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20. LAND LAW

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Interests in land

Mere equity

20.1 In land law, a mere equity ranks the lowest in the hierarchy of interests. A legal or registered interest ranks the highest, followed by an equitable or unregistered interest. Next comes a mere equity, which confers only a personal right or interest that does not, as a general rule, run with the land to bind third parties.

20.2 The effect of a mere equity was illustrated in *UJT v UJR*.[1] The plaintiff, who was the grandson, had applied for a number of orders in relation to a property belonging to his late grandfather's estate. This was to enable him as executor of the estate to sell the property despite the three defendants' continued occupation of it, one of whom was the second defendant, his grandmother. The second defendant had in a suit contended that she had a beneficial interest in the property or otherwise a right to remain in the property until her death.

20.3 In dismissing the second defendant's claim and allowing the plaintiff's application, the High Court held that the second defendant had failed to show on the balance of probabilities that she had contributed to the purchase price of the property. She also failed to prove the existence of any common intention between her and the grandfather as to the beneficial ownership of the property. In the result, there was no purchase price resulting trust or the existence of a common intention constructive trust to give rise to a beneficial interest in the property in her favour.[2]

20.4 The court was of the view that the question whether a widow had a right to occupy property which used to be the matrimonial home did not appear to be a question that the Singapore courts had addressed before. However, the House of Lords' decision in *National Provincial*

1 [2018] 4 SLR 931.
2 *UJT v UJR* [2018] 4 SLR 931 at [44] and [59].

Bank Ltd v Ainsworth[3] ("*Ainsworth*") would appear to represent the position at common law in Singapore.[4] *Ainsworth* had held that a spouse's right to occupy the matrimonial home was a "mere equity" and not an equitable interest, and that it was determinable at the discretion of the court. It was held to be an equity which was enforceable only against the other spouse, not against third parties. It therefore had no proprietary effect.

20.5 The court noted that *Ainsworth* had observed that a spouse's equity would not survive a divorce.[5] In the case where the other spouse had died, the court reasoned that the marriage would by that spouse's death have also terminated and there would no longer remain any juridical basis for the common law to recognise the claimant spouse's right to occupy what used to be the matrimonial home. Accordingly, in the present case, the second defendant could rely on no such equity as the grandfather had passed away.[6] In this regard, given the somewhat inequitable outcome where the marriage was dissolved by death, the court opined that a legislative response similar to that in the UK[7] may be apt in Singapore so as to confer on a claimant spouse a judicially protected right of occupation.[8]

Equitable interest

20.6 In *Carpe Diem Holdings Pte Ltd v Carpe Diem Playskool Pte Ltd*,[9] the plaintiff and the first defendant entered into a franchise agreement under which the first defendant was granted franchise rights to operate a childcare and child development centre under the name "Carpe Diem". The first defendant obtained a lease from the Housing and Development Board ("HDB") to operate a preschool centre at the premises. The first defendant subsequently assigned the lease to the fourth defendant pursuant to a sale and purchase agreement ("S & P Agreement"). Shortly after, the first defendant was placed in liquidation and the second defendant was appointed as liquidator. The plaintiff commenced proceedings against, *inter alia*, the second defendant to reverse his decision to complete the assignment of the lease to the fourth defendant on the ground that the assignment was wrongful. The plaintiff asserted that it enjoyed rights superior to the fourth defendant's

3 [1965] AC 1175.
4 *UJT v UJR* [2018] 4 SLR 931 at [67].
5 [1965] AC 1175 at 1224C.
6 *UJT v UJR* [2018] 4 SLR 931 at [68]. The court also dismissed, *inter alia*, an alternative claim based on a licence coupled with an equity as the requirements for it to arise were not satisfied: *UJT v UJR* at [74]–[76].
7 See the UK Family Law Act 1996 (c 27).
8 *UJT v UJR* [2018] 4 SLR 931 at [71].
9 [2019] 3 SLR 233.

over the lease as it had acquired an equitable interest therein on the basis of the exercise of an option in its favour under the franchise agreement.

20.7 The High Court, in dismissing the plaintiff's claims against the defendants, held that the S & P Agreement conferred on the fourth defendant an equitable interest in the lease pending completion of the assignment based on the rule in *Lysaght v Edwards*.[10] While it was true that prior to approval for the assignment being granted by the HDB, the S & P Agreement was still in the process of completion, upon approval being granted, the S & P Agreement became enforceable and the fourth defendant thereby was deemed to have acquired an equitable interest in the lease from the date of the S & P Agreement.[11]

20.8 The court rejected the plaintiff's submission that it had an earlier equitable interest that took priority over the fourth defendant's equitable interest. The court found that the plaintiff did not exercise the option in the franchise agreement but instead offered the first defendant the choice of either extending the franchise agreement or transferring the lease to the plaintiff. Even if the plaintiff did, it could not have had an equitable interest earlier in time to the fourth defendant since the HDB never gave its approval for the transfer of the lease to the plaintiff.[12] This was in line with the legal principle that where there is a condition precedent to the completion of a contract of sale, the purchaser does not have an equitable interest in the property until such condition is fulfilled.[13]

20.9 In the result, the fourth defendant acquired an equitable interest in the lease as at the date of execution of the S & P Agreement which was first in time to any interest that the plaintiff might have. Consequently, the second defendant, acting as the liquidator for the first defendant, was bound to complete the assignment of the lease in accordance with the S & P Agreement. The assignment of the lease to the fourth defendant was thus not wrongful.

10 (1876) 2 Ch D 499.

11 *Carpe Diem Holdings Pte Ltd v Carpe Diem Playskool Pte Ltd* [2019] 3 SLR 233 at [57].

12 *Carpe Diem Holdings Pte Ltd v Carpe Diem Playskool Pte Ltd* [2019] 3 SLR 233 at [64].

13 See, for example, *Chi Liung Holdings Sdn Bhd v Attorney-General* [1994] 2 SLR(R) 314 and *Tan Soo Leng David v Wee, Satku & Kumar Pte Ltd* [1993] 1 SLR(R) 246.

Co-ownership

Severance of joint tenancy

20.10 In *Peter Low LLC v Higgins, Danial Patrick*[14] ("*Peter Low LLC*"), the plaintiff had obtained an order attaching the defendant's interest as a joint tenant in a property co-owned with the defendant's wife to satisfy a judgment obtained against the defendant. The plaintiff applied for a writ of seizure and sale ("WSS") in respect of the same interest. The assistant registrar below dismissed the application on the authorities of the High Court decisions in *Malayan Banking Bhd v Focal Finance Ltd*[15] ("*Malayan Banking*") and *Chan Lung Kien v Chan Shwe Ching*[16] which held that a joint tenant's interest in immovable property could not be attached by a WSS.

20.11 In allowing the appeal, the High Court in *Peter Low LLC* departed from *Malayan Banking* and *Chan Lung Kien v Chan Shwe Ching*. The court was of the view that the ability of a joint tenant to sever the joint tenancy and alienate his share without the consent of the other joint tenants rendered the joint tenant's interest sufficiently distinct and identifiable to be seized by a WSS.[17] This would not involve the seizure of the other joint tenant's interest, who remains free to deal with his own share.[18]

20.12 Severance of a joint tenancy occurred when the joint tenant's interest was seized, and this seizure occurred when the WSS was registered as provided in O 47 r 4(1)(*a*) of the Rules of Court.[19] Thereafter, in the absence of evidence to the contrary, the court, the sheriff and judgment creditor should be entitled to proceed on the basis that the joint tenants held the property in equal shares both at law and in equity. As interested joint tenants can prove that their beneficial interests are not held in equal shares, no injustice would be caused to any joint tenant.[20]

20.13 The court recognised that a WSS against a joint tenant's interest in land conferred real, and not merely illusory, value to a judgment creditor notwithstanding that an undivided share in immovable property was difficult to market to third parties and not likely to fetch a

14 [2018] 4 SLR 1003.
15 [1998] 3 SLR(R) 1008.
16 [2018] 4 SLR 208.
17 *Peter Low LLC v Higgins, Danial Patrick* [2018] 4 SLR 1003 at [88].
18 *Peter Low LLC v Higgins, Danial Patrick* [2018] 4 SLR 1003 at [77(b)].
19 Cap 322, R 5, 2014 Rev Ed.
20 *Peter Low LLC v Higgins, Danial Patrick* [2018] 4 SLR 1003 at [118].

good price. A WSS would prevent dealings in the land by the other joint tenant and would afford the judgment creditor priority in the distribution of any residual proceeds from a mortgagee's sale of the property.[21]

20.14 The court found that other Commonwealth jurisdictions adopted a principled uniform position in allowing a joint tenant's interest in land to be taken in execution of money judgments.[22] It was desirable to harmonise the development of the common law on this issue and there were no local circumstances which warranted a different position.[23]

20.15 The issue of severance of a joint tenancy by a WSS did not come before the Court of Appeal in *Chan Lung Kien v Chan Shwe Ching*[24] ("*Chan Lung Kien*") which, accordingly, did not consider the conflicting decisions of the High Court on the matter, which will have to await further clarification in the future. Instead, it dealt with the issue of severance of a joint tenancy by unilateral declaration at common law and under the Land Titles Act[25] ("LTA").

20.16 In *Chan Lung Kien*, the property in question was owned by the judgment debtor and her husband as joint tenants. In 2015, both the appellant and respondent had each obtained separate judgments against the judgment debtor. Subsequently, on 9 July 2015, the husband of the judgment debtor took steps in an attempt to sever the joint tenancy over the property. He appeared before a notary public in Melbourne, Australia, and executed an instrument of declaration in the form approved pursuant to s 53(5) of the LTA whereby he declared that he wished to sever the joint tenancy and hold the property as a tenant in common with the judgment debtor. On 10 July 2015, the respondent obtained an order for the judgment debtor's interest in the property to be attached and taken in execution under a WSS to satisfy her judgment. The WSS was also registered with the Singapore Land Authority. On 4 August 2015, a notice entitled "Severance Notice" appeared in *The Straits Times* which was addressed to the judgment debtor, giving her notice that her husband intended to sever the joint tenancy and hold the property as a tenant in common with her. The appellant came to know of the Severance Notice and also obtained a WSS against the property which was similarly registered with the Singapore Land Authority. Thereafter, the bank, which held a mortgage over the property, obtained

21 *Peter Low LLC v Higgins, Danial Patrick* [2018] 4 SLR 1003 at [114] and [115].
22 *Peter Low LLC v Higgins, Danial Patrick* [2018] 4 SLR 1003 at [37]–[53].
23 *Peter Low LLC v Higgins, Danial Patrick* [2018] 4 SLR 1003 at [128].
24 [2018] 2 SLR 84.
25 Cap 157, 2004 Rev Ed.

a mortgagee's sale. The judgment debtor's share of the sale proceeds, after settlement of the amount due to the bank, was paid to the respondent's solicitors pending the outcome of the dispute between the appellant and the respondent as to whose WSS was effective to attach the sale proceeds. Later, the judgment debtor was made a bankrupt.

20.17 From the High Court decision,[26] the appellant only appealed against the judge's ruling that the Severance Notice was ineffective in severing the joint tenancy. The appellant (as well as the respondent) did not appeal against the judge's holding that prior to severance, a joint tenant's interest in jointly held property cannot be attached. The latter issue was, thus, not before the Court of Appeal, which declined to opine on the matter without the full benefit of parties' submissions.

20.18 The position at common law as pronounced by the Court of Appeal in *Sivakolunthu Kumarasamy v Shanmugam Nagaiah*[27] ("*Sivakolunthu*") is that a unilateral declaration of severance by one joint tenant cannot sever a joint tenancy into a tenancy in common no matter how clear and unequivocal the declaration is. The court noted that a unilateral declaration was only effective for severance in England because of s 36(2) of the Law of Property Act 1925[28] ("LPA 1925"), which provided for severance by written notice. This was supported by the English Court of Appeal cases in *Harris v Goddard*[29] ("*Harris*") and the majority decision of Sir John Pennycuick and Browne LJ in *Burgess v Rawnsley*[30] ("*Burgess*"). However, it was the common law prevailing before 1925 that applied in Singapore. *Sivakolunthu* has long been recognised as stating the law in Singapore.

20.19 The Court of Appeal in *Chan Lung Kien* was of the view that there were a preponderance of English cases decided at both first instance and appellate level which held that unilateral declarations of severance were ineffective before s 36(2) was enacted.[31] As for *Burgess*, the Court of Appeal in *Sivakolunthu* considered Lord Denning's view that s 36(2) of the LPA 1925 was merely declaratory of the law as to severance by notice in writing, which was effective in equity to sever a joint tenancy.[32] Sir John Pennycuick and Browne LJ took a different view

26 *Chan Lung Kien v Chan Shwe Ching* [2018] 4 SLR 208. See also (2017) 18 SAL Ann Rev 589 at 589–590.
27 [1987] SLR(R) 702 at [14].
28 c 20 (UK).
29 [1983] 1 WLR 1203.
30 [1975] Ch 429; [1975] 3 All ER 142.
31 Citing, *inter alia*, *Partejche v Powlet* (1740) 4 West T Hard 788 at 789–790; *In re Wilks* (1891) 3 Ch 59 and *Nielson-Jones v Fedden* [1974] 3 WLR 583 at 596D.
32 *Sivakolunthu Kumarasamy v Shanmugam Nagaiah* [1987] SLR(R) 702 at [15].

with regard to the effect of the provision.[33] In the result, they held that the second mode of severance by mutual agreement applied in the case while Lord Denning was of the view that a course of dealing need not consist of mutual conduct but could include unilateral conduct that communicated a clear intention to the other joint tenant. *Sivakolunthu* preferred the majority view in *Burgess* as better representing the position at common law. The majority view in *Burgess* as to the effect of s 36(2) was also aligned with that of the subsequent Court of Appeal case in *Harris*, where it was observed that severance by a unilateral notice was not possible before the provision was enacted and that before 1925, severance by unilateral action was only possible when one joint tenant disposed of his interest to a third party.[34] Having considered all the relevant cases, the Court of Appeal in *Chan Lung Kien* was of the view that there was:[35]

> … more than sufficient material from which it may be concluded that in England, if it were not for s 36(2) of the LPA 1925, a unilateral written notice would not suffice to sever a joint tenancy in equity.

20.20 From the discussion above, it can be seen that a major objection to the mode of severance by unilateral declaration is that the joint tenant who is severing can backtrack and go back to insisting on his or her right of survivorship. In *In re Wilks*[36] ("*Wilks*"), Stirling J held that for an act to amount to severance, "it must be such as to preclude [the joint tenant] from claiming by survivorship any interest in the subject-matter of the joint tenancy".[37] The joint tenant in *Wilks* could have withdrawn his application to the court for payment of money at any time before an order was made thereon. Similarly, in *Nielson-Jones v Fedden*,[38] Walton J was of the view that the authorities were against severance by means of a unilateral declaration[39] as such a mode of severance had no effect on any of the four unities (that is, of title, interest, possession and time), which are essential features of a joint tenancy.[40] Accordingly, to argue that a unilateral declaration came within an act of a joint tenant operating on his or her own share, hence effecting severance, was insufficient. For this first mode of severance laid down in *Williams v Hensman*[41] to be effective, the declaration in question must be final or irrevocable in character such that the joint tenant concerned cannot go back to insisting on the right of survivorship.

33 *Burgess v Rawnsley* [1975] Ch 429; [1975] 3 All ER 142 at 154.
34 *Harris v Goddard* [1983] 1 WLR 1203 at 1209B.
35 *Chan Lung Kien v Chan Shwe Ching* [2018] 2 SLR 84 at [41].
36 (1891) 3 Ch 59.
37 *In re Wilks* (1891) 3 Ch 59 at 62.
38 [1974] 3 WLR 583.
39 *Nielson-Jones v Fedden* [1974] 3 WLR 583 at 593.
40 *Nielson-Jones v Fedden* [1974] 3 WLR 583 at 588C–588H and 590F.
41 (1861) 70 ER 862 at 867.

20.21 Having reaffirmed *Sivakolunthu* as establishing the law in Singapore on modes of severance at common law,[42] the Court of Appeal in *Chan Lung Kien* next considered whether the statutory mode of severance by unilateral declaration provided in the LTA was complied with.

20.22 The LTA provides for a statutory mode of severance of a joint tenancy by unilateral declaration in ss 53(5) and 53(6). It should be noted that these provisions provide an additional means of severing a joint tenancy on top of other recognised methods of severance under existing law.[43] Three steps must be taken for severance to be effective under ss 53(5) and 53(6). First, an instrument of declaration in the approved form would have to be executed. Second, the instrument would have to be served personally or by registered post on every other joint tenant. Third, the instrument would have to be registered on the land-register.[44] In respect of the third step, it was a requirement then for the joint tenant who was severing to produce the original certificate of title for the property to the Registrar of Titles. To overcome the difficulties in procuring the original certificate of title in some cases, s 53(8) of the LTA was enacted in 2001 to allow the Registrar of Titles to dispense with production of the certificate of title if he was satisfied that the applicant for registration of an instrument of declaration was unable to produce it despite the applicant's best efforts to do so.

20.23 In light of the decision of the Court of Appeal in *Diaz Priscillia v Diaz Angela*[45] ("*Diaz*"), which first considered the effect of ss 53(5) and 53(6), the appellant in *Chan Lung Kien* had argued that *Diaz* recognised that the signing and service of an instrument of declaration in the form approved pursuant to s 53(5) was effective to sever a joint tenancy *inter partes* notwithstanding its non-registration. The appellant further argued that *Diaz* demonstrated that an unequivocal act that evinces a clear intention to sever should be treated as the act of a joint tenant "operating on his own share" so as to effect severance at common law.

42 See also *Singapore Parliamentary Debates, Official Report* (18 January 1993) vol 60 at cols 375–376 (S Jayakumar, Minister for Law and Minister for Home Affairs) on the Land Titles Bill 1992 (Bill 36 of 1992), which accepted the law as stated in *Sivakolunthu Kumarasamy v Shanmugam Nagaiah* [1987] SLR(R) 702.

43 See *Singapore Parliamentary Debates, Official Report* (30 August 1993) vol 61 at col 476 (S Jayakumar, Minister for Law and Minister for Home Affairs).

44 For unregistered land, see ss 66A(3) and 66A(4) of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) , which provide for severance to be completed upon service of the deed of declaration.

45 [1997] 3 SLR(R) 759.

20.24 While the outcome of *Diaz* was generally accepted as just given the circumstances of the case, the Court of Appeal in *Chan Lung Kien* did not accept the contentions of the appellant which had their genesis in academic opinions. The court was of the view that the appellant had relied on academic opinions that were confined to the facts of *Diaz* to support his wider argument that any unilateral declaration that is clear, unequivocal, communicated and public can effect a severance in equity.

20.25 The Court of Appeal in *Chan Lung Kien* did not agree with the academic view that, to overcome the difficulty of characterising the co-owner's right as a personal right and a caveatable interest at the same time, *Diaz* could be interpreted as a case where service of an instrument of declaration under s 53(5) severed the joint tenancy in equity by an act of a joint tenant operating on her own share (that is, the first mode of severance in *Williams v Hensman*). Thus, upon severance, each co-owner held a proprietary half-share in equity rather than a personal equity that was binding between themselves only.[46] In the result, *Diaz* was transformed "from a case rationalised by an interpretation of s 53 to a case rationalised by a (proposed) common law doctrine of severance by unilateral declaration".[47]

20.26 The court helpfully explained how the mode of severance in ss 53(5) and 53(6) is to be applied. Given the framework in ss 53(5) and 53(6), the decision in *Diaz*, although well intentioned, could not be supported. To hold that compliance with s 53(5) alone is sufficient to effect severance under the LTA would make the registration requirement in s 53(6) redundant. This would go against the whole rationale of the three-step approach to effect severance provided therein and where registration is the cornerstone of the LTA.[48] While s 53(8) will now make it easier to register an instrument of declaration as production of the certificate of title may be dispensed with, the Court of Appeal in *Chan Lung Kien* made it clear that that was not the basis of its decision. Instead, its "construction of ss 53(5) and 53(6) is based on a plain reading of the language of the sections in their context and with a view to implementing the Parliamentary intention they represent".[49]

20.27 On the facts in *Chan Lung Kien*, there was no severance of the joint tenancy under the LTA as the instrument of declaration was not

46 See Barry Crown, "Severance of a Joint Tenancy" [1998] SingJLS 166 at 170.

47 *Chan Lung Kien v Chan Shwe Ching* [2018] 2 SLR 84 at [59]. See also Barry Crown, "Developments in the Law of Co-ownership" [2003] SingJLS 116 at 122. This suggestion by Crown was also supported by Tan Sook Yee, Tang Hang Wu & Kelvin Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) at para 15.69, fn 112.

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

49 *Chan Lung Kien v Chan Shwe Ching* [2018] 2 SLR 84 at [65].

registered. Also, the manner in which the husband of the judgment debtor purported to serve the instrument did not fully comply with the requirements in s 53(5), which requires service "personally or by registered post". Among others, the Court of Appeal noted that the modes of service adopted, which were posting the instrument via a certificate of posting and placing a newspaper advertisement in Singapore, did not satisfy the statutory requirement as the LTA does not provide for the specified mode of service to be dispensed with or substituted.[50] Even if the husband of the judgment debtor did not know the whereabouts of the latter and hence could not effect personal service, he could have effected service by registered post. In *Chan Lung Kien*, severance only came about later by operation of law when the judgment debtor was made a bankrupt.

20.28 The Court of Appeal in *Chan Lung Kien* has greatly clarified the law on severance under the LTA, which is to be welcomed. The decision provides the much-needed certainty on the approach to be taken in the application of the required three steps to effect severance under ss 53(5) and 53(6). This is a welcome relief, especially given the unsatisfactory decision in *Diaz*. The registration requirement should also no longer represent an obstacle (or an excuse, in some cases) to effecting severance under the LTA in light of s 53(8).

Termination of joint tenancy

20.29 In *Jarret Pereira v Mascreenos Bridjet w/o Moses*,[51] the first and second defendants purchased an HDB flat as joint tenants. Later, the second defendant transferred her interest in the property to the plaintiff, her brother, so as to purchase another flat with her then-husband. The plaintiff paid the second defendant an amount equivalent to her Central Provident Fund contributions towards the property. The plaintiff and first defendant were then registered as joint tenants. Both jointly obtained a fresh mortgage, repayments of which had solely been paid by the plaintiff. The relationship between the parties soured, prompting the plaintiff to apply for the property to be sold.

20.30 The defendants submitted that the beneficial interest in the property ought to be 42:58 in favour of the first defendant. The plaintiff submitted that his interest in the property ought to be 70–73.36%, taking into account his repayment of the mortgage.

50 *Chan Lung Kien v Chan Shwe Ching* [2018] 2 SLR 84 at [68].
51 [2018] SGHC 120.

20.31 The High Court, in ordering the sale of the property, found that the parties did not have certain information relating to the initial purchase of the property, such as the purchase price and the loan amount. As such, it was not possible to determine the second defendant's exact beneficial interest in the property. In the circumstances, equity would presume that, as a joint tenant, the second defendant's – and hence the plaintiff's – beneficial interest in the property was 50%.[52]

20.32 In the result, the court ordered that the net sale proceeds be divided equally between the plaintiff and the first defendant. In addition, the plaintiff was entitled to equitable accounting for the mortgage repayments, utility and conservancy fees, and property tax paid by him in excess of his share.

20.33 In *Prakash Devi w/o Durga Singh v Devendra Pratap Singh*,[53] a joint tenancy was also brought to an end by the sale of the plaintiff's share in the property to the defendant at market price. The property was an HDB flat which was registered the names of the plaintiff, the plaintiff's late husband, and the defendant, as joint tenants. The defendant, who was earning a regular income, was included in the flat application as the plaintiff, who was self-employed, and her late husband, who was retired, were worried that they would not be able to obtain a mortgage loan. Subsequently, a dispute arose between the plaintiff, a grandmother, and the defendant, her grandson, over the property. The plaintiff contended that both parties held the beneficial interest in the property in equal proportions. However, the defendant argued that his beneficial interest amounted to 94.36% of the property.

20.34 The High Court held that it was undisputed that the defendant had been making the mortgage repayments. Given that the mortgage was to be for a period of 30 years and the fact that the plaintiff and her late husband were elderly grandparents in their late 60s and 70s respectively at the material time, the court found it implausible that the parties would have agreed for the mortgage liability to be borne equally between the plaintiff and her late husband on one hand, and the defendant on the other.[54] Further, it was difficult to believe that the plaintiff and her late husband would have agreed to leave their property solely to the defendant, with little much left for their other grandchildren and surviving children, if not for the fact that the defendant was to solely bear the mortgage repayments.[55]

52 *Jarret Pereira v Mascreenos Bridjet w/o Moses* [2018] SGHC 120 at [5].
53 [2018] SGHC 53.
54 *Prakash Devi w/o Durga Singh v Devendra Pratap Singh* [2018] SGHC 53 at [8].
55 *Prakash Devi w/o Durga Singh v Devendra Pratap Singh* [2018] SGHC 53 at [9].

20.35 In the circumstances, the beneficial interest in the property had to be determined from the respective contributions of the parties towards the purchase price of the property. In light of the contributions made, the court ruled that the defendant had a beneficial interest of 94.98% in the property and the plaintiff 5.02%. The plaintiff's share in the property was to be sold to the defendant according to the proportion that the court had determined.

Caveats

Caveatable interest

20.36 In *Jhaveri Darsan Jitendra v Salgaocar Anil Vassudeva*,[56] the first defendant lodged caveats against several properties which were registered in the names of the first plaintiff and certain companies of which the first plaintiff was, *inter alia*, the managing director. The first defendant lodged the caveats to preserve his alleged interests in the properties pending the determination of a suit commenced by him against the first plaintiff. In the suit, the first defendant sought, *inter alia*, a declaration that the first plaintiff held assets, including the said properties, on trust for him and an order that the first plaintiff convey the properties to him. The first defendant argued that the first plaintiff committed breaches of an alleged agreement entered into between them in respect of the properties. The plaintiffs applied for the caveats to be removed.

20.37 The High Court, in allowing the plaintiffs' application, rejected the argument that the first defendant had a caveatable interest in the properties simply by virtue of the fact that he owned shares in the relevant companies. This was against the fundamental distinction between ownership of the shares of a company and ownership of its assets which flowed from the principle of separate legal personality.[57] The court referred to *Natsafe (M) Sdn Bhd v Loi Teak Kuong*[58] where it was held that a company and its shareholders are two separate legal entities and that a shareholder has no caveatable interest, at all, in the company's property.[59] It is respectfully submitted that this must be correct as the property is registered in the name of the company and not in the names of the shareholders of the company. Thus, a shareholder does not have a caveatable interest in properties owned by a company he holds shares in simply by virtue of his shareholding. In any event, the

56 [2018] 5 SLR 689.
57 *Jhaveri Darsan Jitendra v Salgaocar Anil Vassudeva* [2018] 5 SLR 689 at [82].
58 [2005] 6 MLJ 454.
59 *Natsafe (M) Sdn Bhd v Loi Teak Kuong* [2005] 6 MLJ 454 at [24].

claim of the first defendant would not have come within the meaning of "interest" in s 4(1)[60] of the LTA which is necessary to support the entry of a caveat in s 115(1) of the same Act.

20.38 In the circumstances, the first defendant's claim to an interest in the properties did not raise a serious question to be tried with the result that the caveats were set aside.[61]

Strata title

Meaning of "common property"

20.39 "Common property", in respect of strata-titled properties, is defined in s 2(1) of the Building Maintenance and Strata Management Act[62] ("BMSMA") to mean:

> (*a*) in relation to any land and building comprised or to be comprised in a strata title plan, such part of the land and building —
>
> (i) not comprised in any lot or proposed lot in that strata title plan; and
>
> (ii) used or capable of being used or enjoyed by occupiers of 2 or more lots or proposed lots …

20.40 The correct interpretation and application of this provision were considered by the Court of Appeal in *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645*[63] ("*Sit Kwong Lam*"). The appellant owned a unit in a strata development. The unit occupied the 29th and 30th floors of one of the towers in the development. The appellant had undertaken unauthorised installations involving the replacement of the fixed glass panels bordering two areas of his unit on the 29th floor with sliding panels and the installation of timber decking on two wide ledges beyond those panels outside the unit ("Work 1"). He had also covered the entirety of the flat roof on the 30th floor, outside the unit, with similar timber decking ("Work 2"). The flat roof was accessible to all unit owners in the development through a common staircase. The respondent, the management corporation of the development, also discovered that the appellant had, similarly without authorisation, installed an air-conditioning ventilation unit on an

60 "Interest", in relation to land, is defined in s 4(1) of the Land Titles Act (Cap 157, 2004 Rev Ed) to mean "any interest in land recognised as such by law, and includes an estate in land".

61 The defendants' appeals from the decision of the High Court were dismissed by the Court of Appeal on 16 October 2018 with no written grounds of decision rendered.

62 Cap 30C, 2008 Rev Ed.

63 [2018] 1 SLR 790.

external wall enclosing the unit at the 30th floor, in the same vicinity as Work 2 ("Work 3"). The respondent requested the appellant to remove the unauthorised works which, however, remained in place. The appellant subsequently failed to secure approval at an annual general meeting for the exclusive use and enjoyment of the areas where the unauthorised works had been carried out (collectively "the areas").

20.41 The appellant applied to the Strata Titles Board ("STB") seeking a number of orders. The STB found, *inter alia*, that the areas in question were common property and ruled in favour of the respondent. It was undisputed that the areas in question were not marked out as falling within the unit on the strata title plan but were instead demarcated as common property. The High Court[64] upheld the decision of the STB and the appellant appealed.

20.42 The Court of Appeal was of the same view as the High Court that the two limbs of s 2(1)(*a*) should be read conjunctively and not disjunctively, a conclusion supported by the ordinary meaning of the text read in its context. The Court of Appeal also rejected the view that the BMSMA provided for a third category of property in strata developments. The appellant had argued that the BMSMA implicitly recognised such a third category of property and since such property did not come within the purview of the management corporation, any unit owner would be free to carry out works or activities on such property as he or she wished. The Court of Appeal rejected this argument, observing that strata developments were founded on the concept of community living and to ensure harmony, it required the limits of each unit owner's personal rights and duties to be clearly demarcated from the rights and duties of the management corporation. The recognition of a third category of property would disrupt the harmony and would not ensure that strata developments would be properly managed and maintained, contrary to the intention of Parliament.[65]

20.43 However, the exclusive use approach adopted by the High Court in interpreting the second limb of s 2(1)(*a*), so as to prevent there being a third category of property (in addition to common property and individual units), was criticised by the Court of Appeal. Under settled principles of statutory interpretation, the ordinary meaning of the text of a provision read in its context should be given primacy. The fact that a term had been defined in a statute indicated that Parliament must have

64 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2017] SGHC 57. See also (2017) 18 SAL Ann Rev 589 at 603–604.

65 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2018] 1 SLR 790 at [51].

specifically addressed its mind as to the intended meaning of the term.[66] This was the case with the text of the second limb of s 2(1)(*a*) which was clear and unambiguous. There was nothing in the parliamentary debates which suggested that some other meaning was intended. A proper construction of the second limb, in a manner that was consistent with its text, would not lead to the creation of such a third category of property.[67]

20.44 In this regard, the words "used or capable of being used or enjoyed by occupiers of 2 or more lots or proposed lots" in the second limb should be interpreted broadly. The words "use" and "enjoy" are to be read in accordance with their ordinary dictionary meanings. The Court of Appeal further explained that any area or installation that could affect the appearance of a building in a strata development, or that was part and parcel of the fabric of the building, could, by its mere presence, be "enjoyed" by some or even all the unit owners of the development. There was no necessity for the area or installation to be physically accessible by the unit owners (or any of them) in order to be "enjoyed" by the said owners.[68]

20.45 In addition, areas or installations which the management corporation had a duty to control, manage, administer or maintain would presumptively be taken to have satisfied the second limb unless shown otherwise. As such, situations where an area or installation that was not within any unit and which would also fail to satisfy the second limb "would be so few and far between as to pose, in essence, a largely theoretical rather than actual problem".[69]

20.46 A similar approach was also taken by the High Court in *Wu Chiu Lin v Management Corporation Strata Title Plan No 2874*[70] ("*Wu Chiu Lin*"). One of the issues concerned the question whether the external walls of the penthouse units in the development constituted

66 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2018] 1 SLR 790 at [53]. For these principles of statutory interpretation, reference was made to the Australian High Court case of *PMT Partners Pty Ltd v Australian National Parks and Wildlife Service* (1995) 131 ALR 377 at [18] and cited by the Singapore High Court in *Dyna-Jet Pte Ltd v Wilson Taylor Asia Pacific Pte Ltd* [2017] 3 SLR 267 at [95].

67 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2018] 1 SLR 790 at [57].

68 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2018] 1 SLR 790 at [59].

69 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2018] 1 SLR 790 at [62].

70 [2018] 4 SLR 966.

common property. In holding that they did, the court commented by way of *dicta* that the second limb:[71]

> … is meant to assist in delineating more clearly where the line is to be drawn between what is or is not common property; it does not delineate an area that is neither common property nor private property (*ie*, a 'no man's land')".

The second limb is meant to be construed in a very broad fashion, such that:[72]

> … even prospective intangible forms of interaction by [unit owners] with a particular area of a development that may result in them deriving some form of benefit would be sufficient for that area to satisfy the second limb.

As such, the category of a "no man's land" hanging over a development is more perceived than real as the definition of "common property" in s 2(1)(*a*) does not, in practice, allow the concept of a "no man's land" to exist. It was, accordingly, not necessary to resort to the exclusive use approach laid down by the High Court in *Sit Kwong Lam* to deal with the uncertainties associated with this category.

20.47 For the reasons above, the Court of Appeal in *Sit Kwong Lam* found that the various unauthorised works undertaken had been installed on common property. In regard to the ledges on which Work 1 had been constructed, it was, *inter alia*, immaterial that they were not physically accessible by any unit owner given that an area or a feature in a development could be enjoyed without having to physically access it. The flat roof and wall on which Works 2 and 3 had been installed were also part and parcel of the fabric of the building and contributed to its appearance. Further, the appellant did not argue that the respondent was not responsible for their maintenance. In the result, the unauthorised works breached the relevant prescribed statutory by-laws.

20.48 The approach taken by the Court of Appeal on the meaning of "common property" in the BMSMA is in line with the intention of Parliament which looks at, *inter alia*, whether the area or installation concerned is for the use or enjoyment of the occupiers of two or more units. This requirement in the second limb of s 2(1)(*a*) of the BMSMA does not require a consideration of the exclusive use approach adopted by the High Court. The Court of Appeal applied settled principles of statutory interpretation in ascertaining the meaning of "common

71 *Wu Chiu Lin v Management Corporation Strata Title Plan No 2874* [2018] 4 SLR 966 at [63].

72 *Wu Chiu Lin v Management Corporation Strata Title Plan No 2874* [2018] 4 SLR 966 at [75].

property" therein. The second limb in s 2(1)(*a*) was interpreted broadly and the words "used" and "enjoyed" therein were given their ordinary meanings to achieve the legislative intent. The Court of Appeal decision has provided much needed clarity on the meaning of "common property" in the BMSMA, which avoids the strained interpretation given by the High Court.

Exclusive use and enjoyment of common property

20.49 In *Wu Chiu Lin*,[73] various unit owners sought to install coverings over the trellises installed above the private enclosed spaces or balconies of their respective units. A special resolution to adopt a by-law for this purpose ("the trellis by-law") was passed by a majority of 83.06% of the votes cast by share value at an annual general meeting. Subsequently, the respondent, the management corporation of the development, rejected the applications of the unit owners to install coverings over the trellises on the ground that the trellises were common property and hence the trellis by-law should have been passed pursuant to a 90% resolution. The STB ruled against the unit owners. The appellant appealed against the decision of the board and the issue whether the installation of coverings over the trellises constituted exclusive use and enjoyment of the common property arose for consideration of the High Court. Given the meanings of "use" and "enjoy" set out above, an installation of coverings over the roof trellises would amount to the use and enjoyment of the external walls to which the coverings were to be attached. On the issue of exclusivity of the use and enjoyment of the external walls, this requirement was self-evidently met in the instant case as it was not disputed that the coverings were intended to be installed permanently over the roof trellises. Further, the enjoyment by other unit owners of parts of the external walls would be affected as the appellant had installed the coverings to the exclusion of the other unit owners.[74]

20.50 The court rejected the contention of the appellant that a unit owner would only need to petition for the respondent to make a s 33(1) by-law conferring on him or her exclusive use and enjoyment of common property if the use or enjoyment was in a manner or for a purpose that would interfere unreasonably with the use or enjoyment of the common property by others entitled to such use. The court opined that the respondent had to make a by-law under s 33(1) in respect of common property as long as the use and enjoyment or special privilege being conferred was exclusive in nature (that is, to the exclusion of

73 See para 20.46 above.

74 *Wu Chiu Lin v Management Corporation Strata Title Plan No 2874* [2018] 4 SLR 966 at [78].

others), irrespective of whether the usage or enjoyment interfered unreasonably with that by others similarly entitled to such usage or enjoyment.[75] The provisions in ss 33(1) and 63(*c*) of the BMSMA thus concerned themselves with distinct types of usage and enjoyment of common property and were separate and independent obligations to be fulfilled by a unit owner.

20.51 In the instant case, the by-law authorising the installation was made pursuant to a special resolution under s 32(3) of the BMSMA. The court held that since the installation conferred exclusive use and enjoyment or special privileges in respect of common property for a period exceeding three years, then according to s 33(1)(*c*) of the BMSMA, a mere special resolution would be insufficient to pass the trellis by-law, and the trellis by-law could not be regarded as having been validly made.

20.52 It was also found that the respondent did not unreasonably refuse to consent to a proposal by the appellant to effect alterations to the common property. Given that the installation of coverings over the roof trellises constituted an exclusive use and enjoyment of common property, it *ipso facto* was a good reason for the respondent to refuse to consent to the appellant's proposals to install the coverings in the absence of a valid by-law.[76] In the result, it was necessary, pursuant to s 33(1)(*c*) of the BMSMA, for the appellant to petition the respondent to make the trellis by-law pursuant to a 90% resolution in order to be properly authorised to carry out the proposed installation of coverings over the roof trellises.

Improvements to unit which affect appearance of building

20.53 In *Management Corporation Strata Title Plan No 940 v Lim Florence Marjorie*,[77] one of the issues for consideration by the High Court was whether the renovations made by the defendant to her unit had affected the uniformity of the development's façade. The plaintiff, the management corporation of the development, had contended that the defendant, without prior approval from the plaintiff, had widened the entrance from her living room to her balcony by removing wall columns on either side of the entrance and installing new sliding glass doors in the widened access ("the works"). The defendant argued that the plaintiff had given her both written and oral approval before she

75 *Wu Chiu Lin v Management Corporation Strata Title Plan No 2874* [2018] 4 SLR 966 at [82].

76 *Wu Chiu Lin v Management Corporation Strata Title Plan No 2874* [2018] 4 SLR 966 at [88].

77 [2018] SGHC 254.

commenced the works. The plaintiff applied to the High Court for, *inter alia*, a declaration that the defendant carried out the works without the plaintiff's authorisation and for a mandatory injunction compelling the defendant to remove the works and reinstate her balcony to its original condition within a period of time to be fixed by the court.

20.54 Under s 37(3) of the BMSMA, a unit owner is prohibited from effecting any improvement to his unit which affects the appearance of any building comprised in the strata title plan unless the improvement is authorised by the management corporation under s 37(4).

20.55 The court opined that in determining whether the works affected the appearance of a building is a factual exercise to be undertaken by comparing the façade presented by the flat in question with the façade presented by other similar flats and by all of the flats as a whole.[78] This is not to be ascertained as a theoretical exercise but from the viewpoint of a reasonable observer who looks at the building from a position which is practically possible or likely.[79] In this regard, the photographs adduced by the plaintiff showed a discernible variance between the façade presented by the defendant's flat and the façade presented by all of the other flats in her block, both individually and taken as a whole. The vantage points from which the photographs were taken were practically possible or likely for a reasonable observer to occupy when looking at the defendant's balcony.[80] Thus, the works affected the appearance of the building within the meaning of s 37(3) of the BMSMA.

20.56 So long as the objective test in s 37(3) is satisfied, the subsidiary proprietor must seek and secure the management corporation's approval. Whether the works detract from the appearance of the building becomes relevant only when the management corporation considers whether to grant approval under s 37(4). The court next considered whether the plaintiff did authorise the works within the meaning of s 37(4)(*a*). Even if oral approval was given for the works, it would be of no legal effect. This must be correct because s 37(4)(*a*) does not empower a management corporation to approve works which detract from the appearance of a building in its strata title plan. In other words, a management corporation is not empowered to authorise improvements to a unit if the improvements do not meet the statutory

78 Citing *Management Corporation Strata Title Plan No 1786 v Huang Hsiang Shui* [2006] SGDC 20 at [112].

79 *Management Corporation Strata Title Plan No 940 v Lim Florence Marjorie* [2018] SGHC 254 at [75]. In this regard, reference was made to *Re J Saunders* (1993) NSW Titles Cases 80-019.

80 *Management Corporation Strata Title Plan No 940 v Lim Florence Marjorie* [2018] SGHC 254 at [77] and [78].

criteria, such as, for example, where it affects the structural integrity of a building contrary to s 37(4)(*b*).[81]

20.57 The court referred to ss 98(1) and 98(2) of the Condominium Act of Ontario[82] from which s 37(4) was adapted. Case authorities from Ontario had taken the position that a management corporation cannot authorise the works if the statutory criteria are not fulfilled.[83] It is for the management corporation, and not the courts, to be satisfied that the statutory criteria are met. This is to encourage self-regulation as government intervention is no longer feasible.[84] As the plaintiff had determined that the works detracted from the appearance of the building and that they were not in keeping with the rest of the building, the plaintiff was not empowered to authorise them. This had the effect of rendering any oral approval given not being authorisation within the meaning of s 37(4). The defendant was therefore in breach of s 37(3) of the BMSMA and could not rely on estoppel by convention as a defence, which could be raised only against a contractual claim and not against a statutory claim.[85]

By-laws

20.58 In *Sit Kwong Lam*,[86] the appellant had contended that even if Works 2 and 3 (the same was not argued for in respect of Work 1) were installed on common property, and hence in breach of the relevant by-laws, they, nonetheless, fell within the exception in the prescribed statutory by-law 5(3)(*c*) of the Second Schedule to the Building Maintenance (Strata Management) Regulations 2005[87] as structures or devices to prevent harm to children, such that no prior approval from the respondent was necessary. It was argued that this was so if it could be shown that Works 2 and 3 were structures or devices preventing harm to any children in any place within the development and were not

81 *Management Corporation Strata Title Plan No 940 v Lim Florence Marjorie* [2018] SGHC 254 at [85].
82 SO 1998, c 19.
83 See *Metropolitan Toronto Condominium Corp No 985 v Vanduzer* [2010] OJ No 571 at [25] and *Waterloo North Condominium Corp No 37 v Silaschi* 2012 ONSC 5403 at [13].
84 See *Singapore Parliamentary Debates, Official Report* (19 April 2004) vol 77 at cols 2742–2744 (Mah Bow Tan, Minister for National Development and Deputy Leader of the House) and *York Region Standard Condominium Corp No 1076 v Anjali Holdings Ltd* [2010] OJ No 488 at [9].
85 *Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 at [44].
86 See para 20.40 above.
87 S 192/2005.

limited to the prevention of harm to children while they were within the unit.

20.59 In rejecting the appellant's argument, the Court of Appeal held that by-law 5(3)(*c*) applied specifically to the prevention of harm to children while they were physically within the unit. This was also borne out by the other exceptions in by-law 5(3) where the focus was consistently on alterations to the common property that enhanced safety and enjoyment within the unit.[88] To construe otherwise would be to grant a free licence for individual unit owners to take matters into their own hands to reconstruct common property anywhere in the development to prevent harm to children. That was the responsibility of the management corporation under s 29(1)(*a*) of the BMSMA. If it breached its duties, unit owners could resort to s 88(1) of the BMSMA to apply to court for the appropriate remedies.[89]

20.60 Work 2 did not come within by-law 5(3)(*c*) as it was installed to prevent common property outside the unit from becoming slippery when wet. In regard to Work 3, it was not an appeal on points of law as required under s 98(1) of the BMSMA. As the STB had not made any error of law in its interpretation of the by-law, its finding of fact that Work 3 did not come within the exception therein was binding and not subject to challenge.[90] In any event, there was insufficient evidence of a direct correlation between the installation of the air-conditioning ventilation unit on the common property and the prevention of harm to the appellant's children within the unit for the exception in the said by-law to apply.

20.61 The nature of by-laws being statutorily constituted contracts and the proper party to be sued in the event of the by-laws being breached was considered in *Management Corporation Strata Title Plan No 901 v Lian Tat Huat Trading Pte Ltd*[91] ("*Lian Tat Huat Trading*"). The defendant, a unit owner on the ground floor of the development, had let out the unit to a tenant who operated a coffee shop. The tenant had placed tables, chairs and other items on the walkway outside the unit and also installed various fixtures such as television sets and lighting thereon. It was not disputed that the walkway was common property and that the tenant had encroached on it. The plaintiff management corporation commenced proceedings in the High Court seeking

88 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2018] 1 SLR 790 at [72].

89 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2018] 1 SLR 790 at [73].

90 *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2018] 1 SLR 790 at [78].

91 [2018] SGHC 270.

damages and other remedies from the defendant on the basis that the defendant's tenant had breached certain by-laws by encroaching onto the common property of the development. By-law 66 passed by the plaintiff imposed an obligation on the defendant to pay on-demand liquidated damages when its tenant had encroached upon the common property. The defendant applied to strike out the plaintiff's claim on the ground that it was not the proper party to be sued and that the plaintiff should have instead proceeded against the tenant who was bound by the relevant by-laws and had breached them. Further, by-law 66 was invalid and unenforceable because the plaintiff did not have the power to make it.

20.62 The court had regard to s 32(6) of the BMSMA which provides that the by-laws shall have effect as statutorily constituted contracts which are binding on the management corporation, unit owners and any mortgagee in possession, lessee or occupier of a unit. In addition, s 32(10) provides that where there has been a breach of any by-law, the management corporation is entitled to seek relief in court from any person bound to comply with the relevant by-law. The proper party must, therefore, be determined with reference to the particular by-law breached. In the present case, the relevant by-law that had been breached was by-law 64 which set out the obligation not to encroach upon the common property of the development. The tenant was the one who was in breach of its obligations under by-law 64 and not the defendant who was not even in occupation of the unit.[92] A case on point was *Management Corporation Strata Title No 561 v Pontiac Land Pte Ltd*[93] where the tenant of a unit, who operated a cafeteria, had encroached on the common property by placing obstructions therein. The management corporation commenced proceedings, not against the tenant but against the unit owner, seeking an injunction to restrain the latter from obstructing or interfering with the lawful use and enjoyment of the common property. Goh Joon Seng J, who noted that the tenant was a party to the relevant by-law, dismissed the application, holding that, as the obstructions were caused by the tenant who was the occupier, the proceedings against the unit owner were misconceived. The proper party against whom those proceedings should have been brought was the tenant. In the result, the plaintiff's claim in *Lian Tat Huat Trading* was struck out for failing to disclose a reasonable cause of action against the defendant.

20.63 *Lian Tat Huat Trading* also considered the issue whether the plaintiff was empowered to pass by-law 66 under the provisions of the

92 *Management Corporation Strata Title Plan No 901 v Lian Tat Huat Trading Pte Ltd* [2018] SGHC 270 at [24].

93 [1992] SGHC 190.

BMSMA. The High Court ruled that it was for the court under s 32(10) of the BMSMA to determine the quantum of damages payable when there had been a breach. In contrast, by-law 66 was an on-demand provision, under which the plaintiff unilaterally determined the damages payable to it, calculated in accordance with the formula contained therein, without the need to establish any loss and without the need to apply to court. This mechanism was inconsistent with the scheme contemplated in the BMSMA. As such, by-law 66 was beyond the powers of the plaintiff to make.[94]

20.64 It is clear that a management corporation, being a creature of statute, only has powers granted expressly or by implication in that statute, that is, the BMSMA. That being the case, anything done outside those powers would be void *ab initio*. To uphold contracts entered into between a management corporation and an affected unit owner which circumvent the provisions of the BMSMA would be to "drive a coach and horses through it".[95]

Duty of member of council

20.65 The High Court decision in *Fu Loong Lithographer Pte Ltd v Mok Wing*[96] was considered in the previous issue of the SAL Ann Rev.[97]

Appeal on points of law

20.66 In *Wu Chiu Lin*,[98] the High Court had to consider, *inter alia*, whether the appellant's grounds of appeal all raised points of law within the meaning of s 98(1) of the BMSMA. In this regard, the court referred to the decision of the Court of Appeal in *Ng Eng Ghee v Mamata Kapildev Dave*[99] which held that points of law that are subject to appeal under s 98(1) encompassed two types of errors of law. The first is *ex facie* errors of law which include misinterpretation of a statute or a rule of common law; taking irrelevant considerations into account or failing to take relevant considerations into account when purporting to apply the law to the facts and admitting inadmissible evidence or rejecting admissible and relevant evidence.[100] The second would be

94 *Management Corporation Strata Title Plan No 901 v Lian Tat Huat Trading Pte Ltd* [2018] SGHC 270 at [31].
95 *Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 at [10].
96 [2018] 4 SLR 645.
97 (2017) 18 SAL Ann Rev 589 at 613–615.
98 See para 20.46 above.
99 [2009] 3 SLR(R) 109 at [91]–[95].
100 *Ng Eng Ghee v Mamata Kapildev Dave* [2009] 3 SLR(R) 109 at [90].

errors of law involving determinations made where the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal.[101]

20.67 The court held that there was a sound basis for it to consider all of the grounds relied on by the appellant as they raised points of law. Some of the grounds of appeal brought by the appellant raised *ex facie* errors of law as they alleged that the STB had taken irrelevant considerations into account when purporting to apply the law to the facts or that the board had misinterpreted the applicable provisions of the BMSMA. Other grounds of appeal had alleged that the board had asked itself and answered the wrong questions in coming to its decision.[102]

Collective sales

20.68 In *Low Kwang Tong v Karen Teo Mei Ling*,[103] the appellant, a unit owner, had objected to the collective sale of the development on the ground that it was not in good faith. The main contention was that the collective sale committee's ("CSC's") valuation report was erroneous or fundamentally flawed. The valuation report had valued the appellant's unit as a showroom instead of as a canteen or eatery without explanation. Previously, the appellant's unit had been a showroom, but an application was made for change of use to a canteen, which was approved before the application for collective sale was made.

20.69 The appellant appealed after the High Court ruled against him.[104] The Court of Appeal found that the method of apportionment of the collective sales proceeds was not in dispute which was 90% valuation and 10% share value. There was also nothing to show that the collective sale transaction was not in good faith.

20.70 On the valuation report, the Court of Appeal opined that had the report included a sentence or two that the appellant's unit was approved for use as a canteen but the valuer decided to value it as a showroom because that was the best use in the circumstances and therefore the highest value, that would have dispelled the appellant's suspicion that the subsequent explanations were all afterthoughts to try to cover up a mistake.[105] As the High Court was correct in approving the

101 *Ng Eng Ghee v Mamata Kapildev Dave* [2009] 3 SLR(R) 109 at [93].
102 *Wu Chiu Lin v Management Corporation Strata Title Plan No 2874* [2018] 4 SLR 966 at [34]–[37].
103 [2018] SGCA 86.
104 *Teo Mei Ling Karen v Low Kwang Tong* [2018] SGHC 186.
105 *Low Kwang Tong v Karen Teo Mei Ling* [2018] SGCA 86 at [7].

application and granting the collective sale order, the appeal was dismissed.

20.71 In *Deorukhkar Sameer Vinay v Quek Chin Kheam*,[106] the objections of the defendant, a unit owner, to the application for collective sale were that the CSC had failed to discharge its duty fairly, honestly and in good faith. Among others, it was argued that L, a member of the CSC, was not an independent member as there was a conflict of interest in that L was in a patronage relationship with the rest of the CSC members. Further, the method of apportionment of the sale proceeds, calculated at one-third share value, one-third strata area and one-third current market value of each unit, was skewed towards allotting maximum financial gains to the large unit owners at the expense of the small unit owners.

20.72 Having regard to the principles enunciated in the decision of the Court of Appeal in *Ng Eng Ghee v Mamata Kapildev Dave*,[107] the High Court, in granting the order for collective sale, held that the CSC had acted in good faith. There was no evidence to show that there was some dishonesty or bad faith in the appointment of L to the CSC. Also, there was no evidence that L had not acted independently or had acted dishonestly or in bad faith.[108]

20.73 As for the method of apportionment, the CSC had been even-handed and conscientious in its conduct. It took the time to obtain expert opinions on the appropriate method of apportionment to adopt and consulted the unit owners on the course of action to take. The method of apportionment adopted was the fairest as it resulted in the narrowest band of premium differential. The method adopted also evened out the differences between share value, strata area and current market value, such that none of the owners was significantly favoured or disadvantaged.[109] In the result, the defendant's objections were ruled unmeritorious.

20.74 The cases above illustrate the balance which the courts are trying to achieve between ensuring, on the one hand, transparency and clarity in the collective sale process, and not making collective sales unduly onerous on the other. The latter is understandable as there are national objectives involved, such as to promote urban regeneration and

106 *Deorukhkar Sameer Vinay v Quek Chin Kheam* [2018] SGHC 171.
107 *Ng Eng Ghee v Mamata Kapildev Dave* [2009] 3 SLR(R) 109 at [124], [130] and [133].
108 *Deorukhkar Sameer Vinay v Quek Chin Kheam* [2018] SGHC 171 at [90].
109 *Deorukhkar Sameer Vinay v Quek Chin Kheam* [2018] SGHC 171 at [92].

to maximise land use, which would be defeated if collective sales are made unduly onerous.