Chan Lung Kien
v
Chan Shwe Ching

[2017] SGHC 136

High Court — Originating Summons No 918 of 2016
Chua Lee Ming J
10 November 2016; 13 January; 1 March; 5 June; 10 July 2017

Civil procedure — Judgments and orders — Enforcement — Writs of seizure and sale — Joint tenancy

Civil procedure — Judgments and orders — Ex parte orders — Setting aside

Land — Interest in land — Modes of severance — Severance under the Land Titles Act — Non-registration of instrument of declaration

10 July 2017 Judgment reserved.

Chua Lee Ming J:

Introduction

1 The issue in this case is whether a judgment for the payment of money can be enforced by way of a writ of seizure and sale against the judgment debtor's interest in immovable property which is held under a joint tenancy with one or more joint tenants. In my judgment, it cannot.

Background

2 On 10 April 2015, the defendant, Chan Shwe Ching ("CSC")

commenced Suit No 342 of 2015 ("Suit 342/2015") against one Leong Lai Yee ("the Debtor"). On 10 June 2015, CSC obtained summary judgment against the Debtor in Suit 342/2015 for the sum of $1,430,300 plus interest and costs.

3 Meanwhile, on 21 May 2015, the plaintiff, Chan Lung Kien ("CLK") commenced Suit No 494 of 2015 ("Suit 494/2015") against the Debtor. On 18 June 2015, CLK entered judgment in default of appearance against the Debtor in Suit 494/2015 for the sum of S$8,465,839 plus interest and costs.

4 The Debtor held an interest in a property known as 9 Jalan Tanah Rata, Singapore ("the Property") together with her husband, Lim Eng Soon ("Lim"), as joint tenants. On 10 July 2015, CSC obtained an order ("the Order") for the Debtor's interest in the Property to be attached and taken in execution under a writ of seizure and sale ("WSS") to satisfy CSC's judgment debt in Suit 342/2015.[1] The High Court's grounds of decision are reported as *Chan Shwe Ching v Leong Lai Yee* [2015] 5 SLR 295 ("the GD").

5 On 24 July 2015, the WSS obtained by CSC ("CSC's WSS") was registered with the Singapore Land Authority ("SLA") pursuant to s 132 of the Land Titles Act (Cap 157, 2004 Rev Ed) ("LTA").[2]

6 By way of advertisement in the Straits Times on 4 August 2015, Lim gave notice of his intention to sever the joint tenancy and hold the Property as a tenant in common with the Debtor.[3]

7 Subsequently, on 16 September 2015, CLK also obtained a WSS ("CLK's WSS") against the Debtor's interest in the Property.[4] CLK's WSS was registered with the SLA on 12 November 2015.[5]

8 The mortgagee of the Property, Overseas-Chinese Banking Corporation

("OCBC"), exercised its rights under the mortgage and sold the Property. The option granted by OCBC was exercised by the buyer on 12 February 2016[6] and the sale was completed on 19 April 2016.[7] The balance of the sale proceeds amounted to $1,246,683.01.[8] The Debtor's half share amounting to $623,341.50 is currently being held by CSC's solicitors as stakeholders pending the resolution of the present dispute between CLK and CSC.[9]

9 On 21 April 2016, a bankruptcy order was made against the Debtor.[10]

10 As the Order was made *ex parte*, CLK filed the present application to, amongst other things, set aside the Order on the ground that CSC's WSS was void and/or unenforceable.

Whether CLK has the necessary standing to set aside the Order

11 CLK was not a party to the proceedings in which the Order was made. O 32 r 6 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") provides that "[t]he Court may set aside an order made ex parte". I disagree with CSC's submission that O 32 r 6 should be read restrictively and that non-parties to an *ex parte* order may not apply to set aside the order. In my view, it would be unjust to deny a person the right to apply to set aside an *ex parte* order *that affects him*, just because he was not a party to the proceedings in which the *ex parte* order was made. CSC's narrow interpretation of O 32 r 6 is also not supported by the authorities that I was referred to.

12 In *Karaha Bodas Co LLC v Perusahaan Pertambangan Minyak dan Gas Bumi Negara* [2006] 4 SLR(R) 345 ("*Karaha Bodas*"), the court held that the party who obtained an *ex parte* order could also apply to set it aside under O 32 r 6. In coming to this decision, Sundaresh Menon JC (as he then was) observed

(at [19]) that O 32 r 6 "does not limit the court's power by reference to the identity of the party seeking to set aside the order".

13 In *Emjay Enterprises Pte Ltd v Thakral Brothers (Pte) Ltd and others* [2000] 2 SLR(R) 729 ("*Emjay*"), the defendant obtained an *ex parte* attachment order under the Debtors Act (Cap 73, 1985 Rev Ed) against its debtor, Shah Electronics. The plaintiff obtained judgment against Shah Electronics in separate proceedings and a WSS was issued on the same day that the attachment order was granted to the defendant. The plaintiff subsequently filed an originating summons seeking, among other things, an order setting aside the attachment order. The plaintiff was a stranger to the proceedings in which the attachment order was obtained.

14 One of the arguments made by the defendant in *Emjay* was that the plaintiff had no *locus standi* to take out the application to set aside the *ex parte* attachment order as the Debtors Act contemplated an application by the debtor only. Tay Yong Kwang JC (as he then was) rejected this argument and held (at [46]) that the plaintiff had *locus standi* because it was a competing creditor who had a "legitimate interest" to protect. Although *Emjay* did not concern O 32 r 6, in my view, it demonstrates the court's general reluctance to deny a third party the right to challenge an *ex parte* order if its interest has been affected by the order.

15 Finally, in *United Overseas Bank Ltd v Chung Khiaw Bank Ltd* [1968-1970] SLR(R) 194 ("*Chung Khiaw Bank*"), the respondent obtained an *ex parte* order declaring itself a legal mortgagee over the debtor's properties. The appellant was not a party to the proceedings in which the *ex parte* order was obtained. The appellant applied to set aside the *ex parte* order on the ground that it had obtained and registered an order attaching the debtor's properties earlier.

O LIII r 4(1) of the Rules of the Supreme Court 1934 ("the 1934 Rules") provided that "[a]ny order made *ex parte* may be varied or set aside on application, *by any person affected by it*, to a judge, on such terms as to costs or otherwise as to the judge seem fit" [emphasis added]. As the appellant had acquired a right that ranked in priority to the respondent's right, the Federal Court held (at [28]–[29]) that the appellant was (a) a person affected by the *ex parte* order within the meaning of O LIII r 4(1) and (b) entitled *ex debito justitiae* to set aside the *ex parte* order.

16 O LIII r 4(1) of the 1934 Rules is similar to O 32 r 6 except that O LIII r 4(1) was expressly limited to persons affected by the *ex parte* order. On the face of it, O 32 r 6 is couched in broader language since it does not contain any such express limitation. On that basis, the argument that O 32 r 6 is available to non-parties would be even stronger. However, in my view, an applicant under O 32 r 6 must also show that he is affected by the *ex parte* order. It cannot be right to allow a stranger who is not affected by the *ex parte* order to set aside the order. Either way, *Chung Khiaw Bank* is direct authority against CSC.

17 CSC tried to distinguish *Chung Khiaw Bank* on the ground that the appellant was deemed to be an "affected person" under O LIII r 4(1) because it had acquired a right *before* the *ex parte* order was made whereas in the present case, CLK's WSS was issued *after* CSC's WSS. In my view, this distinction is inconsequential. The question in *Chung Khiaw Bank w*as whether the applicant was affected by the *ex parte* order; that is also the question in the present case. It is clear that as a competing creditor, CLK is affected by the Order.

18 In conclusion, I am of the view that CLK has *locus standi* under O 32 r 6 to make this present application. I must emphasise that this application to set aside the Order is not an appeal. In permitting *ex parte* orders to be set aside, O

32 r 6 recognises that an *ex parte* order is provisional in nature and is made upon hearing one party only: *Karaha Bodas* at [19]–[20].

Whether the Order should be set aside

19 In making the Order, Edmund Leow JC decided that a joint tenant's interest can be attached and taken in execution under a WSS. His Honour chose to depart from the High Court decision in *Malayan Banking Bhd v Focal Finance Ltd* [1998] 3 SLR(R) 1008 ("*Malayan Banking*") which decided otherwise. Before I proceed to consider both decisions, it would be useful to first describe the nature of a joint tenant's interest in land.

Nature of a joint tenant's interest

20 In a joint tenancy, all the joint tenants together own the whole property. Joint tenants have rights between each other, but against the world they are seen as one owner. No one joint tenant holds any specific or distinct share of the property. The interest of each joint tenant is identical and lies in the whole of the property. The hallmark of a joint tenancy is the right of survivorship. See *Goh Teh Lee v Lim Li Pheng Maria and others* [2010] 3 SLR 364 ("*Goh Teh Lee*") at [11]; Tan Sook Yee, Tang Hang Wu & Kelvin FK Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) ("*Principles of Singapore Land Law*") at para 9.5.

21 Because each joint tenant's interest in the property is indistinguishable, joint tenants have to act jointly to effectively bind the estate which they hold jointly. Every joint tenant must partake in any dealings with the whole legal estate before such dealings may effectively bind the entire estate since the whole estate does not reside in a single joint tenant. Therefore, although a joint tenant

is entitled to the whole of the interest in the property, he cannot sell the property without the agreement of all the joint tenants. See *Goh Teh Lee* at [17].

22 However, a joint tenant can sever the joint tenancy and if he does so, a tenancy in common would be created. Severance can only take place during the joint tenant's lifetime because of the right of survivorship. A tenant in common owns a specific but undivided share in the property which he can deal with and sell without the need for the agreement of his other co-owners. It is accepted that an interest held by a tenant in common can be seized under a WSS.

23 The mere registration of a WSS over land held under a joint tenancy does not sever the joint tenancy: *Malayan Banking* at [18]; the GD at [9]; *Principles of Singapore Land Law* at para 9.43, also referred to at [18] of the GD. Generally speaking, a joint tenancy may be severed by an act of a joint tenant operating on his own share, mutual agreement or a sufficient course of dealing: *Sivakolunthu Kumarasamy v Shanmugam Nagaiah and another* [1987] SLR(R) 702 ("*Sivakolunthu*") at [11], citing *Williams v Hensman* (1861) 1 J & H 546 at 556.

The decision in Malayan Banking

24 In *Malayan Banking*, the High Court set aside a WSS that was registered against the interest of one joint tenant of the property in question. Tay Yong Kwang JC (as he then was) reasoned as follows (at [15]):

> … Although joint tenancy in immovable property is an interest recognised in law, the "interest of the judgment debtor" attachable under a WSS under O 47 r 4(1)(*a*) [of the ROC] must surely be a distinct and identifiable one. *A joint tenant has no distinct and identifiable interest in land for as long as the joint tenancy subsists. To seize one joint tenant's interest is to seize also the interest of his co-owners when they are not subject to the judgment which is being enforced.* Similarly, "the interest which belongs to the judgment debtor" which may be sold in

> execution (s 135(1) LTA) must be distinct and identifiable and cannot be a joint interest held with someone not subject to the judgment and the execution. A WSS cannot therefore attach the interest of a joint tenant unless it concomitantly severs the joint tenancy.
>
> [emphasis added]

25 Tay JC went on to hold (at [18]) that registration of the WSS does not sever a joint tenancy. Consequently, Tay JC held (at [24]) that "a WSS against immovable property cannot be used to enforce a judgment against a debtor who is one of two or more joint tenants of that immovable property".

Reasons for making the Order

26 Leow JC disagreed with *Malayan Banking*, preferring instead the view expressed in Tan Sook Yee, "Execution against Co-Owned Property" [2000] Sing JLS 52 ("Tan's article (2000)") (at p 57) that even though a joint tenant does not have an undivided share of the land, he has an interest which is identifiable and capable of being determined because the interest of a joint tenant can be converted into undivided shares by alienation (see [12]–[13] of the GD). Leow JC concluded (at [13] of the GD) that:

> … 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.

27 Leow JC found further support for his conclusion in the fact that courts in other Commonwealth jurisdictions have proceeded on the assumption that an interest of a joint tenant can be taken in execution under a writ of execution over land (at [15]–[16] of the GD).

Analysis of the reasons in Malayan Banking and the GD

28 In *One Investment and Consultancy Limited and another v Cham Poh Meng (DBS Bank Ltd, garnishee*) [2016] 5 SLR 923 ("*One Investment*"), Kannan Ramesh JC (as he then was) expressed agreement (at [5]) with *Malayan Banking*.

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 QC, *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.

30 The GD does not directly address this question. Leow JC's conclusion was that a joint tenant's interest can be attached under a WSS because the joint tenancy will be severed when the sheriff subsequently sells the land pursuant to the WSS (see [26] above). As stated earlier, Leow JC relied on the view expressed in Tan's article (2000) at pp 56–57, which states as follows:

> The writ of seizure and sale gives the judgment creditor no interest in the land seized. It would be logical therefore, to conclude that there is no severance. But it does not follow from this that the interest, which a joint tenant does have in the land, cannot be seized. It is submitted that severance 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 …
>
> [emphasis added]

31 The proposition in both the GD and the above passage is that although a joint tenant does not have an undivided share, his interest can be seized under a WSS because it will be converted into an undivided share when the joint tenancy is *subsequently* severed. I respectfully disagree with this proposition for three reasons.

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 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.

35 A judgment creditor may take only property to which the judgment debtor is beneficially entitled: Tan's article (2000) at p 54. This is logical and is also recognised in s 135(1) of the LTA, which provides that 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". The judgment creditor cannot have greater rights than what the judgment debtor has. Therefore, absent statutory powers, the sheriff cannot sell property held under a joint tenancy without the agreement of all the joint tenants.

36 Leow JC expressed the view (at [22] of the GD) that "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". I respectfully disagree.

37 Order 47 r 5(*g*) of the ROC provides as follows:

> **Sale of immovable property (O. 47, r. 5)**
>
> **5.** Sale of immovable property, or any interest therein, shall be subject to the following conditions:
>
> …
>
> (*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.

38 In my opinion, O 47 r 5(*g*) does not allow the court to order a sale of the property against the wishes of the other joint tenants. It merely permits the sheriff to apply to the court for directions *in connection with the sale of immovable property*. In other words, O 47 r 5(*g*) comes into play only where the sheriff has the power to sell the property in the first place.

39 I also disagree with CSC's submissions that either the judgment creditor or the sheriff can apply for sale of the property in lieu of partition. Section 18(2) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") read with para 2 of the First Schedule provides that the High Court shall have:

> Power to partition land and to direct a sale instead of partition in any action for partition of land; and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part of it to be sold, and to give all necessary and consequential directions.

40 The history of this provision was comprehensively reviewed in *Abu Bakar v Jawahir* [1993] 1 SLR(R) 865 at [7]–[17]. It seems to me that the right to apply for partition and the right to apply for sale in lieu of partition are rights given to co-owners. The WSS does not make the judgment creditor a co-owner. Neither does registration of the WSS; the general property and interest in the property remains with the debtor until the execution sale takes place: *United Overseas Bank Ltd v Chia Kin Tuck* [2006] 3 SLR(R) 322 at [14]. In my view, neither the judgment creditor nor the sheriff is entitled to seek either partition of the property seized under a WSS or sale in lieu of partition. I find support for this view in the observation in Tan's article (2000) at p 58 that a judgment creditor would have to persuade the judgment debtor to ask for a sale in lieu of partition.

41 Leow JC also relied on the practice in other Commonwealth jurisdictions. However, as his Honour noted (at [15] of the GD), 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 E24), which was first enacted in 1957, expressly permits the seizure and sale of property held in joint tenancy. The section reads as follows:

> **Sheriff may sell any lands of execution debtor**
>
> **9.** (1) The sheriff to whom a writ of execution against lands is delivered for execution may seize and sell thereunder the lands of the execution debtor, including any lands whereof any other person is seized or possessed in trust for the execution debtor and including any interest of the execution debtor in lands 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.

Conclusion on CSC's WSS

42 The decision in *Malayan Banking* has been understood to be the law in Singapore since 1998 and in my respectful view, it remains good law.

43 Accordingly, I set aside the Order and CSC's WSS which was issued pursuant to the Order.

Status of CLK's WSS

44 If follows from the above that CLK's WSS was also ineffective in attaching the Debtor's interest in the Property unless the joint tenancy had been severed before CLK's WSS was issued.

45 Under s 53(5) of the LTA, a joint tenant may "sever a joint tenancy … by an instrument of declaration in the approved form and by serving a copy of the instrument of declaration personally or by registered post on the other joint tenants".

46 Section 53(6) provides as follows:

> Upon the registration of the instrument of declaration which has been duly served as required by subsection (5), the respective registered estates and interests in the registered land shall be held by the declarant as tenant-in-common with the remaining joint tenants, and the declarant shall be deemed to hold a share that is equal in proportion to each of the remaining joint tenants as if each and every one of them had held the registered land as tenants-in-common in equal shares prior to the severance.

47 Lim had served his instrument of declaration by way of advertisement (see [6] above) but had not registered it as required under the LTA. Clearly therefore there was no severance under the LTA.

48 However, CLK submitted that:

(a) service of Lim's instrument of declaration was sufficient to sever the joint tenancy; and

(b) alternatively, severance may be effected in equity by service of a unilateral declaration.

Whether service of Lim's instrument of declaration severed the joint tenancy

49 CLK relied on *Diaz Priscillia v Diaz Angela* [1997] 3 SLR(R) 759 ("*Diaz*"). In that case, the appellant ("Priscillia") and the respondent ("Angela") were sisters. Their mother ("M") bought a house with Priscillia as joint tenants. In November 1994, M signed a declaration under s 53(5) of the LTA, declaring her intention to sever the joint tenancy and hold the property as tenant in common with Priscillia. The instrument of declaration was served on Priscillia but it was not registered. M left her entire estate to Angela. After her death, Angela lodged a caveat claiming an interest as beneficial owner as tenant in common of an undivided half share in the house. Priscillia contested the caveat on the ground that the severance was not effective and the entire property had devolved to her under the rule of survivorship.

50 The Court of Appeal noted (at [24]) that:

(a) the purpose of sub-ss (5) and (6) of s 53 of the LTA was to enable a joint tenant to sever the joint tenancy without obtaining the consent of the other joint tenants; and

(b) registration of the instrument of declaration required the duplicate certificate of title to be produced and a joint tenant will not be able to sever his tenancy if the duplicate certificate of title is in the hands of another joint tenant or other person (*eg*, a mortgagee) who refuses to release it.

51 The Court of Appeal then held that signing and serving the instrument of declaration under s 53(5) of the LTA is effective to sever the joint tenancy "as between the joint tenants"; however, until registration is completed, the severance does not affect third parties (at [17] and [25]).

52 The difficulties with the distinction drawn in *Diaz* have been commented upon: see Barry C Crown, "Severance of a Joint Tenancy" [1998] Sing JLS 166 ("Crown's article (1998)") and Barry C Crown, "Developments in the Law of Co-Ownership" [2003] Sing JLS 116 ("Crown's article (2003)").

53 In 2001, the LTA was amended and, among other things, s 53(8) was enacted. Section 53(8) provides as follows:

> Where an application to register an instrument of declaration is made under this section, the Registrar may dispense with production of the document of title on such terms as the Registrar thinks fit and register the instrument if he is satisfied that the applicant is unable to produce the document of title on the basis that he is unable to procure it despite his best efforts.

54 Counsel for CLK informed me that the reason for s 53(8) is not apparent from the parliamentary debates. However, it has been argued that s 53(8) removes the basis of the decision in *Diaz* and that the doctrine of severance acting only *inter partes* is no longer part of Singapore law: Crown's article (2003) at p 120. Crown concluded that severance under the LTA will only occur upon registration of the instrument of declaration.

55 I agree with the views expressed in Crown's article (2003). In any event, I do not think that *Diaz* helps CLK's case. As *Diaz* itself recognised, until the instrument of declaration is registered, the severance does not affect third parties. In the present case, CLK was (and still is) a third party. Insofar as CLK was concerned, the joint tenancy had not been severed when he obtained his WSS.

Whether a unilateral declaration can sever a joint tenancy

56 CLK next referred me to several English cases and submitted that the law in England, before the Law of Property Act 1925 (c 20) (UK) ("LPA 1925")

was enacted, was that severance in equity may be effected by service of a unilateral declaration of intention to sever.

57 As mentioned earlier, one of the ways of severing a joint tenancy is by an act of a joint tenant operating on his own share (see [23] above). In *Hawkesley v May and Others* [1956] 1 QB 304 ("*Hawkesley*"), Havers J stated (at 313), *obiter*, that such an act "includes a declaration of intention to sever by one party". *Hawkesley* was followed *In re Draper's Conveyance* [1969] 1 Ch 486 ("*Draper's Conveyance*"). Both decisions were criticised in a case note in the *Law Quarterly Review* at 84 LQR 462 ("the LQR Case Note") as being "contrary to principle and authority" (at p 463). The author of the case note also questioned the need for the established mode of severance by mutual agreement if a unilateral declaration sufficed.

58 In *Nielson-Jones v Fedden and Others* [1975] Ch 222 ("*Nielsen-Jones*"), the court disagreed with *Hawkesley* and *Draper's Conveyance* (at 236F–237B). Walton J agreed with the views stated in the LQR Case Note and added that s 36(2) of the LPA 1925 would be wholly otiose if severance by unilateral declaration were possible. Subsequently, in *Burgess v Rawnsley* [1975] Ch 429 ("*Burgess*"), Lord Denning disagreed with *Nielson-Jones* and took the view that s 36(2) of the LPA 1925 was declaratory of the law as to severance by notice (at 439H–440C). However, Browne LJ and Sir John Pennycuick disagreed with Lord Denning.

59 In *Harris and Another v Goddard and Others* [1983] 1 WLR 1203 ("*Harris*"), a differently constituted Court of Appeal was of the view that before 1925, severance by unilateral action was *only* possible when one joint tenant disposed of his interest to a third party (at 1209B). Dillon LJ was of the view

that the decision in *Draper's Conveyance* was correct only in so far as it was based on s 36 of the LPA 1925 (at 1210C–D).

60 What these English cases show is that it cannot be said to be settled law in England that before 1925, a joint tenant could sever by unilateral action (other than by way of sale). For myself, I find the reasoning in *Nielson-Jones*, *Harris* and the LQR Case Note more persuasive. In any event, the law in Singapore has been clearly settled by the Court of Appeal in *Sivakolunthu*. In that case, the Court of Appeal held (at [14]) that "it is not the law in Singapore that a unilateral declaration of intention to sever a joint tenancy, when communicated to the other joint tenant, has the effect of severing it into a tenancy in common". Although s 53 of the LTA was subsequently enacted in 1993 to give joint tenants the right to unilaterally sever a joint tenancy, *Sivakolunthu* represents the law in Singapore where the requirements of s 53 of the LTA are not met. As discussed earlier (see [47] above), the requirements of s 53 were not met in the present case.

Conclusion on CLK's WSS

61 Accordingly, CLK's WSS was also ineffective in attaching the Debtor's interest in the Property.

Conclusion

62 The writs of seizure and sale obtained by both CLK and CSC are ineffective to attach the Debtor's interest as a joint tenant in the Property.

63 Therefore, the sum of $623,341.50 forms part of the Debtor's estate in bankruptcy and is to be paid to the trustee in bankruptcy.

64 As Leow JC noted at [23] of the GD, it may be unfair to a judgment

creditor that he cannot enforce his judgment against a joint tenant's interest in immovable property. I have some sympathy for that view. However, as stated above, as a matter of legal principle, a joint tenant's interest cannot be taken in execution under a WSS. In my view, legislative intervention is necessary if this is to be changed.

65 As CLK has succeeded in setting aside the Order and CSC's WSS, I award him costs fixed at $15,000 plus disbursements to be fixed by me if not agreed.

Chua Lee Ming
Judge

Chan Wai Kit Darren Dominic and Hirono Eddy (Characterist LLC)
for the plaintiff;
Chia Soo Michael and Hany Soh Hui Bin (MSC Law Corporation)
for the defendant.

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1 Chan Shwe Ching's 1st Affidavit dated 16 September 2016 ("CSC 1st Affidavit"), pp 32–33.
2 CSC 1st Affidavit, pp 35–45.
3 Chan Lung Kien's 2nd Affidavit dated 6 October 2016 ("CLK 2nd Affidavit"), para 3 and p 7.

[4] Chan Lung Kien's 1st Affidavit dated 9 September 2016 ("CLK 1st Affidavit), para 6 and pp 14–15.
[5] CLK 1st Affidavit, para 6 and pp 26–28.
[6] CSC 1st Affidavit, pp 67–68 and 83.
[7] CSC 1st Affidavit, pp 119–120.
[8] CLK 1st Affidavit, para 6 and pp 29–33.
[9] CLK 1st Affidavit, para 6 and pp 38–39.
[10] CLK 1st Affidavit, para 6 and pp 35–36.