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21. LAND LAW

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

I. Law of fixtures

21.1 Where a pillar lies between two adjoining plots of land, is it a fixture, and, if so, which plot does it belong to? This interesting question was considered in *Linday Paul Slader Marsh v Mohamed Shariff B Kassim*.[1] The plaintiffs and the first and second defendants were the owners of the respective adjoining plots of land. A red brick pillar straddled the boundary line of both properties, at the rear of their plots of land.

21.2 To determine if the red brick wall was a fixture, the Magistrate's Court applied the law of fixtures. As to the degree of annexation, the court found that it was a permanent structure built on the land and firmly fixed to the land. As to the object of annexation, the red brick pillar improved both the plaintiffs' and first and second defendants' properties. On the latter's property, it functioned as a structure supporting a back gate. On the plaintiffs' property, it formed part of the rear concrete boundary wall and sat adjoining a green wire mesh fence which separated both properties. In the result, the red brick pillar, clearly intended as a feature of the land on either side, was held to be a fixture.[2]

21.3 As to whether the red brick pillar was a fixture of the plaintiffs' or first and second defendants' property, the court took the view that it ought to be regarded as a fixture of both properties, with the result that the consent of both landowners was required for its severance from the land. The ownership of the red brick pillar was determined by which plot of land it was affixed to and not merely by who had built it. Thus, it mattered not that the red brick pillar was built by the previous owners of the land now owned by the first and second defendants. It was not the case that the red brick pillar belonged to the land of the first and second defendants with the plaintiffs consenting to its encroachment onto their land. On the contrary, the plaintiffs treated the part of the red brick pillar affixed to their land as part of their rear boundary wall and incorporated it into the structure of their land. In the result, the red brick pillar was a fixture that

1 [2023] SGMC 34.
2 See *Pan-United Marine Ltd v Chief Assessor* [2008] 3 SLR(R) 569 at [45].

belonged equally to both the plaintiffs' and first and second defendants' properties.[3] Accordingly, the court held that the deliberate removal of the red brick pillar by the defendants was an act of trespass.

II. Landlord and tenant

A. Creation of tenancy

21.4 The decision of the General Division of the High Court ("General Division") in *Chiap Seng Productions Pte Ltd v Newspaper Seng Logistics Pte Ltd*[4] was considered in the previous Annual Review.[5]

B. Action for distress

21.5 The decision of the General Division in *Chiap Seng Productions Pte Ltd v Newspaper Seng Logistics Pte Ltd*[6] was considered in the previous Annual Review.[7]

C. Termination of tenancy

(1) Repudiatory breach

21.6 *Koh Kia Yeong v Ang Sofeene*[8] dealt with the application of the contractual principle of repudiation to leases. The defendant landlord's lawyer had issued a letter to the plaintiffs, who were the tenants, demanding, *inter alia*, payment of the rent under the tenancy agreement. As the rent was never paid, the defendant physically re-entered the premises by locking it up, thereby terminating the tenancy. The defendant argued that the plaintiffs had, by their conduct, repudiated the tenancy agreement.

21.7 The Magistrate's Court rightly held that it has been settled since *Tan Soo Leng David v Lim Thian Chai Charles*[9] that the contractual principle of repudiation can apply to leases in appropriate cases, depending on the nature of the lease in question. In particular, the more

3 *Linday Paul Slader Marsh v Mohamed Shariff B Kassim* [2023] SGMC 34 at [34].
4 [2023] 4 SLR 754.
5 Teo Keang Sood, "Land Law" (2022) 23 SAL Ann Rev 617 at 620–621. For a case involving the construction of a tenancy agreement to determine whether it was validly renewed, see *Han Kok Kwong v Lye Kok Leong* [2023] SGDC 18.
6 [2023] 4 SLR 754.
7 Teo Keang Sood, "Land Law" (2022) 23 SAL Ann Rev 617 at 622.
8 [2023] SGMC 56.
9 [1998] 1 SLR(R) 880.

that the lease exhibits the characteristics of a purchase of leasehold interest, the less strictly contractual principles on repudiation should be applied, and *vice versa*.[10]

21.8 Viewing the parties' conduct as a whole, the court found that the plaintiffs had in fact repudiated the tenancy agreement because their conduct evinced a clear intention to no longer be bound by the agreement or to only perform it in a manner substantially inconsistent with their obligations. In this regard, the plaintiffs had, *inter alia*, failed to pay rent and had breached the non-assignment clause in subletting the premises. The defendant did communicate unequivocally her intention to treat the tenancy agreement as discharged by effecting physical re-entry on the premises which was sufficient to constitute her acceptance of the plaintiffs' repudiation. The court was also not satisfied that the plaintiffs had discharged their burden in showing that the defendant failed to mitigate her losses.

21.9 The plaintiffs did not dispute the defendant's right, pursuant to the tenancy agreement, to set-off the security deposit against sums which may be found to be due to her. In the result, the court dismissed the plaintiffs' claim for return of the security deposit and held that the defendant was entitled to forfeit the full sum of the security deposit which was to be applied towards reducing the amount payable by the plaintiffs to the defendant.

(2) Holding over

21.10 In *Amirul Akbar bin Abdul Kadir v Lye Kok Leong*,[11] the plaintiff landlord claimed against the defendant tenant for recovery of possession of the property as well as for arrears in rental and double rent for holding over upon termination of the second tenancy. The defendant resisted the plaintiff's attempts to, *inter alia*, recover possession of the property.

21.11 In allowing the plaintiff's claim, the District Court found, on the evidence, that the defendant had withheld payment of rent for certain months under the tenancy. Further, upon expiry of the first tenancy, the parties had concluded an agreement for a second tenancy for a fixed term of two years. The defendant had also exercised the option to renew the second tenancy for another year. Accordingly, the final date by which the defendant could legally occupy the property pursuant to the second tenancy was 7 October 2021. Since the defendant did not

10 See *Tan Soo Leng David v Lim Thian Chai Charles* [1998] 1 SLR(R) 880 at [28] and *Progressive Mailing House Pty Ltd v Tabali Pty Ltd* [1985] HCA 14 at [40].

11 [2023] SGDC 49.

vacate the property and deliver its possession to the plaintiff on or before 7 October 2021, he was regarded as holding over and was liable for double rent under s 28(4) of the Civil Law Act 1909.[12]

21.12 The court also considered the issue of whether considerations of illegality and/or public policy could affect the enforceability of the plaintiff's claim by virtue of the plaintiff's breach of the condition imposed on his purchase of the landed property. During the relevant period, the plaintiff had ceased to be a Singapore permanent resident. Bearing in mind the relevant statutory framework in s 25B of the Residential Property Act 1976,[13] which provides for the imposition of financial penalties and a separate statutory regime for dealing with cases of foreigners such as the plaintiff who had rented out their property without approval, the court took the view that there was no impediment in allowing the plaintiff's claim for arrears and double rent. As for delivery of possession, the plaintiff who held the legal title to the property was clearly entitled to such an order against the defendant.

III. Indefeasibility of title and interests

21.13 The power of the court under s 160 of the Land Titles Act 1993[14] ("LTA") to order rectification of the land register where registration of an instrument of transfer has been obtained through mistake was considered in *Ho Dat Khoon v Chan Wai Leen*[15] ("*Ho Dat Khoon*").

21.14 The plaintiff was operating under a mistake when she executed, by way of an *inter vivos* gift, the transfer of the property to her grandniece, the second defendant. She had, on the same day that she made the *inter vivos* gift through the transfer, also executed a will for the property to be a testamentary gift to the second defendant. The General Division found that what the plaintiff had intended to do was to make a testamentary gift, and not an *inter vivos* gift, when she executed the transfer. The plaintiff sought, *inter alia*, rectification of the land register under s 160 of the LTA.[16] The court, accordingly, set aside the transfer as the plaintiff was, at the time of the transfer, under a mistaken belief as to the legal effect of the transfer and it was unconscionable to deny relief.

21.15 In light of the finding that the transfer should be set aside, the court ordered the rectification of the land register pursuant to ss 160(1)(*b*)

12 2020 Rev Ed.
13 2020 Rev Ed.
14 2020 Rev Ed.
15 [2023] SGHC 326.
16 *Ho Dat Khoon v Chan Wai Leen* [2023] SGHC 326 at [14].

and 160(2) of the LTA. There are two cumulative requirements to be fulfilled for the rectification to be made under the two provisions. First, the registration of the instrument of transfer must have been obtained through mistake as had happened on the evidence of the present case. Second, the registered proprietor (*ie*, the second defendant) who is in possession must be a party or privy to the mistake in consequence of which the rectification is sought, or has caused that mistake or substantially contributed thereto by that proprietor's act, neglect or default.[17]

21.16 Since it had been established that the plaintiff executed the transfer upon the mistaken belief that she was not making an *inter vivos* gift but a testamentary one, the question was whether the second defendant, who became the sole registered proprietor after the transfer, fell within the ambit of the second requirement. The court found that the second defendant did as she was privy to the plaintiff's mistake given that she, together with the first defendant (who was the plaintiff's niece-in-law), would have been apprised as to the legal effect of the transfer, as they had discussions with the plaintiff about the transfer.

21.17 Given the requirements in ss 160(1)(*b*) and 160(2) were met, the court ordered the cancellation of the registration of the transfer and the rectification of the land register to reflect the plaintiff's ownership of the property.

21.18 It is important to note that this power of the court to order rectification under s 160 of the LTA also has the effect of an overriding interest provision in s 46(1)(*g*) of the LTA. It is not just an ordinary provision in the LTA. It has a wider role to play. Both provisions, *ie*, ss 160(1)(*b*) and 160(2), should be interpreted in a way such that both have a useful purpose to serve. In fact, s 160(1) makes it clear in its opening words that the application of s 160(1)(*b*) is subject to the requirements in s 160(2). To construe otherwise is to render s 160(2) otiose and redundant. It must be the case that Parliament does not legislate in vain and the court should endeavour to give significance to every word in ss 160(1), 160(1)(*b*) and 160(2).[18] It should also be noted that this power of the court to order rectification in s 46(1)(*g*) and s 160 has remained in the statute book since their enactment in 1970 and has not been amended thus far. For the reasons above, the court in *Ho Dat Khoon* must be commended for

17 *Ho Dat Khoon v Chan Wai Leen* [2023] SGHC 326 at [52].

18 See *Tan Cheng Bock v AG* [2017] 2 SLR 950 at [38] and *Nimisha Pandey v Divya Bothra* [2023] 5 SLR 1254 at [22]. See also *Quinto v Santiago Castillo Ltd* [2009] UKPC 15 which dealt with a provision similar to s 160 of the Land Titles Act 1993 (2020 Rev Ed).

construing s 160 the way it did and, in the process, giving s 160(2) a new lease of life.[19]

IV. Caveats

A. Caveatable interest

21.19 Does a contractual right to the sale proceeds of property amount to a caveatable interest for the purpose of lodging a caveat? This issue was considered in *Kok Zhen Yen v Beth Candice Wu*[20] ("*Kok Zhen Yen*"). The defendant had lodged a caveat ("first caveat") against the property of the claimants who were the registered proprietors. The defendant alleged that there was a verbal agreement between her and the claimants who agreed to repay the moneys concerned to her from the proceeds of the sale of the property. A week before the lapsing of the first caveat, after being notified by the Registrar of Titles pursuant to s 127(2) of the LTA, the defendant lodged a second caveat against the property based on exactly the same grounds as the first caveat. The claimants came to know of the caveats after the purchasers of the property had accepted and exercised the option to purchase. The claimants applied for the second caveat to be removed pursuant to s 127(1) of the LTA.

21.20 The General Division found that, on the evidence, there was never any agreement between the claimants and the defendant for the defendant to be paid from the sale proceeds of the property. Even if there were, such a right could not amount to a caveatable interest within the meaning of s 115(3)(*a*) of the LTA.[21] The court agreed with the earlier High Court decision in *Salbiah bte Adnan v Micro Credit Pte Ltd*[22] ("*Salbiah*") which held that the purpose of s 115(3)(*a*) is to allow individuals who had a definite entitlement to the sale proceeds of land, but no interest in the land itself, to lodge caveats to protect their interest, such as the interest of a beneficiary under a trust for sale which imposed a duty on the trustee to sell the land. To allow a person with a mere right to have his loan repaid out of the sale proceeds of land to lodge a caveat would be

19 Compare the tenor of the Court of Appeal judgment in *United Overseas Bank Ltd v Bebe bte Mohammad* [2006] 4 SLR(R) 884 when dealing with the provision in s 160(2) of the Land Titles Act 1993 (2020 Rev Ed).

20 [2024] 3 SLR 730.

21 Section 115(3)(*a*) of the Land Titles Act 1993 (2020 Rev Ed) ("LTA") provides: "For the purposes of [Part 12 of the LTA], and without limiting its generality, a reference to a person claiming an interest in land includes a reference to any of the following persons: (a) any person who has an interest in the proceeds of sale of land, not being an interest arising from a judgment or order for the payment of money; …".

22 [2015] 1 SLR 601.

too far removed from the type of interest that s 115(3)(*a*) was meant to protect.[23]

21.21 The court further distinguished between *Salbiah* and *Nimisha Pandey v Divya Bothra*[24] ("*Nimisha Pandey*"), discussed below, on the basis that, while in the latter case the unpaid vendor's entitlement to the purchase sum was contractual as well, the crucial difference between that situation and the one in *Salbiah* is that equity recognises a lien for the unpaid purchase money. It is the lien and not any contractual right to the purchase sum that constitutes the caveatable interest under s 115(1) of the LTA.[25]

21.22 In the result, the defendant had not discharged her burden of showing that she had a caveatable interest in the property which meant that there was no serious question to be tried. The second caveat was, thus, ordered removed from the land register.

B. Remedies of caveatee

21.23 The proper ambit of ss 127(1) and 127(2), read with s 127(4) of the Land Titles Act 1993, pertaining to the remedies of a caveatee was considered in *Nimisha Pandey*.[26] The claimant, the former owner of the property, had lodged a caveat against it on the ground that she was an unpaid vendor. The defendant applied to remove the caveat under s 127(2) of the LTA on the basis that it was vexatious. Subsequently, the claimant and her husband started proceedings (HC/OC 138/2023 ("OC 138")) against the defendant to claim the balance of the purchase price for the property. In the present application filed pursuant to s 127(4) of the LTA, the claimant sought two alternative reliefs: (a) an order that the caveat be maintained until the resolution of OC 138 and any appeal therefrom; or (b) an order that the balance sum be paid into court and held pending the resolution of OC 138 and any appeal therefrom.

21.24 The General Division noted the similarities and differences between ss 127(1) and 127(2) of the LTA. First, under either provision, the burden is on the caveator to show cause why the caveat should be maintained. This is expressly provided for in s 127(1) while under s 127(2) it is implicitly provided when read with s 127(4). The latter provisions provide the caveator with the right to attend before the court

23 *Salbiah bte Adnan v Micro Credit Pte Ltd* [2015] 1 SLR 601 at [33].
24 [2023] 5 SLR 1254.
25 See also *Bestland Development Pte Ltd v Manit Udomkunnatum* [1996] 2 SLR(R) 300 at [15].
26 *Nimisha Pandey v Divya Bothra* [2023] 5 SLR 1254.

which is necessary if he or she wishes to seek an order that the caveat be maintained. Second, under either provision, the court remains the only arbiter in any dispute as to whether the caveat should be maintained.

21.25 In terms of differences, s 127(2) expressly provides the grounds as to why a caveat should not be maintained which are that the caveat had been lodged either: (a) vexatiously; (b) frivolously; or (c) not in good faith. However, for s 127(1), it does not provide such grounds but is framed in an open-ended manner. In addition, s 127(2) prescribes a time period by which the caveator must obtain a court order to maintain the caveat concerned, failing which the caveat would automatically be cancelled. This is an advantage to the caveatee. By contrast, s 127(1) does not provide for such a time period.[27]

21.26 The court was of the view that the three alternative grounds in s 127(2) are directed primarily against eccentric individuals whose claim to land is imaginary. Further, when served with a notice pursuant to s 127(2), all that the caveator needs to do, in order to convince the court to make an order for the caveat to remain, is to furnish satisfactory evidence to show that the cancellation should be withheld or deferred. Such satisfactory evidence will include documentary evidence that on its face justifies the caveator's claim to an interest in the property. This is a relatively low threshold for the caveator to overcome for three reasons. First, when Parliament amended s 127(2) to compel the caveator to come to court, it was not so much that it wanted to change the manner of proof that a caveator should meet to maintain the caveat.[28] Second, the low threshold reflects the framework put in place in s 127(2). Given the 30-day requirement to obtain the court order to maintain the caveat, the caveator's application to court under s 127(4) would be on an expedited basis. In the circumstances, it would not be fair to expect the caveator to produce anything more than simple and satisfactory evidence to show why the caveat should be maintained. Third, requiring the caveator to do no more than furnish such evidence is also similar to that standard employed by the courts in deciding whether to strike out pleadings and other documents, namely, that a pleading will not be struck out where it discloses a cause of action with some chance of success even if the case is weak or not likely to succeed.[29]

27 *Nimisha Pandey v Divya Bothra* [2023] 5 SLR 1254 at [19]–[21].

28 See Land Titles (Amendment) Act 2014 (Act 8 of 2014) s 57 and Singapore Parl Debates; Vol 91, Sitting No 3; [17 February 2014] (Ms Indranee Rajah, Senior Minister of State for Law).

29 See O 9 r 16 of the Rules of Court 2021 and *Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd* [2009] 2 SLR(R) 814 (CA) at [172].

21.27 The position as to how the caveator is to discharge the burden under s 127(1) is different. Although s 127(1) does not state the grounds for the caveat to be cancelled, the caveatee may raise one of the following grounds, with the burden remaining on the caveator to disprove these grounds and hence justify the caveat: (a) the interest claimed is not a caveatable interest; (b) although the interest claimed is a caveatable interest, the caveator did not in fact have such an interest; and (c) the caveator had a caveatable interest but that interest has ceased to exist. The applicable test for determining whether a caveat should be maintained is a two-stage test.[30] On the first stage of the test, the serious question to be tried could be one of fact or law. This is helpful in dealing with cases where, although the interest claimed is not within the list of recognised caveatable interests, it has the potential of being admitted to the list. In such cases, the caveat should be maintained pending the determination of whether the interest claimed could amount to a caveatable interest. The threshold for a "serious question to be tried" is a relatively low one.[31] As for the second stage regarding the balance of convenience, the court must weigh the relative financial status of the parties,[32] namely, the likelihood that the caveatee can satisfy the caveator's claim for the underlying debt (should the applicant succeed at trial), against the likelihood that the caveator would be able to compensate the caveatee for wrongly lodging the caveat (should the respondent succeed at trial). Where the caveator can show that there is a serious question to be tried, the balance of convenience would normally be in favour of allowing the caveat to remain.

21.28 Applying the above principles in relation to s 127(2) of the LTA, the court found that the defect on the face of the caveat was not substantive. It did not show that the caveat was lodged vexatiously, frivolously or not in good faith. While the claimant had stipulated the wrong figure in the caveat, it was not a defect that affected her underlying claim as an unpaid vendor as there were still outstanding sums pursuant to the Sale and Purchase Agreement entered into between the parties in respect of the property. The claimant had also provided satisfactory evidence to show a caveatable interest in the property. She had raised sufficient evidence to discharge her burden of showing, at this stage of the proceedings, that the purchase price had not been fully paid up. In the result, the claimant was

30 See *Eng Mee Yong v Letchumanan s/o Velayutham* [1980] AC 331 at 337 and *PACC Offshore Services Holdings Ltd v Kensteel Engineering Pte Ltd* [2017] SGHC 175 at [10].

31 See *Sim Kwang Mui Ivy v Goh Peng Khim* [1994] 2 SLR(R) 814 at [24] and *PACC Offshore Services Holdings Ltd v Kensteel Engineering Pte Ltd* [2017] SGHC 175 at [34].

32 *PACC Offshore Services Holdings Ltd v Kensteel Engineering Pte Ltd* [2017] SGHC 175 at [39].

an unpaid vendor which conferred on her an interest in the form of an unpaid vendor's lien over the land which was capable of being the subject matter of a caveat.[33]

21.29 As the defendant did not adduce any credible rebuttable evidence against the claimant's caveatable interest given that the evidential burden of proof shifted to her upon the claimant's production of the Sale and Purchase Agreement and other relevant evidence (even though the legal burden remained with the claimant), the court granted an order, pursuant to s 127(4) of the LTA, for the caveat to remain.

C. Second caveats and grant of injunction

21.30 In *Kok Zhen Yen*, discussed above, the court, in dealing with the second caveat lodged by the defendant, noted that there is no prohibition against the lodgement of a similar caveat after a former caveat has been removed by the court pursuant to s 127(1) or has lapsed upon the expiry of the 30-day period after the service of the notice under s 127(2). This can give rise to the abuse of the caveat procedure where s 127 of the LTA is concerned given the strikingly similar action of the defendant in the present case. Without a prohibition similar in substance to the one contained in s 121(7) (in relation to a caveat that has *lapsed* pursuant to s 121(1)(*a*) of the LTA), there would be nothing to stop a caveator from lodging a similar caveat in respect of the same estate or interest in land and against the same caveatee after the court has ordered the removal of the former caveat. This means that the caveatee would have to go to court again when there is a clear situation of abuse by the caveator. The court respectfully urged Parliament to consider plugging this lacuna when possible.

21.31 In the alternative, the court can grant an injunction to restrain such conduct posed by the wrongful lodgement of repeated caveats in the context of s 127 of the LTA. The source of the court's power to grant injunctive relief in an appropriate case may be gathered from the phrase "make such order … as seems just" in s 127(1), which must be read as giving effect to the General Division's broad powers under para 14 of the First Schedule to the Supreme Court of Judicature Act 1969[34] read with s 18 of the same Act. Further, while s 130 of the LTA refers only to a caveator, it does not preclude a caveatee from obtaining injunctive relief

33 *Re Caveat No CV/21366D lodged by Lim Saw Hak* [1996] 1 SLR(R) 70 at [15].
34 2020 Rev Ed.

as the provision provides examples of the types of injunctions which a caveatee may obtain against an errant caveator.[35]

21.32 After considering the principles for the grant of an injunction to restrain a caveator from lodging a further caveat in respect of a property,[36] the court held that the claimants were similarly entitled to such an injunction against the defendant in the circumstances. The latter had lodged two caveats on the same grounds without any basis. The manner in which she lodged them, especially her failure to respond to the notice issued pursuant to s 127(2) in relation to the first caveat, showed that she was likely to lodge further caveats if not restrained from doing so. The court was of the view that she had not responded to the notice because she thought she could lodge repeated caveats against the property without consequences. There was also evidence that the defendant had lodged the caveats with the intention to annoy or harass the claimants which was an abuse of the caveat procedure. Further, the claimants would suffer loss that was difficult to compensate by damages because the sale of the property may not be completed if that was repeatedly disrupted by the defendant's lodgement of further caveats.

D. Liability for compensation

21.33 On whether the defendant was liable to pay compensation to the claimants pursuant to s 128(1) of the LTA, the General Division in *Kok Zhen Yen*, discussed above, held that she was not so liable. While the defendant had entered the second caveat wrongfully because she had done so to annoy or harass the claimants and also without reasonable cause, the court was of the view that s 128(1) of the LTA requires proof of accrued damage as opposed to future damage. This was because she did not have an honest belief based on reasonable grounds that a caveatable interest existed in respect of the property given that she could not even be bothered to justify the first caveat.[37] This is the result of the Court of Appeal's characterisation in *Ho Soo Fong v Standard Chartered Bank*[38] of s 128(1) as creating a statutory tort. There was no evidence as to the damage that the claimants had suffered as a result of the defendant's actions. While the claimants had alluded to losses that they had suffered or might suffer as a result of the defendant's actions, these were not

35 Query whether it may be more appropriate instead for the court to go under s 124(*d*) of the Land Titles Act 1993 (2020 Rev Ed) to grant a caveatee injunctive relief. Section 124(*d*) reads: "In any proceedings in respect of a caveat, the court may – … (*d*) make any other order considered just."

36 See, *eg*, *Andrews Family Holdings Pty Ltd v Yellow Tractor Pty Ltd* [2017] VSC 682 at [24] and *Wells v Rouse* [2015] VSC 533 at [16] and [17].

37 See *Ho Soo Fong v Standard Chartered Bank* [2007] 2 SLR(R) 181 (CA) at [34].

38 [2007] 2 SLR(R) 181 (CA) at [34].

particularised or were speculative. In any event, given that the court had ordered the removal of the second caveat and the completion of the sale of the property was imminent, there was no longer any basis for the claimants to ask for damages to be assessed pursuant to s 128(1).

V. Sale of land under court order

21.34 Can the court allow one co-owner of a property to compulsorily purchase another co-owner's share in the property? This was one of the issues considered by the General Division in *Tan Siew Kheng v Teo Kian Kian*.[39] As seen below, differing views have earlier been expressed by the General Division on the matter.

21.35 "A" and "B", who were siblings, were the registered owners of the property. Each owned half a share of the property. As both had died, each estate held a 50% share in the property. As the respective beneficiaries of the estates, the claimant had a 30% share in the property, while "X" had a 10% share, "Y" (the defendant in the present application) a 35% share and "Z" a 25% share. The claimant applied for, and the defendant objected to, the sale of the property.

21.36 Under s 18(2) read with the First Schedule of the Supreme Court of Judicature Act 1969,[40] the General Division has the power, set out in para 2 of the First Schedule, to direct a sale of land where it appears necessary or expedient.[41] In assessing whether it is "necessary or expedient" for a sale to be ordered, the Court of Appeal had earlier, in *Su Emmanuel v Emmanuel Priya Ethel Anne*,[42] held that this had to be done through a balancing exercise of various factors as follows:[43]

> (a) in deciding whether it is necessary or expedient for a sale to be ordered in lieu of partition, the court conducts a balancing exercise of various factors, including (i) the state of the relationship between the parties (which would be indicative of whether they are likely to be able to co-operate in the future); (ii) the state of the property; and (iii) the prospect of the relationship between the parties deteriorating if a sale was not granted such that a "clean-break" would be preferable.

39 [2024] 3 SLR 1399.
40 2020 Rev Ed.
41 For a case where this power of the court was applied in the context of an application by a trustee in bankruptcy, see *Yiong Kok Kong v Liu Chien Min* [2023] 4 SLR 1089 considered in the previous SAL Annual Review: Teo Keang Sood, "Land Law" (2022) 23 SAL Ann Rev 617 at 629–631.
42 [2016] 3 SLR 1222.
43 *Su Emmanuel v Emmanuel Priya Ethel Anne* [2016] 3 SLR 1222 at [57].

(b) regard should be had to the potential prejudice that the various co-owners might face in each of the possible scenarios, namely, if a sale is granted and if it is not granted.

(c) a sale would not generally be ordered if to do so would violate a prior agreement between the co-owners concerning the manner in which the land may be disposed of.

21.37 Applying these principles, the court ordered the property to be sold as the relationship between the parties had clearly broken down and a clean break was preferable. Furthermore, it was impractical to order a partition of the property as it was unlikely that the co-owners would co-operate to partition given that the relationship had broken down between them. The defendant, too, did not ask for partition.

21.38 On the applicability of s 35(2) of the Conveyancing and Law of Property Act 1886,[44] the court took the view that this was a non-issue as it was not the personal representative of A's estate who sought to sell the property. In any case, the claimant was seeking a sale of the property within the six-year period and this did not run foul of the provision. The court also noted in passing that it may be appropriate to review the necessity of the requirement to obtain the sanction of the court under the provision. In addition to the requirement being an additional expense for the estate, the court observed, *inter alia*, that:[45]

> … it is not clear how s 35(2) of the CLPA protects beneficiaries from wrongful dealings by executors or administrators when they seek to sell or mortgage property belonging to the estate after six years. A sale or mortgage within six years does not require the sanction of the court. It is not clear why a sale or mortgage more than six years after the death of the deceased would be more susceptible to wrongful dealings by the executor or administrator.

21.39 On whether a co-owner can be ordered to buy out another co-owner's share in the property, the court agreed with the earlier High Court decision in *Tan Chor Hong v Ng Cheng Hock*[46] that para 2 of the First Schedule of the Supreme Court of Judicature Act 1969[47] ("SCJA") did not empower the court to allow one co-owner to compulsorily purchase the other co-owner's share.[48] However, the court disagreed with another earlier decision of the General Division in *Sun Yanyuan v Ng Yit Beng*[49] to the extent that "it decided that the court could order a co-owner to

44 2020 Rev Ed.
45 *Tan Siew Kheng v Teo Kian Kian* [2024] 3 SLR 1399 at [21]; see also [22]–[24].
46 [2020] 5 SLR 1298.
47 2020 Rev Ed.
48 *Tan Chor Hong v Ng Cheng Hock* [2020] 5 SLR 1298 at [53].
49 [2023] 3 SLR 1727. This decision was considered in the previous SAL Annual Review: Teo Keang Sood, "Land Law" (2022) 23 SAL Ann Rev 617 at 628–629.

sell his share in a property to another co-owner at valuation regardless of the price that the property could fetch in the open market".[50] The court reasoned that:[51]

> Paragraph 2 of the First Schedule of the SCJA does not empower the court to allow a co-owner to compulsorily acquire another co-owner's share at a price that is lower than the best price obtainable. Such an order would amount to judicial expropriation of the other co-owner's share to the extent of the shortfall compared to the best price obtainable. A co-owner is entitled to sell his share in the property at the best price obtainable. Forcing him to sell his share to another co-owner at valuation would clearly prejudice him if the valuation price was lower than what the property could fetch in an open market sale.

21.40 In *Goh Siam Teow v Lim Tung Hee Arthero*,[52] the only issue for determination was whether the property should be sold pursuant to s 18(2) read with para 2 of the First Schedule to the Supreme Court of Judicature Act 1969. "X", the litigation representative of the applicant pursuant to an order of court, had initiated the action as the applicant lacked mental capacity to do so. The applicant was 89 years old and suffered from dementia. The applicant and the respondent (one of her three children) held the property as tenants-in-common in equal shares. Only the respondent was residing in the property and had been doing so for 20 years. He had been renting out two rooms in the property for which he collected a rental income of about $1,500 a month which he used for his living expenses. The applicant had not received any of the rental proceeds and resided with X, her appointed deputy.

21.41 The respondent objected to the application on procedural and substantive grounds. The respondent argued that X lacked the power to apply for the property to be sold as the court order mentioned above required the respondent to also consent to the sale. As he had not consented to the sale, X was, accordingly, not empowered to make the application in the first place. The General Division, in rejecting the argument, held that the court order pursuant to which X was appointed the litigation representative of the applicant, was merely one agreed method by which X was empowered to act, as deputy of the applicant. The grant of a specific power did not delimit the ambit of general powers accorded to X. Having regard to s 23(1)(*b*) and s 23(1)(*g*) of the Mental Capacity Act 2008,[53] X did not act outside of her powers when commencing the application.

50 *Tan Siew Kheng v Teo Kian Kian* [2024] 3 SLR 1399 at [31].
51 *Tan Siew Kheng v Teo Kian Kian* [2024] 3 SLR 1399 at [30].
52 [2024] 3 SLR 829.
53 2020 Rev Ed.

21.42 The respondent also resisted the sale of the property on the ground that he did not have sufficient resources for his upkeep if the property was sold. The court took the view that the respondent's case must be balanced against the best interests of his ailing and aged mother, the applicant. The latter could not be kept out of the property and have the respondent taking over the benefits of ownership entirely. In the result, a sale of the property was the most equitable solution in the circumstances with the proceeds divided equally between the applicant and the respondent.[54]

VI. Conveyance to defraud creditors

21.43 One of the issues considered in *Wang Xiaopu v Koh Mui Lee*[55] was whether the various transactions carried out by Dr Goh ("G") were intended to defraud creditors and hence voidable under s 73B(1)[56] of the Conveyancing and Law of Property Act ("CLPA").[57] In the present suit, the plaintiff claimed that G had fraudulently disposed of his assets by transferring them to or purchasing them in the names of the defendants. The first defendant was G's wife and the second and third defendants, G's daughter and son respectively.

21.44 The transactions made by G were in respect of, *inter alia*: (a) the transfer of moneys belonging to G from an account with Oversea-Chinese Banking Corporation ("OCBC") into the third defendant's account with the same bank; (b) the purchase of the property, Seascape, in the third defendant's name; (c) the purchase of the property, Berth, in the second defendant's name; and (d) the sale of G's half share in 36 Cove Way to the first defendant.

21.45 The plaintiff had succeeded in an earlier separate action she brought in 2015 against G in respect of business dealings between them. The transactions undertaken by G with the defendants would directly impact whether the plaintiff would be able to enjoy the fruits of litigation in the earlier action and she was hence prejudiced by the transactions made.

21.46 The General Division held that to make out a cause of action under s 73B of the CLPA, the burden of proof was on the plaintiff to establish that:

54 *Goh Siam Teow v Lim Tung Hee Arthero* [2024] 3 SLR 829 at [5] and [9].
55 [2023] 5 SLR 717.
56 Since repealed by the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018).
57 Then Cap 61, 1994 Rev Ed.

(a) there had been a conveyance of property;

(b) this conveyance was made with the intent of defrauding creditors; and

(c) the plaintiff was a person prejudiced by the foregoing conveyance of property.[58]

21.47 The defendant, who was generally the recipient of the property conveyed, would be able to defeat the plaintiff's action and retain the property if he or she could establish that:

(a) they acquired the property for valuable consideration and in good faith, or for good consideration and in good faith; and

(b) they did not have notice of the debtor's intent to defraud their creditors.[59]

21.48 Having regard to the totality of the evidence, the court was satisfied that the plaintiff had succeeded in discharging the burden placed on her under s 73B of the CLPA in respect of the transactions noted in (a), (b) and (d) above at para 21.44. The court found that G's conduct of systematically dissipating his assets to his family members, seen against the backdrop of their inconsistent and unconvincing evidence, was for the purpose of defrauding G's creditors (which the defendants had notice of) and the plaintiff was hence prejudiced by the transactions made.

21.49 As for transaction (c) noted above at para 21.44, which was completed in February 2015, the court held that the plaintiff did not succeed in establishing that G had purchased Berth with an intent to defraud creditors. Both G and the plaintiff still shared a positive relationship in February 2015, and the plaintiff had not informed G of her intention to commence proceedings at that point. Nonetheless, since Berth was purchased with funds in the OCBC account jointly owned by G and the first defendant, the second defendant held Berth on resulting trust for them.

58 See *Wong Ser Wan v Ng Bok Eng Holdings Pte Ltd* [2004] 4 SLR(R) 365 at [5].
59 *Wong Ser Wan v Ng Bok Eng Holdings Pte Ltd* [2004] 4 SLR(R) 365 at [5].

VII. Residential Property Act 1976 and sale requiring court sanction

21.50 The decision of the General Division in *Tan Mei Sin v Tan Ah Lim*[60] was considered in the previous Annual Review.[61]

VIII. Strata title

A. By-laws[62]

21.51 In *Manohar K D Nanwani v The Management Corporation Strata Title Plan No 1884*,[63] the District Court dealt with several issues pertaining to by-laws. In the present case, the respondent management corporation was constituted in 1995 which was before the Building Maintenance and Strata Management Act 2004[64] ("BMSMA") came into effect on 1 April 2005. The respondent's parking by-law required the applicant to be a resident of the strata development and also the owner of the vehicle before a car park label could be issued to him. The vehicle log card, which contained both the name of the owner as well as his registered address, was therefore required as part of the application process. The applicant's supposed difficulty was that his vehicle log card did not bear his address at the strata development. In the present application, the applicant argued that the parking by-law was invalid because it contravened s 32(2) of the BMSMA, which provides that *any* by-law (*ie*, the respondent's parking by-law) made under s 32(2) must not be inconsistent with any such prescribed by-law (*ie*, para 2(2) of the Second Schedule to the Building Maintenance (Strata Management) Regulations 2005[65] ("BMSMR"),

60 [2023] 3 SLR 778.

61 Teo Keang Sood, "Land Law" (2022) 23 SAL Ann Rev 617 at 631–632.

62 For another case on by-laws, see *The Management Corporation Strata Title Plan No. 2418 v MacProtrade LLP* [2023] SGMC 50. It was held that, while the defendant was *prima facie* in breach of the relevant by-law because it had not obtained the plaintiff's written approval to carry out the roof works, the latter was precluded from relying on the defendant's breach as there was evidence that a management staff of the former managing agent did grant verbal approval to the defendant to carry out the works. It further facilitated the said works by allowing the defendant access to the roof, followed by a post-works inspection. In addition, on the evidence, the plaintiff was estopped and time-barred from claiming a breach of the said by-law.

63 [2023] SGDC 40.

64 Now 2020 Rev Ed.

65 S 192/2005. For a case decided under by-law 3(1) of the Second Schedule to the Building Maintenance (Strata Management) Regulations 2005 (S 192/2005) pertaining to obstruction of common property, see *MCST Plan No 3564 v Lian Fong Credit Holdings Pte Ltd* [2023] SLR(StC) 529 considered in the previous SAL Annual Review: Teo Keang Sood, "Land Law" (2022) 23 SAL Ann Rev 617 at 638.

noted below). The respondent argued that it was not even bound by the prescribed by-law.

(1) Management corporations constituted before 1 April 2005

21.52 For a management corporation constituted before 1 April 2005, is the reference to "any such prescribed[66] by-law" in s 32(2) of the BMSMA a reference to the by-laws in the Second Schedule to the BMSMR or the by-laws in the First Schedule to the repealed Land Titles (Strata) Act[67] ("repealed LTSA")? This was one of the issues considered by the District Court. If it is the former, then the respondent would be bound by para 2(2) of the Second Schedule to the BMSMR, which provides that "[t]he management corporation *shall not unreasonably withhold its approval* to the parking or leaving of a motor vehicle or vehicle on the common property". However, if the by-laws in the First Schedule to the repealed LTSA apply, then the respondent would not be bound by the BMSMR as the First Schedule to the repealed LTSA did not have a by-law equivalent to para 2(2) of the Second Schedule to the BMSMR.

21.53 The court ruled that for management corporations constituted before 1 April 2005, the reference to "any such prescribed by-law" in s 32(2) of the BMSMA is a reference to the by-laws in the First Schedule to the repealed LTSA. This is because, pursuant to para 14(2)(*a*) of the Fourth Schedule to the BMSMA (which s 32(2) of the BMSMA is expressly subject to), the prescribed by-laws in force in the strata development were those set out in the First Schedule to the repealed LTSA and not those set out in the Second Schedule to the BMSMR. The reference point must be the by-laws prescribed by statute which are applicable to the particular management corporation in question. Thus, for management corporations constituted before 1 April 2005, these would be the by-laws in the First Schedule to the repealed LTSA.[68]

(2) Valid by-law being non-discriminatory

21.54 The applicant further argued that the parking by-law was invalid because it discriminated against residents whose vehicles were

66 The term "prescribed" in the Building Maintenance and Strata Management Act 2004 (2020 Rev Ed) refers to the by-laws prescribed by statute, in contradistinction to the additional by-laws made by a management corporation.

67 Cap 158, 1999 Rev Ed.

68 While it was not necessary for the court, in light of this ruling, to consider further whether the parking by-law was reasonable, it went on to hold that the said by-law was not unreasonable as there was a good reason for it and that it was not onerous (*Manohar K D Nanwani v The Management Corporation Strata Title Plan No 1884* [2023] SGDC 40 at [37]).

registered to addresses other than the strata development in question. The court clarified the decision of the Strata Titles Board (the "Board") in *Roland Yeo Peng Sin/Chan Mei Yoke v MCST Plan No 2054*[69] which the applicant had relied on. The Board had observed that "a by-law that is discriminatory in its application will qualify for repeal".[70] The basis of the Board's observation was s 105(1) of the BMSMA which provides, *inter alia*, that the addition of a new by-law is liable to be repealed if, having regard to the interest of all subsidiary proprietors in the use and enjoyment of their lots or the common property, it should not have been made or effected. The court explained that what the Board meant was that an additional by-law that involves a differentiating measure is liable to be repealed under s 105(1) of the BMSMA if the differentiating measure negatively impacts the interest of all subsidiary proprietors in the use and enjoyment of their lots or the common property. In any case, the court found that the applicant's vehicle log card bore the strata development address.[71] In other words, the applicant was not even a victim of the alleged discrimination he complained of.

(3) Reliefs for enforcement of by-laws

21.55 As the parking by-law was not invalid, the court held that the applicant was not entitled to the reliefs sought which were contingent on a finding that the parking by-law was invalid. The court further noted that the primary provisions having to do with the enforcement of by-laws in the BMSMA are ss 32(10) and 32(11) of the BMSMA where the reliefs referred to therein are premised on a valid by-law. Accordingly, the applicant could not avail himself of ss 32(10) and 32(11) as the reliefs sought by him did not fall within the description therein.

21.56 The court also distinguished the High Court case of *Management Corporation Strata Title Plan No 901 v Lian Tat Huat Trading Pte Ltd*[72] ("*Lian Tat Huat Trading*"). In that case, the subsidiary proprietor was not seeking *substantive reliefs* on the basis of an invalid by-law. Rather, the subsidiary proprietor had filed an application to *procedurally strike out* the management corporation's claim pursuant to O 18 r 19 of the

69 [2014] SGSTB 1.

70 *Roland Yeo Peng Sin/Chan Mei Yoke v MCST Plan No 2054* [2014] SGSTB 1 at [20].

71 The court relied on illus (g) to s 116 of the Evidence Act 1893 (2020 Rev Ed). The court took the view that the applicant could, but did not, produce his vehicle log card given that the only steps involved in complying with the respondent parking by-law were the non-onerous steps of: (a) updating one's National Registration Identity Card to reflect the strata development address; and (b) producing a copy of the vehicle log card to the respondent.

72 [2018] SGHC 270.

Rules of Court.[73] The present case was different as the applicant was seeking substantive reliefs on the basis of the alleged invalidity of the parking by-law. The decision in *Lian Tat Huat Trading* did not stand for the proposition that this was possible notwithstanding ss 32(10) and 32(11) of the BMSMA.

B. Meetings

21.57 In *Cheung Phei Chiet v Jujun Tanu*[74] ("*Cheung Phei Chiet*"), the following matters pertaining to meetings were dealt with by the General Division.

(1) Declaratory relief in relation to legality of proposed resolutions or motions

21.58 The present proceedings in *Cheung Phei Chiet*, which concerned a small strata development comprising four commercial lots on the ground floor and four residential lots above them, arose out of the acrimonious and bitter disputes between two opposing groups of disgruntled subsidiary proprietors, namely, the applicant and the respondents, regarding the management and affairs of the strata development. The applicant had since resigned from the management council, leaving the respondents as the only council members. The applicant sought, *inter alia*, a declaration that various motions which the respondents sought to pass were unlawful, unenforceable, invalid and/or void. These motions pertained to, *inter alia*, giving the appointed chairman of the incoming council a casting vote in the event of any deadlock in any council meetings and the grant of exclusive use and enjoyment by-laws to the respondents in respect of certain parts of the common property.

21.59 At the outset, the court pointed out that the applicant's characterisation of the proposed resolutions as "resolutions" was, strictly speaking, incorrect. The appropriate term to use would be "motions". Only when a motion, *ie*, a proposal for consideration at a meeting, is passed, will it then become a resolution of the management corporation.[75] In dismissing the application for a declaration, the court was of the view that, given the proposed resolutions were ultimately not passed, any declaration sought to be granted would be hypothetical or academic in nature. There was no public interest that justified the granting of the

73 2014 Rev Ed.
74 [2023] 5 SLR 1011.
75 *Cheung Phei Chiet v Jujun Tanu* [2023] 5 SLR 1011 at [60].

declaration sought in respect of these hypothetical issues.[76] In any case, if the proposed resolutions or motions of similar effect were ever raised again in future general meetings, it was always open to the subsidiary proprietors to raise their objections in the next general meeting in accordance with the internal mechanism under the BMSMA.

(2) Subsidiary proprietors' statutory right to propose resolutions or motions

21.60 The applicant had also sought an order from the court to restrain the respondents from introducing the proposed resolutions, or motions to similar effect, at general meetings. The court was of the view that to grant the order would be to effectively and permanently curtail the respondents' rights as subsidiary proprietors to propose any motions they wish for the general body's consideration. This is a statutory right that is enshrined under para 12 of the First Schedule to the BMSMA. The mandatory language therein reinforces the absolute right accorded to a subsidiary proprietor to put in motions in a meeting. This right is so crucial to a subsidiary proprietor that the right to call for a motion is also available to a subsidiary proprietor who may be in arrears in contributions because of a dispute with the council.[77] Accordingly, the court declined to grant the order as it offended the statutory rights of the respondents as subsidiary proprietors.

(3) Installation of structure on common property

21.61 In regard to the order sought by the applicant to permanently restrain the respondents from installing any kitchen exhaust system or ducting ("KED") on the common property of the development unless a by-law was passed pursuant to a 90% resolution, the court was of the view that it did not have the power to pre-emptively and permanently restrict the rights of the respondents to deal with their property and the common areas linked to their property, subject to any requirements prescribed under the BMSMA. It was difficult to determine whether the fact of the installation of the KED in itself would lead to a violation of ss 63(*c*) and 63(*d*) of the BMSMA. This was so given that the respondents had not tabled any resolutions on the installation of any KEDs. In

76 For case law on the grant of declaratory relief which the court referred to, see, *eg*, *Salijah bte Ab Latef v Mohd Irwan bin Abdullah Teo* [1996] 2 SLR(R) 80 at [50(b)], *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732 at [136], *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd* [2006] 1 SLR(R) 112 at [14], *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 at [143], *Ainsworth v Criminal Justice Commission* (1992) 106 ALR 11 at 22 and *Latham Scott v Credit Suisse First Boston* [2000] 2 SLR(R) 30 at [74].

77 *Cheung Phei Chiet v Jujun Tanu* [2023] 5 SLR 1011 at [74].

addition, to impose a mandatory requirement of a 90% resolution in respect of motions for exclusive use of KEDs in the common property, regardless of the actual duration of use as stated in the motion, would be in contravention of s 33 of the BMSMA.

C. Exclusive use by-laws

21.62 In *Cheung Phei Chiet*,[78] discussed above, the applicant had contended that the requirements for passing an exclusive use by-law under s 33 of the BMSMA were not satisfied. The court held that the facts of the present case were materially different from the context of *Mu Qi v Management Corporation Strata Title Plan No 1849*.[79] In the present case, the proposed resolutions which were sought to be passed during the 2021 Annual General Meeting were all expressly stated to be for a period of one year. The burden was on the applicant to show, which he could not, that the respondents had intended to abuse the requirements under s 33(1) of the BMSMA through the indefinite passing of an ordinary, and not 90%, resolution every year. While the structures[80] concerned appeared permanent, the respondents would have to bear the consequences of them being illegal structures after one year, should they be unable to obtain the necessary votes to pass the resolutions for these structures. Accordingly, the proposed resolutions were correctly framed as ordinary motions in accordance with s 33(1)(*a*) of the BMSMA as the respondents were only seeking resolutions for a period of one year. The court also held that the proposed resolutions did not offend any formalities requirement for passing an exclusive use by-law under s 33(2) of the BMSMA.

21.63 In *Soo Hoo Khoon Peng v MCST Plan No 2906*,[81] discussed further below, the applicant, a subsidiary proprietor, had sought permission from the respondent, the management corporation of the development, to install a screen in the balcony of his lot. The screen's brackets would be mounted on the balcony walls. When the respondent refused to allow him to do so, the applicant commenced proceedings against the former in the District Court. Although the screen to be installed was entirely within the lot, the applicant conceded that, given some parts of these walls were load-bearing, they were considered "common property" by virtue of their being structural elements and, hence, coming within the definition of "common property" in s 2(1)(*c*)(iii) of the BMSMA. This would require a 90% resolution at a general meeting of subsidiary proprietors to instal

78 *Cheung Phei Chiet v Jujun Tanu* [2023] 5 SLR 1011.
79 [2021] 5 SLR 1401.
80 That is, the installation of air-conditioning compressors, a shop name and logo, and a light source at the common areas.
81 [2023] SGHC 355.

the screen if exclusive use and enjoyment of the common property was involved. The District Court dismissed the application and the applicant appealed.

21.64 The General Division held that for common property comprising structural elements within the subsidiary proprietor's lot, whether or not there is exclusive use and enjoyment of the common property must depend on the property's location within the development, as well as the role(s) that the property plays given that location. The court distinguished the High Court case of *Wu Chiu Lin v Management Corporation Strata Title Plan No 2874*[82] and that of the Court of Appeal in *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645*[83] which dealt with outward facing walls which served aesthetic function for the respective developments. This would not be so for structural elements comprised within the lot which are inward facing, in which case the approach to assessing if there is exclusive use and enjoyment (within the meaning of s 33(1)(*c*)(i) of the BMSMA) ought to be adapted accordingly. Where the subsidiary proprietor is proposing to perform works on such features, it would not be meaningful for the test (of whether the works amount to exclusive use and enjoyment) to centre on whether the works visually obstruct the feature. Rather, the test ought to focus on the impact which the works have on structural functionality. This is because use and enjoyment of such a non-external facing structural feature is derived by other subsidiary proprietors from the structural support which it renders to their respective lots, rather than from visual appreciation. An example of exclusive use in such a context would conceivably be when the subsidiary proprietor's works would hinder the management corporation from maintaining the structural feature within his lot. Such works could potentially deprive other subsidiary proprietors of the structural integrity of that feature.[84]

21.65 Given that the applicant was seeking permission to appeal against the District Court's dismissal of his action, he also had to demonstrate the prospect of miscarriage of justice if permission was not granted.[85] This the applicant failed to show and the appeal was, thus, dismissed by the General Division, which went on to find that the screen failed to keep with the appearance of the rest of the building(s) as required under the BMSMA, which is discussed below.

82 [2018] 4 SLR 966.

83 [2018] 1 SLR 790.

84 In such a case, if the works proposed by the subsidiary proprietor affect the feature's structural integrity, this will also trigger the prohibition in s 37(4)(*b*) of the Building Maintenance and Strata Management Act 2004 (2020 Rev Ed).

85 *Lee Kuan Yew v Tang Liang Hong* [1997] 2 SLR(R) 862 at [15]–[16].

D. Decisions of management council that of management corporation

21.66 In dismissing the application for an order to restrain the respondents from engaging their personal solicitors, Legal Solutions, to act as solicitors for the management corporation, the court in *Cheung Phei Chiet*, noted above, held that it is well established that the management corporation has a distinct legal personality[86] and the respondents act as the management corporation's agents through their position as members of the council. Hence, the management corporation was not precluded from engaging Legal Solutions unless there were restrictions imposed on the council. Under s 58(1) of the BMSMA, the management corporation's council has the power to decide on any matter, and that decision is the decision of the management corporation. The decision to appoint Legal Solutions as the management corporation's solicitors was not a matter which the council was precluded from deciding on as it did not fall within the definition of a "restricted matter" under s 58(1) read with s 58(4) of the BMSMA.[87]

E. Vacation of office of member of council

21.67 In *Cheung Phei Chiet*, the applicant had also asked for an order for the removal of the respondents as council members on the ground that they had breached their duties or failed to discharge their duties as council members. The court held that s 18 of the SCJA, read with para 14 of the First Schedule thereto, did not assist the applicant. The said provisions do not give the court the power to grant any and all kinds of remedies sought. The court has to exercise its discretion in a manner that is incompatible with the framework set out under the prescribed law,[88] *ie*, the BMSMA, which is the key legislation governing the affairs of strata developments. While s 123 of the BMSMA makes it clear that a subsidiary proprietor or management corporation continues to have the rights and remedies under general law apart from the BMSMA, such rights only relate to the normal incidents of legal relationships as between the subsidiary proprietor and the management corporation, namely, the preservation of rights and reliefs which a subsidiary proprietor may have

86 Building Maintenance and Strata Management Act 2004 (2020 Rev Ed) ss 24(1)(*b*) and 24(2).

87 The court also held that there were insufficient facts to show that Legal Solutions was placed in a position of conflict of interest. The matters in which Legal Solutions was engaged to act for the management corporation were matters which were entirely distinct both in terms of the subject matter engaged, the period in which these matters arose and the respective interests of the parties (*Cheung Phei Chiet v Jujun Tanu* [2023] SGHC 51 at [139]).

88 See *Chan Yung Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [34].

against the management corporation, or *vice versa*, at common law and under other legislation.[89]

21.68 The court further held that there was no legal basis to exercise its powers to remove the respondents from their position as council members of the management corporation. It is not for the courts to resolve any and all disputes of the subsidiary proprietors of a strata development, especially where s 54 of the BMSMA has clearly delineated the framework and regime to remove the management corporation's council members. The respondents could also not be faulted for the delays caused in not getting up to speed on the administrative matters relating to the running of the management corporation. The applicant, having contributed substantially to these difficulties, could not now be heard to complain against the respondents.

F. Composition of members of management council in mixed-use developments

21.69 The decision of the General Division in *Management Corporation Strata Title Plan No 2553 v Chia Yew Liang*[90] was considered in the previous Annual Review.[91]

G. Effecting improvements to lots

21.70 One of the issues considered in *Management Corporation Strata Title Plan No 1788 v Lau Hui Lay William*[92] concerned the meaning of the words "effect any improvement" in or upon the lot of a subsidiary proprietor in s 37(1) of the BMSMA. The defendants had installed mezzanine attics in their lot before the coming into force of the BMSMA on 1 April 2005. The Urban Redevelopment Authority ("URA") subsequently granted written permission for the defendants to retain the mezzanine attics. The defendants paid the penalty and development charge required of them by the URA.[93] The claimant management corporation instituted proceedings against the defendants for installing the unauthorised mezzanine attics. Among others, the claimant sought for the defendants to be ordered

89 *Cheung Phei Chiet v Jujun Tanu* [2023] 5 SLR 1011 at [177].
90 [2023] 4 SLR 1076.
91 Teo Keang Sood, "Land Law" (2022) 23 SAL Ann Rev 617 at 636–637.
92 [2023] SGHC 284.
93 With the grant of written planning permission from the Urban Redevelopment Authority, there was no longer any continuing breach of s 12 of the Planning Act 1998 (2020 Rev Ed). In fact, s 34(4) of the same Act provides that no further proceedings shall be instituted or taken against any person for an offence under s 12 once the penalty has been paid.

to remove the unauthorised mezzanine attics. In the alternative, the defendants were to pay additional contributions to the management fund and sinking fund for the unauthorised structure.

21.71 The General Division held that the claimant had no cause of action against the defendants and dismissed their claim. The court found on the evidence that the defendants had completed the installation of the mezzanine attics by around April or May 1993, way before 1 April 2005 when the BMSMA came into force. As such, prior to 1 April 2005, there was no provision of law requiring a subsidiary proprietor who wished to effect any improvement in or upon his lot that would increase the floor area to obtain authorisation from the management corporation by way of the passing of a 90% resolution under the BMSMA. This only changed with the enactment of s 37(1) and 37(2) of the BMSMA.

21.72 The court also disagreed with the claimant's argument that the defendants' act of applying to the URA for written permission to retain the unauthorised works constituted the act of "effect[ing] any improvement" under s 37 of the BMSMA. The court was of the view that given the statutory context to s 37(1) of the BMSMA, the word "effect" therein refers solely to the effecting of *physical* works in or upon a subsidiary proprietor's lot. The installation of the mezzanine attics was physically completed at a definite moment in time. If the installation of the mezzanine attics was started *and* completed at a time when the BMSMA had yet to come into force, then the effecting of this improvement in or upon the lot would not be in breach of s 37(1) of the BMSMA.

21.73 In *Cheung Phei Chiet*, discussed above, the court held that the removal of the rear windows (now replaced with a brick wall) in the lot owned by one of the respondents was unauthorised and was in breach of s 37 of the BMSMA. The alteration was one which the management was not empowered to authorise under s 37(4) of the BMSMA. Further, it was not possible for the respondent to rely on the doctrine of acquiescence to say that the management corporation had, by its inaction, acquiesced in the breach. It was simply illogical to conclude that the management corporation had acquiesced to a matter for which it had no power to approve. In the result, the respondent was required to reinstate the rear windows.[94] However, there was no breach of s 37(3) of the BMSMA flowing from the erection of the front wall of the same lot. In any event, even if there was a breach, the doctrine of acquiescence applied to ratify the breach, given that the erection of the front wall was an improvement

94 *Cheung Phei Chiet v Jujun Tanu* [2023] 5 SLR 1011 at [228].

to the lot which the management corporation was empowered to authorise.[95]

21.74 As seen in *Soo Hoo Khoon Peng v MCST No 2906*,[96] dealt with above, while the General Division was of the view that the test of what constitutes exclusive use and enjoyment of non-external facing structural elements comprised within the lot should focus on the impact of the proposed works on structural functionality (rather than on aesthetics), this does not mean that the element of aesthetics is irrelevant. The screen's roller blinds would, when drawn down, cover the open space within the applicant's balcony. While this did not amount to obstruction of common property, it still affected the overall façade of the building. Accordingly, whether installation of the screen should be allowed depended on compliance with the aesthetic-related provisions in the BMSMA, namely, ss 37, 37A and prescribed by-law 5 in the Second Schedule to the BMSMR.

21.75 Which provision applies depends on the location of the proposed works. For works within the subsidiary proprietor's lot, ss 37 and 37A of the BMSMA apply. Where they are performed on common property, by-law 5 applies. In the less common situation where the works are performed on common property that also lies within the subsidiary proprietor's lot, such as in the present case, all three provisions apply. Here, the structural walls to which the screen brackets were to be affixed were comprised in the applicant's lot. What is important to note is that works done must not detract from, and must be in keeping with, the appearance of the rest of the building or other buildings as mandated in ss 37(4), 37A(2)(*b*) and prescribed by-law 5(4).

21.76 With regard to a management corporation's guidelines on aesthetic uniformity, prescribed by-law 5(4) states that any installation must not only keep with the appearance of the rest of the building(s) but also keep with the guidelines of the management corporation. Both requirements are necessarily related as the management corporation's guidelines on aesthetic uniformity would assist in maintaining some degree of uniformity in the appearance of the installations, thereby helping to maintain the aesthetics of the building(s). A fair degree of latitude should be accorded to the management corporation in the promulgation

95 For another case where the court found that the management corporation was empowered to approve the unauthorised works, see *Prem N Shamdasani v MCST Plan No 920* [2023] 3 SLR 1662 considered in the previous SAL Annual Review: Teo Keang Sood, "Land Law" (2022) 23 SAL Ann Rev 617 at 634–635.

96 [2023] SGHC 355.

of guidelines on what is aesthetically acceptable and what is not.[97] While a wide discretion is accorded to the management corporation in this regard, there still has to be a balance struck between aesthetic uniformity and the efficacy of the safety equipment prescribed by the management corporation to keep relevant harm at bay.[98]

21.77 The burden is on a subsidiary proprietor who is challenging the guidelines issued by a management corporation to maintain the development's aesthetic appearance to show that they are unacceptable. This position also aligns with the broader policy, as seen in decided case law, that management corporations should be given sufficient leeway to dictate what accords with the development's overall aesthetic theme, which is an important function that has an impact on the value of the development.[99] Where the guidelines are clearly unreasonable or disproportionate, the subsidiary proprietor may face less difficulty in discharging that burden which is, however, dependent on the facts.

21.78 In dismissing the applicant's application for permission to appeal against the District Court's decision,[100] the High Court also rejected the argument that, to allow the respondent to make guidelines which only allow for one or two types of safety equipment is to render redundant the host of definitions of safety equipment provided for in s 37A of the BMSMA. The court was of the view that what the respondent did in this case was not to restrict the host of categories, but rather the type of installations within each category. Given that a management corporation is responsible for maintaining the aesthetic uniformity of the development, with a view to preserving its value, it is to be expected that the guidelines made by a management corporation must necessarily result in limiting the variety of aesthetic designs available.[101] In the result, the installation

97 *MCST Plan No 940 v Lim Florence Marjorie* [2019] 4 SLR 773 at [87]–[88] in the context of the operation of s 37 of the Building Maintenance and Strata Management Act 2004 (2020 Rev Ed).

98 In the present case, the respondent had issued guidelines on the safety equipment that subsidiary proprietors could install, namely, install invisible grilles to prevent falls from height and mosquito nets to prevent entry of insects. In refusing to consent to the installation of the screen, the respondent took the view that the applicant could avail himself of these other installations which were approved under the respondent's guidelines.

99 See *MCST Plan No 940 v Lim Florence Marjorie* [2019] 4 SLR 773 at [91] and Singapore Parl Debates; Vol 94, Sitting No 50; [11 September 2017] where the then-Second Minister for National Development, Mr Desmond Lee, remarked, in the context of s 37A of the Building Maintenance and Strata Management Act 2004 (2020 Rev Ed), that the onus of ensuring that installations maintain uniformity with the development's overall appearance lies with the subsidiary proprietor.

100 See Supreme Court of Judicature Act 1969 (2020 Rev Ed) s 21(1)(*a*) read with O 18 r 19(2) of the Rules of Court 2021.

101 *Soo Hoo Khoon Peng v MCST No 2906* [2023] SGHC 355 at [40].

of the screen, if allowed, would fail to keep with the appearance of the rest of the building(s) as required under the BMSMA.

H. Relationship between sections 88(1)(a) and 111(b) BMSMA

21.79 The decision of the General Division in *Prem N Shamdasani v MCST Plan No 920*[102] was considered in the previous Annual Review.[103]

I. Enforcement of Strata Titles Board order

21.80 Must a party who wishes to enforce a Board order by way of committal proceedings take out two separate and sequential leave applications, namely: (a) an application under s 120(1) for leave for judgment to be entered in terms of the Board order; and (b) an application under O 45 r 5 of the Rules of Court for leave to commence committal proceedings if the respondent disobeys the judgment that had been entered pursuant to s 120(1)? The District Court in *Spring Land Pte Ltd v The Management Corporation Strata Title Plan No 4067*[104] answered the issues in the affirmative and helpfully explained the proper manner of enforcing an order of the Board.

21.81 The applicant, a subsidiary proprietor of a strata development, after obtaining a consent order from the Board, successfully obtained an order of the District Court, DC/ORC 3285/2021 ("ORC 3285"), which granted leave to the applicant for an application for an order of committal against the chairperson of the management council of the respondent, the management corporation of the strata development. The respondent had earlier failed to comply with the consent order of the Board. ORC 3285 was issued pursuant to: (a) s 120(2) of the BMSMA (which stipulated the punishment for contravening an order of the Board); and (b) O 45 r 5 and O 52 r 2 of the Rules of Court.

21.82 The court held that to enforce an order of the Board by way of committal proceedings, an applicant must first apply under s 120(1) of the BMSMA for leave for judgment to be entered in terms of the Board's order. This is so that the judgment can be served on the respondent. The Board being an administrative body, its consent order clearly does not fall within the scope of a "judgment or order".[105] Hence, this step is necessary

102 [2023] 3 SLR 1662.
103 Teo Keang Sood, "Land Law" (2022) 23 SAL Ann Rev 617 at 637–638.
104 [2023] SLR(StC) 337.
105 See O 42 of the Rules of Court where a "judgment" and an "order" must refer to one that has been made in "Open Court" or "in Chambers" by a "Judge", a "Registrar" or a "Court".

to "convert" the order of the Board into a judgment for the purpose of enforcement under the Rules of Court and this accords with s 120(1). After this has been done and, if the respondent refuses or neglects to comply with the said judgment, then the applicant can make a second application, this time for leave under O 45 r 5, to commence committal proceedings against the respondent. The court noted that the applicant appeared to take the position that as long as the respondent had breached the order of the Board, this fact alone was a sufficient basis to commence committal proceedings.[106] Without first obtaining leave of court under s 120(1), the order of the Board could not be enforced as a "judgment or order" pursuant to O 45.[107] These two applications should not be conflated as they are very different applications which serve different purposes.[108]

21.83 The court further noted that the applicant did not treat the respondent and the chairperson as separate entities regarding the breach of the Board's order. The chairperson was not subject to any judgment as it was the respondent that had been directed to provide the relevant materials. Accordingly, there was no basis for the applicant to apply for committal proceedings against him.

21.84 In the result, the application for an order of committal was subsequently dismissed by the court at the hearing as the applicant had failed to prove that it had obtained leave to enter judgment in terms of the order of the Board pursuant to s 120(1). Further, no judgment had been served on the chairperson arising from the said order for which he could be said to have disobeyed.

J. Collective sales

21.85 The case of *Mrs Spykerman Chwee Wah Christina née Lim v Yow Jia Wen*[109] ("*Mrs Spykerman Chwee Wah Christina*") dealt with the following issues pertaining to the collective sale of the strata development in question.

106 The applicant was also wrong to have treated a breach of the Board's order as a contempt of court under O 52 given that the Board was clearly not a "court" as defined in s 2(*a*) of the Administration of Justice (Protection) Act 2016 (2020 Rev Ed) and O 1 r 4(2) of the Rules of Court (2014 Rev Ed) (*Spring Land Pte Ltd v The Management Corporation Strata Title Plan No 4067* [2023] SLR(StC) 337 at [23]).

107 *Spring Land Pte Ltd v The Management Corporation Strata Title Plan No 4067* [2023] SLR(StC) 337 at [22].

108 *Spring Land Pte Ltd v The Management Corporation Strata Title Plan No 4067* [2023] SLR(StC) 337 at [31].

109 [2024] 4 SLR 219.

(1) Re-filing objections to General Division

21.86 The defendants had re-filed objections to the application for the collective sale before the General Division which were not raised before the Board. These objections related to the following: (a) a pre-application feasibility study was not carried out; (b) no steps were taken to verify the gross floor area of the strata development; and (c) the valuation expert appointed by the claimants was not an independent valuer for the purposes of para 1(*e*)(vi) of the First Schedule to the Land Titles (Strata) Act 1967[110] ("LTSA"). The claimants, as authorised representatives of the collective sale committee ("CSC") appointed pursuant to the collective sale agreement ("CSA"), contended that where a person re-filed his objection to the General Division pursuant to s 84A(4A) of the LTSA, such objection must state the same grounds of objection as those filed before the Board.

21.87 On the above preliminary issue, the General Division, having regard to the evidence, allowed the objections filed by the defendants and reiterated the law on the re-filing of objections to the High Court. The court ruled that the grounds of objection raised need not be identical to that in the objection to the Board where: (a) the ground of objection filed to the High Court is based on facts which were unknown at the time the objection was filed to the Board;[111] (b) the claimants have waived their right to object to different grounds of objection being raised, despite being absent from the objection filed to the Board, by accepting that the issue can be submitted before the High Court; and (c) the ground of objection relates to a statutory prerequisite for approval of an application for collective sale under s 84A(1) of the LTSA. Thus, the independent valuer ground raised by the defendants as a ground of objection is an issue that goes to whether the claimants' application under s 84A of the LTSA is valid and may be made. Hence, the absence of this ground (which relates to statutory compliance) in the objection before the Board would not preclude the court from considering if such statutory compliance has been met.

(2) Majority consent requirement

21.88 The court also had to consider whether the 80% majority consent requirement for collective sale at $890m was satisfied pursuant to s 84A(1)(*b*). Under the terms of the CSA, revision of the reserve price may be done by drawing up a "supplementary joint agreement" ("SJA")

110 2020 Rev Ed.

111 See *Lim Hun Joo v Kok Yin Chong* [2019] SGHC 3 at [50] and [52] and *Ngui Gek Lian Philomene v Chan Kiat* [2013] 4 SLR 694 at [45].

for execution by the subsidiary proprietors. The defendants contended that the 80% requirement had not been satisfied and objected to the collective sale on this basis. They argued that the CSC satisfied the 80% requirement by relying on *both* the first SJA, which was executed by owners representing 72.20% in total share value and 71.80% in total area, *and* the second SJA, which was executed by owners representing 8.73% share value and 8.31% share area. An addition of both sets of numbers could not be done as the first SJA was not valid and binding.

21.89 The court noted that there is nothing in the wording of s 84A(1) of the LTSA that imposes a limitation that the agreement in writing to the collective sale must be contained within the confines of one single document. In addition, there is also nothing in s 84A(1) of the LTSA that requires the 80% requirement to be satisfied by an agreement in writing, namely, a valid and binding contractual agreement. The defendants also accepted at the hearing that the two SJAs were supplemental to the CSA and they formed part of the CSA. While there was nothing in each SJA that expressly stated that they were part of the same SJA, there was similarly nothing that stated that they were to be regarded as separate supplemental agreements. Further, there was nothing in the language of the SJAs that indicated that the SJAs were to be treated as separate agreements. On the other hand, there was language in the SJAs that suggested that the first and second SJA were part of the same agreement. For example, the text of cl 3 of the second SJA reinforced the view that both documents were to be treated as part of the same SJA. Furthermore, the requirement in cl 6.12.1 of the CSA (*ie*, that the SJA drawn up pursuant to that clause shall only be valid and binding if owners with not less than 80% of the total share value and total strata area had executed the SJA) referred to the first and second SJAs collectively, and not the SJAs individually. None of the parties who had signed the CSA or the SJAs had maintained that these agreements were invalid. In the result, the court ruled that the 80% requirement had been met for the collective sale of the strata development.

(3) Sale price and good faith requirement

21.90 Section 84A(9)(*a*)(i)(A) of the 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). The defendants objected to the collective sale at the sale price of $890m on the basis that this price was

not arrived at in good faith[112] as the CSC did not, *inter alia*, ensure that a pre-application feasibility study was carried out.[113]

21.91 The pre-application feasibility study ground raised two sub-issues: (a) whether the CSC had breached their duty to act with conscientiousness by failing to conduct the study; and (b) whether the omission to conduct the study resulted in the sale price not being the best price reasonably obtainable.[114] The court found that the relevant URA Circular to Professional Institutes dated 13 November 2017 titled "Pre-Application Feasibility Study on Traffic Impact for En-Bloc Residential Redevelopments" was not intended to be a directive from the URA for the CSC to conduct such a study prior to the completion of a collective sale. As such, the omission to conduct the study could not be said to constitute a failure by the CSC to act in the best interests of all the subsidiary proprietors. Thus, the omission did not constitute a breach of the CSC's duty to act with conscientiousness. It was also not clear that doing the study would have immediately increased the marketability of the strata development. On the contrary, it may have lead to a lower land value, especially where the proposed development was found to have a significant traffic impact on the locality in question, which would lead to a reduced number of dwelling units to be allowed, and the effect was likely a lower land value. Accordingly, the defendants had not shown that the sale price of $890m was not the best price reasonably obtainable in the circumstances because the CSC did not ensure that the study was carried out. Having regard to the totality of the evidence, the court ruled that the defendants had failed to provide any credible evidence to show that the CSC did not act in good faith in arriving at the sale price of $890m.

(4) Method of apportionment of sale proceeds and good faith requirement

21.92 Section 84A(9)(*a*)(i)(B) of the LTSA provides that the High Court must not approve an application for collective sale if it is satisfied that the transaction is not in good faith after taking into account, among

112 For the law on on the "good faith" requirement as it pertains to the sale price of a strata title property, see *Ng Eng Ghee v Mamata Kapildev Dave* [2009] 3 SLR(R) 109 at [133] and [154] and *Ramachandran Jayakumar v Woo Hon Wai* [2017] 2 SLR 413 at [59].

113 The other two grounds were that the collective sale committee had relied on a valuation report based on an incorrect gross floor area and did not take steps to verify the actual gross floor area of the strata development. Both grounds were rejected by the court as there were no credible evidence to support the defendants' contentions.

114 *Mrs Spykerman Chwee Wah Christina née Lim v Yow Jia Wen* [2024] 4 SLR 219 at [73].

other things, the method of distributing the proceeds of sale. In the present case, the method of apportionment was based on 90% valuation, 5% strata area, and 5% share value. The defendants argued that too much weightage had been placed on valuation without proper regard to share value. In doing so, the CSC failed to adequately take into account the subsidiary proprietors' share value in the common property which made up a significant portion of the site area.

21.93 The court found that the method of apportionment the CSC relied on resulted in a premium variance of 2.86% while the method that the defendants advocated for (*ie*, based on 65% strata area and 35% share value) resulted in a premium variance of 22.66%. The former was more even-handed and equitable to all subsidiary proprietors overall. For the premium test analysis, the method that shows the lowest variance in the collective sale proceeds premiums amongst all typical residential/commercial lots is deemed to be the fairest and the most equitable manner of distributing the sale proceeds amongst all subsidiary proprietors. As the difference is small, any gain enjoyed or loss suffered by individual lots compared to others is marginal. This view accords with the findings of the High Court in the earlier case of *Deorukhkar Sameer Vinay v Quek Chin Kheam*[115] that the method of apportionment relied on there was the fairest as it resulted in the smallest premium variance.

21.94 While the defendants claimed that the common area of the strata development was expansive, which should have been taken into account through the subsidiary proprietors' share value, they had not provided any evidence to establish their claim as a matter of fact. No credible evidence was provided to show the size of the common area. The defendants also failed to show that the claimants' valuation expert was not an independent valuer for the purposes of para 1(*e*)(vi) of the First Schedule to the LTSA. While they had the opportunity to provide expert evidence to show that the valuation of the claimants' valuer was wrong or that the method of apportionment relied on by the CSC was wrong, they had not done so. The defendants had also not suggested that the claimants' valuer was not independent because of her connections with the CSC or the developer. As the method of apportionment relied on by the CSC was more equitable to all subsidiary proprietors, it supported the claimants' case that the method of apportionment was not arrived at in bad faith. Given that the defendants had not shown that the CSC did not act in good faith in arriving at the method of apportionment, s 84A(9)(*a*)

115 [2018] SGHC 171 at [53]–[54].

did not operate to prevent the court from approving an application for collective sale made under s 84A(1) of the LTSA.
