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21. LAND LAW

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I. Landlord and tenant

A. Nature of tenancy – periodic or at will

21.1 In *Na Bon Tiam v Ark Engineering & Offshore Pte Ltd*[1] ("*Na Bon Tiam*"), the plaintiff leased its premises to the defendant. On the basis that the defendant was in arrears of rent, the plaintiff changed the lock to the premises and denied the defendant access to it. Later, the plaintiff formally re-entered the premises.

21.2 It was undisputed that the original lease was automatically renewed for a period of 24 months upon the expiration of the initial 24-month term of the original lease. However, no written signed fresh tenancy agreement governing the tenancy between the parties after the expiry of the original lease had been produced in evidence by either party. The plaintiff submitted that a month-to-month tenancy at will arose in respect of the premises and was in subsistence at the relevant time of the dispute between the parties. On the other hand, the defendant argued that there was a month-to-month periodic tenancy between them.

21.3 The Magistrate's Court held that where the tenant of a fixed-term lease continues staying on the property after the expiration of the lease, either a tenancy at will or a periodic tenancy can be created. In *Javad v Mohammed Aqil*,[2] the English Court of Appeal held that in order to determine what interest the tenant had, the court had to take into fair consideration all of the circumstances in order to draw a sensible and reasonable inference of the terms which the parties are taken to have intended to apply. In the present case, the court found that the parties had not expressly agreed to any fresh tenancy agreement. This meant that at the time the original lease expired, the parties had no intention of agreeing to terms on a fresh tenancy agreement. The court distinguished the English High Court case of *Valley View v NHS Property Services Ltd*[3]

1 [2024] SGMC 12.
2 [1991] 1 WLR 1007.
3 [2022] EWHC 1393.

("*Valley View*") relied on by the plaintiff in arguing that a tenancy at will had arisen between the parties. In *Valley View*, both sides conducted themselves on the basis that they remained in negotiations to settle the formal terms. The English High Court had specifically found this intention to be there even though negotiations proceeded very slowly with lengthy gaps in communications, with the focus of negotiations changing course multiple times over a period of more than four years, as the court accepted that negotiations were not regarded as abandoned or concluded during this period. This intention to negotiate formal terms was lacking in the present case. The court, accordingly, concluded that, in the circumstances, an implied periodic tenancy arose between the parties after the expiration of the original lease.[4] As such, the terms of the original lease continued to bind the parties and the bi-monthly periodic tenancy (given that rent was paid on that basis) was automatically renewed once every two months until the appropriate notice to quit was given by either party. The defendant was, hence, liable to the plaintiff for rent for the relevant period.

B. Termination of tenancy

(1) Forfeiture

(a) Prohibition against subletting, parting with and sharing of possession and use of demised premises

21.4 In *Royal & Sons Organisation Pte Ltd v Hotel Calmo Chinatown Pte Ltd*[5] ("*Royal & Sons Organisation*"), the claimant leased to the defendant premises to conduct business thereon in good faith and in a reputable manner. It was for a term of six years. Clause 2(22) of the tenancy agreement prohibited the subletting, sharing or the use of the premises or any part thereof, except for unit #01-12 for use of "F&B" which the defendant had sublet to R. The claimant later sought forfeiture of the lease on the ground, *inter alia*, that the defendant had breached cl 2(22) by allowing a third party (one MoNo) to use the lobby of the premises.

21.5 The General Division of the High Court ("High Court") agreed with the claimant that the defendant had breached cl 2(22) of the tenancy agreement. Section 18(1) of the Conveyancing and Law of Property Act

4 The court also rejected the plaintiff's argument that an equitable lease arose between the parties after the expiry of the original lease (*Na Bon Tiam v Ark Engineering & Offshore Pte Ltd* [2024] SGMC 12 at [40]).

5 [2024] SGHC 248.

1886[6] ("CLPA"), requiring the requisite notice to be given by the claimant to the defendant before forfeiting the lease, was not applicable in the light of s 18(8) of the CLPA.[7] The court was of the view that it was not a defence to say that the defendant had since terminated R's subtenancy as the latter covered unit #01-12 and was unrelated to the use of the lobby of the premises. Further, it was contrary to the contemporaneous documentary evidence and the defendant's own affidavit of evidence-in-chief that it did not know of MoNo's activities in the lobby.[8] The defendant knew of R's plans to set up a retail space in the lobby of the premises and for MoNo to use it for the storage and sale of food items.[9] Accordingly, the claimant was entitled to forfeit the lease pursuant to the tenancy agreement and to re-enter the premises.

21.6 One of the claimant's alternative grounds for forfeiture did not apply in the circumstances. The court found that the defects identified in the cure notice had been satisfactorily remedied by the defendant. Hence, the claimant was not entitled to forfeit the lease on the basis of the cure notice.

(b) Requirements in section 18(1) CLPA

21.7 In *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd*[10] ("*Marchmont*"), the claimant leased most of the area of its premises to the first defendant for a period of three years for the stated purpose of hotel operation only. The second and third defendants were the directors of the first defendant. Subsequently, the claimant sought possession of the premises, damages for breaches of the tenancy agreement and double the value pursuant to s 28(4) of the Civil Law Act 1909[11] for the periods during which the first defendant was holding over the premises. The first defendant counterclaimed for a declaration, *inter alia*, that the claimant's notices of breaches were invalid.

21.8 The claimant had issued the first defendant the first notice of breach ("NOB 1") which included a "non-exhaustive" list of six alleged breaches of the tenancy agreement, such as the permitting of more than two occupants to reside in one room or the failure to keep the premises

6 2020 Rev Ed.
7 *Royal & Sons Organisation Pte Ltd v Hotel Calmo Chinatown Pte Ltd* [2024] SGHC 248 at [55].
8 *Royal & Sons Organisation Pte Ltd v Hotel Calmo Chinatown Pte Ltd* [2024] SGHC 248 at [54].
9 *Royal & Sons Organisation Pte Ltd v Hotel Calmo Chinatown Pte Ltd* [2024] SGHC 248 at [37] and [47].
10 [2024] SGHC 108.
11 2020 Rev Ed.

in good and tenantable repair. In addition, the notice required the first defendant to take immediate steps to rectify the irregularities or breaches "whether listed or not". The second notice of breach ("NOB 2") issued by the claimant pertained to the first defendant's breach and non-compliance of its insurance requirements under the tenancy agreement. The first defendant was told to rectify the breach. The third notice of breach ("NOB 3") alleged that the first defendant failed to fulfil its obligations in regard to various covenants in the tenancy agreement, including covenants to ensure adequate manpower to operate and maintain the security of the premises, maintain a high standard of service and keep the premises clean and in good and tenantable repair. For all three breaches, notices of termination were issued to the first defendant.

21.9 In regard to NOB 1, the High Court held that it lacked sufficient particulars. A notice under s 18(1) of the CLPA should enable the tenant to understand with reasonable certainty what it is which he is required to do and the notice should be so distinct as to direct the attention of the tenant to the particular things of which the landlord complains.[12] Further, the sufficiency of particulars required for a notice under s 18(1) is a matter of law and cannot be based on whether there is specific prejudice in a particular case. Consequently, NOB 1, requiring the first defendant to rectify all breaches, whether or not listed, was far too vague and did not meet the statutory requirement of sufficient particulars in s 18(1) of the CLPA.

21.10 On the claimant's submission that what it was seeking was the right to repossess, which was distinct from the right of re-entry or forfeiture found in s 18(1) of the CLPA, the court noted that the claimant was not able to explain how the two rights were conceptually distinct nor point to any authority for this conceptual distinction. As the claimant was seeking to re-enter and repossess the premises, the requirements in s 18(1) clearly applied. For the reasons above, NOB 1 was not a valid notice for the purposes of s 18(1) and therefore the right of re-entry or forfeiture was not enforceable pursuant to the said notice.

21.11 NOB 2 was very clear in that it required the first defendant to fulfil the insurance requirements as set out in particular clauses of the tenancy agreement. The notice was sufficiently particularised as to direct the first defendant's attention to the particular things the claimant complained of, specifically, the absence of a non-cancellation clause in the insurance policy. In the circumstances, there was also reasonable time to remedy the breaches. The period of over six months between the issuance of

12 *Lee Tat Realty Pte Ltd v Limco Products Manufacturing Pte Ltd* [1998] 2 SLR(R) 258 at [9], [10] and [13].

NOB 2 and the commencement of proceedings was a reasonable period of time after the notice of the breach, for the first defendant to liaise with insurance brokers to remedy the breach of the insurance requirements. However, the breaches remained unremedied. Accordingly, the claimant validly exercised the termination clause under the tenancy agreement to forfeit the lease.

21.12 As for NOB 3, it was insufficiently particularised simply because it utilised the phrase "[a]mong other things" which did not enable the first defendant to understand what it was required to do with reasonable certainty. As the alleged breaches highlighted did not satisfy the requirement for sufficiency of particulars, NOB 3 as a whole was bad.

21.13 In *Venturelink Enterprise Pte Ltd v Ranjit Investment Holdings Pte Ltd*,[13] the landlord (claimant) applied for summary judgment in respect of a commercial lease against its tenant (defendant). The claimant sought to forfeit the lease on two grounds: (a) the defendant had used the premises for residential purposes, thereby breaching the covenant in the tenancy agreement that the premises be used as an office and for commercial purposes only; and (b) the defendant breached its obligation to pay rent of $12,500 per month, having paid only $3,000 per month during the four-month period from November 2023 to February 2024.

21.14 In regard to the first ground, the District Court was of the view that it was not clear from the face of the letter sent by the claimant's solicitor that the notice requirement in s 18(1) of the CLPA had been complied with. The letter did specify that there was a breach of the relevant covenant in the tenancy agreement but it did not then require the defendant to remedy the breach and/or make compensation in money to the satisfaction of the claimant as stipulated in s 18(1). There was also no indication from the letter that the defendant still had an opportunity to remedy the breach in order to avoid forfeiture, which was essential to the purpose of the statutory requirement to give notice. The letter merely stated that: "As required by URA, we are instructed to demand for the particulars of all the occupants presently residing at the Property." However, this demand for the particulars of the occupants did not require the breach to be remedied. Accordingly, in respect of the notice requirement in s 18(1) of the CLPA, the court was not satisfied that the claimant had a *prima facie* case or that there were no triable issues.

21.15 As for the second ground, a landlord must satisfy the following requirements to forfeit a lease for non-payment of rent: (a) first, the right of forfeiture for non-payment of rent must be expressly reserved; or

13 [2024] SGDC 210.

alternatively, payment of rent must be a condition of the lease; (b) second, a formal demand for rent in arrears must be made unless the need for such demand is contractually dispensed with; and (c) third, the landlord must effect re-entry by either physical means or by process of law. In the present case, the court found that the claimant had made out a *prima facie* case for each of the three conditions above: (a) first, the tenancy agreement expressly reserved the right of forfeiture for non-payment of rent and there was a *prima facie* case that the contractual conditions giving rise to the right had been met; (b) second, the common law requirement for a formal demand for rent in arrears had been contractually dispensed with. Clause 4(a) of the tenancy agreement expressly provided that the right of re-entry was exercisable when rent was in arrears "whether or not formal demand ha[d] been made";[14] and (c) third, the claimant's filing of the present action by way of an originating claim seeking possession of the premises thereby effected re-entry by process of law. As recognised in case law, re-entry by process of law may be effected by issuance and service of proceedings by the landlord unequivocally claiming possession against the tenant, which is equivalent to a physical re-entry.[15] The burden then shifted to the defendant to establish that there was a fair or reasonable probability that it had a real or *bona fide* defence. In other words, it needed to show that there was a triable issue or question.

21.16 In the circumstances, as the defendant had failed to raise any triable issues, the court held that the claimant had established a *prima facie* case that all the conditions for forfeiting the lease for non-payment of rent had been met. The claimant was, therefore, entitled to forfeit the lease which was deemed to have been terminated at the date of service of the originating claim.

(c) Breach of conditions

21.17 Under common law, the right of re-entry does not arise immediately upon a mere default in payment of rent. In *Guenther Arnd Wolfram v Erwin Kong*,[16] the District Court found that the right to re-enter the premises in cl 4(a) of the tenancy agreement was subject to two conditions in so far as rent arrears were concerned, namely: (a) the tenant failed to pay rent for 14 days after its due date; and (b) the tenant was not contactable or responsive to the landlords' demand for rent and interest incurred. While the first condition was satisfied in that the tenant

14 For a case where the landlords wrongfully terminated a tenancy agreement by re-entering the premises without having complied with the formal demand requirement, see *Ng Poh Keng v Fatimah Mohsin The Wedding Gallery Pte Ltd* [2024] SGDC 196.

15 See *Leow Ban Hong v Eng Wei Guang, Brendon Joshua* [2022] SGDC 224 at [20(c)].

16 [2024] SGDC 317.

did default in paying rent for more than 14 days, the same could not be said for the second condition. The evidence showed that the tenant was contactable and responsive to the landlords' demand for rent as he had asked for more time to make payment and proposing payment plans, especially in the days leading up to the re-entry.

21.18 Had the landlords omitted the second condition, it would have granted them the right of re-entry immediately after rent became due and owing for 14 days, being a breach of a condition in the lease. However, the landlords did not have a properly worded forfeiture clause to safeguard their rights. Accordingly, the court held that their re-entry to the premises was unlawful.

(2) Repudiatory breach

21.19 The High Court in *Royal & Sons Organisation*, discussed above, held that the claimant was not entitled to forfeit the lease as the aggregate conduct of the defendant did not show a repudiatory breach of the tenancy agreement. The claimant failed to establish that there was an obligation under the tenancy agreement for the defendant to conduct business on the premises in good faith and in a reputable manner, read with the understanding that the defendant would operate at the premises a high-quality boutique hotel and/or a boutique hotel befitting the claimant's reputation for attracting reputable and/or high quality tenants. Moreover, the defendant had satisfactorily rectified the defects identified in the cure notice.[17]

21.20 In *Na Bon Tiam*, discussed above, the court held that the plaintiff's act of changing the lock to the premises amounted to an act of re-entry which effectively deprived the defendant of exclusive possession of the premises. From the time the plaintiff changed the lock to the premises, the plaintiff ensured that only he could have access to it – effectively repossessing the premises. In doing so, the plaintiff also committed an act of repudiation of the periodic tenancy which brought the tenancy to an end. This was in breach of ss 19G(1) and 19G(2) of the COVID-19 (Temporary Measures) Act 2020[18] which prescribe that the termination of the lease agreement and the exercise of a right of re-entry are actions which a landlord is prohibited from taking under the said Act.

21.21 While the issue did not arise in *Marchmont*, the court, nevertheless, flagged out the consideration whether legislative

17 *Royal & Sons Organisation Pte Ltd v Hotel Calmo Chinatown Pte Ltd* [2024] SGHC 248 at [99].

18 Act 14 of 2020.

amendments to s 18(1) of the CLPA might be merited for making clear that it applied to repudiatory breaches of leases as well.[19] Where the taking of possession of the property is pursuant to a repudiatory breach and *not* pursuant to the exercise of the power of forfeiture (as in *Tan Soo Leng David v Lim Thian Chai Charles*),[20] the requirements in s 18 of the CLPA will be inapplicable. Otherwise, one will be conflating the two distinct conceptual remedies unless the terms of the lease provide for a repudiatory breach to amount to a forfeiture as well. It is trite that forfeiture is a draconian *property law* remedy which will bring the lease to an end with no right on the part of the landlord to claim for unpaid rent after the date of the forfeiture. On the other hand, repudiatory breach, as an alternative remedy available to the landlord on the breach of a lease, is a *contractual law* remedy allowing for the unpaid rent for the uncompleted duration of the lease to be claimed provided the landlord has taken reasonable steps to mitigate the losses suffered. It is obvious then that the statutory requirements set out in s 18(1) of the CLPA apply to forfeiture as a draconian property remedy and it does not necessarily follow that they should similarly apply to repudiatory breach which is governed by contract law principles with the necessary safeguards already put in place at general law (*eg*, ascertaining that the act amounts to a repudiatory breach and mitigation of loss). The recognition of the distinction between the property law remedy of forfeiture and the contractual law remedy of repudiatory breach will prevent the blurring of the line between the two remedies.

(3) Waiver of breach

21.22 In *Royal & Sons Organisation*, the court found that the rental payment received by the claimant on 1 April 2023 did not constitute a waiver of the breach of cl 2(22) of the tenancy agreement. This was because the claimant had commenced proceedings against the defendant on 6 April 2023 very shortly after receipt of the 1 April 2023 payment. This was clear evidence that there was no intention to waive the MoNo breach which constituted the claimant's final determination to take advantage of forfeiture.[21]

21.23 Further, the question that has to be answered in each case is whether it was rent that was demanded and paid, or if it was damages for trespass that was demanded and paid. In the case of the latter, there

19 *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd* [2024] SGHC 108 at [139]–[140].
20 [1998] 1 SLR(R) 880.
21 See also *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd* [2024] SGHC 108 at [84].

would be no waiver.[22] The court found that the invoice from the claimant for the 1 April 2023 payment stated that this was for GST compliance purposes and that the payment by the defendant was for its liability for double rent/double value/damages for trespass. There was no reference to rental in the invoice for the 1 April 2023 payment.

21.24 In *Marchmont*, noted above, the issue whether the claimant had waived its rights to forfeiture in relation to NOB 2 also arose for consideration. The main test is whether the landlord has done an act unequivocally recognising the subsistence of the lease with the knowledge of the circumstances from which the right of re-entry arises at the time when that act is performed.[23] If a landlord has already shown a final determination to take advantage of the forfeiture (for instance, by commencing proceedings to recover possession), no subsequent act will operate as a waiver.[24] Moreover, a breach of a continuing obligation gives rise to a continuing right of re-entry and a continually recurring cause of forfeiture should the obligation be breached.[25] It is an obligation that accrues daily. Applied to the facts of this case, it meant that the breaches of the continuing obligations pertaining to the insurance requirements would give rise to a continuing right of re-entry.

21.25 The court did not regard the non-rental payment acts relied on by the first defendant from a date earlier than the date of final determination (*ie*, 28 December 2022 when the claimant commenced legal proceedings) as a waiver of forfeiture. These pertained to the claimant continuing to accept payments from the first defendant for utilities charges and other outstanding sums owing and payable in relation to the tenancy agreement. As for the acceptance of rent, the question was whether, as a matter of fact, the money was only accepted as damages or whether it was tendered and accepted as rent.[26] The court found, on an objective evaluation of the mode, timing and amounts of the payment, that the payments made by the first defendant were in fact tendered and accepted as rental payments. The amount of money paid by the first defendant each month was precisely the sums due as rental payments under the tenancy agreement. Further, the timing and method of transfer of the payments

22 See *Fico Sports Inc Pte Ltd v Thong Hup Gardens Pte Ltd* [2011] 1 SLR 40 at [120] and [121]. The High Court in *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd* [2024] SGHC 108 at [111] accepted this approach.

23 *Matthews v Smallwood* [1910] 1 Ch 777 at 786.

24 See *Grimwood; Toleman v Portbury* (1872) LR 7 QB 344; *Evans v Enever* [1920] 2 KB 315; and *Civil Service Co-operative Society v McGrigor's Trustee* [1923] 2 Ch 347.

25 *Protax Co-operative Society Ltd v Toh Teng Seng* [2001] SGHC 84 at [35].

26 See *Fico Sports Inc Pte Ltd v Thong Hup Gardens Pte Ltd* [2011] 1 SLR 40 at [121] and *Leivest International Pte Ltd v Top Ten Entertainment Pte Ltd* [2006] 1 SLR(R) 888 at [42].

adhered to the requirements of the tenancy agreement. Consequently, the claimant's acceptance of the rental payment would constitute a waiver of forfeiture, until the time that it served on the first defendant its action to recover possession which was around 28 December 2022.

21.26 Having regard to the circumstances of the case, the court was of the view that there should not be relief pursuant to s 18(3) of the CLPA as the first defendant did not treat key obligations, such as the insurance requirements, seriously and ordered that the claimant be entitled to possession of the premises. As the claimant was entitled to forfeit the tenancy agreement on the basis of NOB 2, the court did not consider it necessary to examine the claimant's alternative position that the first defendant was in repudiatory breach of the tenancy agreement.

(4) Holding over

21.27 In *Royal & Sons Organisation*, the claimant had claimed against the defendant for double rent for the period of holding over pursuant to s 28(4) of the Civil Law Act 1909[27] ("CLA"). As the court had found earlier that the tenancy was determined and that the claimant was entitled to exercise forfeiture of the premises with effect from 10 March 2023, the defendant was, thus, holding over from that date onwards. The claimant was, hence, entitled to double rent from 10 March 2023 at the rates submitted for until possession of the premises was returned to the claimant.

21.28 In *Marchmont*, the court clarified that intention or knowledge is not required on the part of the tenant for holding over. Even if the intention and knowledge referred to in *Lee Wah Bank Ltd v Afro-Asia Shipping Co (Pte) Ltd*[28] relates to whether the tenant knew that he had a right to remain in possession arising from his legal defences, such intention and knowledge must necessarily be construed objectively. In the present case, it could not be said that the first defendant knew that it had a right to remain in possession. In the result, the claimant was entitled to double the value or rent under s 28(4) of the CLA. The court was also of the view that it is irreconcilable that a landlord can both recognise a tenancy as subsisting by way of waiver of the right to forfeiture and also claim that the tenancy was determined so as to claim double value under s 28(4) of the CLA. As a matter of principle, if there is waiver, there would be no holding over for the period for which there was waiver. Thus, in the present case, for the purposes of assessing the holding over period, due to the claimant's affirmation of the lease and waiver of forfeiture by

27 2020 Rev Ed.
28 [1992] 1 SLR(R) 740 at [17].

its acceptance of rental payments tendered by the first defendant, the claimant had not determined the tenancy until final determination of the tenancy on 28 December 2022. The period of holding over therefore commenced from the determination of the tenancy as of 29 December 2022, *ie*, one day after commencement of proceedings, until delivery of possession of the premises to the claimant.

C. Remedy of distress

21.29 The procedure for the remedy of distress is governed by the Distress Act 1934.[29] Section 4 of the Act expressly provides that no landlord shall distrain for rent except in the manner provided therein.

21.30 In *Na Bon Tiam*, by changing the lock to the premises and taking possession of the premises back from the defendant, the plaintiff had also seized the defendant's property, with the plaintiff readily admitting that he had done so in order to compel the defendant to pay up the outstanding rent. It was undisputed on the evidence that the plaintiff had proceeded to distrain for rent without having first obtained a writ of distress and had breached s 5 of the Distress Act in doing so. Thus, his argument that he was exercising a landlord's lien over the defendant's property had no basis.

II. Caveats

21.31 The decision of the High Court in *Kok Zhen Yen v Beth Candice Wu*[30] was considered in the previous year's review of cases.[31]

III. Easements

21.32 *Huber's Pte Ltd v Hu Lee Impex Pte Ltd*[32] dealt with the novelty of s 97A of the Land Titles Act 1993[33] ("LTA") which confers on the court the power to create easements over registered land. The applicant sought to redevelop its land (dominant tenement) as it was underutilised. Among others, it decided to demolish part of the existing factory thereon and the wall of the factory that faced the respondent's land (servient tenement). The applicant had obtained approval for the redevelopment from JTC and the Building Construction Authority ("BCA"). Due to the

29 2020 Rev Ed.
30 [2024] 3 SLR 730.
31 Teo Keang Sood, "Land Law" (2023) 24 SAL Ann Rev 647 at 652, 653, 656 and 657.
32 [2025] 3 SLR 85.
33 2020 Rev Ed.

wall's proximity to the respondent's land, the applicant sought to obtain from the High Court two temporary court-ordered easements over the servient land to install, *inter alia*, scaffolding, hoardings and a dust-and-noise barrier before it commenced the redevelopment, including the demolition of the wall (boundary wall). The applicant had earlier sought unsuccessfully to obtain the easements directly from the respondent. The latter had raised safety concerns and business interruption in refusing to grant the easements. Further, it had claimed that the injuries it would suffer were incapable of being measured and thus compensated.

21.33 The circumstances in which the court may grant an easement and the requirements which need to be satisfied are set out in ss 97A(1) and 97A(2) of the LTA. The court may make an order creating an easement on application by an interested person, *ie*, the applicant, if the easement is reasonably necessary for the effective use or development of the dominant land that is to be benefited. The order may be made only if the court is satisfied that: (a) the use or development will not be inconsistent with the public interest; (b) the proprietor of the servient land can be adequately compensated for any loss or other disadvantage that will arise from the creation of the easement; and (c) all reasonable attempts have been made by the applicant to obtain the easement directly from the proprietor of the servient land. Section 97A was enacted to empower the court to create easements "in light of increased activity in the redevelopment of properties", since "[w]hen land is re-parcelled and developed, it can give rise to situations where … new easements are required" to avoid "less efficient use of the land".[34]

21.34 While s 97A of the LTA is *in pari materia* with s 88K of the New South Wales Conveyancing Act 1919 such that decisions from the courts of New South Wales would be a helpful guide, the High Court cautioned that they had to be read in the Singapore context. Having regard to the legal principles laid down in the New South Wales cases,[35] the High Court held that to be satisfied that the easement sought was reasonably necessary for the effective use or development of the applicant's land, the court would be guided by the following considerations: (a) the proposed use or development of the land was reasonable as compared to possible alternative uses and developments; (b) the proposed easement was reasonably necessary for that proposed use or development of the land which entailed a consideration of whether the use or development

34 See Singapore Parl Debates; Vol 91, Sitting No 3; Page 41; [17 February 2014] (Indranee Rajah, Senior Minister of State for Law).

35 See *117 York Street Pty Ltd v Proprietors of Strata Plan No 6123* (1998) 43 NSWLR 504; *Moorebank Recyclers Pte Ltd v Tanlan Pty Ltd* [2012] NSWCA 445; *Rainbowforce Pty Ltd v Skyton Holdings Pty Ltd* [2010] NSWLEC 2; and *Shi v ABI-K Pty Ltd* [2014] NSWCA 293.

with the easement was substantially preferable to an alternative use or development without the easement; and (c) the effect of the grant of the easement on the respondent's land.

21.35 In granting the easements sought, the court, having regard to the facts, was satisfied that the proposed redevelopment, which had received approval from JTC and BCA, was a reasonable use of the applicant's land. Further, the easements sought from the court were reasonably necessary for the effective use and development of the applicant's land, in accordance with the proposed redevelopment. The court did not think that the burden imposed on the respondent was so logistically insurmountable or incapable of compensation, so as to detract from a finding of reasonable necessity, especially where the easements sought only imposed a temporary burden (for no more than 60 days) on the respondent's land.

21.36 The proposed redevelopment was not inconsistent with public interest. Apart from the existence of permissions from the relevant planning authorities, the proposed use or development allowed the applicant's land to be developed to its optimal potential as it promoted the efficient use of land, particularly in a country as land scarce as Singapore. It also allowed the applicant's land to be used in a more efficient manner by maximising the gross plot ratio.

21.37 The court was also of the view that the respondent could be adequately compensated. The impacts on its business resulting in losses, whether tangible or otherwise, were capable of being compensated in monetary terms. They were quantifiable and could be readily remedied with appropriate compensation orders. However, any loss which could not be shown to have arisen causally from the easements would not be relevant as can be seen from the requirement in s 97A(2)(*b*) of the LTA.

21.38 The applicant had also made all reasonable attempts to obtain the easements directly from the respondent. It had sufficiently informed the respondent of the easements and accorded the respondent reasonable opportunity to consider its position in relation thereto. It had also proposed alternatives and engaged in revisions of its original plan to address the respondent's concerns. Further, various attempts were made to continue negotiations with the respondent until it was clear that further negotiations were unlikely to produce a consensus in the light of the respondent's lack of response.

IV. Sale of land under court order

21.39 The decisions of the High Court in *Goh Siam Teow v Lim Tung Hee Arthero*[36] and *Tan Siew Kheng v Teo Kian Kian*[37] were considered in the previous year's review of cases.[38]

21.40 *Kow Kim Song v Kow Kim Siang*,[39] a decision of the High Court, is instructive in further delineating the circumstances in which the court will not order the sale of land under s 18(2) of the Supreme Court of Judicature Act 1969[40] ("SCJA") read with para 2 of the First Schedule thereto. The parties to the proceedings had inherited the property as tenants-in-common in equal shares after their late mother, who was the sole owner, passed away. They had subsequently begun serious discussions about the respondent's purchase of the applicants' two-third share in the property. After engaging solicitors to conduct negotiations, they agreed to a price of $400,000 for the applicants' share in the property and a completion period of four months from the date of exercise of the option to purchase ("OTP"). Notwithstanding the OTP, the applicants applied pursuant to the SCJA for an order that the property be sold in the open market and for the net sale proceeds to be divided between them.

21.41 In deciding whether it is "necessary or expedient" for a sale to be ordered pursuant to para 2 of the First Schedule to the SCJA, the Court of Appeal in *Su Emmanuel v Emmanuel Priya Ethel Anne*[41] held that this had to be done through a balancing exercise of various factors, namely, *inter alia*, the state of the relationship between the parties, the state of the property and the potential prejudice that the various co-owners might face if a sale is or is not granted. A sale will generally not be ordered if to do so will violate a prior agreement between the co-owners concerning the manner in which the land may be disposed of. In the subsequent case of *Ooi Chhooi Ngoh Bibiana v Chee Yoh Chuang*,[42] the Court of Appeal warned against adopting a presumptive starting point in favour of or against granting the sale order based on a rigid, rule-based approach to the factual matrix at hand. Instead, the court is to conduct a balancing exercise of various factors, having regard to all the relevant facts and circumstances of the case.[43]

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36 [2024] 3 SLR 829.
37 [2024] 3 SLR 1399.
38 Teo Keang Sood, "Land Law" (2023) 24 SAL Ann Rev 647 at 660–661 and 658–660 respectively.
39 [2024] 6 SLR 686.
40 2020 Rev Ed.
41 [2016] 3 SLR 1222 at [57].
42 [2020] 2 SLR 1030.
43 *Ooi Chhooi Ngoh Bibiana v Chee Yoh Chuang* [2020] 2 SLR 1030 at [31].

21.42 In the present case, the court found the application to be insufficiently particularised and premature in so far as the parties were still engaged in good faith discussions.[44] For one, beyond a bare assertion that the applicants have had difficulty in dealing with the respondent, the evidence did not show the state of relationship between the parties, for example, that the parties' relationship had broken down since they started negotiations.[45] Further, the evidence did not show, contrary to the applicants' assertion, that the respondent had withdrawn from the agreement to purchase.[46] Instead, the respondent did not behave unreasonably and had remained willing to effect a sale of the property and engaged in good faith negotiations. The applicants had not shown that such negotiations would be impractical or useless. They should not be allowed to prematurely terminate the negotiations and apply pressure on the respondent to effect a sale on their preferred terms. Thus, the relative prejudice which would be occasioned to either party from the sale order being granted or refused militated in favour of refusing the order of sale so that negotiations could continue between the parties to effect a sale of the property on the terms agreed between them.

21.43 In the result, the court found that it was neither necessary nor expedient to order a sale of the property in the circumstances.

V. Strata title

A. Effecting improvements to lots

21.44 The decisions of the High Court in *Management Corporation Strata Title Plan No 1788 v Lau Hui Lay William*[47] and *Soo Hoo Khoon Peng v Management Corporation Strata Title Plan No 2906*[48] were considered in the previous year's review of cases.[49]

21.45 One of the issues considered in *The Management Corporation Strata Title Plan No 2785* v *Ng Jun Quan*[50] ("*Ng Jun Quan*") was whether the renovation works undertaken by the defendant (a unit owner) were in breach of s 37(1) of the Building Maintenance and Strata Management

44 *Ooi Chhooi Ngoh Bibiana v Chee Yoh Chuang* [2020] 2 SLR 1030 at [2].
45 *Ooi Chhooi Ngoh Bibiana v Chee Yoh Chuang* [2020] 2 SLR 1030 at [16].
46 *Ooi Chhooi Ngoh Bibiana v Chee Yoh Chuang* [2020] 2 SLR 1030 at [17].
47 [2024] 5 SLR 1409.
48 [2024] 4 SLR 824.
49 Teo Keang Sood, "Land Law" (2023) 24 SAL Ann Rev 647 at 671–672 and 673–675 respectively.
50 [2024] SGDC 150.

Act 2004[51] ("BMSMA"). The renovation works involved the construction of a mezzanine level (Work 1) and a staircase connecting the mezzanine level to the base level (Work 2). The requisite authorisation under s 37(2) of the BMSMA had not been obtained. The defendant submitted that he was led to believe that there would be no objections to the works undertaken as long as approval from the Urban Redevelopment Authority ("URA") was obtained. This was based on the alleged conduct of one of the managing agent's representatives and the other unit owners as well as how other units in the development had supposedly also undertaken floor area-increasing renovation works. The District Court held that this was irrelevant to the question of whether the works constituted a breach of s 37(1) of the BMSMA. As s 37(2) of the BMSMA was not fulfilled, there was no doubt that Works 1 and 2 constituted a breach of s 37(1) of the BMSMA.

B. Meaning of "common property" and strata boundaries

21.46 In *Ng Jun Quan*, discussed above, Work 3 involved the removal of a portion of the building roof, Work 5 was the partial demolition of the wall between the open terrace and the mezzanine level, and Work 6 involved the removal of the concrete roof gutter. In regard to Work 3, the court found that the building roof was not comprised in the defendant's unit in the strata title plan. Further, the building roof affected the appearance of the building and being an essential part of the building, was also part and parcel of the fabric of the building. As such, in line with the decision in *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645*[52] ("*Sit Kwong Lam*"), it could, by its mere presence, be "enjoyed" by some or even all unit owners of the development,[53] hence coming within the meaning of "common property" in s 2(1) of the BMSMA where examples of common property set out therein included "a roof … of a building which is used or enjoyed, or capable of being used or enjoyed, by occupiers of 2 or more lots".

21.47 The defendant had submitted that, as the surrounding area comprised low-rise shophouses, the only reasonable view of the unit would be from the street level from which, presumably, the building roof was not visible. The court was of the view that there was no reason why the question of whether the appearance of a building could be affected should turn on the fortuitous matter of whether the surrounding buildings are high or low-rise as new buildings could be developed later.

51 2020 Rev Ed.
52 [2018] 1 SLR 790.
53 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2018] 1 SLR 790 at [59].

21.48 In the light of para 5(1) of the Second Schedule to the Building Maintenance (Strata Management) Regulations 2005[54] ("BMSMR"), Work 3 amounted to damage of the building roof which was common property which, in turn, constituted a breach of para 5(1).

21.49 Similarly, Work 5 constituted a breach of para 5(1) of the Second Schedule to the BMSMR as it amounted to damage of the outer half of the wall between the open terrace and the mezzanine level which was common property having regard to the guidance in *Sit Kwong Lam*, noted above, and r 41 of the Boundaries and Survey Maps (Conduct of Cadastral Surveys) Rules.[55] Further, the court found that the area in question was not comprised in the defendant's unit in the strata title plan.

21.50 As for Work 6, the concrete roof gutter was also not comprised in the defendant's unit having regard to the strata title plan. It was also used or capable of being used or enjoyed by occupiers of two or more units, serving the whole building's drainage purposes. Moreover, it came within the examples of common property set out in s 2(1) of the BMSMA, being a "facility for the passage or provision" of either "water" or "drainage". Accordingly, Work 6 similarly amounted to damage of the concrete roof gutter which was common property and constituted a breach of para 5(1) of the Second Schedule to the BMSMR.

C. Exclusive use by-laws

21.51 The decision of the High Court in *Soo Hoo Khoon Peng v Management Corporation Strata Title Plan No 2906*[56] was considered in the previous year's review of cases.[57]

21.52 The issue of exclusive use by-laws also arose for consideration in *Ng Jun Quan*. This concerned Works 4 and 7, the former involving the construction of the open terrace, and the latter, the construction of the roofing frame. The defendant did not dispute that the requisite resolution under s 33(1)(*c*) of the BMSMA and prior written approval under para 5(1) of the Second Schedule to the BMSMR had not been obtained. Instead, it was submitted that Works 4 and 7 were not done on common property.

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54 S192/2005. The relevant part of para 5(1) of the Second Schedule to the Building Maintenance (Strata Management Regulations 2005 reads: "A subsidiary proprietor or an occupier of a lot shall not … damage or deface, any structure that forms part of the common property except with the prior written approval of the management corporation."

55 Cap 25, R 5, 2007 Rev Ed.

56 [2024] 4 SLR 824.

57 Teo Keang Sood, "Land Law" (2023) 24 SAL Ann Rev 647 at 668 and 669.

21.53 The court was of the view that Work 4 did not involve common property. In the absence of more conclusive evidence, it was not clear whether the walls to which the open terrace were connected were external or internal walls.[58] In the circumstances, it was found that Work 4 did not constitute a breach of s 33(1)(*c*) of the BMSMA or para 5(1) of the Second Schedule to the BMSMR.

21.54 However, Work 7 was clearly intended to give the defendant the exclusive use and enjoyment of the open terrace. Since the open terrace occupied the area where the building roof once stood which had been found earlier to constitute common property,[59] it followed that the roofing frame would give the defendant the exclusive use and enjoyment of what was effectively common property. An exclusive use resolution pursuant to s 33(1)(*c*) of the BMSMA was, thus, required.

21.55 It was also clear that the roofing frame was attached to several parts of the building that constituted common property, including the building roof and the external wall. This would have required the driving of nails or screws or the like into common property. As such, it amounted to damage of common property and constituted a breach of para 5(1)(*c*) of the Second Schedule to the BMSMR.

21.56 In the result, the court granted the mandatory injunctions sought by the claimant except for Work 4.[60]

D. Duty of disclosure of interests in contracts by council members

21.57 In *That's Refrigerating & Electrical Engineering LLP v Management Corporation Strata Title Plan No 4672*,[61] the former chairman of the second management council of the defendant management corporation ("MC") had taken part in the consideration and discussion of contracts for the supply of goods and services to the MC which were to be carried out by vendors (the plaintiffs) owned and controlled by him without seeking the management council's approval. This came to light after the term of the second management council ended and the third management council

58 *The Management Corporation Strata Title Plan No 2785 v Ng Jun Quan* [2024] SGDC 150 at [38].

59 See para 21.46 above.

60 The court found that: (a) there was nothing in the claimant's own conduct which would make it unjust for the mandatory injunctions sought to be granted; and (b) the breaches were not trivial and had caused damage to the claimant, and the mandatory injunctions sought would not impose substantial hardship on the defendant with no counterbalancing benefit to the claimant; see *The Management Corporation Strata Title Plan No 2785 v Ng Jun Quan* [2024] SGDC 150 at [60].

61 [2024] SGMC 86.

took office. The latter discovered that the former chairman had a direct pecuniary interest in the contracts. He was a partner as well as a director and shareholder of the respective plaintiffs. As such, the MC declined to pay the outstanding invoices and the plaintiffs commenced proceedings against it.

21.58 The Magistrate's Court found that the former chairman had procured much of the goods and services without the second management council's mandate. Accordingly, the MC was held not contractually bound to pay for the supply of goods and services which its council had not authorised. Further, s 60 of the BMSMA was breached as it requires a council member to not only disclose the nature of his or her interest but also "not take part in the consideration or discussion of or vote on any question with respect to" the proposed contracts. While the former chairman did not take part in the voting for the proposed contract, he did take part in the consideration and discussion of the contracts.

21.59 The court also observed that council members occupy a special position in the management corporation strata title framework. They have been held to be fiduciaries analogous to that of company directors.[62] While the BMSMA does not stipulate remuneration for council members, that does not mean they can abuse their powers for personal gain or run for office with the intention of making secret profits. The relevant statutory safeguards in the BMSMA are meant to prevent abuse, malpractice and corruption by council members.[63]

E. Interest rate chargeable for unpaid contributions

21.60 The issue whether the Strata Titles Board ("STB") or the court is the more appropriate forum to consider an application to vary the interest rate payable for unpaid contributions was ventilated in *The Management Corporation Strata Title Plan No 4424 v Chua Cheng Yu*.[64] The claimant (management corporation) had brought proceedings in the Magistrate's Court against the defendant (unit owner) for unpaid management and sinking fund contributions. The defendant then commenced proceedings with the STB for variation of the interest rate chargeable for late payment of contributions pursuant to s 107 of the BMSMA and applied to stay the court proceedings pending the resolution of his application to the STB. In essence, the defendant argued before the court that his stay application

62 *Fu Loong Lithographer Pte Ltd v Mok Wing Chong* [2018] 4 SLR 645 at [222].

63 *Fu Loong Lithographer Pte Ltd v Mok Wing Chong* [2018] 4 SLR 645 at [225]. See also Singapore Parl Debates; Vol 49, Sitting No 13; col 1412; [28 July 1987] (Prof S Jayakumar, Second Minister for Law).

64 [2024] SGMC 40.

should be granted on the ground that the court could not make an order to vary the interest rate chargeable, there being no express statutory provision like s 107 of the BMSMA which expressly confers the power to do so on the STB.

21.61 In declining to exercise its discretion to grant a stay of the proceedings, the court noted that both the management corporation and the defendant were entitled to bring their respective applications under the BMSMA, namely, the management corporation under ss 40(6) and 124(1) and the defendant under s 107. In the circumstances, it was important to examine the timing and stage of the respective proceedings. The correspondence between the parties revealed that the defendant had been disputing the amount payable since as early as October 2022. Yet, even after the application of the management corporation was filed in January 2024, it took the defendant another three months to file the STB application. The court proceedings were also at a much more advanced stage than the STB proceedings.[65]

21.62 Moreover, there was nothing to suggest that the court was less equipped compared to the STB to decide what ought to be a reasonable interest rate on the facts. Similar factual and legal arguments on whether the 24% interest was enforceable would likely be presented, whether before the STB or the court.[66] Given that the variation of interest rate could be ordered by the court as well, allowing the application before the court to proceed would not disadvantage or cause prejudice to the defendant in depriving him of a relief he sought.

21.63 Hence, letting the court determine the issue of the interest rate, together with the only other outstanding matter of costs, was the most efficient and fair manner of resolving the outstanding dispute between the parties for the following reasons: (a) as the court could determine essentially the same issues before the STB, it was not necessary for the court to wait for any determination of the STB application before it could make its decision; and (b) there would not arise any inconsistent findings/rulings since once the court had determined whether the interest rate was recoverable, the matter ought to be *res judicata* before the STB.

65 *The Management Corporation Strata Title Plan No 4424 v Chua Cheng Yu* [2024] SGMC 40 at [15].

66 *The Management Corporation Strata Title Plan No 4424 v Chua Cheng Yu* [2024] SGMC 40 at [23].

F. Obligation to maintain escalators under BMSMR

21.64 In *Royal & Sons Organisation*, discussed above, the defendant counterclaimed against the claimant for elevator maintenance and repair costs incurred pursuant to the tenancy agreement. This was on the basis that escalators form part of the "structure" of the premises. The claimant submitted that it was not liable on the ground that the relevant clause in the tenancy agreement only mentioned "lift" repairing but not escalator repairs and that the word "structure" therein did not include "escalator".

21.65 The court noted that the case law did not support the defendant's submission. "Structures" would include brick party walls and brick boundary walls or referred to support framework or essential parts of a building which suggested that escalators were not structures.[67] Moreover, an escalator is not regarded as part of the "structure" under the Building Maintenance and Strata Management (Lift, Escalator and Building Maintenance) Regulations 2016[68] ("BMSMR"). Instead, as the lessee and occupier of the premises, the defendant was obliged to engage an escalator service contractor to maintain the escalators under reg 25 of the BMSMR. The counterclaim was, accordingly, dismissed.

G. Collective sales

21.66 The decision of the High Court in *Mrs Spykerman Chwee Wah Christina née Lim v Yow Jia Wen*[69] was considered in the previous year's review of cases.[70]

(1) Sale price and good faith requirement

21.67 Section 84A(9)(*a*)(i)(A) of the Land Titles (Strata) Act 1967[71] ("LTSA") requires the High Court to be satisfied that the transaction was in good faith having regard to the sale price for the strata development before approving an application for collective sale pursuant to s 84A(1). This issue arose for consideration in *Silvester Selvan s/o Jeyaperagasam v Hilda Loe Associates Pte Ltd*.[72] The defendants had objected to the collective sale on the ground of failure to act in good faith on account of the following: (a) the lack of probity in the collective sale committee ("CSC")'s dealings

67 See *Chiu Teng Construction Co Pte Ltd v The Hartford Insurance Co (Singapore) Ltd* [2001] SGHC 119 at [54]–[55] and *Management Corporation Strata Title Plan No 367 v Lee Siew Yuen* [2014] 4 SLR 445 at [37].
68 S 348/2016.
69 [2024] 4 SLR 219.
70 Teo Keang Sood, "Land Law" (2023) 24 SAL Ann Rev 647 at 676–681.
71 2020 Rev Ed.
72 [2024] 5 SLR 346.

with the purchaser of the development; (b) the failure to obtain the best price for the property; and (c) the failure to consult the unit owners during the collective sale exercise.

21.68 Having considered the submissions and evidence in the case, the High Court found that the defendants failed to establish that there had been any want of probity in the CSC's dealings with the purchaser. There was no impropriety in the pre-tender dealings between the CSC and the purchaser. The steps taken by the CSC fully aligned with its duty to secure an appropriate price for the property.[73] Further, there is nothing inherently objectionable with a CSC prioritising its resources to focus on a specific buyer, if market conditions warrant such a strategy (barring any suggestion of conflict of interest arising from links with that buyer).[74] While the court noted that there were various missteps by the CSC in its conduct of the collective sale process, viewed in its entirety, the conduct of the CSC did not cross the threshold to the point of indicating a lack of good faith given that the collective sale process should be assessed holistically.[75]

21.69 On the issue whether there was a failure to obtain the best price for the property, the burden of proving lack of good faith by the CSC in securing an appropriate price was on the defendants. In this regard, they had failed to explain why the methodology adopted was wrong, what the appropriate methodology was and how adoption of the appropriate methodology would have yielded a better price.

21.70 The court also found that the CSC did not fail in its duty to consult the unit owners. The evidence showed that by the time the defendants asked for the valuation reports, there was already no turning away from the purchaser and revising the reserve price was no longer an option. Hence, while the CSC's delayed disclosure of the valuation reports might have been at odds with its duty to be transparent with the unit owners, the omission did not suffice to translate into a lack of good faith. There was also no failure on the part of the CSC to disclose the property's potential change of use (to serviced apartments) as well as the fact that the existing gross floor area and gross plot ratio were higher than that indicated in the Master Plan. It would have been a different matter if URA had given regulatory approval before the sale and purchase agreement with the

73 *Silvester Selvan s/o Jeyaperagasam v Hilda Loe Associates Pte Ltd* [2024] 5 SLR 346 at [52].

74 See *Ng Eng Ghee v Mamata Kapildev Dave* [2009] 3 SLR(R) 109 at [156].

75 Citing *Ramachandran Jayakumar v Woo Hon Wai* [2017] 2 SLR 413 at [59] and *Kok Yin Chong v Lim Hun Joo* [2019] 2 SLR 46 at [67(b)].

purchaser was concluded[76] as an argument could possibly be made that disclosure would have allowed the unit owners to rethink the reserve price and possibly halt the impending sale to the purchaser. In the result, the court granted the application for collective sale of the property.

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76 *Silvester Selvan s/o Jeyaperagasam v Hilda Loe Associates Pte Ltd* [2024] 5 SLR 346 at [31].