IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 02

Suit No 1027 of 2018 (Summons Nos 3977 and 4299 of 2019)

Between

Chain Land Elevator Corp

… *Plaintiff*

And

(1) FB Industries Pte Ltd
(2) Lee Buck Huang
(3) Tan Boo Kong

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure] — [Judgment and orders] — [Enforcement] — [Whether writ of seizure and sale exigible on interest in joint tenancy]

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Chain Land Elevator Corp
v
FB Industries Pte Ltd and others

[2020] SGHC 02

High Court — Suit No 1027 of 2018 (Summons Nos 3977 and 4299 of 2019)
Tan Siong Thye J
25 October 2019; 21 November 2019

7 January 2020

Tan Siong Thye J:

Introduction

1 Chain Land Elevator Corp ("the Respondent") obtained judgment in its favour in Suit No 1027 of 2018 ("Suit 1027"). It sought to enforce that judgment against the second defendant in that suit, Lee Buck Huang ("the Applicant"). On 1 July 2019 the Respondent obtained an *ex parte* writ of seizure and sale order ("the Order") in respect of two properties held by the Applicant and his wife as joint tenants, these being at 72 Tanah Merah Kechil Road ("the Property") and 82 Tanah Merah Kechil Avenue #09-12 ("the Flat").

2 The Applicant took out Summons No 4299 of 2019 ("SUM 4299") and Summons No 3977 of 2019 ("SUM 3977") to resist the Order. In SUM 4299, the Applicant sought to set aside the Order. In SUM 3977, the Applicant sought to stay the execution of the Order pending the decision of SUM 4299. As

SUM 4299 and SUM 3977 were heard together, the utility of SUM 3977 was lost and by consent the Applicant withdrew SUM 3977.

3 The central issue in SUM 4299 was whether the Property and the Flat, both held by the Applicant and his wife as joint tenants, were exigible to a writ of seizure and sale ("WSS") issued under O 47 r 4 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"). After hearing parties' arguments, I allowed the Order to remain and dismissed SUM 4299.

4 The Applicant applied for leave to appeal as he was dissatisfied with my decision. The Respondent consented to the application and I agreed, as the case law regarding the present controversy on whether joint tenancies are exigible to WSSes, which I shall explain below, is in a state of flux. This requires the Court of Appeal to provide guidance and clarity to the legal position on this issue. In the meantime, I shall now provide my grounds of decision.

Background facts

5 The first defendant in Suit 1027, FB Industries Pte Ltd ("FB Industries") was a long-time customer of the Respondent, which is a Belize-incorporated company that supplies elevator parts.[1]

6 On 28 April 2017, the Respondent sued FB Industries for payment on certain invoices.[2] It obtained default judgment, but did not enforce that judgment because there was a settlement agreement made on 28 June 2017 between the Respondent, FB Industries, the Applicant and Tan Boo Kong ("Tan", the third

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1 Ku Pu-Tien's 3rd affidavit ("KPT-3") at para 5.

2 KPT-3 at para 6.

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defendant) under which FB Industries was to pay the Respondent $3,226,653.23. The Applicant and Tan were guarantors under the settlement agreement.[3]

7 FB Industries defaulted on payment and the Respondent commenced Suit 1027 against FB Industries, the Applicant and Tan (collectively, "the Defendants") to recover the outstanding sum.[4] The Respondent obtained summary judgment (uncontested) on 1 February 2019 for the sum of $2,665,440.50, plus interest and costs.[5] After recovering $63,871.26 via garnishee proceedings,[6] about $2.7m remained unsatisfied. Consequently, the Respondent obtained the Order against the Property and the Flat, which the Applicant and his wife, Yeo Chui Huang ("YCH"), owned as joint tenants.[7] The Order stated:[8]

> It is ordered that:
>
> 1. The interest of [the Applicant] in the immovable properties specified in the Schedule annexed hereto be attached and taken into execution to satisfy the judgment dated 1 February 2019.

8 On 16 July 2019 the Order was lodged against the Property and the Flat. On 24 July 2019 the Order was served on the Defendants.[9] On 6 August 2019 the Applicant filed SUM 3977 to stay the execution of the Order. On 28 August 2019 the Applicant filed SUM 4299 to set aside the Order.

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3 KPT-3 at para 7.

4 KPT-3 at para 8.

5 KPT-3 at para 10.

6 KPT-3 at para 11.

7 Applicant's 2nd affidavit ("LBH-2") at para 4 and p 17.

8 HC/ORC 4334/2019.

9 KPT-3 at paras 13, 15.

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Preliminary issue: Prayer 2 of SUM 4299

9 Prayer 2 of SUM 4299 was for a declaration that the beneficial owners of the Property were the Applicant, YCH, and his two sisters (Lee Soo Cheng ("LSC") and Lee Mui Kiang ("LMK")).

10 The Respondent argued in its written submissions that the Applicant was not the proper applicant to apply for a declaratory order regarding beneficial ownership.[10] Instead, the other alleged beneficial owners should apply to intervene and have their respective shares determined at a full hearing.

11 At the hearing, the Applicant applied to withdraw prayer 2 of SUM 4299. This was granted.

The key issue

12 The key issue before me was whether a joint tenant's interest in land or immovable property (I shall use the two terms interchangeably) was exigible to a writ of seizure and sale under O 47 r 4(1) of the ROC. The next issue was whether the registration of a WSS severed a joint tenancy.

13 In this judgment I shall set out the applicable statutory provisions; provide a capsule summary of the parties' arguments; review the relevant Singapore authorities; and address the parties' arguments in detail alongside the relevant authorities.

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[10] Plaintiff's Submissions ("PS") at para 12; Ku Pu-Tien's 4th affidavit ("KPT-4") at para 12.

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The relevant statutory provisions on writs of seizure and sale

Rules of Court

14 Order 47 r 4 and r 5 of the ROC deal with the seizure and sale of interests in immovable property in Singapore:

> **Immovable property (O. 47, r. 4)**
>
> **4**.—(1) Where the property to be seized consists of immovable property or any interest therein, the following provisions shall apply:
>
> (*a*) seizure shall be effected by registering under any written law relating to the immovable property an order of Court in Form 96 (which for the purpose of this Rule and Rule 5 shall be called the order) attaching the interest of the judgment debtor in the immovable property described therein and, upon registration, such interest shall be deemed to be seized by the Sheriff;
>
> …
>
> (*e*) after registering the order, the judgment creditor must —
>
> (i) file a writ of seizure and sale in Form 83;
>
> (ii) file an undertaking, declaration and indemnity in Form 87; and
>
> (iii) upon compliance with sub-paragraphs (i) and (ii), the Sheriff must serve a copy of the writ of seizure and sale together with the order and the notice of seizure in Form 97 on the judgment debtor forthwith and, if the judgment debtor cannot be found, must affix a copy thereof to some conspicuous part of the immovable property seized;
>
> (*f*) subject to sub-paragraph (*g*), any order made under this Rule shall, unless registered under any written law relating to such immovable property, remain in force for 6 months from the date thereof;
>
> (*g*) upon the application of any judgment creditor on whose application an order has been made, the

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Court, if it thinks just, may from time to time by order extend the period of 6 months referred to in sub-paragraph (*f*) for any period not exceeding 6 months, and the provisions of sub-paragraphs (*d*) and (*e*) shall apply to such order; and

(*h*) the Court may at any time, on sufficient cause being shown, order that property seized under this Rule shall be released.

…

Sale of immovable property (O. 47, r. 5)

5. Sale of immovable property, or any interest therein, shall be subject to the following conditions:

(*a*) there shall be no sale until the expiration of 30 days from the date of registration of the order under Rule 4(1)(*a*);

(*b*) the particulars and conditions of sale shall be settled by the Sheriff or his solicitor;

(*c*) the judgment debtor may apply by summons to the Court for postponement of the sale in order that he may raise the amount leviable under the order by mortgage or lease, or sale of a portion only, of the immovable property seized, or by sale of any other property of the judgment debtor, or otherwise, and the Court, if satisfied that there is reasonable ground to believe that the said amount may be raised in any such manner, may postpone the sale for such period and on such terms as are just;

(*d*) the judgment creditor may apply to the Court for the appointment of a receiver of the rents and profits, or a receiver and a manager of the immovable property, in lieu of sale thereof, and on such application, the Court may appoint such receiver or receiver and manager, and give all necessary directions in respect of such rents and profits or immovable property;

(*e*) where the interest of the judgment debtor in any immovable property, seized and sold under the order, includes a right to the immediate possession thereof, the Sheriff shall put the purchaser in possession;

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> (*f*) pending the execution or endorsement of any deed or document which is ordinarily lawfully required to give effect to any sale by the Sheriff, the Court may by order appoint the Sheriff to receive any rents and profits due to the purchaser in respect of the property sold; and
>
> (*g*) the Sheriff may at any time apply to the Court for directions with respect to the immovable property or any interest therein seized under the order and may, or, if the Court so directs, must give notice of the application to the judgment creditor, the judgment debtor and any other party interested in the property.

15 The process of execution of the WSS was succinctly summarised by Pang Khang Chau JC (as he then was) at [58] of *Peter Low LLC v Higgins, Danial Patrick* [2018] 4 SLR 1003 ("*Higgins*"):

> 58 After judgment is obtained, the process of execution against the judgment debtor's immovable property would proceed in the following chronological order:
>
> (a) An application is made pursuant to O 47 r 4(1)(*b*) for an order attaching the interest of the judgment debtor in the immovable property.
>
> (b) If the application is in order, the court will grant the order sought. The order, which is to be in Form 96 in Appendix A of the ROC, will state that the interest of the judgment debtor in the immovable property is to be "attached and taken in execution to satisfy the judgment".
>
> (c) The order is then registered under the LTA (O 47 r 4(1)(*a*) of the ROC; s 132 of the LTA). Upon such registration, the interest of the judgment debtor "shall be deemed to be seized by the Sheriff" (O 47 r 4(1)(*a*)). Thereafter, any dealings by the judgment debtor in the land shall not be registered until the registration of the said order is cancelled (s 133 of the LTA).
>
> (d) The judgment creditor will then file a document in Form 83 entitled "Writ of Seizure and Sale in Respect of Immovable Property" (O 47 r 4(1)(*e*)(i)). This writ directs the Sheriff to serve the writ together with the order referred to above on the judgment debtor. The writ also directs the Sheriff to sell the interest of the

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> judgment debtor, if necessary, in order to satisfy the judgment debt.
>
> (e) Thereupon, the sheriff will serve the writ and order together with a notice of seizure in Form 97 on the judgment debtor (O 47 r 4(1)(*e*)(iii)). The notice of seizure informs the judgment debtor that his interest in the immovable property had been seized.
>
> (f) If the judgment debt has been satisfied, the judgment creditor may apply to withdraw the writ. This would result in the cancellation of the registration referred to at [(c)] above (s 136 of the LTA). Otherwise, the sheriff will proceed to sell the judgment debtor's interest in the immovable property (O 47 r 5 of the ROC; s 135 of the LTA).

Land Titles Act

16 Also relevant is s 135 of the Land Titles Act (Cap 157, 2004 Rev Ed) ("LTA") which specifies the interest that may be sold in execution under a writ:

> **Land sold in pursuance of writs**
>
> **135**.—(1) The interest in registered land which may be sold in execution under a writ shall be the interest which belongs to the judgment debtor at the date of the registration of the writ.

17 "Interest" and "writ" are defined in ss 4 and 131 respectively:

> **Interpretation**
>
> **4.**—(1) In this Act, unless the context otherwise requires —
>
> …
>
> "interest", in relation to land, means any interest in land recognised as such by law, and includes an estate in land;
>
> **Interpretation of this Part**
>
> **131.** In this Part, unless the context otherwise requires —
>
> …
>
> "writ" means a writ of execution issued out of any court having jurisdiction to levy execution against land, and, where the

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> context admits, includes renewal of a writ and a second or subsequent writ on the same judgment.

Supreme Court of Judicature Act

18 Finally, s 13 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") provides:

> **Writs of execution**
>
> **13.** A judgment of the High Court for the payment of money to any person or into court may be enforced by a writ, to be called a writ of seizure and sale, under which all the property, movable or immovable, of whatever description, of a judgment debtor may be seized, except —
>
> (*a*) the wearing apparel and bedding of the judgment debtor or his family, and the tools and implements of his trade, when the value of such apparel, bedding, tools and implements does not exceed $1,000;
>
> (*b*) tools of artisans, and, where the judgment debtor is an agriculturist, his implements of husbandry and such animals and seed-grain or produce as may in the opinion of the court be necessary to enable him to earn his livelihood as such;
>
> (*c*) the wages or salary of the judgment debtor;
>
> (*d*) any pension, gratuity or allowance granted by the Government; and
>
> (*e*) the share of the judgment debtor in a partnership, as to which the judgment creditor is entitled to proceed to obtain a charge under any provision of any written law relating to partnership.

Summary of the parties' arguments

The Applicant's submissions

19 The Applicant essentially argued as follows:

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(a) A WSS could only be issued against a distinct and identifiable interest of the judgment debtor.[11] A joint tenant does not own a specific or distinct share of the jointly owned property (until the point of severance of the joint tenancy into a tenancy in common). Although joint tenants have rights *inter se*, against the world they are seen as one owner.[12] Even though a joint tenant has a *right* to sever with the concurrence of the other joint tenants (*ie*, a right to a potential aliquot share for the purposes of severance), that right is not in and of itself a sufficient interest as it is not distinct and identifiable. Therefore, unless and until severance is effected, the joint tenant's interest remains indistinguishable from the interest of the other co-owners.[13]

(b) The registration of a WSS over land that is held under a joint tenancy does not sever the joint tenancy[14] for the following reasons:

(i) *Higgins* wrongly interpreted the decision of the Court of Appeal of Ontario in *Power v Grace* [1932] OR 357 ("*Power v Grace (CA)*") to stand for the proposition that the time of severance of the joint tenancy was to be determined by reference to what constituted execution by the sheriff under the relevant statutory framework. *Power v Grace (CA)* only decided that the delivery of a writ to a sheriff did not affect the title or interest of the joint tenant in such a way as to sever the joint tenancy. The

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11 Defendant's Submissions ("2DS") at para 14(2).

12 2DS at paras 14(1), 15.

13 2DS at para 42.

14 2DS at paras 14(3), 26-36.

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court did not need to opine on when severance was effected under the statutory framework.[15]

(ii) The better view was that severance had to entail an "effect wrought upon the title or interest of the joint tenant". In support, the Applicant cited *Ho Wai Kwan & anor v Chan Hon Kuen & anor* [2015] 2 HKC 99 ("*Ho Wai Kwan*"), which held that an act of severance must have a final or irrevocable character to preclude the joint tenant from claiming by survivorship any interest in the subject matter of the joint tenancy.

(iii) The registration of a WSS did not sever a joint tenancy because it did not have the effect required by *Ho Wai Kwan.* In *United Overseas Bank Ltd v Chia Kin Tuck* [2006] 3 SLR(R) 322 ("*Chia Kin Tuck*") the court held that the registration of a WSS did not vest in the judgment creditor any interest in the land, since the interest remained with the judgment debtor. The effect of registration was only to prevent the judgment debtor from dealing with the land to the prejudice of the judgment creditor. The four unities, which were the "hallmark" of a joint tenancy, had not been broken.[16] The four unities are unity of possession, title, time and interest.

(c) Any attempt to seize the interest of the debtor joint tenant would necessarily involve the seizure of the interest(s) of the innocent non-

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15 2DS at paras 30–34.

16 2DS at paras 28, 34–35.

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debtor joint tenant(s).[17] But O 47 r 4(1)(*a*) of the ROC requires that *only* the interest of the judgment debtor be seized under a WSS.[18] Accordingly, any order which purports to seize more than the interest of the judgment debtor would be in excess of the court's power under s 13 of the SCJA.[19]

(d) The view that a joint tenant's interest in immovable property is not exigible to a WSS is supported by how a garnishee order cannot be made in respect of a joint bank account,[20] as held in *One Investment and Consultancy Ltd and another v Cham Poh Meng (DBS Bank Ltd, garnishee)* [2016] 5 SLR 923 ("*One Investment*").

(e) The Commonwealth authorities holding that a joint tenant's interest is exigible to a WSS should not be followed as they were not well-reasoned.[21] The Singapore cases that decided a joint tenant's interest in land was exigible to a WSS were not based on sound legal principles and reasoned analysis.

The Respondent's submissions

20 The Respondent's arguments were essentially these:

(a) A joint tenant has a real proprietary interest in the property, this being an *aliquot* share in the property. It follows that what would be

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17 2DS at para 17(2).

18 2DS at paras 18–19.

19 2DS at para 23.

20 2DS at paras 20-22.

21 2DS at paras 45-47.

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seized by the WSS is only the interest of the judgment debtor and not that of the non-debtor joint tenant. It also follows that a WSS can attach to a joint tenant's interest in land independently of severance.

(b) A joint bank account is distinguishable from a joint tenant's interest in land. Hence, although a garnishee order could not be effected on a joint bank account, a WSS could be effected on a joint tenancy. Therefore, *One Investment* which dealt with a joint bank account did not apply to this case.

(c) The Commonwealth and Singapore authorities on this point are sufficiently reasoned and analysed. For decades, the Commonwealth cases had consistently held that the interest of the joint tenant was exigible to the WSS and Singapore should follow suit.

(d) In any case, severance was effected upon the execution of a WSS. Regardless of which interpretation of *Power v Grace (CA)* was preferred, the bottom line was that the execution of a WSS had a real effect on the title and interest of the joint tenant. Moreover, the "fine mess" referred to in *Malayan Banking Bhd v Focal Finance Ltd* [1998] 3 SLR(R) 1008 ("*Malayan Banking*") could be overcome by the doctrine of temporary severance.

The Singapore authorities

21 The Singapore authorities go both ways and the parties unsurprisingly emphasised the cases that supported their respective positions.

22 The two cases that took the approach that a joint tenant's interest in land was *not* exigible to a WSS were the decisions of Tay Yong Kwang JC (as he

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then was) in *Malayan Banking*; and Chua Lee Ming J in *Chan Lung Kien v Chan Shwe Ching* [2018] 4 SLR 208 ("*Chan Lung Kien*").

23 The three cases that took the contrary approach were the decisions of Edmund Leow JC in *Chan Shwe Ching v Leong Lai Yee* [2015] 5 SLR 295 ("*Leong Lai Yee*"); Pang JC in *Higgins*; and Chan Seng Onn J in *Ong Boon Hwee v Cheah Ng Soo and another* [2019] 4 SLR 1392 ("*Ong Boon Hwee*").

24 I shall summarise the five cases in chronological sequence.

Malayan Banking

25 Both sides submitted that *Malayan Banking* is the first reported local case dealing with the issue of whether a joint tenant's interest in land is exigible to a WSS.[22] Tang Hang Wu & Kelvin FK Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 4th Ed, 2019) ("*Tan Sook Yee's Principles of Singapore Land Law*") at para 9.48 states, without citing authority, that "[u]ntil [*Malayan Banking*], it was accepted that the interest of a joint tenant can be subject to a writ of seizure and sale".

26 *Malayan Banking*, an appeal to the High Court from the District Court, involved a property in the joint names of a husband and wife that was mortgaged to a bank. The appellant was a creditor of both spouses. The respondent was a creditor of only the husband. First the respondent and then the appellant, a month apart from each other, registered WSSes (against the interests of the husband and both spouses respectively). The couple defaulted on their

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[22] Plaintiff's Further Submissions ("PFS") at para 11; Defendant's Further Submissions ("2DFS") at para 2.

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obligations and the mortgagee bank exercised its power of sale. The court was called upon to decide on the priorities in distribution of the sale proceeds between the appellant and the respondent.

27 Tay JC held that the appellant was entitled to the entire sum of the surplus of sale proceeds, because the WSS taken out by the respondent against only the interest of one joint tenant was invalid and had to be set aside (at [24]). In coming to the view that a joint tenant's interest in land was *not* exigible to a WSS, Tay JC reasoned as follows:

(a) The "interest of the judgment debtor" was attachable under a WSS issued in accordance with O 47 r 4(1)(*a*), and this interest had to be a distinct and identifiable one. Similarly, "the interest which belongs to the judgment debtor" which may be sold in execution (s 135(1) of the LTA) had to be distinct and identifiable and could not be a joint interest held with someone not subject to the judgment and the execution: at [15].

(b) A joint tenant had *no* distinct and identifiable share in land for as long as the joint tenancy subsisted: at [15]. This was because (at [14], citing Assoc Prof Tan Sook Yee in *Principles of Singapore Land Law* (1994 Ed) at pp 87–88):

> Joint tenancy is that form of co-ownership where each of the co-owners owns the whole interest. There are no shares. As between the joint tenants themselves, they have rights; however, as against the world, they are viewed as one.

Therefore, to seize one joint tenant's interest was to seize also the interest of his co-owners when they were not subject to the judgment which was being enforced. It followed that a WSS could not attach the

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interest of a joint tenant unless it concomitantly severed the joint tenancy: at [15].

(c) The registration of a WSS did not sever joint tenancy: at [17]–[18].

(i) This view accorded with the view in Canada. *Power v Grace* [1932] 1 DLR 801 ("*Power v Grace (HC)*") and *Power v Grace (CA)* were relied on for the proposition that delivery of a writ of execution to the sheriff did not by itself amount to severance. Tay JC cited (at [19]) the portion of *Power v Grace (HC)* stating:

> Although the delivery of the writ to the sheriff binds the lands from the date of delivery, *it does not change the ownership …*
>
> The continuance of the joint tenancy depends on the maintenance of the union of title, interest and possession, and a destruction of any of these unities leads to a severance.
>
> …
>
> The trend of the authorities is that a mere lien or charge on the land, either by a cotenant or by operation of law, is not sufficient to sever the joint tenancy; there must be something that amounts to an alienation of title.
>
> [emphasis added]

(ii) It would create a "fine mess" if a WSS when registered severed a joint tenancy, because of the various possible contingencies that could occur. These included the postponement or abandonment of the sale because of the sale of any other property of the judgment debtor (O 47 r 5(*c*) of the ROC), the appointment of a receiver of the rents and profits (O 47 r 5(*d*)), the withdrawal of the WSS (O 47 r 9) or the

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cancellation of the WSS due to its lapse or withdrawal (ss 134 and 136 of the LTA).

(d) Instead of executing a WSS, a judgment creditor could proceed against a judgment debtor who was a joint tenant of land by appointing a receiver by way of equitable execution: at [23].

Leong Lai Yee

28 In *Leong Lai Yee*, the plaintiff was a creditor of the defendant who was a joint tenant of the property. The defendant was reported missing and became uncontactable. The plaintiff obtained summary judgment against the defendant and, after an unsuccessful attempt at enforcement by way of appointing a receiver (because there was no rent to receive), sought to attach the defendant's interest in the property under a WSS.

29 Leow JC granted the application. In holding that a joint tenant's interest in land was exigible to a WSS, he reasoned as follows:

(a) Preliminarily, Leow JC noted that the requirement that an interest in land had to be "distinct and identifiable" for a WSS to attach to such an interest, and that to be distinct and identifiable a share in the land had to be a separate and undivided one, appeared for the first time in *Malayan Banking*. No authority was cited for this proposition. Nor was there any mention of such a requirement in the academic writing that existed at the time of that decision: at [11].

(b) Although a joint tenant did not have an undivided share, his interest was attachable by a WSS because it *would be converted* into an undivided share when the joint tenancy was subsequently severed.

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Therefore, severance of a joint tenancy into undivided shares was *not* a prerequisite for a WSS to be issued against a joint tenancy's interest in land (at [12]–[13] and [20]):

> 12 The concept of joint tenancy is admittedly a somewhat strange legal creation. Every joint tenant in a joint tenancy arrangement is entitled to the whole of the property. This may give the impression that a joint tenant's share of the property is one that is incapable of being determined. But the plaintiff cites [Tan Sook Yee, "Execution against Co-owned Property" [2000] SJLS 52 ("'Execution against Co-owned Property'")] … in this regard to argue that even though a joint tenant does not have an undivided share of the land for as long as the joint tenancy subsists, the joint tenant has an interest in land which is identifiable and capable of being determined. Prof Tan explains (at p 57) that ***this is because the interest of a joint tenant can be converted into undivided shares by alienation, and "for [the] purposes of alienation each is conceived as entitled to dispose of an aliquot share"*** (per Dixon J in *Wright v Gibbons* (1949) 78 CLR 313). When the property is sold for example, the joint tenants will be entitled to the sale proceeds according to their interest in the property and their exact "share" of the property can be grasped. The joint tenants are usually entitled to the proceeds equally unless they are holding the property on trust for themselves as tenants-in-common in undivided and unequal shares, perhaps proportionate to their contribution.
>
> 13 I am of the view that this reasoning is logical and compelling. ***In fact, there are many instances before the court in which it has to determine what a joint tenant should be entitled to out of the sale proceeds of a property, based on his interest in the said property***. These include applications under s 18(2) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) … read with para 2 of the First Schedule thereto, which allows a co-owner to apply to the High Court for an order of the sale of the property "where it appears necessary or expedient". In these cases, the court similarly has to determine how the net sale proceeds should be divided amongst the co-owners after a sale, and very often in the context of joint tenancy arrangements … . This can also happen even after a sale has been ordered, and the court has to declare each joint tenant's beneficial interest in the property to

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> apportion the sale proceeds … . Thus, if the interest of a joint tenant in land is one that is capable of being alienated and identified, and it is commonly accepted that severance of a joint tenancy will occur when the sheriff sells the land pursuant to a WSS, there is no reason why a WSS cannot be issued against a joint tenant's interest in land.
>
> …
>
> 20 For the purposes of the present case, ***the relevant question to be asked when a WSS attaches to an interest in land should not be whether severance of the joint tenancy has occurred or will immediately occur, but whether severance can occur in the future. Given that it is accepted that when a sheriff decides to sell the land under a WSS severance of a joint tenancy will occur if it has not already occurred, and that the interest of a joint tenant can be determined when severance occurs, there is no reason why a WSS cannot be issued against a joint tenant's interest in land.***
>
> [Original emphasis omitted; emphasis added in bold italics]

(c) Regarding the practice in other Commonwealth jurisdictions, Leow JC noted (at [15]):

> … The courts in other jurisdictions proceed on the assumption that an interest of a joint tenant can be taken in execution under a writ of execution over land, and focus on the priority between different creditors, the effect of the registration of a writ of execution on severance, and other related issues instead.

(d) Leow JC agreed with *Malayan Banking* that a WSS did not sever a joint tenancy at the time of registration. He also agreed with *Malayan Banking*'s reliance on *Power v Grace (CA)* for the proposition that the delivery of a writ of execution to the sheriff did not in itself amount to severance: at [9] and [16]. However, he *also* cited *Power v Grace (CA)* as authority for how the Canadian courts have adopted an intermediate approach – the mere registration of a writ of *fieri facias* does not sever

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a joint tenancy, and the judgment debtor must take sufficient steps to execute the judgment against the debtor's interest in the property. Leow JC considered this a possible approach to take though he left the issue open: at [19].

(e) Leow JC also addressed the alleged prejudice to the non-debtor joint tenant arising from him being "forced" to sell his share of the property upon execution of the WSS (at [21]–[23]):

> 21 … [I]t should be clarified that when a joint tenant's interest in the property is seized under a WSS, this has no bearing on another joint tenant's interest in that same property as *the judgment creditor only takes what the judgment debtor is entitled to, and nothing more*. In the event of a sale of the property, the sheriff can only market the judgment debtor's share of the property and has to give notice to the other party prior to doing so.
>
> 22 But given that the sheriff may apply to the court for directions under O 47 r 5(*g*) of the [ROC], it is recognised that *a sale of the whole property may still be ordered, in spite of the objections of a co-owner of the property*. It may seem to some that the "innocent" joint tenant, who does not wish to sell his property, is "forced" to sell his interest in the property. But the risk of unfairness is inherent in any form of co-ownership … and is not confined to the context of WSS of a property held by joint tenants. The situation would be very similar in cases involving the WSS of an immovable property held as tenants-in-common and its subsequent sale. The court even has the power to order the sale of a property in cases which do not involve the enforcement of a judgment debt, even if it means overriding the consent of a co-owner as long as the court deems it "necessary or expedient" to order a sale of the whole property (see s 18(2) read with para 2 of the First Schedule of the SCJA).
>
> 23 *Such "unfairness" is thus not peculiar to a case in which a WSS is registered over a judgment debtor's interest in a property held in joint tenancy*, and courts should hesitate to treat judgment debtors differently based on the type of co-ownership by which their property is held. From the point of view of the judgment

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> creditor, why should he be prejudiced in the enforcement of a judgment debt merely because his debtor is a joint tenant and not a tenant-in-common? *The perceived "unfairness" to the co-owner of the property must also be balanced against the "unfairness" to a judgment creditor in a similar case as the one before us.* …
>
> [emphasis added]

(f) The appointment of a receiver as an alternative method of enforcement of a judgment debt was unsatisfactory because it only entitled the judgment creditor to rental and profits from the property, which was a very different remedy from the execution of a WSS: at [9]. This method would also be subject to the same problem of particularising the exact interest the judgement creditor was entitled to: at [14].

Chan Lung Kien

30 In *Chan Lung Kien*, the plaintiff (CLK) and the defendant (CSC) were both judgment creditors of one L. CSC obtained a WSS over L's interest in a property that L held with her husband as joint tenants. About a month later, the husband gave notice of his intention to sever the joint tenancy and hold the property as a tenant in common with L but did not register that notice of intention. Subsequently, CLK obtained a WSS over L's interest in the same property. The mortgagee of the property then sold the property. The question arose as to whether CLK or CSC was entitled to the balance sale proceeds. CLK applied to set aside CSC's WSS.

31 Chua J held that *both* WSSes should be set aside (at [62]). In so deciding, he reasoned as follows:

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(a) All joint tenants together owned the whole property and had rights *inter se*, but were seen as one owner as against the world: at [20]. Therefore, seizure of a joint tenant's interest also meant seizure of his co-owners' interest. Chua J agreed with the reasoning in *Malayan Banking*, stating (at [29]):

> Conceptually, the reasoning in *Malayan Banking* … that seizing a joint tenant's interest also means seizing his co-owners' interests must be correct, since each joint tenant's interest in the property is indistinguishable. Each joint tenant holds nothing by himself; he holds the whole estate together with the other joint tenants: Robert Megarry & William Wade, *The Law of Real Property* (Charles Harpum, Stuart Bridge & Martin Dixon eds) (Sweet & Maxwell, 8th Ed, 2012) at para 13-003. How does a WSS seize such an interest unless the issuance of the WSS itself amounts to a severance? However, it is well established that the issuance of a WSS does not sever the joint tenancy.

(b) He disagreed with Leow JC's proposition in *Leong Lai Yee* that although a joint tenant did not have an undivided share, his interest could be seized under a WSS because it *would be* converted into an undivided share when the joint tenancy was subsequently severed. Chua J gave three reasons in support (at [32]–[34]):

> 32 First, the proposition focuses not on what is being seized when the WSS is issued but on what can be seized *subsequently* upon severance of the joint tenancy. However, upon severance, the joint tenancy ceases to exist as it would have been converted into a tenancy in common. What the WSS seizes when that happens is not the interest of a joint tenant but that of a tenant in common. In my view, the proposition implicitly acknowledges that there is nothing for the WSS to bite onto until the joint tenancy is converted into a tenancy in common.
>
> 33 Second, before the court makes an order for a WSS to be issued, it must be satisfied that the interest that is sought to be seized under the WSS is capable of being so seized. If it is not capable of being so seized, the court cannot make the order. It cannot be an answer to

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> say that that interest will subsequently be converted into one which would be capable of being seized. In other words, if the nature of a joint tenant's interest is such that it cannot be seized under a WSS, it cannot be an answer to say that upon a *subsequent* severance, the joint tenant's interest will be converted into that of a tenant in common which can be seized under a WSS.
>
> 34 Third, in any event, the proposition seems to be premised on an ability to sell the *property* following a seizure of the *debtor's interest*. However, the seizure of the debtor's interest does not allow the sheriff to sell the property in respect of which the debtor is a joint tenant. Seizure of a joint tenant's interest under a WSS is not the same thing as a seizure of the property itself. Further, it is clear from the earlier discussions (at [21] above) that even assuming that a joint tenant's interest can be taken in execution under a WSS, the sheriff cannot sell *the property* without the agreement of all the joint tenants.
>
> [emphasis in original]

(c) Chua J also disagreed with Leow JC that O 47 r 5(*g*) of the ROC enabled the court to order a sale of the property against the wishes of the other joint tenants. It only permitted the sheriff to apply to court for directions *in connection with the sale of the immovable property*, *ie*, that provision came into play only where the sheriff had the power to sell the property in the first place: at [36]–[38].

(d) Chua J found that neither the judgment creditor nor the sheriff were entitled to apply for a sale of the property in lieu of partition under s 18(2) of the SCJA read with para 2 of the First Schedule. The rights to apply for partition and to apply for sale in lieu of partition were rights given to co-owners. The WSS did not make the judgment creditor a co-owner and neither did the registration of the WSS. The general property and interest in the property remained with the debtor until execution of the sale: at [39]–[40], citing *Chia Kin Tuck* at [14].

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(e) Chua J had this to say about reliance on the practice in other Commonwealth jurisdictions (at [41]):

> Leow JC also relied on the practice in other Commonwealth jurisdictions. However, as his Honour noted … these cases proceeded on the *assumption* that a WSS can be executed against a joint tenant's interest in land, without any discussion. These cases therefore do not assist in the analysis of the issues discussed above. I would add that in Canada, s 9 of the Execution Act, RSO 1990, c E.24, which was first enacted in 1957, expressly permits the seizure and sale of property held in joint tenancy. … Previous Canadian cases had assumed that a joint tenant's interest can be attached in execution. However, in 1953, the Ontario High Court in *Re Tully and Tully and Klotz* [1953] 4 DLR 798 cast doubt on this position when it decided, albeit without giving written reasons, that a joint tenant's interest could not be attached in execution. There was thus at least some degree of uncertainty in Canada on this issue before the legislature intervened and enacted s 9 of the Execution Act.

(f) The mere registration of a WSS over jointly held land did not sever the joint tenancy. The modes of severance were an act of the joint tenant operating on his own share, mutual agreement or a sufficient course of dealing: at [23].

Higgins

32 The defendant in *Higgins* co-owned a property with his wife as joint tenants. He had two sets of judgment creditors: the plaintiff law firm, which acted for him in two lawsuits and now claimed unpaid legal fees; and the counterparty ("X") in those lawsuits. X filed a WSS over the property sometime between July 2015 (when *Leong Lai Yee* was decided) and July 2017 (when *Chan Lung Kien* was decided). In September 2017, the law firm also applied for a WSS. The sole issue on appeal from the Assistant Registrar was whether a judgment for payment of money was enforceable by way of a WSS against the

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judgment debtor's interest in immovable property which was held under a joint tenancy.

33 Pang JC dealt with this issue very comprehensively. He also appointed an *amicus curiae* to address the legal issues before the court. These were the reasons for his decision:

(a) Historically, English law permitted execution by way of a writ of *elegit* against the interest of a joint tenant (the writ of *elegit* was a statutory creation under which a judgment debtor could take possession of half of the joint debtor's freehold land). This was supported by *Lord Abergavenny's Case* (1607) 77 ER 373 ("*Lord Abergavenny's Case*"), where judgment was obtained by the plaintiff against M (a joint tenant of land). M then released all her estate and right in the land to F, the other joint tenant. The court held that notwithstanding the release, the plaintiff was entitled to execute the judgment by a writ of *elegit*. Pang JC observed at [17] that:

> (a) The issue in [*Lord Abergavenny's Case*] was whether a judgment debtor could defeat execution against her interest as joint tenant by releasing her interest in the land to the other joint tenant.
>
> (b) The premise underlying this issue must be that the law as it stood in 1595 allowed a joint tenant's interest in land to be taken in execution of a judgment by writ of *elegit*. Had this not been the case, the arguments in [*Lord Abergavenny's Case*] would have included the preliminary issue of whether a joint tenant's interest in land was exigible to a writ of *elegit*, and not just the issue of whether an execution by writ of *elegit* could be defeated by the joint tenant releasing her interest in the land before execution.

(b) That approach under English law became part of Singapore law under the Second Charter of Justice in 1826. Though the provisions that

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tracked the evolution of the writ of *elegit* evolved over the years and Singapore also introduced the Torrens system, there was *no intention* to restrict the successors of the writ of *elegit* to a narrower range of interests in land than those previously exigible to the writ of *elegit*. That evolution may be summarised as follows: at [21]–[35].

(i) The writ of *elegit* was replaced by the "Writ of Execution against Lands" in the Straits Settlements Civil Procedure Ordinance 1878 (Ordinance No 5 of 1878) ("CPO 1878") and the Straits Settlements Civil Procedure Code 1907 (Ordinance No 31 of 1907) ("CPC 1907"); followed by the "writ of seizure and sale" in the Courts Ordinance 1934 (Ordinance No 17 of 1934) ("Courts Ordinance 1934") and the Civil Procedure Rules of the Supreme Court 1934 (S 2941/1934) ("RSC 1934"); and finally the WSS in the Supreme Court of Judicature Act 1969 (Act 24 of 1969).

(ii) Although the Rules of the Supreme Court 1970 (S 274/1970) ("RSC 1970") for a time replaced the WSS with charging orders as the mode of execution against immovable property, eventually the WSS was restored as the relevant mode of execution in 1991 via the introduction of O 47 rr 4 and 5, the texts of which remain substantially unchanged to this day.

(iii) Singapore adopted the Torrens system of land registration through the enactment of the Land Titles Ordinance 1956 (Ordinance No 21 of 1956) ("LTO 1956"). Section 106(1) of the LTO 1956 provided that:

> The interest in registered land which may be sold in execution under a writ is the interest which

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> belongs to the judgment debtor at the date of registration of the writ.

The draftsman's intention in implementing this provision was clear – that provision was meant to import the Australian position that the interest of a joint tenant could be taken under a writ. Pang JC cited (at [35]) the draftsman of the LTO 1956, John Baalman, in *The Singapore Torrens System – Being a Commentary on the Land Titles Ordinance, 1956 of the State of Singapore* (The Government of the State of Singapore, 1961) ("*Baalman's Commentary*") at p 218:

> It has been held in Australia that the interest of a joint tenant can be taken under a writ; *Registrar-General v Wood* (1926) 39 C.L.R. 46. So also that of a tenant in common; *In re Guss* (1927) 28 S.R. (N.S.W.) 226. There is nothing in this Ordinance which makes those decisions inapplicable. [Emphasis in original omitted]

(c) It was the position in England, Australia, Hong Kong, and Canada, amongst other Commonwealth authorities, that a judgment debtor's interest in immovable property which was held under a joint tenancy may be taken in execution (at [54]–[55]):

> 54 It would appear that in all Commonwealth jurisdictions on which relevant materials could be found, the uniform position is to allow a joint tenant's interest in land to be taken in execution of money judgments. No materials have been placed before me to indicate that there are any Commonwealth jurisdictions which have taken the contrary position.
>
> 55 Several of the cases noted above did not merely assume that the interest of a joint tenant in land is exigible to execution. For instance, [*Yu Pei-Tseng v Mong Wing Ho Alexander* [1978] HKDCLR 15], [*Maroukis v Maroukis* [1984] 2 SCR 137], and [*First Global Bank Limited v Rohan Rose* [2016] JMCC COMM 19] are all examples of cases in which the point was raised squarely and a considered decision made by the court

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> on the point. Even in the other cases which accepted the exigibility of a joint tenant's interest in land to execution without discussion, the judges in all likelihood did so not because they had failed to consider the point, but because they (as well as the parties) had considered the point indisputable having regard to the authority of cases such as [*Lord Abergavenny's Case*] … and authoritative texts such as *Coke on Littleton* and *Comyns' Digest*.

The position in the Commonwealth authorities accorded with logic and principle, and there were no local circumstances to warrant Singapore striking out on its own to take a different position from all the other jurisdictions: at [127]–[128].

(d) Regarding the nature of the joint tenancy, Pang JC emphasised that there were "two not altogether compatible aspects of joint tenancy" [original emphasis omitted], at [77]:

> *… Consequently, the court is not compelled to focus only on one aspect (that a joint tenant holds the whole with the other joint tenants but holds nothing by himself) to the exclusion of the other equally valid aspect (that a joint tenant has a real ownership interest which is capable of immediate alienation without the consent of the other joint tenants). Once both aspects of joint tenancy are given weight to:*
>
> > *(a) it will no longer appear incompatible with the nature of the joint tenancy to hold that a joint tenant's interest in land is exigible to a WSS; and*
> >
> > (b) the seizure of a joint tenant's interest in land by WSS will also need not be seen as a seizure of the other joint tenant's interest – while a WSS would prevent the debtor-joint tenant from dealing with his interest, with the consequence that the other joint tenant would not be able to join the debtor-joint tenant in disposing of the whole property together, the other joint tenant remains free to deal with his aliquot share independently of the debtor-joint tenant.
>
> [emphasis added]

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Pang JC isolated the crucial factor that rendered a joint tenant's interest exigible to execution as its severability (at [81]–[82]). He based this reasoning on *The Registrar-General of New South Wales v Wood* (1926) 39 CLR 46 ("*RG v Wood*"), which dealt with a tenancy by entireties, which differs from joint tenancy as the former is not severable. A tenancy by entireties was "a form of co-ownership featuring only the first aspect of a joint tenancy (*ie*, the right of survivorship and the general rule that co-owners must act together when dealing with the property as a whole) but not the second aspect (*ie*, severability of the joint tenancy and the rule that a joint tenant is able to act on his own share without the consent of the other joint tenant)" (*Higgins* at [79]). The pertinent point from *RG v Wood* was that if the Married Women's Property Act 1901 in Australia had modified the tenancy by entireties to take on the characteristics of a joint tenancy, then it could be taken under an execution. If it did not, then it could not so be. Therefore, the difference was that a joint tenancy had something the tenancy by entireties did not – *ie*, severability.

(e) Pang JC considered and distinguished the situation of a joint bank account in *One Investment* (at [86]–[87]) and decided that the approach to joint bank accounts was inapplicable to joint tenancies.

(f) Therefore, he concluded that although he had no difficulty in principle with the notion that the phrase "interest of the judgment debtor" for a WSS in O 47 r 4(1)(*a*) of the ROC referred to an interest which was sufficiently distinct and identifiable to be seized in a meaningful way, a joint tenant's interest in land "amply satisfie[d] this requirement": at [141].

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(g) Regarding the concern over the sheriff's ability to sell, Pang JC clarified that there was a distinction between: (a) the saleability of a joint tenant's *interest* in the land; and (b) the saleability of the *whole property*. He was of the view that since the sale of the undivided share of the tenant in common was not controversial, then the sale of the joint tenant's interest was similarly uncontroversial: at [106]–[116].

(h) Pang JC did not think the arguments on purported "unfairness" to the other joint tenant versus possible "unfairness" to judgment creditors advanced the analysis much: at [120]–[126].

(i) Pang JC held that severance would occur at the time the WSS was registered (at [97]):

(i) Interestingly, he relied on *Power v Grace (CA)* to support his view – the same authority that *Malayan Banking* and *Chan Lung Kien* relied on for the contrary view. He appeared to have interpreted *Power v Grace (CA)* more narrowly in that "the lesson to be drawn from [*Power v Grace (CA)*] is that, in order to identify the time of severance, we need to understand what constitutes execution or seizure under Singapore's statutory framework" (at [95]). That case did not stand for the general proposition that independent of the statutory context, severance under a writ of execution occurs only when the sheriff commences the process of selling the land: at [92]–[97].

(ii) The way around the "fine mess" mentioned in *Malayan Banking* would be to adopt the doctrine of "temporary severance": at [98]–[105], *obiter*.

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(iii) The difficulty with ascertaining the relative shares of joint tenants is mitigated because the default position, unless otherwise established, is that the joint tenants would hold in equal shares in tenancy in common upon severance: at [117]–[119].

Ong Boon Hwee

34 The plaintiffs in *Ong Boon Hwee* obtained judgment against the defendant and sought to enforce this by way of a WSS over a property that was jointly held by the defendant and her husband. The defendant's husband applied to set aside the WSS.

35 Chan J, in dismissing the application, held that a joint tenant's interest was exigible to a WSS independent of severance of the joint tenancy (at [74]):

(a) On a preliminary point, Chan J disagreed with Pang JC in *Higgins* that the writ of *elegit* was the progenitor of the WSS; instead the WSS was likely modelled after the writ of *fieri facias* in New South Wales. Nevertheless, it did not affect his analysis: at [27]–[36].

(b) Chan J agreed with Pang JC that "[g]iven the 'two not altogether compatible aspects of joint tenancy', the court is not compelled to focus on only one aspect (that a joint tenant holds the whole with the other joint tenants but nothing by himself) to the exclusion of the other equally valid aspect (that a joint tenant has a real ownership interest which is capable of immediate alienation without the consent of the other joint tenants). Giving weight to both aspects of joint tenancy, it would not be incompatible with the nature of the joint tenancy to hold that a joint tenant's interest in land is exigible to a WSS": at [48(c)].

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(c) Chan J observed that the Commonwealth authorities supported the view that a joint tenant's interest was exigible to a WSS, though he noted that "it appears that the issue as to whether a WSS can latch onto a joint tenant's interest in land for the purpose of enforcement did not arise squarely in some of the cases from the Commonwealth jurisdictions considered by Pang JC": at [37].

(d) The view that a joint tenant's interest was exigible to a WSS was supported by the draftsman's intention in *Baalman's Commentary*: at [39]–[46]. "The decision in *Malayan Banking*, which stipulated at [15] that '"the interest which belongs to the judgment debtor' which may be sold in execution (s 135(1) of LTA) must be distinct and identifiable and cannot be a joint interest" thus directly opposes the draftsman's intention" (at [46]).

(e) Chan J made no finding as to whether a joint tenancy was severed by a subsequent registration of the WSS: at [74].

My decision

Exigibility of a joint tenant's interest to a WSS

36 After hearing the parties' arguments, I was inclined to accept the reasoning and the decisions in *Leong Lai Yee*, *Higgins* and *Ong Boon Hwee.* Thus, I was satisfied that the interest of a joint tenant was capable of attachment by an order under O 47 r 4(1) of the ROC and exigible to a WSS. I shall now explain my reasons for coming to this decision.

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No requirement of a "distinct and identifiable" interest

37 The Applicant's case rested on two key premises: (a) there was a requirement that a judgment debtor's (in this case, the Applicant's) interest in land had to be "distinct and identifiable" for a WSS to attach ("the Requirement"); and (b) a joint tenant's (the Applicant's) interest in land did not satisfy the Requirement. But the Requirement is not expressly found in O 47 r 4(1)(*a*) of the ROC that deals with WSSes, which provides that the order of court in Form 96 is to attach "the interest of the judgment debtor in the immovable property". Nor is the Requirement found in any other statute on this issue, including s 135(1) of the LTA and s 13 of the SCJA. These relevant statutes merely refer to "interest" and not "distinct and identifiable interest".

38 In *Leong Lai Yee*, Leow JC noted that the Requirement appeared for the first time in *Malayan Banking*. He did not ground his decision on whether a joint tenant's interest in land satisfied the Requirement. Instead, he simply held that "severance of a joint tenancy into undivided shares was not a prerequisite for a WSS to be issued against a joint tenant's interest in land" (at [11]). Chua J in *Chan Lung Kien* cited *Malayan Banking* and agreed that the Requirement would apply to WSSes (at [24] and [42]). Pang JC in *Higgins* had no difficulty accepting the Requirement in principle and held that a joint tenant's interest in land "amply satisfied this requirement": at [141]. Chan J in *Ong Boon Hwee* appeared to indicate that the Requirement would not apply to WSSes as this was not the intention of the draftsman: at [46].

39 The established and uncontroversial approach to statutory interpretation is that a court should *not* read into a statute words that are not there, especially when the statute is clear and unambiguous. See *Thomson (Pauper) v Goold & Co* [1910] AC 409 at 420, "[i]t is a strong thing to read into an Act of Parliament

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words which are not there, and in the absence of clear necessity it is a wrong thing to do"; and *Vickers, Sons & Maxim, Ltd v Evans* [1910] AC 444 at 445, "we are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself". Similarly, the Singapore court has declined to give a more restrictive meaning to the wording in a statute than the plain wording would suggest: *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 525 at [30]:

> Admittedly, the "default" in O 25 r 3(2) (like that in the present case), relates to a default in complying with an order of court, unlike a default under O 13 and O 19 of the ROC which relates to a default in complying with the procedures prescribed in those orders of the ROC. But there is nothing in s 34(1)(*a*) to suggest that the "default judgment" referred to in the provision is limited only to a judgment obtained by default in complying with the procedures prescribed in the ROC and not default in complying with an order of court. *We can see no justification to give such a restrictive meaning to the word "default" which means non-compliance with something. To so restrict its meaning would be to read, quite unwarrantably, additional words into the provision, words which are not there.* [emphasis added]

40 In my view, it was unnecessary for *Malayan Banking* to read the Requirement into O 47 r 4(1)(*a*) of the ROC as the wording of the provision is clear and unambiguous. Firstly, the qualifying adjectives "distinct and identifiable" are absent from the plain wording of the statute. Secondly, nor is there any indication, from the history of this provision outlined in *Higgins* (see [33(b)] above), that the legislature intended to introduce this qualification at any point. To the contrary, the intention of the draftsman, John Baalman, was not to introduce this restrictive reading. As explained by Pang JC in *Higgins* and Chan J in *Ong Boon Hwee*, the draftsman's aim was to import the position under the Australian Torrens system of land registration. Under that system the interest of the joint tenant was exigible to a WSS. There was no explicit requirement that the "interest" must be a "distinct and identifiable" one. This further strengthened the case that "interest" in the LTA should not be read as

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"distinct and identifiable interest". Thirdly, it is unnecessary to read the Requirement into the ROC because the words "interest of the judgment debtor" under O 47 r 4(1)(*a*) are perfectly clear and unambiguous. Those words have long been interpreted as referring to how a judgment creditor may only attach, by way of a WSS (or the WSS's progenitor), property to which the debtor was *beneficially* entitled. That is illustrated by the case of *Ng Boo Bee v Khaw Joo Choe, Khaw Sim Tek and others* (1921) 14 SSLR 90 ("*Ng Boo Bee*").

41 In *Ng Boo Bee*, a judgment creditor had registered an order of attachment. But by then the debtor had already conveyed the land to third parties who had paid the purchase money and entered into possession, although they had not yet registered their conveyance. The court held that at the date of purported seizure the debtor had no interest to be seized, as the property no longer belonged to the debtor beneficially. The issue was the interpretation of s 619(1) of CPC 1907, which provided that:

> where the property to be seized consists of immoveable property or any interest therein, either in law or at equity, the seizure shall be made by registering … an Order of Court … attaching the interest of the judgment debtor in the property described in the Order.

Pertinently, s 617(1) elaborated on what kind of property was seizable under a WSS: Lands "belonging to the judgment debtor, or over which, or the profits of which, he has a disposing power, which he may exercise for his own benefit".

42 Ebden J explained:

> The all important question is as to the effect of section 617 of [the CPC 1907] which replaced the old writ of execution by a writ of
>
> > seizure and sale of all saleable property moveable or immoveable, *belonging to the judgment debtor*, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit.

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> There was some comment before us on the application of the words "belonging to" where "real" or immovable property is affected. It seems clear beyond question that *this writ of seizure and sale was inspired by the writ of elegit, and that* ***the words "belonging to" were used in the section in place of the words "seised or possessed of"*** *because the writ is made applicable to moveable and immoveable property alike.* ***The words "belonging to the judgment debtor" can only be read as equivalent to some such words as, "of which the judgment debtor is lawfully possessed of his own right" and as including the power of disposition as the greater includes the less.***
>
> [emphasis added in italics and bold italics]

43 Accordingly, the relevant provisions of the ROC did not impose the Requirement. The starting point should, therefore, be to ask whether the judgment debtor is seised or possessed of *an* interest in the immovable property (as opposed to asking the further question of whether that interest is sufficiently "distinct and identifiable"). In my view, the answer to that had to be in the affirmative, having regard to the two aspects of a joint tenancy.

The nature of the joint tenancy

44 The Applicant argued that "[i]n a joint[ ]tenancy, each joint tenant holds the whole jointly *and nothing severally*" [original emphasis omitted; emphasis added].[23] The interest in the property was therefore held by a "composite person", here the Applicant and his wife.

45 I did not accept this argument. As explained in *Higgins* and *Ong Boon Hwee*, there are two perspectives to a joint tenancy:

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[23] 2DS at para 16.

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(a) A joint tenant holds the whole with the other joint tenants *but nothing by himself* ("the First Aspect").

(b) A joint tenant has a *real ownership interest* which is capable of immediate alienation without the consent of the other joint tenants ("the Second Aspect").

46 The Second Aspect works in this way. In a joint tenancy there are no *actual* shares because each co-owner owns the whole. But the law recognises him as having a *notional*, *aliquot* share, *ie*, a share that is a potentially rather than actually divided share in property. A joint tenant's aliquot share is converted into actual, undivided shares in property held as a tenant in common upon severance. That view is shared by the learned authors of *Tan Sook Yee's Principles of Singapore Land Law* at para 9.17:

> … The cases have proceeded on the fallacy that a joint tenant does not have a distinct and identifiable share prior to severance. This is a false premise. **A joint tenant has an *aliquot* share prior to severance.** … The presence of an *aliquot* share explains why a joint tenant may unilaterally alienate his own share to a third party which results in a severance of the joint tenancy. Furthermore, it is uncontroversial that when a joint tenant becomes bankrupt, his share of the joint tenancy passes to the Official Assignee and Public Trustee which thereby causes a severance of the joint tenancy. If the joint tenant does not have a distinct and identifiable share prior to severance, then unilateral alienation and severance upon bankruptcy should not be doctrinally possible. … [emphasis added in bold]

47 Considering the above, the question boiled down to this: *Which of the two aspects of a joint tenancy should the court emphasise*, in deciding whether a joint tenant's interest was exigible to a WSS? This was not a question susceptible to being answered purely by reference to the decided cases, but a normative choice to be made after considering the precedents, principles and

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practicalities or questions of fairness and comparative prejudice to all the affected parties.

48 I held that the Second Aspect should trump the First Aspect, such that a joint tenant should be regarded as having an interest capable of attachment under a WSS, for the following three reasons.

Distinguishing a joint tenancy from a tenancy by entireties

49 Firstly, the tenancy by entireties was a distinct form of co-ownership that existed alongside the joint tenancy and tenancy in common. It differed from a joint tenancy in that it had only the First Aspect (*ie*, the right of survivorship and the requirement that co-owners must act together when dealing with the property as a whole). As explained in Oval A Phipps, "Tenancy by Entireties" (1951) 25 Temple Law Quarterly 24 at 25 and 39:

> Tenancy by the entireties as it was known to the early common law **depended in its characteristics upon the marital-unity concept and the corollary, the husband's dominance before the law.** …
>
> …
>
> (e) *Management, control, power to alienate*
>
> In a joint tenancy each co-owner is empowered—in the absence of express or implied contrary agreement between the parties—to manage, control, and dispose of his undivided share … without interference by his fellow or fellows, and he may alienate his portion at will—thereby creating a tenancy in common between his alienee and the other joint tenant or tenants. **But one of tenants by the entireties has no such separate powers as to any part of the principal asset** …
>
> [emphasis added in bold]

See also "Tenancy by Entireties" (1891) 11 Canadian Law Times 97 at 98:

> … [T]he reason why the joint estate of husband and wife differs from a joint tenancy is, *that the husband and wife are considered in law as one person,* and it is all the same as if there

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> had originally been a sole seisin of the land. The ***composite person***, so to speak, lives on and is seised of the entirety as long as the survivor of them lives and is seised. [emphasis added in italics and bold italics]

To choose to emphasise the First Aspect of a joint tenancy, as the Applicant urged, would assimilate the effects of a joint tenancy to a tenancy by entireties notwithstanding that they were distinct forms of legal status. Indeed, it was telling that the Applicant's counsel referred to the interest in the Property being held by the "composite person" of the Applicant and his wife.

50 To clarify, the tenancy by entireties is not currently part of Singapore land law. This form of property holding may have been introduced into Singapore via the Second Charter of Justice in 1826, given that it continued to exist in England before 1 January 1926: Kevin Gray & Susan Francis Gray, *Elements of Land Law* (OUP, 5th Ed, 2009) at para 7.4.110. There is some doubt whether the tenancy by entireties was indeed introduced because the Second Charter of Justice imported English law subject to modification by local customs. Regardless, as stated in *Tan Kay Thye and others v Commissioner of Stamp Duties* [1991] 1 SLR(R) 306 ("*Tan Kay Thye*") at [15], coparcenary and tenancy by entireties ceased to exist in Singapore from 1 August 1886. This date appears to be the date on which the Conveyancing and Law of Property Act (Cap 61) (then known as Ordinance 6 of 1886) came into effect, though the court in *Tan Kay Thye* did not explain its reasoning in this way. The tenancy by entireties has been abolished in England and Australia, amongst other jurisdictions.

51 Therefore, the First Aspect of a joint tenancy would not fit into the Singapore legal framework.

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Prejudice to the non-debtor joint tenant or the creditor

52 Secondly, the court's preference of the Second Aspect over the First Aspect must balance the comparative prejudice that would result to the non-debtor joint tenant and the creditor's interest who was attempting to execute a WSS.

53 I did not find any of the arguments regarding prejudice to the non-debtor joint tenant persuasive.

54 It was argued that following *Malayan Banking* and *Chan Lung Kien*, to seize one joint tenant's interest was to seize also the interest of the innocent co-owners when they were not subject to the judgment which was being enforced.

55 As stated, a joint tenancy has two distinct aspects. If the Second Aspect is emphasised, then what the court order attaches to is the debtor-joint tenant's aliquot share in the jointly held property. The order would *not* affect the non-debtor joint tenant's aliquot share whose interest in the joint tenancy is protected even if there should be a forced sale of the property, depending on the circumstances. Conversely, if the First Aspect is emphasised, there would be seizure of the non-debtor joint tenant's interest because the joint tenants' interests in a joint tenancy are one and the same. The question, as I have emphasised at [47], must be *why* one aspect should be preferred over another.

56 It was also argued that the non-debtor joint tenant would be "forced" to sell her share of the property upon execution of the WSS (a point noted in *Leong Lai Yee* at [21]). However, the non-debtor joint tenant could avoid the sale of the property by buying over the interest of the debtor joint tenant from the creditor or the sheriff.

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57 The tangential issue is whether a sheriff can apply to court for directions to sell the property under O 47 r 5(*g*) when the non-debtor joint tenant does not consent. If the sheriff cannot, then there is no question of the latter being "forced" to sell. The authorities diverge. *Leong Lai Yee* at [21]–[22] stated that a sheriff could apply to the court for directions to sell the property despite the non-debtor joint tenant's objections and the Applicant submitted that it was "arguable at least" that this was the case.[24] In contrast, *Higgins* at [111] stated that the sheriff could not apply for such directions and the Respondent endorsed this position.[25] I preferred the view in *Leong Lai Yee*. While a sheriff can usually only sell the debtor's interest in a jointly held property (see the wording of s 135(1) of the LTA and Forms 83 and 97 of the ROC), *if the sheriff applies to court for directions* under O 47 r 5(*g*) then the court may direct the sale of the entire property. The wording of O 47 r 5(*g*), which refers to "immovable property or any interest therein seized" is wide enough to cover this, contrary to other provisions of O 47 r 5 such as r 5(*e*) cited in *Higgins* (which refers only to "the interest of the judgment debtor in any immovable property, seized and sold under the order"). In coming to my view I did not derive much assistance from *BYX v BYY* [2019] SGHC 237, cited by the Applicant, as that case dealt with whether an execution creditor could sell the property even if a mortgagee did not consent. The applicable provisions there were O 31 r 1 of the ROC and para 2 of the First Schedule to the SCJA, and the parties did not submit on whether these applied to WSSes.

58 But even if a court has the power to direct a sale despite the non-debtor joint tenant's protests, that does not mean the non-debtor joint tenant is left

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24 PFS at para 32.

25 2DFS at para 9.

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unprotected. The Applicant and the Respondent both pointed to ways the non-debtor joint tenant could be protected, even though interpleader proceedings did not apply to immovable property. Both submitted that non-debtor joint tenants could seek a declaration and directions from the court.[26] The Applicant also submitted that the non-debtor joint tenant could commence separate proceedings to assert its right, or intervene in the suit under which the WSS was issued under O 15 r 6(2)(*b*)(ii) (on the ground that there is a question or issue arising out of, relating to, or connected with any relief or remedy claimed in the cause or matter that would be just and convenient to determine between the interested non-party and the parties).[27]

59 Even if a sale did occur, the non-debtor joint tenant would be entitled to part of the sale proceeds. The only question would then be of *apportioning* their entitlement and that was a *practical question* of having the necessary evidence. One solution would be to look at the parties' contributions to the purchase price of the property. It would be open to the debtor joint tenant to furnish the necessary information (about the non-debtor joint tenant's interest) to the creditor who took out the WSS in examination of judgment debtor proceedings. Another solution would be for the joint tenants to invoke any applicable legal presumptions (such as the presumption of advancement from husband to wife) in support of their case. In this regard, the Applicant's counsel had submitted, in response to my example at the hearing that the court regularly apportions matrimonial assets held in joint tenancies, that this was only possible because the court was empowered to divide matrimonial assets under the Women's Charter (Cap 353, 2009 Rev Ed). That submission missed the point I was

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26 PFS at para 25; 2DFS at para 7.

27 PFS at paras 20–24.

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making – I was aware that the court has the power to divide matrimonial assets under the Women's Charter. I wanted to illustrate the point that the interests of the spouses who own properties as joint tenants are not indivisible and unidentifiable. Thus, the courts regularly approach the issue, at the stage of *apportioning entitlement*, by looking at parties' respective contributions.

60 On the other hand, a creditor of a debtor-joint tenant would potentially be prejudiced if enforcement were stymied merely because his debtor was a joint tenant and not a tenant in common: *Leong Lai Yee* at [23]. That would be especially egregious if a debtor deliberately converted his property holding to that of a joint tenancy to pre-empt execution. To be fair to creditors, debtors should not be allowed to hide behind a joint tenancy to avoid paying their debts. It is no answer to say that creditors can appoint a receiver as suggested by Tay JC in *Malayan Banking*. The shortcomings of this remedy – the entitlement to rental and profits and not the property itself, as highlighted in *Leong Lai Yee* (see [29(f)] above) – make it a poor substitute for a WSS.

The analogy to joint bank accounts

61 Thirdly, even though joint bank accounts cannot be garnished, the reasoning does not apply analogously to jointly held land.

62 The Applicant cited *One Investment*, as well as two old English authorities that both dealt with jointly held bank accounts. In *MacDonald v The Tacquah Gold Mines Company* (1884) 13 QBD 535, Fry LJ stated that "to enable a judgment creditor to attach a debt due to two persons in order to answer for the debt due to him from the judgment debtor alone … would be altogether contrary to justice" (at 539). This case was endorsed in *Hirschorn v Evans (Barclays Bank, Ltd, Garnishees)* [1938] 2 KB 801.

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63 However, these authorities did not assist the Applicant. In *One Investment* itself, Kannan Ramesh JC (as he then was) pointed out two key reasons why the joint bank account context was not analogous. There was no risk that the judgment debtor could access the assets of the innocent joint tenant (because severance would occur by the time of sale of the property and the sheriff may only market the judgment debtor's share). There was also a way for joint tenants to monitor and challenge a sale. Conversely, allowing joint accounts to be attached in garnishee proceedings would cause prejudice to third parties (banks) who had no visibility as to the respective contributions of the joint account holders (at [23]):

> 23 Putting aside my reservations as to the correctness of [*Leong Lai Yee*] … I did not find it to be relevant to my determination. [*Leong Lai Yee*] specifically concerned a WSS against immovable property, and the illiquid nature of immovable property means that many of the concerns surrounding the potential prejudice to joint account holders in garnishee proceedings do not arise. *There is no risk that the judgment debtor can access the assets of the innocent joint tenant*; *… the joint tenancy is severed by the time of the sale of the property by the Sheriff and the Sheriff may only market the judgment debtor's share of the property.* Upon such severance, the judgment debtor can no longer deal in the shares of the former joint owners in the property. *Further, the notification of parties who may be prejudiced is either inherent or expressly provided for in a WSS against immovable property.* Order 47 r 5(*g*) of the ROC permits the Sheriff to apply to court for directions and for notice to be given to all parties interested in the property. Thus the sale of jointly-owned property would necessarily be carried out with the notice of all owners. *There is therefore a framework which allows joint tenants to monitor and challenge the sale. No such framework exists in respect of a garnishee order against a joint account.* [emphasis added]

64 There are two other reasons why the analogy to the joint bank account is not appropriate:

(a) Joint account holders are protected by banking secrecy under s 47(1) of the Banking Act (Cap 19, 2008 Rev Ed) which reads:

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> "Customer information shall not, in any way, be disclosed by a bank in Singapore or any of its officers to any other person except as expressly provided in this Act." The Banking Act does not allow the holder of a WSS to access the banking information of the non-debtor joint account holder. Hence, the bank is required to protect the banking information of the non-debtor joint account holder.
>
> (b) The Applicant did not cite any authorities or literature explaining that joint accounts have the First and Second Aspects identified above in relation to joint tenancies. The two are, therefore, not analogous in this sense.

65 Accordingly, the distinction between a joint tenancy and tenancies by entireties, considerations of fairness between non-debtor joint tenants and creditors, as well as the dis-analogy to the joint bank account situation were good reasons to accept the Second Aspect of joint tenancies over the First Aspect. I hence concluded that a joint tenant's interest could be attached by an order of court and taken in execution of a WSS. I wish to emphasise that in my deliberation I was deeply mindful that the legal position must be fair to all the parties involved, *ie*, the creditor, the debtor and particularly the innocent non-debtor joint tenants (in this case, the Applicant's wife), and other purported equitable interests held by the joint tenants on others' behalf (such as the Applicant's sisters, if the allegations were true).

Other arguments raised by the Applicant

66 It remains to deal briefly with two other arguments raised by the Applicant.

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Alleged conceptual difficulties with the right to alienate

67 The Applicant argued that the WSS purported to bite onto the *right to alienate*, *ie*, the right of a debtor joint tenant to give up the relationship of joint tenancy and part ways with his co-owner. But until that right is exercised, the interest is not distinct but bundled with someone else's. This right was in itself not an interest, and an interest was needed for a WSS to attach.

68 In my view, it was not the *right to alienate* that the WSS is purported to latch onto, but the joint tenant's interest in the *aliquot share*. That aliquot share would not be made into undivided shares until the joint tenant exercised his right to alienate. That point was made clear in *Higgins* at [88]:

> … I am not persuaded that the considerations arising from the nature of the joint tenancy are sufficient to support the conclusion that a joint tenant's interest in land cannot be seized by WSS. On the contrary, **the severability of the joint tenancy and the ability of a joint tenant to alienate his aliquot share** (or potential aliquot share) without the consent of the other joint tenants ought, in principle, **lead to the result that *any property interest* which a debtor-joint tenant is able to alienate on his own *should be also saleable in execution by the sheriff* on the debtor-joint tenant's behalf.** [emphasis added in bold and bold italics]

Reliance on Commonwealth authorities

69 The Applicant argued that the Singapore cases that decided a joint tenant's interest was exigible to a WSS, as well as the Commonwealth authorities they relied on, did not explain *why* they came to this view beyond citing precedents that took this view. The propagation of this proposition, therefore, became a self-fulfilling prophecy.

70 Preliminarily, in so far as the Applicant alleged the cases asserted without explaining why the Second Aspect should be selected, his counsel did

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the same in asserting why the First Aspect should be preferred. It was a case of the pot calling the kettle black.

71 In any case, the allegation that the Singapore authorities were indiscriminately and blindly following precedents was unwarranted and unfair. The cases after *Malayan Banking*, both for and against, were alive to the limitations of the Commonwealth authorities (see the observations at [29(c)], [31(e)], [33(d)] and [35(c)] above, for *Leong Lai Yee*, *Chan Lung Kien*, *Higgins*, and *Ong Boon Hwee* respectively). It is interesting to note that the Applicant alleged that *Higgins* cited three cases that simply *assumed* that a joint tenant's interest could be seized,[28] but these ***very same cases*** were those identified by Pang JC as cases that did *not* merely assume the exigibility of a joint tenant's interest in land (*Higgins* at [55]).

72 Accordingly, I held, in line with *Leong Lai Yee*, *Higgins* and *Ong Boon Hwee*, that a joint tenant's interest in land was exigible to a WSS independently of severance.

Severance of the joint tenancy

73 It was relevant to consider when, exactly, a joint tenancy was severed due to my holding that a joint tenant's interest need not be sufficiently distinct and identifiable at the point of attachment of the court order. In my view, the execution of a WSS did *not* effect a permanent severance of the joint tenancy. Permanent severance would occur only upon a sale of the joint tenant's interest by the sheriff.

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[28] 2DS at para 46.

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Power v Grace (CA)

74 I began with *Power v Grace (CA)*, which the Applicant alleged that *Higgins* had interpreted incorrectly. That case concerned a joint tenancy between a mother and daughter. The plaintiff obtained judgment against the mother and a writ of *fieri facias* was delivered to the sheriff. The mother died before the sheriff could act under the writ. The sole issue was whether the delivery of the writ to the sheriff constituted "execution" (*ie*, seizure). Only if it did not would the daughter, as the surviving joint tenant, take the land discharged of the execution. The Ontario Court of Appeal held that delivery was not execution (or seizure) because the statute clearly distinguished between delivery and execution. The relevant provision stated that a sheriff "to whom a writ of execution against lands is *delivered* ***for execution*** may seize and sell thereunder" [emphasis added in italics and bold italics]. Therefore, mere delivery was not equivalent to seizure. In the words of Grant JA:

> *The filing of the writ of fi. fa. with the sheriff merely gives the right to seize the lands,* and until the withdrawal, discharge or expiry of the writ, the lands continue "bound" in that sense. The change which may subsequently be made in "title and interest" is potential only, *contingent upon the lands being placed in execution by seizure with a view to sale as by law provided.* I am therefore of opinion in the case at bar, that *the joint-tenancy was not severed or destroyed by the filing of the writ of fi. fa., in the sheriff's office* … [emphasis added]

75 *Power v Grace (CA)* could not apply directly to the Singapore context, given the different statutory provisions. In this regard I agreed with Pang JC that "the lesson to be drawn from [*Power v Grace (CA)*] is that, in order to identify the time of severance, we need to understand what constitutes execution or seizure under Singapore's statutory framework" (*Higgins* at [95]). Beyond this, I did not think *Power v Grace (CA)* was helpful to my analysis.

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No permanent severance on registration of the WSS

76 In interpreting O 47 r 4 of the ROC, I found that severance did *not* occur on registration of the WSS. I agreed with Tay JC in *Malayan Banking* (at [17]–[18]) that various complications would arise if the contrary view were taken:

> 17 … A WSS against land is an order of court granted *ex parte* but it is not an order that must necessarily result in a sale. This is reinforced by the use of the words "and thereafter, if necessary, to sell the said interest …" in Form 95E which is the direction to the sheriff/bailiff. The sale may be postponed and subsequently abandoned because of the sale of any other property of the judgment debtor (O 47 r 5(*c*)). There may be an appointment of a receiver of the rents and profits or a receiver and manager of the immovable property "in lieu of sale" (O 47 r 5(*d*)). The WSS may be withdrawn (O 47 r 9). Similarly, registration of the WSS may be cancelled because it has lapsed (s 134 LTA) or has been withdrawn (s 136 LTA).
>
> 18 Bearing in mind that any of the above contingencies could happen, it would be creating a fine mess to hold that a WSS when registered severs a joint tenancy. What would be the position of the co-owners in relation to each other should the WSS subsequently be withdrawn or its registration lapse? Do they revert to being joint tenants again? If the WSS is renewed or a second or subsequent one issued, do the rights of the co-owners change once again? A further argument against severance is that registration of the WSS (if it were possible to do so) merely prevents transfers of interest by the joint tenant, such that there is no severance of the joint tenancy until the Sheriff transfers the judgment debtor's interest to another person. In favour of this is the fact that on the register, the judgment debtor remains a joint owner of the property, and in terms of form, maintains the same interest as his co-owner. For these reasons, I hold that registration of the WSS does not sever a joint tenancy.

77 I observe that if, for instance, a non-debtor joint tenant decides to purchase the "share" of the debtor joint tenant in order to avert a forced sale by the sheriff, there would be no need for the sheriff to sell the property and permanent severance would not occur.

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78 What, then, is the position between registration of the WSS and sale? *Higgins* proposed the doctrine of "temporary severance". The key tenets of the doctrine were summarised in *Higgins* as follows (at [99]):

> (a) The registration of a WSS does not permanently sever the joint tenancy.
>
> (b) Instead, a temporary severance is effected while the WSS remains in force, during which period the four unities of a joint tenancy are suspended.
>
> (c) If the WSS lapses or is withdrawn, the four unities are restored and the joint tenancy comes back into existence.
>
> (d) Permanent severance occurs only upon an out-and-out sale of the joint tenant's interest by the sheriff.

79 I accepted that some of the key tenets of the doctrine of temporary suspension or severance would adequately fill the analytical gap in the interim between registration of the WSS and permanent severance upon sale by the sheriff.

80 *Higgins* proposed that upon eventual severance of the joint tenancy the presumption, absent any evidence to the contrary, should be that the joint tenants held the land in equal shares both at law and in equity (*Higgins* at [118]). *Higgins* explained that the presumption was a sensible starting point because no injustice would be caused to any joint tenant; mechanisms existed for interested joint tenants to prove that their beneficial interests were not held in equal shares. But if the concern is that of injustice, it is not necessarily just to start with a presumption, which could work both ways depending on whether the non-debtor joint tenant actually lays claim to more or less than half of the property. Having the presumption may be an easy way to resolve the apportionment but it may, in certain instances, result in unfairness to the non-debtor joint tenant. In the absence of a presumption the court has to find an equitable and fair evaluation to ascertain a just apportionment. The burden is on the creditor or the

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sheriff to establish on the evidence the proportion of the debtor's interest/share in the joint tenancy. If the creditor or the sheriff fails to adduce evidence to apportion or quantify the debtor's interest in the joint tenancy it may even be that the remedy of forfeiture should not be granted, since the burden of proof has not been discharged notwithstanding that this interest is exigible to the WSS. This issue of apportionment is not directly relevant here and parties have not fully argued on it. I shall leave it for another occasion where this issue takes centre stage.

The Applicant's allegations that he, his wife and his sisters had contributed financially to the Property

81 The Applicant further alleged that there was a common intention constructive trust and/or presumption of resulting trust in the Property. This is because the Applicant alleged that he, his wife and two sisters had financially contributed towards the purchase of the Property notwithstanding that the Property was registered only in the names of the Applicant and his wife as joint tenants. As a result of this allegation, the Applicant sought prayer 2 in SUM 4299, which requires the court to make a declaration that the beneficial owners of the Property are the Applicant, his wife and two sisters.

82 The Respondent argued that such an argument was self-defeating *vis-à-vis* the main relief. If the Applicant is arguing for a common intention constructive trust or resulting trust, then even if the court finds for the Applicant on the main issue (*ie*, finds that a joint tenant's interest is not exigible to a WSS), such a trust means the joint tenancy has been severed in equity into an implied tenancy in common in unequal shares proportioned to the amount of the

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purchase price contributed by each co-owner. Therefore, the Applicant's distinct share *in the tenancy in common* remained exigible.[29]

83 In rebuttal, the Applicant cited ss 36(2), 46, 47 and 135(2)(*b*) of the LTA to say that the Respondent was not entitled to go behind the land register. The certificate of title from the Land Registry under the Torrens system was conclusive evidence that the Applicant and his wife are joint tenants.

84 As I have mentioned above at [11], the Applicant, at the hearing of SUM 4299, withdrew prayer 2. Be that as it may, I shall give my views on this matter regarding severance and apportionment of interest.

85 The Respondent was correct insofar as the presumption of resulting trust may arise due to parties' unequal contributions to the purchase price, to affect the proportion of their entitlement to the proceeds. However, that issue of apportionment becomes relevant only when there is severance (see "Execution against Co-owned Property" at 57, set out immediately below), and as I have held, permanent severance would occur only upon a sale of the joint tenant's interest by the sheriff:

> … [S]everance into undivided shares is not a prerequisite for the issuance of a writ of seizure and sale against a joint tenant's interest. He has an interest, which can be converted into an undivided share by alienation, and "for the purposes of alienation each is conceived as entitled to dispose of an aliquot share". The judgment creditor however does have to state clearly that he is only taking the interest to which the joint tenant is entitled. *Although a joint tenant does not have an undivided share, yet* ***when the property is sold****, the erstwhile joint tenants will be entitled to the proceeds equally unless they were holding in trust for themselves as tenants in common in undivided and unequal shares, perhaps proportionate to their contribution.* Unlike the situation in tenancies in common where

[29] PS at paras 52–55.

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> the co-owners may own in unequal shares, in the case of a joint tenancy when the issue of the precise entitlement has to be particularised, for example, when there has been an alienation by a joint tenant, it must be in equal shares, for prior to the alienation each was entitled to the whole. If there are three joint tenants in law and in equity, and one of them alienates his interest to a fourth party, the alienee would get one third undivided share. … [emphasis added in italics and bold italics]

86 The above was illustrated by *Ong Boon Hwee*, where Chan J held, *after* deciding that a joint tenant ("Y")'s interest was exigible to a WSS, that Y had a beneficial interest in the property to be attached because the presumption of advancement operated in Y's favour (despite Y not having contributed to the purchase price). For the purposes of SUM 4299 I only had to be satisfied that the Applicant had *some* beneficial interest in the Property and the Flat. This was, by his own account,[30] satisfied.

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30 LBH-2 at paras 17, 26.

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Conclusion

87 In conclusion, I held that a joint tenant's interest in land was exigible to a WSS independently of severance. Accordingly, I dismissed SUM 4299 and affirmed the Order. Costs to the Respondent were fixed at $7,000 and $500 for SUM 4299 and SUM 3977 (which was withdrawn by consent) respectively.

Tan Siong Thye
Judge

Wong Soon Peng Adrian, Ang Leong Hao and Timothy Ng Xin Zhan (Rajah & Tann Singapore LLP) for the applicant in Summons Nos 4299/2019 and 3977/2019;
Kelley Wong Kar Ee and Toh Kok Seng (Lee & Lee) for the respondent in Summons Nos 4299/2019 and 3977/2019.

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