA applies to give the tenant a number of opportunities to avoid forfeiture by paying into court all rent in arrears and the landlord's cost for bringing the proceedings.[43] The absence of a notice requirement in s 18A is counterbalanced by the fact that the opportunity for relief is guaranteed. It is only if the tenant fails to

38 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [68].
39 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [68].
40 Conveyancing and Law of Property Act 1886 (2020 Rev Ed) s 18(3).
41 Conveyancing and Law of Property Act 1886 (2020 Rev Ed) s 18(3).
42 *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd* [2024] SGHC 108 at [127].
43 This was adapted from the Landlord and Tenant Act 1730 (c 28) (UK).

avail himself of these opportunities that the court may order possession of the land to be given to the landlord, following which the tenant shall be barred from all relief. As relief under s 18A is guaranteed, tenants often try to bring themselves within its ambit in attempting to avoid forfeiture. However, s 18A(6) makes it clear that the statutory relief is not available:[44]

> … where the lessor is proceeding in the same action to enforce a right of re-entry or forfeiture on any other ground as well as for non-payment of rent, or to enforce any other claim as well as the right of re-entry or forfeiture and the claim for arrears of rent.

21.18 In other words, where the landlord is complaining of multiple breaches including non-payment of rent, and each breach is capable on its own of giving rise to a right of forfeiture, the tenant is not allowed to avoid forfeiture simply by paying the arrears in rent. As Chua Lee Ming J explained in *Sim Khong (Pte) Ltd v Lion Peak Pte Ltd*,[45] "[i]t is clear that the additional protections afforded to a lessee in s 18A [of the] CLPA are not meant to disadvantage a lessor proceeding on multiple grounds, one of which is the failure to pay rent".[46] This is consistent with *Campbell Hospitality* where it was held that a landlord was free to choose the breach on which forfeiture was grounded.

C. Holding over

21.19 Where a tenant continues to exercise exclusive control over the land after the lease has come to an end, and he does so without the landlord's consent, the tenant is said to be "holding over". Such holding over attracts liability to pay double rent or double value under s 28(4) of the Civil Law Act 1909.[47] The issue of holding over tends to be more contentious where the landlord has sought to bring the lease to a premature end, such as by an action for forfeiture, and the tenant disputes the landlord's entitlement to do so. In *Campbell Hospitality*, the tenant remained in occupation of the premises even after the landlord commenced an action to forfeit the lease.[48] The landlord claimed to be entitled to double rent from the time the lease was forfeited. The tenant defended by arguing that even if the lease was forfeited, the contentious nature of the dispute meant that they were not aware that they had no right to remain on the premises, and hence their continued occupation was not a holding over. Reliance was placed on *Lee Wah Bank Ltd v*

44 Conveyancing and Law of Property Act 1886 (2020 Rev Ed) s 18A(6).
45 [2025] SGHC 83.
46 *Sim Khong (Pte) Ltd v Lion Peak Pte Ltd* [2025] SGHC 83 at [30].
47 2020 Rev Ed.
48 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816.

Afro-Asia Shipping Co (Pte) Ltd[49] where the Court of Appeal said that holding over "requires an intention on the part of the tenant to refuse to deliver up the premises with knowledge that he has no right to remain in possession".[50]

21.20 In the General Division, Kwek Mean Luck J took the view that the reference to knowledge in *Lee Wah Bank Ltd v Afro-Asia Shipping Co (Pte) Ltd*[51] was purely *obiter* as the focus in that case was simply on whether the tenant had any intention to refuse to yield up the premises to the landlord.[52] Even if knowledge is relevant, it must be based on an objective assessment of the law and facts, for otherwise the tenant would always succeed in denying holding over based on their own subjective knowledge.[53] The Appellate Division agreed that all that is required is the tenant's intention to refuse delivery of the premises to the landlord.[54] As this was what happened on the facts, the tenant was liable to pay double rent from the date the landlord commenced an action to forfeit the lease. The focus on the tenant's refusal to deliver possession of the premises without regard to his subjective assessment of the matter is consistent with the literal wording of s 28(4) of the Civil Law Act 1909.[55] It is important to note that this provision, which traces its origin to s 435 of the Civil Law Ordinance 1878,[56] did not directly replicate the wording of the equivalent English provisions.[57] The generality of the expression "holding over" in the Singapore provision shall be contrasted with the reference in the relevant English provisions to a tenant who "shall wilfully hold over any [land]".[58] The adverb "wilfully" implies being more than deliberate, specifically, having the knowledge that the tenant had no right to remain in possession.[59] This is not required for the finding of holding over in Singapore, given the omission of the adverb "wilfully".

49 [1992] 1 SLR(R) 740.
50 *Lee Wah Bank Ltd v Afro-Asia Shipping Co Pte Ltd* [1992] 1 SLR(R) 740 at [17].
51 [1992] 1 SLR(R) 740.
52 *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd* [2024] SGHC 108 at [146].
53 *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd* [2024] SGHC 108 at [147].
54 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [96]–[97].
55 2020 Rev Ed.
56 SS Ord No 5 of 1878.
57 Therefore, one must be cautious in comparing the two sets of provisions. *Cf Mount Elizabeth Health Centre Pte Ltd v Mount Elizabeth Hospital Ltd* [1992] 3 SLR(R) 155 at [57]–[60].
58 Landlord and Tenant Act 1730 (c 28) (UK) s 1; Distress for Rent Act 1737 (c 19) (UK).
59 See, *eg*, *TFS Stores Ltd v The Designer Retail Outlet Centres (Mansfield) General Partner Ltd* [2019] Bus LR 1970 at [148]–[150].

21.21 Where holding over has been established, the landlord is required to choose between claiming double rent (or value) and damages. In *Liau Beng Chye v Chua Wei Jiea*,[60] Jeyaretnam J explained:[61]

> There is no room to 'mix and match' the award of double rent with an award of damages for failure to yield up … The award of double rent obviates the need to prove loss. It is an alternative to a claim for damages. It cannot be granted together with damages for failure to yield up.

21.22 Considering that the amount claimable – whether double rent or double value – is almost certainly disproportionately more than any loss of rent that the landlord may have suffered, the remedy has been described as a form of penalty.[62] This characterisation of the remedy accords with the original purpose of introducing the remedy, which was to ameliorate the "great inconveniences" suffered by landlords from holding over by tenants.[63] As the remedy is not loss-based, the tenant cannot resist the claim by showing that the loss suffered by the landlord is less than the amount claimed. It is only necessary to add that in an exceptional case where the loss suffered by the landlord is more than the double rent or value, it would be worthwhile for the landlord to claim damages instead.

IV. Proprietary estoppel and contractual licences

21.23 The dispute in *Rita Kishinchand Bhojwani v HVS Properties Pte Ltd*[64] concerned an apartment owned by a family company of which the family patriarch was the directing mind. The apartment was occupied by the parents and their daughter until the latter's eviction. The daughter claimed that she had a right to occupy the property either on the basis of proprietary estoppel or pursuant to a contractual licence. Christopher Tan JC dismissed the claim because the evidence tendered by the daughter was so unsatisfactory and unreliable such that she failed to even establish a *prima facie* case. Nonetheless, the decision raised a few important points of law that deserve attention.

A. Proprietary estoppel

21.24 The daughter's proprietary estoppel claim was rejected for failing to satisfy any of the basic elements of the claim. First, the daughter did not

60 [2025] SGHC 226.
61 *Liau Beng Chye v Chua Wei Jiea* [2025] SGHC 226 at [36].
62 AJ Bradbook, "The Actions for Double Rent and Double Value Against Overholding Tenants" (1978) 13 *University of Western Australia Law Review* 420.
63 Distress for Rent Act 1737 (c 19) (UK) s 18.
64 [2025] SGHC 80.

sufficiently identify the *content* of the alleged representation. She failed to even put forth a consistent account of what was allegedly promised to her.[65] She claimed to have been given an irrevocable right to stay, but also said that she was allowed to stay as long as her parents wanted her to. The latter implied a right of revocation. Second, even assuming that there was a sufficiently clear representation, the daughter failed to establish that the detriments she had allegedly suffered were of any degree of significance.[66] For example, her claim that she was the primary caregiver of her parents was rejected because the evidence showed that they were mainly served by their multiple domestic helpers.[67] Third, even assuming that her acts of taking care of her parents constituted a sufficient detriment, it was questionable whether it was performed in reliance on the alleged representation. During her cross-examination, the daughter conceded that she had done so primarily on account of her love for her parents. As any reliance on the alleged representation was *de minimis*, the element of detrimental reliance was not sufficiently established.[68]

B. Contractual licence

21.25 The learned judge was not convinced that the daughter had been granted a contractual licence for three reasons. First, she "failed to identify with any measure of particularity the offer and acceptance under which the contract underpinning the licence came to life".[69] Second, even if some kind of agreement could be found, she did not set out to rebut the presumption that, within the domestic context, there is no intention to create legal relations.[70] The presumption, which applied in this case, was in fact strengthened by her concession that her alleged acts of detriment were performed due to her love for her parents and were not consideration for the contract.[71] Third, even if a contractual licence had been created, there was no attempt to explain what its terms might be, in particular whether the alleged right to indefinite occupation was subject to any proviso. In this regard, following the earlier case of *Ram Niranjan v Navin Jatia*,[72] the learned judge held that it would be appropriate to imply a term to the effect that the daughter's right to stay was subject to her good behaviour:[73]

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65 *Rita Kishinchand Bhojwani v HVS Properties Pte Ltd* [2025] SGHC 80 at [108]–[109] and [116].
66 *Rita Kishinchand Bhojwani v HVS Properties Pte Ltd* [2025] SGHC 80 at [137].
67 *Rita Kishinchand Bhojwani v HVS Properties Pte Ltd* [2025] SGHC 80 at [129].
68 *Rita Kishinchand Bhojwani v HVS Properties Pte Ltd* [2025] SGHC 80 at [43].
69 *Rita Kishinchand Bhojwani v HVS Properties Pte Ltd* [2025] SGHC 80 at [167].
70 *Rita Kishinchand Bhojwani v HVS Properties Pte Ltd* [2025] SGHC 80 at [168].
71 *Rita Kishinchand Bhojwani v HVS Properties Pte Ltd* [2025] SGHC 80 at [170].
72 [2020] 3 SLR 982.
73 *Rita Kishinchand Bhojwani v HVS Properties Pte Ltd* [2025] SGHC 80 at [171].

> It was inconceivable that [the parents] would have contemplated letting the [daughter] stay in the Apartment, irrespective of how she behaved towards her family. Any failure by the parties to provide for this contingency would clearly have been a gap, for which an implied term would be required to give efficacy to the contractual licence. Such a term would, to use Chua J's words in *Ram Niranjan*[74] (at [115]), have received the family's 'unhesitating agreement had it been proposed to them then'.

21.26 In other words, the contractual licence was revocable if the daughter had engaged in unreasonable behaviour. What amounts to unreasonable behaviour necessarily depends on the facts of each case. In the present case, the daughter commenced a spate of baseless litigations against her family members, thereby resulting in the need for her 90-year-old mother to keep coming to court to defend against the daughter's claims. At home, the daughter regularly took video recordings of conversations among family members, to their irritation, in preparation for litigation. On the whole, the learned judge held that the daughter "had very clearly demonstrated behaviour which was sufficiently unreasonable as to justify termination of the contractual licence".[75]

V. Co-ownership

A. Ouster

21.27 Where two or more persons acquire an interest in land with the intention that they are to have simultaneous enjoyment of the interest, they acquire the interest as co-owners. Therefore, whichever form of co-ownership one is concerned with (joint tenancy or tenancy in common), there is unity of possession in the co-owners. This means that a co-owner is entitled to enjoy every part of the land, even if this causes annoyance or inconvenience to the other co-owner(s). However, if a conduct crosses the line from rightful use to exclusionary behaviour, it amounts to ouster, in which case the wrongful co-owner is guilty of trespass. Ouster can be actual or constructive. Both forms of ouster were alleged in *Lee Say Yng v Lee Cheng Mui*[76] where two siblings quarrelled over their rights to enjoy a two-storey semi-detached house owned by them in equal shares. The house was occupied by the sister and their mother. The brother had been living in Australia for almost three decades. In 2017, the brother informed his sister of his intention to return to Singapore to spend more time with their ageing mother. He requested to occupy a specific room in the house. Although he was allowed to do so, a dispute

74 *Ram Niranjan v Navin Jatia* [2020] 3 SLR 982.
75 *Rita Kishinchand Bhojwani v HVS Properties Pte Ltd* [2025] SGHC 80 at [180].
76 [2025] SGHC 126.

arose because the sister refused to remove her personal belongings from the wardrobe in that room. The brother argued that this amounted to constructive ouster. In assessing the claim, Alex Wong JC relied on the test laid down by Philip Jeyaretnam JC in *Goh Rosaline v Goh Nellie*:[77]

> In my view, constructive ouster will include wholly unreasonable conduct of one tenant in occupation that effectively prevents another tenant from also residing there. In the case of residential premises, and especially where the tenants in common are family members, the court must have regard to the subjective feelings of the occupants, including likes and dislikes. The court must consider objectively whether, having regard to the subjective characteristics of the occupants themselves, the impugned conduct amounts to an ouster.

21.28 The complained conduct would be unreasonable if it was aimed at making co-living difficult for the other co-owner.[78] The learned judge found that the sister had not acted unreasonably because she had genuine reasons for not wanting to clear the room.[79] She did not want anyone else to touch her personal belongings, yet she was not in sufficiently good health to personally remove them. Although this was in some sense unreasonable, the important point was that she was not intentionally making things difficult for her brother. Aside from this, it must surely also matter that the inconvenience to which the brother was subjected was relatively trivial. He was not excluded from the house but was merely prevented from using the space occupied by the wardrobe.

21.29 The dispute took a different turn when, after the passing of their mother, the brother informed his sister of his intention to move back to the house on a permanent basis. The sister rejected the proposal, saying that they "cannot stay together".[80] She suggested that if the brother insisted on enforcing his right to the house, the deadlock could only be resolved by the brother buying over her half share or by selling the house in the open market. The learned judge held that this amounted to actual ouster.[81] Although the brother was not actually denied entry into the house, the sister could be understood to have implied that if he insisted on moving back, she would deny him entry. The finding of ouster was affirmed by the Appellate Division.[82]

77 [2021] SGHC 153 at [38].
78 This was phrased in negative form in *Goh Rosaline v Goh Nellie* [2021] SGHC 153 at [39]: "It is important to assess whether any concern, interest or preference relied upon by either party is genuinely held, and has not been feigned for the purpose of making coliving [*sic*] difficult for the other occupant."
79 *Lee Say Yng v Lee Cheng Mui* [2025] SGHC 126 at [103]–[106].
80 *Lee Say Yng v Lee Cheng Mui* [2025] SGHC 126 at [117].
81 *Lee Say Yng v Lee Cheng Mui* [2025] SGHC 126 at [117]–[125].
82 *Lee Cheng Mui v Lee Say Yng* [2026] SGHC(A) 13.

B. *Rule of survivorship and severance of joint tenancy*

21.30 The recent case of *Koh You Quan v Koh Hock Meng*[83] raised an interesting point about the significance of registration in co-ownership law. The property in question was a Housing & Development Board ("HDB") flat jointly purchased by a couple in 1977 and registered in their joint names. In January 2024, the wife was diagnosed with stage four cancer and was advised by doctors that she had only a few more months to live. A week later, on 9 January 2024, she took two legally significant steps to preserve her share in the property as she did not want her husband, whom she alleged to have failed in his marital and familial duties, to benefit from the rule of survivorship. First, she executed a will to leave her interest in the property to her two sons in equal shares. Second, she executed an instrument of declaration for statutory severance and served it on the husband. The instrument was lodged for registration on 11 January 2024. However, despite the use of the statutory procedure for severance, the wife maintained, through a statutory declaration, that she was wholly entitled to the property in equity, either based on a presumed resulting trust or a common intention constructive trust. On 12 January 2024, the wife passed away from her illness. That was also the same day the instrument of severance was registered. The executor of her estate sought a court declaration that she was wholly entitled to the property in equity.

21.31 Mohamed Faizal JC rejected the argument based on a presumed resulting trust and a common intention constructive trust for insufficiency of evidence. In such a situation, the default position would be that the beneficial interest mirrored the registered interest. However, the learned judge declined to make any determination on this issue in light of the incomplete evidence presented before the court, in particular whether the wife's death occurred before or after the instrument of severance was registered.[84] As the learned judge explained:[85]

> In theory, if registration had taken place before the Deceased's passing, then the statutory severance would have been effective, and the Deceased's 50% share of the legal title would fall to her estate. If, however, the Deceased passed away before registration could take place, then it could conceivably mean that the right of survivorship would have applied at the point of passing and the full legal title would have vested in the [husband], such that there would no longer be any legal joint tenancy to sever.

83 [2026] 3 SLR 170.

84 *Koh You Quan v Koh Hock Meng* [2026] 3 SLR 170 at [46].

85 *Koh You Quan v Koh Hock Meng* [2026] 3 SLR 170 at [46].

21.32 Importantly, relying on the decision in *Chan Lung Kien v Chan Shwe Ching*,[86] the learned judge said that the severance would be effected only upon registration.[87] In that case, the Court of Appeal preferred a conjunctive reading of ss 53(5) and 53(6) of the Land Titles Act[88] because it gives emphasis to the vital role of registration in the Torrens system.[89] Applying this to the present facts, "if the [wife] passed away before the instrument of declaration was registered, the right of survivorship would have applied before any statutory severance could have been effected".[90]

21.33 Although the matter was not fully argued before the court, one should observe that the present case is more complex than what it appears to be. In the first place, it is distinguishable from *Chan Lung Kien v Chan Shwe Ching*[91] because here the instrument of severance was in fact registered, following which the certificate of title was amended to show that the husband and wife held the property in equal shares. If emphasis is to be given to registration, the registration of the instrument of severance must be accorded legal significance. By the same reasoning, one may argue that the requirement of registration ought to also apply to the operation of the rule of survivorship. Under s 114 of the Land Titles Act 1993[92] ("LTA"), the surviving joint tenant may apply to have the death of the deceased joint tenant notified on the land-register, upon which the Registrar of Titles must amend the certificate of title to reflect the operation of the rule of survivorship. In short, the competition is to be resolved by reference to the order of registration (or notification). However, if this is truly how the matter should be analysed, the rule of survivorship would never prevail where the instrument of severance has been lodged for registration when the deceased joint tenant was still alive. It is simply impossible for the surviving joint tenant to be any quicker in procuring the operation of the rule of survivorship on the land registered. However, although this may seem unfair to the surviving joint tenant, it must not be forgotten that the law has always recognised the liberty of each joint tenant to bring the jointure to an end.[93] Taking this view to its logical conclusion, even if it turns out that the severing joint tenant

86 [2018] 2 SLR 84. That case was decided by Sundaresh Menon CJ, Andrew Phang JA, Judith Prakash JA, Tay Yong Kwang JA and Steven Chong JA.

87 Departing from the earlier decision of the same court in *Diaz Priscillia v Diaz Angela* [1997] 3 SLR(R) 759.

88 Cap 157, 2004 Rev Ed. See generally Alvin W-L See, "Severance by Unilateral Declaration: Lessons from Singapore" [2019] *Conveyancer & Property Lawyer* 138; Barry C Crown, "Severance of a Joint Tenancy" [1998] SJLS 166; and Barry C Crown, "Developments in the Law of Co-ownership" [2003] SJLS 116.

89 *Chan Lung Kien v Chan Shwe Ching* [2018] 2 SLR 84 at [64].

90 *Koh You Quan v Koh Hock Meng* [2026] 3 SLR 170 at [46].

91 [2018] 2 SLR 84.

92 2020 Rev Ed.

93 See, *eg*, *Cray v Willis* (1729) 2 P Wms 529; 24 ER 847.

died before the instrument of severance was registered, the severance ought to be regarded as effective in equity. As the severing joint tenant has no control over the timing of her death, this would plainly be such an exceptional situation where registration ought not to be insisted.[94]

C. Order for sale

21.34 The Supreme Court of Judicature Act 1969[95] confers on the General Division a general power to order a sale in lieu of partition of a co-owned land. The power is stated in para 2 of the First Schedule:

> Power to partition land and to direct a sale instead of partition in any action for partition of land; and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part of it to be sold, and to give all necessary and consequential directions.

Considering the difficulty in obtaining an order for partition, it is typical for aggrieved co-owners to ask only for an order for sale. Interestingly, the nature of such an application has been the subject of judicial disagreement. In *Tan Poh Beng v Choo Lei Mei*,[96] Edmund Leow JC held that the statutory provision was not intended to create "an unfettered power on the Court's part to order the sale of a property simply because it is 'necessary or expedient' to do so".[97] Instead, the court's power to direct a sale was "contingent on there being a *substantive legal basis* to justify the exercise of that power"[98] [emphasis in original], as inferable from the statutory reference to a "cause or matter"[99] relating to land.[100]

21.35 The issue was recently revisited by the General Division in *Sin Chiau Soon v Aitken Robert Bond*.[101] The property in question was an industrial unit held by two business partners as tenants in common in equal shares. Following the breakdown in the relationship, one co-owner stopped contributing to his share of the property-related expenses, in particular, the mortgage repayments, property tax, Management Corporation Strata Title ("MCST") fees and fire insurance premiums. This same co-owner also refused to agree to any sale or lease of the property. Faced with such difficulty, the aggrieved co-owner applied to the court for an order for sale. The rogue co-owner argued, relying on *Tan*

94 Alvin W-L See, "Severance by Unilateral Declaration: Lessons from Singapore" [2019] *Conveyancer & Property Lawyer* 138.
95 2020 Rev Ed.
96 [2014] 4 SLR 462.
97 *Tan Poh Beng v Choo Lei Mei* [2014] 4 SLR 462 at [19].
98 *Tan Poh Beng v Choo Lei Mei* [2014] 4 SLR 462 at [19].
99 *Tan Poh Beng v Choo Lei Mei* [2014] 4 SLR 462 at [19].
100 *Tan Poh Beng v Choo Lei Mei* [2014] 4 SLR 462 at [19].
101 [2025] 5 SLR 782.

Poh Beng v Choo Lei Mei,[102] that the court had no substantive legal basis to order a sale. Chua Lee Ming J rejected this argument. In the first place, even if such a requirement is inferable from the statutory wording, it does not apply to the first limb of the statutory provision, namely the "[p]ower to partition land and to direct a sale instead of partition in any action for partition of land".[103] Where the aggrieved co-owner asks for an order of sale, the application is to be characterised as an action for partition, and the court is empowered to direct a sale in lieu of partition.[104] This is supported by a series of cases in which the apex court held that the only considerations in the court's exercise of this power were necessity and expediency.[105] The requirement of substantive legal basis is inconsistent with these cases.

21.36 Alternatively, one may argue that even if the stricter view is adopted, there is a clear substantive legal basis for ordering a sale on the application of a co-owner. Historically, every co-owner has the right to bring the co-ownership to an end by partition. It is of course true that this right is now diluted by the court's power to direct a sale in lieu of partition, and that the court may even refrain from making any order if it is neither necessary nor expedient. However, in so far as an order for sale is meant to be a substitute for partition, they rest on the same conceptual footing. In other words, even if a co-owner's application for an order for sale is not an action for partition, it is similarly based on the historical right of a co-owner to bring the co-ownership to an end.

21.37 Having been convinced that the court had the power to direct a sale, the learned judge held that an order to this effect should be made.[106] The aggrieved co-owner was made to bear all the expenses relating to the property after the relationship breakdown. This financial burden made it difficult for the aggrieved co-owner to keep up with the mortgage loan, thereby risking a forced sale by the bank. In such circumstances, it was both necessary and expedient to make an order for sale.

VI. Caveats

21.38 The dispute in *Primepulse Consultancy Pte Ltd v Chan Pau Tee*[107] ("*Primepulse*") concerned an unusually drafted loan agreement through

102 [2014] 4 SLR 462.
103 *Sin Chiau Soon v Aitken Robert Bond* [2025] 5 SLR 782 at [23]–[25].
104 *Sin Chiau Soon v Aitken Robert Bond* [2025] 5 SLR 782 at [25].
105 *Ooi Chhooi Ngoh Bibiana v Chee Yoh Chuang* [2020] 2 SLR 1030; *Su Emmanuel v Emmanuel Priya Ethel Anne* [2016] 3 SLR 1222.
106 *Sin Chiau Soon v Aitken Robert Bond* [2025] 5 SLR 782 at [35].
107 [2025] 3 SLR 1272.

which the lender sought to acquire a security interest in the sale proceeds of a property of which the borrower was a co-owner. The agreement also allowed the lender to lodge a caveat over the property for as long as the loan amount remained outstanding. However, when the lender lodged a caveat, the borrower (and the other co-owner) applied to the Registrar of Titles for its cancellation on the ground that it was lodged vexatiously, frivolously and/or not in good faith pursuant to s 127(2) of the LTA. The lender in turn resisted this allegation and prayed that the caveat be allowed to remain. Wong Li Kok, Alex JC held that the caveat should be withdrawn because it significantly misdescribed the subject matter of the security interest. Although the dispute was resolved on this procedural basis, the learned judge also offered his view on whether the form of security in question was recognised in law and whether it was a caveatable interest.

A. Caveatable interest

21.39 Section 115(1) of the LTA states that a caveat may be lodged by "[a]ny person claiming an interest in land". In the context of registered land, a debt is typically secured by a mortgage over the land.[108] Where the mortgage is unregistered, it is called an equitable mortgage, which is a caveatable interest. However, in *Primepulse*, the loan agreement did not refer to a mortgage (or charge).[109] Instead, the security interest was given expression through an unusual set of terms:[110]

> [The borrower] hereby irrevocably and unconditionally consent[s] to the sale of the Property, and that [the borrower] will apply the proceeds from the sale of the Property to repay the outstanding loan amounts due under this Agreement.
>
> …
>
> … [the borrower] HEREBY ASSIGNS unto the Lender all [her] rights, title, interest, benefit, advantages, permits, licences and remedies which [the borrower] may have in under or arising out of the Sale Agreement including all the sale proceeds thereof and other monies payable or to become payable thereunder as a continuing security for the payment of the Total Indebtedness …
>
> [emphasis in original omitted]

21.40 Unlike a regular mortgage of land, the subject matter of the security interest contemplated by the loan agreement was not the land but its sale proceeds. As the learned judge explained, "the Assignment amounted to an equitable charge over the proceeds of sale".[111] On

108 Land Titles Act 1993 (2020 Rev Ed) s 68(1).
109 In this context, the terms "mortgage" and "charge" are used interchangeably.
110 *Primepulse Consultancy Pte Ltd v Chan Pau Tee* [2025] 3 SLR 1272 at [17] and [19].
111 *Primepulse Consultancy Pte Ltd v Chan Pau Tee* [2025] 3 SLR 1272 at [72].

the face of it, the lender did not have an "interest in land". However, s 115(3)(*a*) of the LTA states that a person claiming an interest in land includes "any person who has an interest in the proceeds of sale of land, not being an interest arising from a judgment or order for the payment of money". Whether this provision should be given its literal meaning has been the subject of judicial disagreement. For background, the limit of s 115(3)(*a*) was first tested by moneylenders who attempted to circumvent the statutory prohibition against using a HDB flat as security for any debt.[112] Instead of acquiring a mortgage, which would be void, the creditor devised a quasi-security arrangement which involved the lodging of a caveat, the purpose of which was to hold the debtor's property hostage by preventing any dealing with it. This was what happened in *Salbiah bte Adnan v Micro Credit Pte Ltd*,[113] where the loan documents expressly provided that, in the event of default by the debtor, the creditor would be allowed to lodge a caveat over the debtor's property "to secure [the creditor's] interest in the sale proceeds of the [p]roperty".[114] Leow JC held that such a quasi-security arrangement did not create any recognised security interest, and therefore the lender was not entitled to lodge a caveat to protect a personal right to repayment.[115] This was despite the plain wording of s 115(3)(*a*) as this provision must be given a purposive interpretation.[116]

21.41 The original purpose of s 115(3)(*a*), as Baalman explained, was to address a situation where the doctrine of conversion applies.[117] The most straightforward example, which he specifically referred to, is a trust for sale. This typically takes the form of an express trust with a duty imposed on the trustee to sell the land. As equity regards as done that which ought to be done, and what the trustee ought to have done is to convert the land into money, the beneficiary is treated as having an interest in the sale proceeds and not in the land. This conversion operates immediately even though the land has yet to be sold for money. This had important implications in the old law of succession, under which *realty* passes to the deceased's heir while *personalty* passes to the deceased's next of kins. If the beneficiary dies before the land is sold, his interest, being in the sale proceeds instead of the land, passes as personalty to his next of kin. This outcome is desirable because it accords with the intention of the

112 Housing and Development Act 1959 (2020 Rev Ed) s 58(1).
113 [2015] 1 SLR 601.
114 *Salbiah bte Adnan v Micro Credit Pte Ltd* [2015] 1 SLR 601 at [1].
115 *Salbiah bte Adnan v Micro Credit Pte Ltd* [2015] 1 SLR 601 at [41]. See also *Kok Zhen Yen v Beth Candice Wu* [2024] 3 SLR 730 at [35]–[40].
116 *Salbiah bte Adnan v Micro Credit Pte Ltd* [2015] 1 SLR 601 at [30].
117 John Baalman, *The Singapore Torrens System: Being a Commentary on the Land Titles Ordinance, 1956 of the State of Singapore* (Government of the State of Singapore, 1961) at p 196.

settlor in creating a trust for sale. However, in Singapore, the distinction between realty and personalty ceased to be of any relevance since the enactment of the Indian Act No XX of 1837, which provided that a realty would devolve in the same manner as a personalty.[118] The upshot was that although the doctrine of conversion was received into Singapore through the Second Charter of Justice[119] in 1826, it no longer served the original purpose for which it was conceived. Understandably, therefore, what Baalman intended to achieve through s 115(3)(*a*) was to *reconvert* the beneficiary's interest in the sale proceeds into an interest in the land.[120] In short, because s 115(3)(*a*) is meant to undo the effect of the doctrine of conversion, it should not apply in a situation where the doctrine does not operate. The doctrine operates only where the landowner is "charged with a duty of sale".[121]

21.42 However, in *Primepulse*, the learned judge expressed preference for a literal reading of s 115(3)(*a*):[122]

> [T]he court must assume that Parliament does not legislate in vain, nor does it legislate tautologously (see *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 … at [38]). The fact that s 115(3)(*a*) of the LTA refers to '*any* person who has an interest in the proceeds of sale of land, not being an interest arising from a judgment or an order for the payment of money' … would, in its ordinary meaning, imply that *any* and all interests in the proceeds of sale of land, barring only the two explicit exceptions, would constitute a caveatable interest in land. [emphasis in original]

21.43 In other words, as the plain meaning of the statutory wording is unambiguous, one should avoid referring to external materials to show that a different meaning is intended.[123] With respect, the attempt to identify the precise scope of s 115(3)(*a*) is not entirely free of ambiguity. For example, it is unclear why judgment creditors have been expressly forbidden from relying on this section. This prohibition, which was added only in 2001,[124] did not exist in the original enactment.[125] Unfortunately, the parliamentary reports do not reveal the reason for this amendment.

118 See also Conveyancing and Law of Property Act 1886 (2020 Rev Ed) s 35(1).
119 Letters Patent establishing the Court of Judicature at Prince of Wales' Island, Singapore and Malacca dated 27 November 1826 and made under the authority of Act 6 Geo 4, c 85.
120 John Baalman, *The Singapore Torrens System: Being a Commentary on the Land Titles Ordinance, 1956 of the State of Singapore* (Government of the State of Singapore, 1961) at p 196.
121 *Salbiah bte Adnan v Micro Credit Pte Ltd* [2015] 1 SLR 601 at [34].
122 *Primepulse Consultancy Pte Ltd v Chan Pau Tee* [2025] 3 SLR 1272 at [64].
123 *Primepulse Consultancy Pte Ltd v Chan Pau Tee* [2025] 3 SLR 1272 at [63]–[65], citing the Interpretation Act 1965 (2020 Rev Ed) s 9A(2)(*b*)(i).
124 Land Titles (Amendment) Act 2001 (Act 25 of 2001) s 25.
125 Land Titles Ordinance 1956 (Act 21 of 1956) s 93.

On one view, the fact that the prohibition did not extend to regular creditors claiming an interest in the sale proceeds suggests that they are allowed to rely on the section. Alternatively, the focus on judgment creditors may serve to clarify that the preservation of an enforcement order should be pursued under s 132 – by registering the enforcement order – and not through the lodgment of a caveat.[126] Such a clarification says nothing about whether a regular creditor claiming to have an interest in the sale proceeds may rely on s 115(3)(*a*). If one accepts the basic principle that s 115(1) is primarily (even if not solely) concerned about recognised property rights, then s 115(3)(*a*) should be interpreted in a way that is consistent with this basic principle unless there are strong reasons for doing otherwise.

21.44 In any event, one may argue that even if a purposive reading of s 115(3)(*a*) were to be adopted, the lender in *Primepulse* had a caveatable interest. As the learned judge rightly accepted, the loan agreement created a recognised form of security interest, specifically an equitable charge over the sale proceeds. On the face of it, this appears illogical because no sale proceeds currently exist. However, they can be brought into existence through a sale of the property, to which the borrower has given her irrevocable and unconditional consent. As equity regards as done that which ought to be done, the lender is treated as having a security interest in the sale proceeds and not in the land. In other words, the design of the security interest is premised on the operation of the doctrine of conversion. As such, one may argue that this was a situation which attracts the operation of s 115(3)(*a*). By contrast, in the earlier cases where the lenders were held to have no caveatable interest, the borrowers were under no duty to sell their properties in the event of default.

B. Removal of caveat

21.45 As Baalman explained, the procedure for the removal of a caveat under s 127(2), which applies to a lodgment that is vexatious, frivolous or not in good faith, is "directed primarily against eccentric individuals whose claim to land is only imaginary".[127] Considering the expedited nature of the application to resist the withdrawal, the caveator is not required to prove that he has a caveatable interest.[128] Instead, what he

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126 Thereby reversing the practice previously endorsed by the Court of Appeal in *Official Assignee of the estate of Lim Chiak Kim, a bankrupt v United Overseas Bank Ltd* [1988] 2 SLR(R) 88.

127 John Baalman, *The Singapore Torrens System: Being a Commentary on the Land Titles Ordinance 1956 of the State of Singapore* (Government of the State of Singapore, 1961) at p 208.

128 *Primepulse Consultancy Pte Ltd v Chan Pau Tee* [2025] 3 SLR 1272 at [28], citing *Nimisha Pandey v Divya Bothra* [2023] 5 SLR 1254 at [29].

needs to do is to dispel the allegation by furnishing "satisfactory evidence that the caveats were not lodged with improper motive, or utterly groundless and unable to withstand a challenge to cancel it".[129] In *Primepulse*, the lender was held to have acquired a recognised security interest amounting to a caveatable interest. Even prior to this judicial pronouncement, the loan agreement was clearly different from those found in the earlier cases such that one cannot say for sure that what the lender had was merely a personal right to be repaid. As such, it is difficult to say that the caveat was lodged vexatiously, frivolously, or not in good faith.

21.46 The real problem with the lender's caveat was that it misdescribed the *extent* of the underlying interest. On the facts, the borrower was merely a joint tenant of the property. Without the consent of the other joint tenant, the borrower was unable to deal with the entire interest in the property. The borrower was at most entitled to deal with her individual entitlement as a joint tenant. Therefore, even if the property were sold, the equitable charge granted by the borrower would only attach to half of the sale proceeds. The caveat, in failing to express such limitation, appeared to suggest that the lender was entitled to claim from the entire sale proceeds.[130] As this was positively misleading, the learned judge refused to order against the application for the removal of the caveat. Interestingly, the learned judge suggested that the caveat must be regarded as having been lodged vexatiously, frivolously, or not in good faith:[131]

> [I]f the [caveator's] interests as described in the caveats are inconsistently stated and raises doubts as to the true interest claimed in the caveats and the supporting grounds, I had reason to find that the caveats were lodged vexatiously, frivolously and/or not in good faith.

21.47 This view is understandable as the application to remove the caveat was made pursuant to s 127(2) of the LTA. However, it was more likely that the misdescription was due to the caveator's carelessness, which is less culpable than the types of wrongful lodgments referred to in s 127(2). The preferred view is that even if the application to remove the caveat commenced under s 127(2), the court may uphold the application for removal on any other recognised grounds, such as careless misdescription. This view is supported by s 127(4) which gives the court a broad power to "make such order in the premises as seems just".

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129 *Primepulse Consultancy Pte Ltd v Chan Pau Tee* [2025] 3 SLR 1272 at [32].
130 *Primepulse Consultancy Pte Ltd v Chan Pau Tee* [2025] 3 SLR 1272 at [44].
131 *Primepulse Consultancy Pte Ltd v Chan Pau Tee* [2025] 3 SLR 1272 at [36].

VII. Easements

21.48 The dispute in *Management Corporation Strata Title Plan No 561 v Kosma Holdings Pte Ltd*[132] concerned the use of a service road behind Parklane Shopping Mall, a strata-titled mall. This service road is the only vehicular access to the mall's car park as well as its loading bay. Interestingly, the mall and the service road are on separate land lots. They were previously comprised in a single land lot until subdivided. At the time of dispute, the service road was owned by KOSMA Holdings Pte Ltd ("KOSMA"), a company who was also the subsidiary proprietor of the mall's car park. A gantry was installed at the service road's entrance to control vehicular access. For many years, refuse collection trucks were allowed free entry into the mall's loading bay where the rubbish bins were located. The dispute arose when KOSMA decided to charge fees for entry into the loading bay. In response, the MCST who was responsible for administering the mall's common property applied to the court for relief, seeking either the declaration of an implied easement or the creation of a new easement by the court.

A. Implied easement

21.49 The MCST applied for a declaration of an implied easement pursuant to s 99 of the LTA. Section 99(1) states that where a parcel of land has undergone subdivision, there shall be implied, in favour of each subdivided lot, such easements as referred to in s 99(1A). This includes any right of way that: (a) has been appropriated or set apart on the subdivision plan; and (b) is necessary for the reasonable enjoyment of the dominant land. Unfortunately, the MCST was unable to produce the subdivision plan despite their best efforts.[133] The MCST sought to rely instead on the certified plan for the mall, on which the service road was marked "service road". However, the two plans were technically different, as a subdivision plan would include additional markings relating to drainage, party wall and supply lines. In *Muthukumaran s/o Varthan v Kwong Kai Chung*,[134] the Court of Appeal was prepared to accept that the certified plan was the subdivision plan for the purpose of s 99 of the Land Titles Act.[135] However, the court refrained from making any definitive pronouncement, not only because no argument was advanced on this

132 [2026] 3 SLR 1058.

133 The subdivision was not lodged with the Registrar of Titles. However, this is not a requirement for an easement to be implied under s 99 of the Land Titles Act (Cap 157, 1994 Rev Ed): see *Management Corporation Strata Title Plan No 549 v Chew Eu Hock Construction Co Pte Ltd* [1998] 2 SLR(R) 934.

134 [2016] 1 SLR 1273.

135 Cap 157, 2004 Rev Ed.

point but also because it was not critical for the resolution of the dispute. The declaration of an implied easement was eventually denied because there was no sufficient indication of an easement on the plan. In short, there is no clear precedent for equating a certified plan with a subdivision plan. In *Management Corporation Strata Title Plan No 561 v Kosma Holdings Pte Ltd*,[136] the learned judge considered it likely that the certified plan was prepared based on the subdivision plan, and therefore it would be reasonable to regard the former as "secondary evidence in order to establish the inference that the approved subdivision plan (like the Certified Plan) used the label 'service road' and in the same manner".[137] However, the learned judge refrained from doing so because, based on the definition of "secondary evidence" in s 65 of the Evidence Act 1893,[138] one was not a "copy" of the other.[139]

B. Judicial creation of easement

21.50 Attention then shifted to s 97A(1) of the LTA which allows the court to:[140]

> … make an order creating an easement over registered land if the easement is reasonably necessary for the effective use or development of other land (whether registered or unregistered) that will have the benefit of the easement.

21.51 This provision was introduced in 2014 to "facilitate more efficient and optimal use of land".[141] In so far as the substantive requirements of s 97A of the LTA were concerned, the learned judge had no difficulty in finding that an easement over the access road was reasonably necessary for the effective use of the mall. To illustrate the point, the learned judge alluded to the high degree of inconvenience that the MCST would be put to in operating the mall without an easement:[142]

> The Mall as it was built was and is dependent on access via the Service Road to the Loading Bay (including the bin centre). Even though the MCST has been unable to produce the subdivision plan, it is plain from the Certified

136 [2026] 3 SLR 1058.
137 *Management Corporation Strata Title Plan No 561 v Kosma Holdings Pte Ltd* [2026] 3 SLR 1058 at [26].
138 2020 Rev Ed.
139 *Management Corporation Strata Title Plan No 561 v Kosma Holdings Pte Ltd* [2026] 3 SLR 1058 at [26].
140 An equivalent provision for the judicial creation of a new easement over unregistered land is found in s 34A of the Conveyancing and Law of Property Law Act 1886 (2020 Rev Ed).
141 See Singapore Parl Debates; Vol 91, Sitting No 3; Pages 41–42; [17 February 2014] (Indranee Rajah, Senior Minister of State for Law).
142 *Management Corporation Strata Title Plan No 561 v Kosma Holdings Pte Ltd* [2026] 3 SLR 1058 at [48].

> Plan that without access to the Loading Bay via the Service Road, the Mall cannot effectively function for its built purpose as a mall. While it may not be physically impossible to wheel the rubbish bins through the Mall and past the neighbouring development along Selegie Road (yet without stepping onto Selegie Road which would cause an obstruction to traffic and would also be against the flow of traffic) to meet refuse trucks backing into Kirk Terrace, one has only to envisage this process to realise it is completely impractical. Similarly, loading and unloading cannot take place via Selegie Road.

21.52 Having accepted that the creation of an easement over the service road was reasonably necessary for the use of the mall, the learned judge went on to address s 97A(2) of the LTA, which states that an appropriate order may be made only if the court is satisfied:

> (*a*) that the use of the land to which the benefit of the easement is to be made appurtenant will not be inconsistent with the public interest;
>
> (*b*) that the proprietor of the land to be burdened by the easement can be adequately compensated for any loss or other disadvantage that will arise from the creation of the easement; and
>
> (*c*) that all reasonable attempts have been made by the applicant to obtain the easement or an easement having the same effect directly from the proprietor of the land to be burdened by the easement.

21.53 As the third requirement was clearly not satisfied, the learned judge gave the parties time to exchange proposals concerning the grant of an easement. The parties were also asked to make submissions, if the negotiation did not lead to an agreement, about the scope of the easement to be created and the compensation that would be payable to KOSMA.

21.54 About four and a half months later, a supplemental judgment was delivered.[143] As the parties had failed to come to an agreement about the grant of an easement, the learned judge held that an easement should be created pursuant to s 97A. Having regard to what was reasonably necessary for the effective use of the mall, it was held that the easement should be limited to vehicular access to the mall's loading bay. Refuse trucks should be allowed free entry, whereas other service vehicles would be charged a fee.[144] To prevent future disputes, a limit was placed on the entry fees for the latter category of vehicles, being no higher than 1.5 times the rates imposed by KOSMA for vehicles entering the car park.[145]

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143 *Management Corporation Strata Title Plan No 561 v Kosma Holdings Pte Ltd* [2026] SGHC 25.

144 *Management Corporation Strata Title Plan No 561 v Kosma Holdings Pte Ltd* [2026] SGHC 25 at [16]–[18].

145 *Management Corporation Strata Title Plan No 561 v Kosma Holdings Pte Ltd* [2026] SGHC 25 at [20].

The commercial sensibility of this decision was elaborated upon by the learned judge:[146]

> This is a simple self-policing approach. The demands of the market will inform how KOSMA prices entry to the Carpark. Pegging the price for entry to the Loading Bay to 1.5 times that for the Carpark will ensure that 'prevailing commercial and market conditions' will always be considered by KOSMA (or any subsequent owner of the Carpark and Service Road). At the same time, allowing the rate to use the Loading Bay to be slightly higher than that for the Carpark will incentivise users of the Loading Bay to minimise time spent at the Loading Bay.

21.55 Turning to the issue of compensation, the learned judge focused on the additional wear-and-tear that would be caused by the entry of refuse trucks on the 6.4m stretch of the service road fronting the loading bay. The MCST was ordered to share half the cost of future maintenance, repairs and replacements.[147]

VIII. Strata developments

A. Water leakage

21.56 The case of *Lew Huey Jiun Isabelle v Lee Yu Ru Michael*[148] concerned a failed attempt at appealing against the decision of the Strata Titles Board ("STB") on liability for water leakage. The ceiling of the claimants' flat was damaged by water leaking from the defendant's flat located above. When the defendants were attempting to rectify the problem, the claimants managed to rent out their flat. Thereafter, the defendants were denied access to the claimants' unit to identify the source of the leakage. The claimants insisted that the rectification work could be carried out in the flat above without involving the flat below. However, despite the defendants' rectification efforts, the problem persisted. The tenancy was eventually terminated by the tenant. A replacement tenant was found but the agreed rent was lower. The STB awarded the claimant the basic cost of rectification. The full cost was not awarded because the claimants were partly to blame for denying the defendants access to the claimants' flat to carry out rectification works. The claim for loss of rental was also not awarded because the evidence did not sufficiently reveal a causal connection between the leak and the loss resulting from the termination of the first tenancy.

146 *Management Corporation Strata Title Plan No 561 v Kosma Holdings Pte Ltd* [2026] SGHC 25 at [20].
147 *Management Corporation Strata Title Plan No 561 v Kosma Holdings Pte Ltd* [2026] SGHC 25 at [34].
148 [2025] SGHC 1.

21.57 The claimants filed an appeal but were late in doing so. An important consideration for whether an extension of time should be allowed was whether the appeal had any prospect of success. If the merits of the case were such that an appeal would be hopeless, an extension of time should be denied. To strengthen their case, the claimants sought to furnish additional evidence, specifically an affidavit by the first tenant explaining that he terminated the tenancy because of the water leak. As it transpired, this tenant was also the author of a report of a leak, titled "Expert Witness Report", which was adduced before the STB to explain why the problem could be rectified without having access to the flat below. In the proceedings below, the claimants have taken active steps to conceal the fact that these were the same person. Considering the deliberate nature of the omission, Tan JC rejected the admission of the new affidavit, thereby preventing the claimant from establishing the causal connection between the water leakage and the termination of the tenancy.[149] Even if such evidence was admitted, thereby establishing the required causation, it would have made no difference to the outcome. The problem remained unrectified because the claimants had prevented the defendants from entering the flat below to effect the necessary repairs.[150] A final consideration was that no appeal should lie "except on a point of law".[151] The claimants argued, based on an extended definition of "point of law", that the STB had failed to consider admissible and relevant evidence. But even on this definition, which the learned judge was inclined to reject, there was nothing to suggest that the STB had erred in law. The learned judge explained:[152]

> Reverting to the present case, I can see no obvious error on any point of law in connection with the first ground of appeal. The STB's decision as to causation of the rental loss did not turn on any point of law, whether novel or settled. Nor can the STB's decision on this point be regarded as one which no person acting judicially and properly instructed as to the relevant law could have arrived at. Rather, it was a factual decision that was amply supported by the abject dearth of evidence adduced by the Claimants in support of their case.

As such, an extension of time to file an appeal was denied because the appeal would be hopeless.

149 *Lew Huey Jiun Isabelle v Lee Yu Ru Michael* [2025] SGHC 1 at [41].
150 *Lew Huey Jiun Isabelle v Lee Yu Ru Michael* [2025] SGHC 1 at [42].
151 Building Maintenance and Strata Management Act 2004 (Act 47 of 2004) s 98; now Building (Strata Management) Act 2004 (2020 Rev Ed) s 98.
152 *Lew Huey Jiun Isabelle v Lee Yu Ru Michael* [2025] SGHC 1 at [59].

B. Pet by-law

21.58 The dispute in *Tan Shuh Lin v Loong Kai Jun Matthew*[153] arose from an unfortunate incident that happened at the car park lobby of a condominium. An elderly man, who was standing beside the lift, was startled when a dog exited the lift. The dog was held on a short leash by its owner who exited the lift at the same time. The elderly man fell backwards and suffered a traumatic brain injury. His daughter commenced an action on his behalf, claiming that the dog owner was negligent in handling the dog and that he had breached condominium by-laws relating to pet size. The latter claim focused on the interpretation of a by-law which stated: "Only dogs of small breed as defined by the relevant authorities are allowed."[154] The claimant alleged that the dog, a corgi, was not of "small breed". The difficulty with this assertion is that there is no universal guideline or classification of dogs by reference to size. A corgi falls somewhere in the middle in so far as size is concerned. The claimant referred the court to the Housing and Development (Animals) Rules 2024 which states, in The Schedule, a list of 62 "applicable dogs" that are permitted to be kept in a HDB flat. The corgi is missing from the list. District Judge Samuel Wee rejected the use of this list for two reasons. First, the HDB could not be considered as a relevant authority in so far as a private residential property was concerned.[155] Second, the term "applicable dogs" was not expressly defined by reference to size.[156] Therefore, it was held that the defendant did not breach the small dog breed by-law.

IX. Concluding observations

21.59 The disputes that have come before the courts are increasingly complex, arising from broken familial relations, sophisticated business arrangements, and competing land uses. From the reported cases, it is clear that the courts have addressed them with a generous dose of common sense, pragmatism and contextual sensitivity. Although the issues covered in this review have not been tested before the apex court,

153 [2025] SGDC 303.
154 *Tan Shuh Lin v Loong Kai Jun Matthew* [2025] SGDC 303 at [5].
155 *Tan Shuh Lin v Loong Kai Jun Matthew* [2025] SGDC 303 at [54].
156 *Tan Shuh Lin v Loong Kai Jun Matthew* [2025] SGDC 303 at [55]. The author notes that although most of the dog breeds on the list were smaller than a corgi, there was at least one breed, the Shetland sheep dog, that was consistently larger than the corgi.

one can be confident that the courts below have applied, and developed, the law with sufficient rigour to withstand further scrutiny.