IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 135

Originating Summons No 872 of 2014

In the matter of No 820 Upper Bukit Timah Road Singapore and No 822 Upper Bukit Timah Road Singapore
Between

Peh Kah Chan

… *Plaintiff*

And

Tan Chong Realty (Pte) Ltd

… *Defendant*

GROUNDS OF JUDGMENT

[Land] — [Sale of land] — [Contract]
[Land] — [Registration of title] — [Land Titles Act]
[Equity] — [Estoppel] — [Proprietary estoppel]
[Trusts] — [Constructive trusts]

Peh Kah Chan
v
Tan Chong Realty (Pte) Ltd

[2016] SGHC 135

High Court — Originating Summons No 872 of 2014
Lai Siu Chiu SJ
28 and 29 January, 29 February, 11 March 2016

13 July 2016

Lai Siu Chiu SJ:

Introduction

1 On 11 March 2016, I delivered oral judgment in this Originating Summons No 872 of 2014 (the "OS"); I dismissed the claim of Peh Kah Chan (the "plaintiff") against Tan Chong Realty (Private) Limited (the "defendant"). As the plaintiff has filed a Notice of Appeal (in Civil Appeal No 56 of 2016) against my decision, I now expand on my oral judgment and set out in greater detail the reasons for my dismissal of his claim.

The facts

2 Some 58 years ago, the plaintiff and a lady called Ng Miene ("Mdm Ng") by an agreement dated 9 June 1958 (the "sale and purchase agreement") purchased two shophouses now known as Nos 820 and 822 Upper Bukit Timah Road respectively (individually, "No 820" and "No 822" and

collectively, the "two shophouses") which were situated on part of Lot 198 Mukim 14. The vendors in the sale and purchase agreement were two gentlemen, namely Ho Hoo Koon ("Ho") and Loh Seck Fah ("Loh"). The plaintiff said he had negotiated only with Ho.

3 The plaintiff was prompted to buy No 820 because Ho had allegedly assured the plaintiff that his purchase included the land at the front (the "frontage") and at the rear of No 820 Upper Bukit Timah Road (the "backyard"). Mdm Ng purchased No 822. Facing Upper Bukit Timah Road, No 822 is the right-most corner shophouse while No 820 is the adjoining shophouse. In the sale and purchase agreement, the consideration was stated as $20,400 but the plaintiff maintained that he had actually paid $17,000 to Ho. In re-examination, he said he and Mdm Ng paid $17,000 each to Ho (which seems unlikely). If indeed $17,000 was the total purchase price paid by the plaintiff and Mdm Ng instead of $20,400, it meant that they were given a discount of $3,400 (or 16.7%) on the $20,400 stated in the sale and purchase agreement as the consideration for the two shophouses.

4 Earlier that same year, Ho and Loh had bought the two shophouses along with eight other shophouses in the same row (now known as Nos 804 to 818 Upper Bukit Timah Road) from Nanyang Manufacturing Company Limited ("Nanyang") by an agreement dated 28 January 1958 (the "vendors' purchase agreement"). The total consideration paid by Ho and Loh to Nanyang was $102,000. It is strange that Ho and Loh sold the two shophouses to the plaintiff at the exact same price (according to the sale and purchase agreement) as what they had paid Nanyang. No one would ever know the reason as neither vendor testified. Ho and Loh were unlikely to be alive in any

case as the plaintiff is 90 years of age and Ho and Loh were older than him. If indeed the consideration paid by the plaintiff was $17,000, the defendant's submissions surmised that the discount was an incentive from Messrs Ho and Loh to the plaintiff to complete his purchase. The plaintiff could have rescinded his purchase as the vendors could not/did not obtain approval for subdivision within twelve months, as stipulated under clause 1(b) of the sale and purchase agreement.

5 The plaintiff had given his daughter Peh Guat Hong (the "daughter") a Power of Attorney dated 23 November 2012 to manage his affairs, including those relating to the two shophouses. As the daughter was born either in 1957 or 1959 (according to the plaintiff), she was in no position to know what transpired in 1958 between her father and Ho.

6 The main difference between the sale and purchase agreement and the vendors' agreement was as follows:

(a) In the vendors' purchase agreement, the Schedule states:

> Area covered by the 10 houses known as Nos. 1-D, 1-E, 1-F, 1-G, 1-H, 1-I, 1-J, 1-K, 1-L and 1-M facing Bukit Timah Road *including any land between the said 10 houses and Bukit Timah Road and the land at the rear of the said 10 houses up to the drain*. Subject to the subdivision being approved by the local authorities. The purchaser will himself obtain permission from the necessary authorities to use the said 10 houses as dwellings and will be liable for such costs and expense… [emphasis added]

(b) The Schedule to the sale and purchase agreement states:

> Part of lot 198 together with the two houses known as Nos… being the 9th and 10th of the ten houses facing Bukit Timah Road from the town.

7 In the vendors' purchase agreement, Lot 198 was described as Lot 1-8Pt.

8 Mdm Ng died on 24 April 1964. In the plaintiff's second affidavit, he deposed that he paid $22,500 to the personal representatives of her estate to buy over her interest in No 822 by way of a deed of assignment dated 22 October 1970 (the "deed of assignment"). The deed of assignment however stated the consideration was only $2,520. In 1971 after he had carried out major renovations (which included works done to the frontage and backyard), the plaintiff and his family (together with his fifth brother and the latter's family) moved into the two shophouses from their previous home at No 63 Bukit Panjang Village. For the first two to three years after moving in, the plaintiff operated a seafood restaurant on the ground floor of No 822. Later in the 1980s, the plaintiff re-located his provision shop business to the two shophouses from No 964 Upper Bukit Timah Road.

9 Lot 198 was brought under the predecessor of the Land Titles Act (Cap 157, 2004 Rev Ed) ("LTA"), the Land Titles Ordinance 1956, in August 1981. In 1957, Nanyang as the then owner had applied for subdivision of Lot 198 under DC 91/57. The plan in DC 91/57 was approved on 14 December 1972 (the "Approved Plan"), but for some unknown reason, Nanyang never proceeded with the subdivision exercise. A copy of the Approved Plan is attached to this judgment in Annex A.

10 Nanyang went into liquidation subsequently and its liquidators sold Nanyang's land in Lot 198 to Teck Hock Land Pte Ltd ("Teck Hock") on 28 September 1981 (the "Teck Hock agreement"). Teck Hock mortgaged the land

it purchased to the Oversea-Chinese Banking Corporation Limited (the "bank" or "OCBC"). A new (qualified) Certificate of Title was issued to Teck Hock in August 1982. Teck Hock defaulted on the mortgage and by a mortgagee sale in 1989, the bank sold Teck Hock's land in Lot 198 to the defendant.

11 Between 30 September 1987 and 26 February 2001, the plaintiff filed a total of six caveats and two extension caveats. In the 1987 and 1988 caveats for Nos 822 and 820 respectively, the plaintiff claimed interest in Lot 198 by virtue of the sale and purchase agreement and the deed of assignment.

12 Four caveats were filed in 1991 by the plaintiff, three in April and one in December. His grounds of claim were: (i) the sale and purchase agreement, (ii) the deed of assignment, and (iii) the Teck Hock agreement.

13 The plaintiff's caveat filed on 4 April 1991 namely CV/056016B is interesting—his ground of claim was "by virtue of having been in undisturbed possession of the land above described for a period exceeding twelve years to the exclusion of the Registered Proprietor". He was relying on adverse possession.

14 The four caveats filed in 1991 by the plaintiff were extended in 1996 and further extended in 2001. The four caveats filed or extended as at 2001 had attached to each a survey plan which had been prepared by a registered surveyor How Huai Hoon ("How"). How's survey plan and the contents of the caveats all stated that the plaintiff's claim was confined to the two shophouses. There was no mention of the frontage or backyard of the two shophouses in the survey plan.

15 According to the defendant's director Samuel Lee ("Lee"), the defendant conducted searches on the caveats filed by the other shophouses at Nos 804 to 818. The searches revealed that all of them had referred only to their shophouses (and not their respective frontage or backyard) as their caveatable interests.

16 In 1995, the plaintiff engaged a registered surveyor Tang Tuck Kim ("Tang") to excise and subdivide the two shophouses from Lot 198. Tang who testified for the plaintiff was said to be an expert witness. That was incorrect, he was a factual witness. There was some confusion on the part of the then-Land Office in thinking Tang was the defendant's private surveyor when it wrote to the defendant on 8 March 1996 to highlight the problem on subdivision (set out below). Due to the lapse of time, Tang said he could not remember inspecting the two shophouses or conducting a survey for the plaintiff. However, from his invoice dated 20 June 1997 for $927.00, it would appear that Tang had billed the plaintiff for doing a survey and had forwarded a copy of the Approved Plan to him. From his correspondence that was produced in court, Tang was able to recall that he had encountered legal problems while corresponding with the Land Office at the material time.

17 In order to carry out the subdivision and allocate separate titles for the two shophouses, State land in an adjoining Lot 634 had to be amalgamated with Lot 198, due to the fact that the approved subdivision exceeded the boundaries of Lot 198. Lot 634 had to be alienated from the State Reserve together with part of Lot 201. These additional lots needed to be amalgamated with Lot 198 before the subdivision to excise all ten shophouses could proceed. The problem was exacerbated by the mixed titles of the plots to be

amalgamated. The titles of Lots 201 and 634 were 999-year leaseholds, whereas the plaintiff and the owners of the other eight shophouses held freehold titles to their shophouses. Consequently, all the shophouse owners had to agree to surrender their freehold title (which they did) in exchange for 999-leasehold titles.

18 I reproduce below Figure 1 from the first report of the defendant's registered surveyor Loi Hwee Yong ("Loi") dated 10 April 2015 ("Loi's first report"). It shows the approved subdivision boundary and the additional land to be amalgamated therewith from Lots 634 and 201.

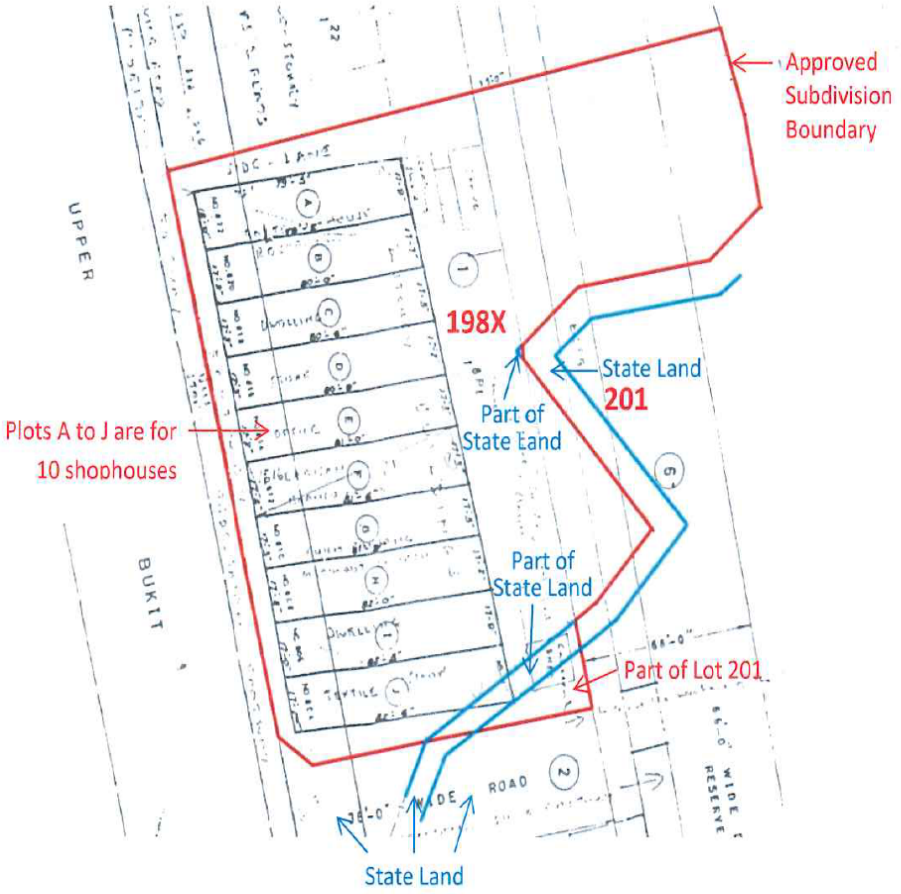


Figure 1: Part of Plan (MMM) in D.C. 91/57

19 In 1998, by way of Originating Summons No 1723 of 1998 (the "1998 OS"), the plaintiff applied for, *inter alia*, declarations that the defendant was obliged to take reasonable steps to procure the subdivision of Lot 198 and transfer separate titles for the two shophouses to the plaintiff. An order of court was obtained on 7 July 2003 without objections from the defendant; the defendant acknowledged the plaintiff's interest as purchaser and equitable owner of the two shophouses on Lot 198 from the time the defendant

purchased Teck Hock's land from OCBC. The defendant was ordered by the court to procure the subdivision of Lot 198 and issue separate titles for the two shophouses to the plaintiff.

20 The subdivision of Lot 198 by the defendant was finally completed on 28 April 2008 in accordance with the Approved Plan. All ten shophouse owners shared the costs of survey and subdivision. Separate Certificates of Title were issued for the two shophouses, copies of which were forwarded to the plaintiff's solicitors in January 2009. No 820 became Lot 1579P while No 822 became Lot 1578V. The defendant retained the remaining portion of Lot 198 which became Lot 1577W. Lot 1577W included the frontage and backyard of the two shophouses. Figure 3 from Loi's first report shown below shows the result after the subdivision of the ten shophouses and the defendant's land.

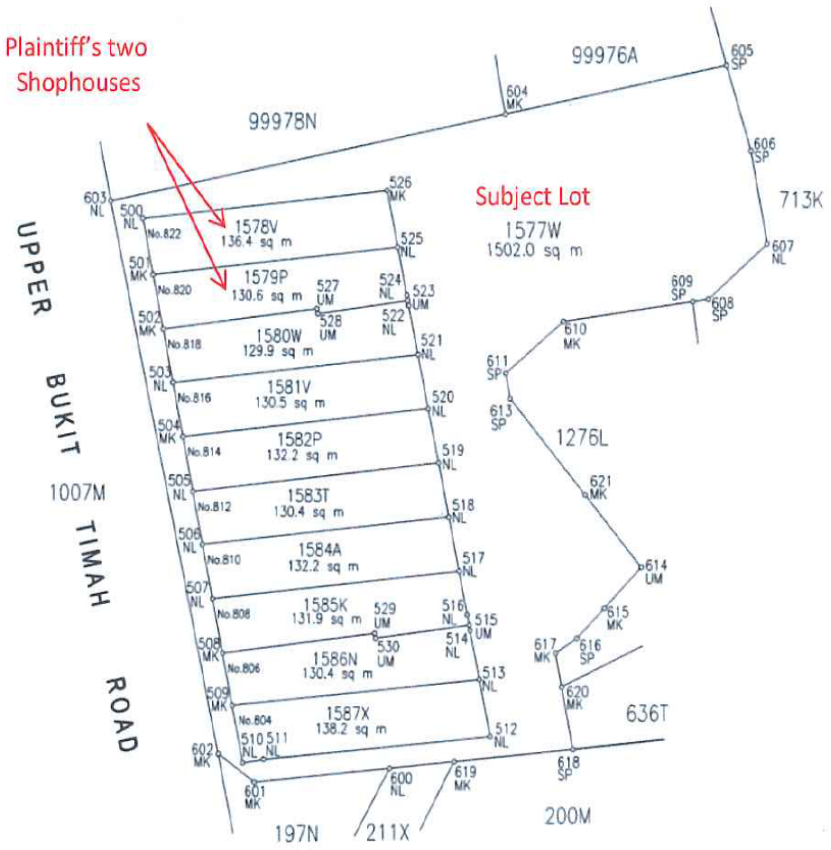


Figure 3: Part of Certified Plan 81986

21 For the subdivision exercise in 2008, the defendant had engaged Loi to excise the row of ten shophouses from the defendant's land in Lot 198 in compliance with the Approved Plan. Loi was said to be the defendant's expert witness which, as in Tang's case, was incorrect. Having carried out a survey for the defendant for purposes of the subdivision exercise, Loi was their factual, and not expert witness.

22 In July 2012, the plaintiff for the first time (via caveat CV8751P) made a claim to the backyard. Similarly, his solicitors for the first time raised the issue in their letter dated 27 August 2012 to the defendant's solicitors.

23 In September 2014 by way of this OS, the plaintiff for the first time lodged a claim to the frontage. Further, the backyard claimed by the plaintiff in the OS *exceeded* the area claimed in caveat CV8751P lodged in 2012. This was some five years (counting to July 2012) after the Certificates of Title for the two shophouses had been issued to the plaintiff.

24 In the OS, the plaintiff claimed, *inter alia*:

> 1. A declaration that the frontages of each of the following lots and the land up to the drain at the rear of each of the following lots: -
>
> a. Lot No. MK 14-1579P at No. 820, Upper Bukit Timah Road, Singapore 678151 ("No. 820"); and
>
> b. Lot No. MK 14-1578V at No. 822, Upper Bukit Timah Road, Singapore 678151 ("No. 822"),
>
> being the areas hatched in purple (the "Frontages") and dark blue (the "Backyards") respectively and marked "A1", "A2", "B1" and "B2" in the plan in Schedule 1 annexed hereto ("the Plan") and which are presently part of Lot No. MK 14-1577W:-
>
> c. are part of the property purchased by the Plaintiff pursuant to the Sale and Purchase Agreement dated 9 June 1958, and
>
> d. are part of No. 820 and No. 822;
>
> 2. A declaration that the Plaintiff is the owner in equity of the Frontages and the Backyards, being the areas hatched in purple and dark blue respectively and marked "A1", "A2", "B1" and "B2" in the Plan and which are presently part of Lot No. MK 14-1577W; [and]
>
> 3. A declaration that the subdivision of Lot 198 Mukim 14 and issue of titles for Lot No. MK 14-1579P, Lot No. MK 14-

> 1578V and Lot No. MK 14-1577W procured by the Defendant is erroneous; …

25 The area claimed by the plaintiff (the frontage and backyard) approximated 179.05 sq m or 1,927.28 sq ft. This was to be contrasted with the area of 1,413 sq ft for No 820 and 1,447 sq ft for No 822. A copy of the plan showing the plaintiff's claim that was annexed to the OS as Schedule 1 is attached to this judgment in Annex B.

26 Both parties filed a total of ten affidavits for the OS. Because of the contentious nature of the contents of the affidavits, the deponents were ordered to be cross-examined; hence, the hearing before this court.

The evidence

The plaintiff's case

27 The elderly plaintiff's testimony did not particularly assist the court, apart from his evidence on Ho's alleged assurances to him. Neither was the daughter's evidence helpful since she was born around the time of her father's purchase of the two shophouses. The thrust of the daughter's two affidavits was to the effect that since the time the plaintiff and his family moved into the two shophouses in 1971, he and his family had occupied the frontage and backyard exclusively. After moving into the two shophouses, the plaintiff had carried out extensive renovations in or about 2005, costing approximately $25,000. The works included constructing a sheltered car park and laying ceramic tiles and cement flooring at the backyard and rebuilding the side walls. The plaintiff had also laid mosaic tiles at the frontage all the way to his

back door. The plaintiff's family had also used the backyard to host dinners for social events.

28 The daughter asserted that over the years, the family did not receive complaints from Ho, Loh, Nanyang, Teck Hock or anyone else that the plaintiff had encroached onto other persons' land. The daughter's two affidavits did not explain why no caveat was filed by her father to claim an interest to the frontage and backyard before 2014 and 2012 respectively, notwithstanding his exclusive and uninterrupted occupation of the same.

29 However, during cross-examination, the daughter was questioned on this glaring omission. Her repeated answer was that the plaintiff and, in later years, she herself, left it to their lawyers to take the necessary steps to protect the plaintiff's interests, including filing the various caveats. As it was never the plaintiff's intention to sell the two shophouses, the daughter added that she did not pay attention to the area of the two shophouses as stated in the sale and purchase agreement or in the Certificates of Title; nor did she notice that the areas stated did not include the frontage or backyard. The plaintiff and her had only come to realise the omission at the time they commenced this OS.

30 For the plaintiff's closing submissions, his counsel had relied heavily on the documentation in court. Besides the differences in description of the properties as set out in the Schedules to the vendors' purchase agreement and in the sale and purchase agreement (see [6]), the plaintiff pointed out that the area of land conveyed in the vendors' purchase agreement was stated to be approximately 24,988 sq ft. whereas the actual land physically occupied by the ten shophouses (as shown in the then plan attached to Tang's affidavit, which

is reproduced in Annex B) was only 1323 sq m or 14,240.65 sq ft. This was to be contrasted with the total area occupied by the ten shophouses plus their frontage and backyards up to the drain, which was 2,294 sq m or 24,692.41 sq ft.

31 With respect, I did not see the relevance in the differences in area between what Ho and Loh purchased from Nanyang and the total area occupied by the ten shophouses. As noted earlier from their Schedules at [6], the vendors' purchase agreement included the frontage of Upper Bukit Timah Road as well as the entire backyard up to the drain, while the sale and purchase agreement did not. It would be stretching and straining the meaning of a 'house' or 'shophouse' to say (as the plaintiff sought to do at [44] of his submissions) that the definition of a 'house' or shophouse' ie a 'building' would extend to the land occupied by a shophouse.

The defendant's case

32 The defendant's director Lee relied on documentation for his evidence as he had only joined the defendant in 1997. Lee pointed out that the vendors' purchase agreement as well as the sale and purchase agreement contained the same provision (in clause 1[b]) that the sales were subject to subdivision being approved by the authorities at the vendors' expense, of the portions agreed to be sold. Hence, Nanyang applied for subdivision in 1957, although it did not eventually follow through on its application. When the defendant purchased Teck Hock's land from OCBC by tender, the sale was "subject to the interests of all prior encumbrances and occupiers" (as reflected in the purchaser's caveat filed by the plaintiff on 23 December 1991). That was why the

defendant was willing to carry out the subdivision exercise for the ten shophouses.

33 I should point out that the Methodist Church of Malaysia (the "Church") was the previous owner of two of the shophouses, namely Nos. 808 and 810 Upper Bukit Timah Road ("Nos 808 and 810"). The Church subsequently sold the properties to Silo Multi-Purpose Co-operative Society Limited ("Silo"), which was the predecessor of the present supermarket chain NTUC Fairprice Co-operative Ltd ("NTUC"). The plaintiff's solicitors had also acted for NTUC in the subdivision exercise. The caveats filed first by the Church and then by SILO and NTUC were confined to Nos 808 and 810.

34 Lee had, in the discovery process, obtained from the plaintiff's solicitors the cause papers in Originating Summons No 232 of 1991 where NTUC had sued OCBC and the defendant as first and second defendants respectively, essentially for the same declaratory relief as the plaintiff sought in the 1998 OS. In his second affidavit, Lee deposed that the plaintiff's solicitors had filed six caveats (with one extension caveat) for Nos 808 and 810 in the exact same terms as those filed for the plaintiff; there was no claim to the frontage or backyard of those shophouses. (In cross-examination, Lee disclosed that the defendant had themselves owned shophouses at Nos 816 and 818 Upper Bukit Timah Road after being approached to purchase them by their previous owners.)

The decision

35 The conveyance of Nanyang's sale of ten shophouses to Ho and Loh and Ho and Loh's subsequent sale of the two shophouses to the plaintiff were

handled by the established conveyancing firm of Richard Chuan Hoe Lim & Co ("RCH Lim"). It was obvious from the conveyancing documents that neither Ho nor Loh (and for that matter the plaintiff as well) could speak, write or read English. While Nanyang could and did convey to Ho and Loh the frontage and backyard of the entire row of ten shophouses, RCH Lim well knew that Ho and Loh could not do so in turn in their own sub-sales to five or more different purchasers, despite whatever assurances Ho might have given to the plaintiff.

36 After the subdivision in 2008, part of Lot 198 was further subdivided in 2013 into Lots 1764N, 1765X, 1766L and 1767C. Lot 1764N (at the back of the shophouses) is a large drainage reserve area while Lot 1767C which is at the side of No 822 is a road reserve. Lot 1767C includes the backyard of all ten shophouses. Parts of Lots 1764N and 1767C were the subject of the plaintiff's claim according to the plan attached to the OS and to this judgement.

37 The further subdivision is encapsulated in Figure 4 of Loi's first report:

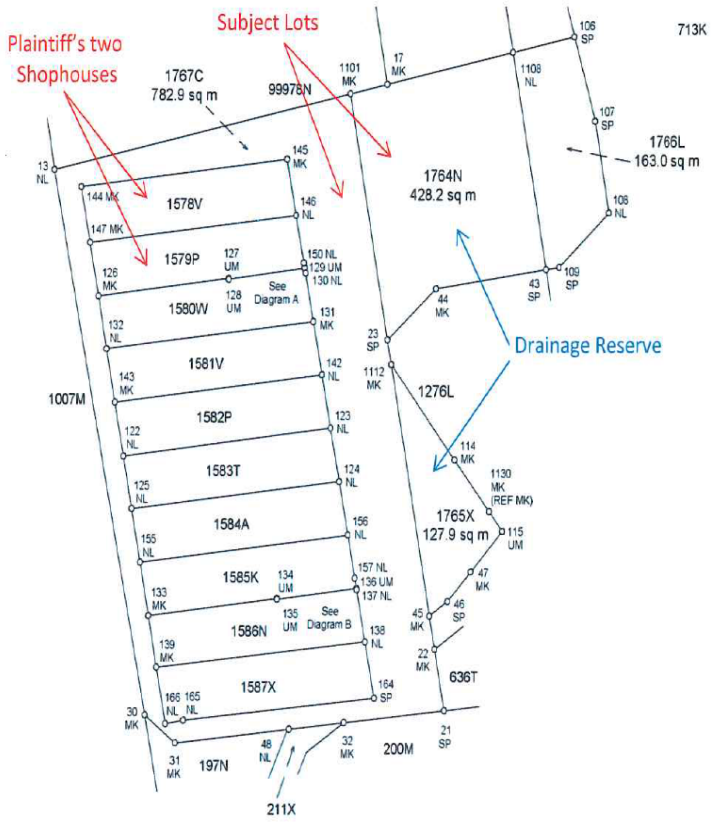


Figure 4: Part of Certfied Plan 86571

38 While (arguably) each of the ten shophouses could have been conveyed by Ho and Loh with their respective frontages (as the plots were more or less uniform in size for each shophouse according to the plan attached to the vendors' purchase agreement), it would not have been possible to subdivide the entire backyard of the shophouses equally by ten as the land was irregular in shape. This can be seen in the Approved Plan and in Figure 27 (reproduced below) attached to Loi's second report (in his second affidavit filed on 13 November 2015). Loi's first report estimated that Nanyang built

the row of ten shophouses in or about 1957 to 1958. They were built in the time when the bucket system existed and night soil removal had to be done from the rear of buildings. A modern piped sewerage system only reached Upper Bukit Timah Road in the early 1970s. Hence, there was a need for a common passageway for the night soil removal system. Photographs attached to Loi's first report showed the remnants of the night soil removal system at the backyard of all the shophouses.

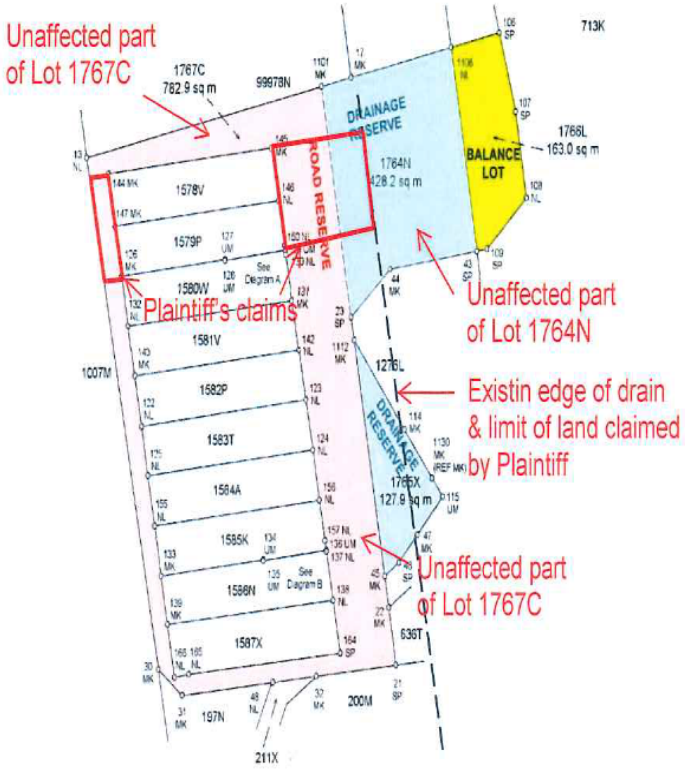


Figure 27: The Lots As They Exist Now

39 In the daughter's evidence and in the plaintiff's closing submissions,

much was said and made about the fact that over the years since the plaintiff and his family moved into the two shophouses in 1971, the family had used the frontage and backyard exclusively and made improvements thereon (see [8] above) without objections from any party. It was also the ground of claim for his caveat filed on 4 April 1991. However, that caveat did not mention the *front or the back* of the two shophouses; it only mentioned *the shophouses per se*.

40 In his closing submissions (at [65]), the plaintiff blamed the defendant for his omission to make an adverse possession claim, pointing out that had the defendant's then solicitors Lee Chang & Partners ("Lee Chang") replied promptly to the letter of his solicitors Khattar Wong & Partners ("KWP") dated 25 August 1994, the plaintiff could have, before 2 September 1994, filed new caveats reflecting his occupation of the frontage and backyard. That date was the statutory deadline for claims based on adverse possession to be lodged (after s 9(3) of the Limitation Act (Cap 163, 2004 Rev Ed) and s 50 of the LTA had abolished such claims in 1993). ss 9(1) and (3) of the Limitation Act states:

> **Limitation of actions to recover land**
>
> 9.—(1) No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him, or, if it first accrued to some person through whom he claims, to that person.
>
> …
>
> (3) This section shall not apply to an action to recover land from a person by reason only of his unauthorised occupation of the land.

41 Section 50 of the LTA states:

> **No title by adverse possession**
>
> Except as provided in section 174(7) and (8), no title to land adverse to or in derogation of the title of a proprietor of registered land shall be acquired by any length of possession by virtue of the Limitation Act (Cap. 163) or otherwise, nor shall the title of any proprietor of registered land be extinguished by the operation of that Act.

42 The Plaintiff relied on the transitional provisions found in ss 174(7) and (8) of the LTA that could have helped him to make an adverse possession claim. The subsections state:

> (7) Where at any time before 1st March 1994 a person —
>
> (*a*) was in adverse possession of any registered land; and
>
> (*b*) has lodged an application for a possessory title to the land under the provisions of the repealed Act and the application has not been withdrawn but is on that date pending in the Land Titles Registry,
>
> the application shall be dealt with in accordance with the provisions of the repealed Act in force immediately before that date.
>
> (8) Where at any time before 1st March 1994 a person —
>
> (*a*) was in adverse possession of any registered land; and
>
> (*b*) was entitled to lodge an application for a possessory title to the land under the provisions of the repealed Act which were in force immediately before that date,
>
> he may, within 6 months of that date make an application to court for an order to vest the title in him or lodge an application for a possessory title to the land and the application shall be dealt with in accordance with the provisions of the repealed Act in force immediately before that date.

43 Lee Chang's letter dated 22 July 1994 sent on behalf of the defendant stated:

> We refer to your letters dated 3 February 1994, 21 March 1994 and 20 July 1994.
>
> We do not agree with your view that our clients are under any legal obligation under a constructive trust or otherwise, to procure the sub-division of the land and to make the legal assurance in your client's favour.
>
> However, notwithstanding this, our clients are prepared to sub-divide the land on the following conditions:
>
> 1. Your client bears the costs of doing the survey in respect of his lot;
>
> 2. Your client bears all costs of the sub-division including our clients' administrative costs;
>
> 3. Your client surrenders to our client all land (if any) which he may have encroached upon which he is not entitled to under the Sale and Purchase Agreement dated 9 June 1958 between Ho Hoo Kun and Loh Seck Fah and your client.
>
> Kindly let us have your client's confirmation on the above.

44 In response to the above letter, KWP wrote on 25 August 1994:

> We refer to your letter of 22nd July 1994.
>
> We have been instructed by our client to inform you that our client is agreeable to bear the cost for sub-division provided that such cost relates only to the survey and sub-division carried out with respect to the properties mentioned above [*ie* Nos 820 and 822] and that your client bear their own administrative and legal costs.
>
> Please also note that our client is not aware of nor have knowledge of encroachment on any land to which he is not entitled to under the Sale Agreement dated 9th June 1958.
>
> Kindly therefore request your client to proceed with the application for sub-division and keep us informed of the development.

45 There was considerable toing and froing over the years between the solicitors acting for the defendant and plaintiff. However, not once did the plaintiff's solicitors raise the issue of adverse possession. Indeed, in their

above letter dated 25 August 1994 to Lee Chang, the plaintiff had denied (in paragraph three) that he had encroached on any land that he was not entitled to under the sale and purchase agreement. That being the plaintiff's stand, why would Lee Chang even think of the possibility of adverse possession on the plaintiff's part?

46 The plaintiff's "missed opportunity" (the words used in [68] of his closing submissions) to apply for adverse possession of the frontage and backyard of the two shophouses was not caused by the defendant. Consequently, it was puzzling why the defendant was being held responsible for the plaintiff's failure to lodge a claim for adverse possession before the statutory deadline.

47 Section 46 of the LTA encapsulates the indefeasibility of title under the Torrens system – it states:

> **Estate of proprietor paramount**
>
> 46.— (1) Notwithstanding —
>
> > (*a*) the existence in any other person of any estate or interest, whether derived by grant from the State or otherwise, which but for this Act might be held to be paramount or to have priority;
> >
> > (*b*) any failure to observe the procedural requirements of this Act; and
> >
> > (*c*) any lack of good faith on the part of the person through whom he claims,
>
> any person who becomes the proprietor of registered land, whether or not he dealt with a proprietor, shall hold that land free from all encumbrances, liens, estates and interests except such as may be registered or notified in the land-register…

48 As was said by the Court of Appeal in *Wong Kok Chin v Mah Ten Kui Joseph* [1992] 1 SLR (R) 894 (a case cited by the defendant) at [7]:

> The object of the LTA was to simplify dealings in land by the introduction of a register of titles to mirror land ownership ("the register is everything" principle or the "what you see is what you get" principle). As a corollary to that principle, the *bona fide* purchaser will obtain the title of the vendor as mirrored in the land register ("the indefeasibility principle").

49 The plaintiff's closing submissions raised the issue of constructive trust, as well as the application of the principles in *Pallant v Morgan* [1953] 1 Ch 43, citing the discussion of these principles in John McGhee gen ed, *Snell's Equity* (Sweet & Maxwell, 33rd Ed, 2015) ("*Snell's Equity 2015*"). According to *Snell's Equity 2015* at para 24-038:

> A constructive trust may be imposed over property acquired by one person, A, that he had previously agreed with another person, B, he would only acquire for the benefit of both himself and B. The trust arises under what is called the equity in *Pallant v Morgan*. A holds the property on trust for himself and B to prevent A from benefiting unconscionably from the breach of the agreement with B.

50 The headnotes in *Pallant v Morgan* read as follows:

> The agents of two neighbouring landowners agreed in an auction room immediately before an auction sale of land that the plaintiff's agent should refrain from bidding and that the defendant, if his agent was successful, would divide the land according to a formula agreed between the agents, which, however, left certain details to be agreed later. The plaintiff's agent, who had authority to bid up to £2,000, having refrained from bidding, the defendant's agent, who had authority to bid up to £3,000, succeeded in obtaining the property for £1,000, but the parties having failed to agree on those details the defendant retained the whole of the land:-
>
> Held, that the agreement for division was too uncertain to justify an order for specific performance in the plaintiff's favour, but that the defendant was not entitled to retain the

> property, as that would amount to a fraud on his part, having regard to the agents' agreement in the auction room as to bidding. The true view was that the defendant's agent made his bid on behalf of himself and the plaintiff's agent and that the property was held by the defendant on trust for himself and the plaintiff jointly.

51 At paragraphs 24-039 and 24-040, the learned authors of *Snell's Equity* state:

> A *Pallant v Morgan* equity typically relates to specific property that is not first owned by either of the parties, A or B. …
>
> The effect of the equity is that A becomes bound by a constructive trust to prevent him from benefiting by his unconscionable breach of the agreement. …
>
> Like the other doctrines considered in this chapter, the *Pallant v Morgan* equity is one where the defendant acts wrongfully by seeking to take advantage of the incompleteness or informality of an expressly intended transaction affecting specific property. The basis of the equity is the unconscionable conduct of A in claiming the property as entirely his own by breaching the prior agreement that he would acquire the property for himself and B.

52 Looking at the prerequisites in [49] and the headnotes of the case set out in [50], the equitable principles in the *Pallant v Morgan* case did not apply here. What was the unconscionable conduct of the defendant *vis-à-vis* the plaintiff that calls for the application? If any constructive trust was to be imposed on the defendant, the defendant had already discharged its duty as such trustee by assisting the plaintiff in 2008 to obtain subdivision for the two shophouses along with the owners of the other eight shophouses.

53 Further, it cannot be disputed that the defendant had never made any representation to the plaintiff. It was the defendant's predecessor in title Ho who had given the alleged assurances to the plaintiff that his purchase of the two shophouses came with the frontage and backyard.

54 The case of *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 would not assist the plaintiff either. The Court of Appeal in that case dealt with the parol evidence rule as encapsulated in s 94 of the Evidence Act (Cap 97, 1997 Rev Ed) and the admissibility of extrinsic evidence to interpret a written (insurance) contract.

55 As for s 115(1) of the LTA, with respect, I did not see how the section could assist the plaintiff. The section relates to lodgment of caveats and the relevant portions state:

> **Caveats may be lodged**
>
> 115.— (1) Any person claiming an interest in land (whether or not the land has been brought under the provisions of this Act), or any person otherwise authorised by this Act or any other written law to do so, may lodge with the Registrar a caveat in the approved form which shall include the following particulars:
>
> (*a*) the name of the caveator and the caveatee;
>
> (*b*) an address in Singapore at which notices may be served on the caveator and the caveatee;
>
> (*c*) nature of the interest claimed by the caveator;
>
> (d) the grounds in support of the claim;
>
> (*e*) the nature of the prohibition of the dealing in land;
>
> (*f*) the lot affected by the caveat and, where that lot is comprised in a folio, the folio;
>
> (*g*) where the caveat relates to only part of the land, such description of that part as will enable it to be identified to the satisfaction of the Registrar;
>
> (*h*) if the caveator is a purchaser or sub-purchaser of the interest in the land, the amount of the purchase price and the date of the caveator's contract or the date on which he exercised the option to purchase the interest in the land, as the case may be; …

56 It bears repeating that prior to July 2012, the plaintiff failed to file any caveat pertaining to his claim to part of Lots 1764N and 1767C. The claim could have been (but was also not) raised in the 1998 OS. This omission, even if not deemed fatal to the plaintiff's claim (as the defendant submitted it was), certainly raised the question – why did the plaintiff not make a claim for adverse possession when he had so many opportunities to do so?

57 The plaintiff's lame explanation (at [76] of his closing submissions) for his omission to file any caveat before July 2012 pertaining to the frontage and backyard of the two shophouses was that the caveats "constitute nothing more than an innocent misunderstanding". The plaintiff then went on to disclaim responsibility (at [78] of his submissions) for the inaccuracy of How's sketch plan that was attached to caveats CV/050340A and CV/057597A filed on 30 September 1987 and 23 March 1988 respectively. (The sketch plan did not include the frontage and backyard of Nos 820 and 822.) Neither excuse was acceptable. The plaintiff's caveats were filed by solicitors who would/should have checked the accuracy of the sketch plan that they used.

58 The inaccuracies in the plaintiff's caveats would have misled the defendant. Had the defendant been forewarned before July 2012 that the plaintiff's caveats extended to the frontage and backyard besides the two shophouses, the defendant would undoubtedly have refused to agree to the excision of the two shophouses from the defendant's ownership of Lot 198 and would not have consented to the subdivision carried out in 1998. Consequently, there was no merit in the suggestion of counsel for the plaintiff to Lee (in cross-examination) that the defendant waited nine years (from the time of Lee Chang's letter dated 3 June 1999 to KWP until 6 January 2009

when KWP wrote to Lee Chang) before raising the issue of the plaintiff's encroachment so as to make subdivision easier and deprive the plaintiff of the frontage and backyard of the two shophouses.

59 Indeed, as far back as 29 October 1991, the defendant's solicitors had written to the plaintiff's solicitors to recognise the plaintiff's interest as purchaser of the two shophouses as follows:

> We are instructed by our clients that they will agree to recognise your client's interest as purchaser and owner in equity of the shophouses known as Nos. 820 & 822 Upper Bukit Timah Road, in *so far as the said interest accrued from the Sale and Purchase Agreement and the Deed of Assignment* produced in your letter to us dated 5 June 1991. [emphasis added]

The defendant had relied on what was stated in the plaintiff's caveats, in the defendant's decision to recognise the plaintiff's interest as purchaser of the two shophouses. Copies of the plaintiff's five caveats filed between 30 September 1987 and 6 April 1991 had been forwarded by his solicitors to the defendant's then-solicitors Lee & Partners on 5 June 1991.

60 The defendant had raised the doctrines of issue estoppel and *res judicata* against the plaintiff, relying on *Goh Nellie v Goh Lian Teck* [2007] 1 SLR(R) 453. This was premised on the 1988 OS. The defendant argued that the plaintiff cannot relitigate again the issue of the extent of his title to the two shophouses and attempt to defeat the defendant's title to Lot 1577W. The argument was persuasive but I did not even need to address it, since it was clear on the evidence that title to the frontage and the backyard of the two shophouses was never, and could not have been, conveyed to the plaintiff by

Ho and Loh for the reasons given in [35], whatever assurances the plaintiff might have received from Ho to the contrary.

61 This court was somewhat skeptical of the daughter's claim that throughout the years neither the plaintiff nor she paid attention to the Approved Plan (copy of which Tang had forwarded to the plaintiff by his letter dated 19 October 1991 to the Chief Surveyor that was copied to the plaintiff) or to the contents of the various caveats filed before July 2012. I noted that the daughter had worked in a listed finance company since graduating with a degree in accountancy in 1980. She rose through the ranks until she attained her present position of senior vice-president. She would certainly be familiar with caveats in the course of her work. Even a cursory reading of the caveats filed by the plaintiff before July 2012 would have made the daughter realise that the father's interest in the two shophouses did not extend to the frontage or the backyard.

62 To succeed in his claim, the plaintiff must overcome the hurdles in ss 46(2)(*a*) and (*b*) of the LTA which states:

> (2) Nothing in this section shall be held to prejudice the rights and remedies of any person —
>
> > (*a*) to have the registered title of a proprietor defeated on the ground of fraud or forgery to which that proprietor or his agent was a party or in which he or his agent colluded;
> >
> > (*b*) to enforce against a proprietor any contract to which that proprietor was a party;

There was no suggestion here that the defendant was guilty of any fraud under s 46(2)(*a*) which rendered it unconscionable for the defendant to retain ownership of the frontage and backyard of the two shophouses now located in

Lot 1577W. The plaintiff had no privity of contract with the defendant (as the successors in title to Lot 198 after Messrs Ho and Loh, Teck Hock and OCBC) that would enable him under s 46(2)(*b*) to enforce against the defendant any representations that were allegedly made to him by Ho.

63 Consequently, the plaintiff's reliance on the following extract from *Tan Sook Yee's Principles of Singapore Land Law* (S Y Tan, H W Tang & K Low eds) (LexisNexis, 2009) ("*Principles of Singapore Land Law*") on proprietary estoppel was misconceived. Paragraph 7.68 of *Principles of Singapore Land Law* reads as follows:

> …where an owner of land permits the claimant to have, or encourages him in his belief that he has, some right or interest in the land, and the claimant acts on this belief to his detriment, then the owner of the land cannot insist on his strict legal rights if to do so would be inconsistent with the claimant's belief.

64 The defendant being a *bona fide* purchaser for value without notice of the plaintiff's claim (until 2012) would be protected according to the following extract from Lord Watson's judgment in *Gibbs v Messer* [1891] AC 248 at p 254, as cited in *Principles of Singapore Land Law* at para 13.5:

> The object [of the Torrens system of land registration] is to save persons dealing with the registered proprietors from the trouble and expense of going behind the register in order to investigate the history of their author's title, and to satisfy themselves of its validity. That end is accomplished by providing that everyone who purchases *in bona fide and for value from a registered proprietor and enters his deed of transfer or mortgage on the register, shall thereby acquire an indefeasible right, notwithstanding the infirmity of his author's title*. [emphasis from the book]

65 It was not for the plaintiff to assert that Lots 1764N and 1767C had no value to the defendant. The court had inquired of Lee and he had confirmed

that the defendant had a factory/warehouse behind the row of shophouses to which access from Upper Bukit Timah Road was via a side-lane adjoining No 804. The defendant's land approximated 180,000 sq ft. Lots 1764N and Lot 1767C might well be amalgamated with the defendant's land, subject to the drainage reserves in Lots 1764N, 1765X and 1767C, thereby increasing the gross floor area (according to Lee) for redevelopment purposes.

66 The plaintiff's claim extended to drainage and road reserves (the road reserve affected not only the frontage of the shophouses but also Lot 1767C). The plaintiff had submitted that there was no certainty (according to the testimony of both Tang and Loi) that the State would require the drainage and road reserves to be vested in the State as a condition for the grant of written permission for redevelopment. It was further submitted that this issue was irrelevant in any case to the court's determination of the parties' legal rights.

67 It was then argued that if the State required the reserved land to be vested in the State for which compensation would be paid, it should be the plaintiff as the equitable owner of those lots who should receive the compensation, and not the defendant.

68 The plaintiff sought to persuade the court that the granting of a declaratory order that the plaintiff was the equitable owner of Lot 1767C would suffice without the need for the defendant to apply for subdivision; the declaratory order could be registered with the defendant holding the legal title to Lot 1767C on trust for the benefit of the plaintiff. This would enable the plaintiff to have continued access to his home and ensure that the defendant could not sue the plaintiff for trespass or encroachment.

69 Nothing however was said by the plaintiff as to whether the relevant authorities would even allow the defendant to transfer the road and drainage reserves to the plaintiff and whether the court had a discretion to grant the orders he had sought over what was essentially State land. Consequently, his submissions were rejected.

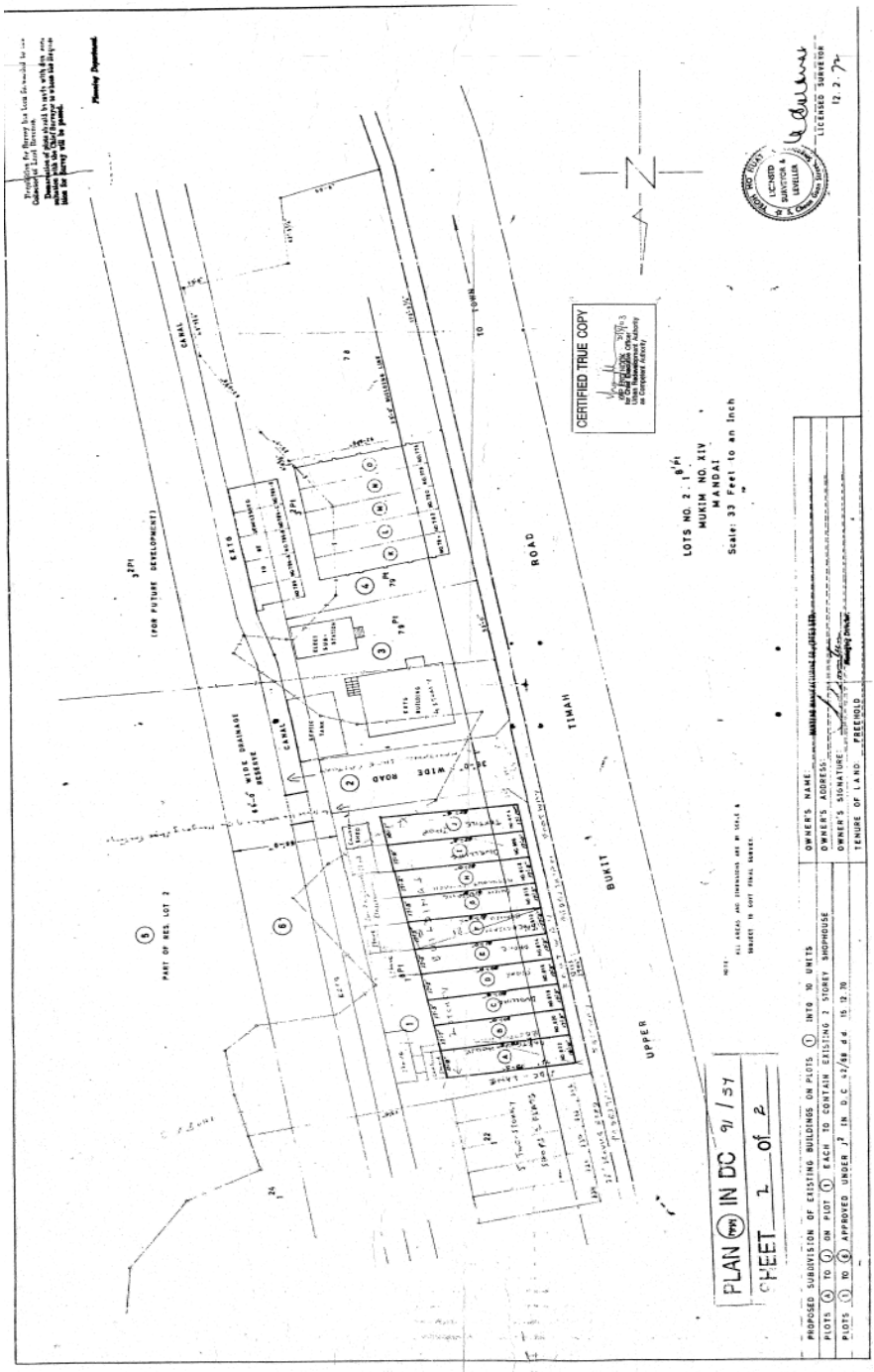
Conclusion

70 There was no merit in the plaintiff's claim. As such, I dismissed the OS with costs to the defendant to be taxed unless otherwise agreed.

Lai Siu Chiu
Senior Judge

Deborah Barker SC, Ng Junyi and Ang Keng Ling (KhattarWong LLP) for the plaintiff;
Kenny Chooi, David Kong and Kelvin Fong (Yeo-Leong & Peh LLC) and Andre Yeap SC and Yam Wern-Jhien (Rajah & Tann Singapore LLP) (instructed counsel) for the defendant.

Annex A: The Approved Plan in DC 91/57



Annex B: Plan showing the Plaintiff's Claim