IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 65

Suit No 770 of 2016
(Registrar's Appeal No 339 of 2018)

Between

Ong Boon Hwee

… *Appellant*

And

(1) Cheah Ng Soo
(2) Phoey Kaw Moi

… *Respondents*

JUDGMENT

[Civil Procedure] — [Judgment and orders] — [Enforcement] — [Writs of seizure and sale] — [Joint tenancy]

TABLE OF CONTENTS

Ong Boon Hwee
v
Cheah Ng Soo and another

[2019] SGHC 65

High Court — Suit No 770 of 2016 (Registrar's Appeal No 339 of 2018)
Chan Seng Onn J
22 January 2019; 1 February 2019

12 March 2019 Judgment reserved.

Chan Seng Onn J:

Introduction

1 In recent times, there have been several conflicting High Court ("HC") decisions dealing with the question of whether a joint tenant's interest in immovable property is exigible to a Writ of Seizure and Sale ("WSS"). While the court in *Malayan Banking Bhd v Focal Finance Ltd* [1998] 3 SLR(R) 1008 ("*Malayan Banking*") and *Chan Lung Kien v Chan Shwe Ching* [2017] SGHC 136 ("*Chan Lung Kien*") decided in the negative, two other HC decisions, namely, *Chan Shwe Ching v Leong Lai Yee* [2015] 5 SLR 295 ("*Leong Lai Yee*") and *Peter Low LLC v Higgins, Danial Patrick* [2018] 4 SLR 1003 ("*Peter Low*") took a contrary position.

2 In this judgment, I detail my reasons for finding that a joint tenant's interest in land is exigible to a WSS.

Facts

3 On 8 March 2018, Cheah Ng Soo and Phoey Kaw Moi (collectively "the Plaintiffs") entered into a consent judgment ("the Judgment") with Chan Shwe Ching ("the Defendant"), whereby the Defendant was to pay (i) S$255,000.00 and interest thereon to Cheah Ng Soo, and (ii) S$115,000.00 and interest thereon to Phoey Kaw Moi.[1]

4 To enforce the Judgment, the Plaintiffs sought a WSS in respect of 32 Chwee Chian Road Singapore ("the Property"), which was subject to a joint tenancy between the Defendant and her husband, Ong Boon Hwee ("the Appellant").

5 On 14 June 2018, the Plaintiffs obtained an order to attach the Defendant's interest in the Property in satisfaction of the Judgment ("the Order").[2] Faced with this, the Appellant, who was not a judgment debtor, filed an application (Summons 4783 of 2018) to set aside the Order.[3]

6 On 6 December 2018, following the decision in *Peter Low* and the reasons therein, the Assistant Registrar dismissed the Appellant's application. The Appellant appealed.

The decision in *Malayan Banking*

7 Before detailing the parties' arguments, it is helpful to summarise the decisions. In this regard, *Malayan Banking* appears to be the first local case which dealt squarely with the issue at hand (*Peter Low* at [64]).

1 HC/JUD 140/2018 (Consent Judgment) at [1] and [3].

2 HC/SUM 2733/2018 (Registrar's Orders) dated 14 Jun 2018; HC/WSS 38/2018 (WSS) dated 29 August 2018.

3 HC/SUM 4783/2018 (Summons to Set Aside WSS) dated 12 October 2018.

8 In *Malayan Banking*, Tay Yong Kwang JC (as he then was) ("Tay JC") held that a WSS against immovable property could not be used to enforce a judgment against a debtor who was one of two or more joint tenants of that property (*Malayan Banking* at [24]). Tay JC reasoned that the interest of the judgment debtor attachable under a WSS must surely be a distinct and identifiable one, and since a joint tenant holds no distinct and identifiable share in land while the joint tenancy subsists, a WSS cannot attach to the interest of a joint tenant unless it concomitantly severs the joint tenancy (*Malayan Banking* at [15]).

9 Tay JC did not think that a WSS concomitantly severs a joint tenancy. While he acknowledged the Court of Appeal's ("CA") observation in *Sivakolunthu Kumarasamy v Shanmugam Nagaiah and another* [1987] SLR(R) 702 ("*Sivakolunthu*") at [39] that "[i]n principle, there is no reason why a court order may not have such an effect [of severing a joint tenancy]", Tay JC observed that a WSS against land does not necessarily result in its sale. Indeed, even after a WSS over land is granted, the sale may be postponed or subsequently withdrawn (*Malayan Banking* at [17]; see Rules of Court (Cap 322, R5, 2014 Rev Ed) ("ROC") O 47 rr 5(*c*) and 9).

10 Accordingly, he viewed that "it would be creating a fine mess to hold that a WSS when registered severs a joint tenancy" since the WSS may not be given full effect. In such instances, it would then be unclear whether the joint tenants revert back to being joint tenants (*Malayan Banking* at [18]). Tay JC also observed that his holding accorded with the legal position in Canada that the delivery of a writ of execution does not by itself amount to severance (*Malayan Banking* at [19]–[20]).

The decisions in *Leong Lai Yee* and *Chan Lung Kien*

11 The holding in *Malayan Banking* remained undisputed locally for almost 20 years, until 2015 when Edmund Leow JC ("Leow JC") held in *Leong Lai Yee* that a joint tenant's interest in property was exigible to a WSS.

12 In coming to his decision, Leow JC observed 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, because while 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". Hence, when the property is sold, the joint tenant will be entitled to his share of the property (*Leong Lai Yee* at [11]–[12]). Leow JC also compared the WSS to a receivership (at [14]):

> [T]he challenge of having to particularise the exact interest that the judgment creditor is entitled to similarly arises in the appointment of a receiver, which was the alternative method of enforcing a judgment debt suggested in *Malayan Banking*... [However,] even if a receiver were to be appointed, the receiver cannot receive more rent and profit than what the joint tenant is entitled to, and hence his exact "share" of the joint tenancy has to be determined. It is difficult to see why the situation involving a WSS of a joint tenant's interest in the property should be any different.

13 Leow JC's proposition, as Chua Lee Ming J ("Chua J") observed shortly after in *Chan Lung Kien* at [31], was 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" [emphasis in original] ("Leow JC's proposition"). Leow JC found further support for his conclusion from how other Commonwealth jurisdictions have proceeded on the assumption that a joint tenant's interest is exigible to a writ of execution over land (*Leong Lai Yee* at [15]–[16]).

14 However, Chua J disagreed with Leow JC's proposition because it focused "not on what is being seized when the WSS is issued but on what can be seized *subsequently* upon severance of the joint tenancy" (*Chan Lung Kien* at [32]). This presupposes that until the joint tenancy is severed, there is nothing for the WSS to latch onto. In Chua J's view, before the court makes an order for a WSS, it must be satisfied that there is an interest under the WSS that is capable of being seized. It cannot be an answer to say that upon a *subsequent* severance (*eg,* through a sale of the property), the joint tenant's interest will be converted into that of a tenant in common which is capable of being seized under a WSS (*Chan Lung Kien* at [33]).

15 Therefore, Chua J considered the decision in *Malayan Banking* to be good law in Singapore, and held that a WSS cannot attach to a joint tenant's interest in immovable property (*Chan Lung Kien* at [42]).

16 A natural corollary of his decision was that, like Tay JC, Chua J held that a WSS order *does not* concomitantly sever the joint tenancy (*Chan Lung Kien* at [29]), such that the WSS has something to latch onto. If this view is adopted, a joint tenant's interest in immovable property would not be exigible to a WSS.

The decision in *Peter Low*

17 In *Peter Low,* Pang Khang Chau JC ("Pang JC") embarked on a comprehensive review of the history of the WSS in Singapore and the position in other Commonwealth jurisdictions before deciding that a WSS can be enforced against a joint tenant's interest in land.

18 The salient points of the *Peter Low* decision are as follows:

(a) In England, money judgments could be executed against the interest of a joint tenant in land since at least the 17th century through writs of *elegit* (*Peter Low* at [17]–[20]).

(b) Writs of *elegit* were replaced by the WSS in Singapore through the Straits Settlement Civil Procedure Ordinance 1878 (Ordinance No 5 of 1878) ("CPO 1878"). In subsequent legislation that replaced the CPO 1878, the interest of a joint tenant in land was never expressly excluded from the reach of the WSS. Indeed, the draftsman of the Land Titles Ordinance 1956 (Ordinance No 21 of 1956) ("LTO") that eventually became the current Land Titles Act (Cap 157, 2004 Rev Ed) ("LTA"), noted in his Commentary (John Baalman, *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) that the LTO was not intended to render inapplicable Australian decisions which held that a joint tenant's interest could be taken under a writ. Australian jurisprudence was persuasive given that the LTA was derived from the Australian Torrens system (*Peter Low* at [22]–[35]).

(c) In every jurisdiction surveyed by Pang JC (which included England, Australia, Hong Kong, Canada, Ireland, New Zealand, and a number of Caribbean jurisdictions), a joint tenant's interest in land could be taken in execution of money judgments (*Peter Low* at [37]–[55]).

(d) Most importantly, in response to the decisions in *Malayan Banking* and *Chan Lung Kien* that disallowed the attachment of a WSS on a joint tenant's interest as a joint tenant holds "no distinct and

identifiable interest in land", Pang JC noted at [77] of his judgment, after surveying Australian authorities, that

> [T]he court is not compelled to focus only on one aspect [of a joint tenancy] (that a joint tenant holds the whole with the other joint tenant 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***). 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 in italics and bold italics]

Since a joint tenant can sever the joint tenancy without the prior consent of the other joint tenant(s), a joint tenant's interest is sufficiently distinct and identifiable to be seized by a WSS (*Peter Low* at [88]). In this regard, severance occurs upon registration of a WSS against a joint tenant's interest (*Peter Low* at [97]).

The main issue

19 I now turn to the main issue of whether a WSS can latch onto a joint tenant's interest in land.

Historical overview of execution of money judgments against land

20 As mentioned at [18(b)] above, following a historical survey, Pang JC concluded that "[p]rior to the decision in *Malayan Banking* … all relevant authorities appear to support the view that, under Singapore law, the interest of a joint tenant in land was exigible to execution" (*Peter Low* at [36(c)]). Having considered the authorities, I agree with Pang JC's finding. I elaborate.

Execution of money judgments against a joint tenant's interest in land

21 In 13th century England, a money judgment could be satisfied through either a writ of *fieri facias* over goods and chattels, which used the proceeds of the sale of the judgment debtor's goods and chattels to satisfy the judgment, or a writ of *levari facias*, which enabled the sheriff to receive the rents and profits of the judgment debtor's lands (William Blackstone, *Commentaries on the Laws of England*, vol 3 (A Strahan, 15th Ed, 1809) ("*Blackstone's Commentaries*") at p 417).

22 In 1285, to remedy the inadequacies of the writs of *fieri facias* (which only extended to goods and chattels) and *levari facias,* the writ of *elegit* was introduced via the Statute of Westminster II (13 Edward I, c 24) (UK).[4] Under this writ, the sheriff could first deliver the judgment debtor's goods and chattels to the judgment creditor in part satisfaction of the debt.[5] If the goods were insufficient, then one half of the judgment debtor's freehold land could also be delivered to the judgment creditor. The moiety of land would be held by the judgment creditor until the rents and profits received from the land were sufficient to satisfy the judgment *or* until the judgment debtor's interest in the land had expired (*Blackstone's Commentaries* at pp 418–419).[6]

4 Appellant's Bundle of Authorities ("ABOA") Tab 2.

5 ABOA Tab 3.

23 In *Lord Abergavenny's case* (1607) 6 Co Rep 78b,[7] judgment was obtained by the plaintiff against one Margaret Pool, who held the subject plot of land in joint tenancy with her sister, Frances Pool. The judgment was obtained in 1592. On 24 May 1595, Margaret released all her estate and right in the said land to Frances, and therefore ceased to be a joint tenant to the land. Thereafter, on 27 June 1595, the plaintiff sought execution of the judgment by a writ of *elegit*. It was held that Margaret's share in the land was charged to the plaintiff's execution once he had obtained a judgment against her, and that her act of transferring her interest in the land to Frances could not defeat the plaintiff's execution. Accordingly, notwithstanding the prior transfer, the writ of *elegit* attached to Margaret's half share in the land in satisfaction of the judgment debt.

24 While the issue of Margaret's joint tenancy was not considered by the court, it is implicit in the judgment that the law of England as it stood when the case was decided allowed a joint tenant's interest in land to be taken in execution of a judgment by a writ of *elegit*.

25 In this regard, the Appellant argued that *Lord Abergavenny's case* is more akin to the principle enshrined in ss 98–100 of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("Bankruptcy Act"), which allows the court to invalidate an unfair preference or undervalue transaction and restore the parties' position to what it would have been but for the transaction.[8] This is similar in effect to what was done in *Lord Abergavenny's case*, where the court disregarded Margaret's transfer of her interest in the land to ensure that the plaintiff could enforce the judgment against her.

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6 ABOA Tab 3.

7 ABOA Tab 5.

8 Appellant's Written Submissions ("AWS") at [19].

26 However, even if I accept that *Lord Abergavenny's case* reflects the principle enshrined in the Bankruptcy Act, this would mean that the transfer by Margaret was undone and Margaret was regarded as a joint tenant of the land for enforcement purposes. If this were the case, the fact that the plaintiff in *Lord Abergavenny's case* could attach the writ of *elegit* to Margaret's half share must imply that there was nothing preventing a joint tenant's interest in land from being taken in execution of a judgment. Hence, I find that *Lord Abergavenny's case* supports the finding that a joint tenant's interest in land is exigible to a writ.

Writ of elegit *replaced by WSS in Singapore*

27 The writ of *elegit* became part of Singapore law through the Second Charter of Justice of 1826. In 1878, it was repealed and replaced by the WSS locally through the CPO 1878 (Tan Sook Yee, "Execution Against Land in Singapore – Some Problems" [1987] 1 MLJ xv at xv–xvi). Barring a break between 1970 and 1991 when the WSS was replaced by charging orders, the WSS has remained the mode of execution against immovable property since 1878 (*Peter Low* at [22]–[33]).

28 However, as the Appellant pointed out, unlike the WSS, the writ of *elegit* merely enabled the judgment creditor to receive the proceeds of the judgment debtor's land, and did not allow the seizure and sale of said land to satisfy the judgment debt.[9] Thus, the Appellant argued that the WSS was promulgated under "an entirely new statute" and that Pang JC was "fundamentally incorrect" to state that the writ of *elegit* was replaced by the WSS.[10]

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9 AWS at [26].

10 AWS at [26].

29 Notwithstanding the fundamental differences between the writ of *elegit* and a WSS, it remains that the writ of *elegit* was introduced as a means of enforcement over the judgment debtor's land. Hence, that it could be levied against a joint tenant's interest in land supports the proposition that judgment debts could be enforced against a joint tenant's interest in land.

The writ of elegit *was likely not the progenitor of the WSS*

30 Furthermore, while I agree with the Appellant that the writ of *elegit* was likely not the progenitor of the WSS, this does not assist the Appellant's case.

31 During the subsistence of the writ of *elegit*, the judgment creditor was merely a tenant by *elegit*, and could not seize the land in satisfaction of the debt (*Blackstone's Commentaries* at p 419).[11] This could be contrasted with the writ of *fieri facias* over goods and chattels, which was available to a judgment creditor prior to the introduction of the writ of *elegit.* Under the writ of *fieri facias*, the judgment creditor could sell the goods and chattels of the judgment debtor (*Blackstone's Commentaries* at p 417).

32 It is therefore evident that a writ of *elegit,* while a writ of execution over land, was materially different from the WSS of present-day as it did not enable the judgment creditor to satisfy the judgment through a sale of the debtor's land.

33 Therefore, as Professor Tan Sook Yee observed, the WSS was likely modelled after the writ of *fieri facias* in New South Wales, Australia, which was materially similar to a WSS and could be used for execution against all kinds of property, and was not restricted to goods and chattels (Tan Sook Yee, "Execution Against Co-Owned Property" [2000] SJLS 52 at 53). Hence, it may

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[11] ABOA Tab 3.

be correct to say, as the Appellant posits, that the writ of *elegit* was not the progenitor of the WSS.

Commonwealth authorities uniformly demonstrate that a joint tenant's interest in land can be taken in execution of money judgments

34 Nonetheless, as Pang JC noted, in Australia, it has been consistently accepted that a money judgment can be executed against a joint tenant's interest in land. Summarising the authorities (*Peter Low* at [41]):

> (a) Dixon J said in *Wright v Gibbons* that (at p 331):
>
> > … Execution on a judgment for debt against one joint tenant bound his aliquot share and continued to do so in the hands of the survivor if the execution debtor afterwards died.
>
> (b) Meagher JA also stated in *Guthrie*, as one of ten principles of law regarding joint tenancies, that (at p 680):
>
> > A judgment creditor, or a secured creditor, of one joint tenant may execute against that joint tenant's *aliquot* share (*Wright v Gibbons* (at 331) per Dixon J), and when that happens a severance of the jointure must be effected.
>
> (c) More recently, Kirby and Crennan JJ, who formed part of the majority of the High Court of Australia in *Director of Public Prosecutions (Vic) v Le* (2007) 240 ALR 204, positively cited (at [100]) the authority of P J Butt, *Land Law* (Sydney, Law Book Co, 5th Ed 2006) for the proposition that:
>
> > … for the purposes of severance, 'a joint tenant is regarded as having a *potential* share in the land commensurate with that of the other joint tenants'. Alienation of a joint tenant's interest in land is one method of severance. This can occur as a result of a legal process. For example, **taking a joint tenant's interest in land in execution of a judgment will sever a joint tenancy** …
>
> [emphasis in italics in original; emphasis added in bold]

35 In fact, in the local Straits Settlements Case of *Muthoo Karuppan Chitty v Onan & ors, Onan, executor of Rajeedin deceased*, Suit No 688 of 1907,

Hyndman-Jones CJ interpreted "any interest therein" in s 619(1) of the Straits Settlements Civil Procedure Code 1907 (Ordinance No 31 of 1907) ("CPC 1907") as including "the interest of a tenant in common, a *joint tenant*…" [emphasis added] (see J Bernard Weiss, Bashir Mallal & Nazir Mallal, *The Straits Settlements Practice* (Malayan Law Journal Office, 1937) at p 296). Section 619(1) of CPC 1907 referred to the seizure of "immovable property *or any interest therein*", [emphasis added] and is materially similar to O 47 r 4(1) of the ROC today, which begins with "[w]here the property to be seized consists of immovable property *or any interest therein*…" [emphasis added].

36 Hence, *even if* the writ of *elegit* was not the progenitor of the WSS, it remains that, until *Malayan Banking*, Australian and local authorities appeared to show that the interest of a joint tenant over land could be taken under a writ. This is bolstered by Pang JC's extensive review of decisions in other Commonwealth jurisdictions, namely, England, Hong Kong, Canada, Ireland, New Zealand and several Caribbean nations, all of which allow for the same (see *Peter Low* at [37]–[53]). Indeed, the Appellant has not submitted any authorities showing otherwise.

37 Be that as it may, 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. For example, in England, because the authority of *Lord Abergavenny's case* has never been doubted, modern authorities continue to conclude without discussion that "involuntary severance results from the making of a charging order … in respect of a debtor joint tenant's beneficial interest in land" (Gray and Gray, *Elements of Land Law* (Oxford University Press, 5th Ed, 2009) at para 7.4.81). It will be recalled that *Lord Abergavenny's case* did not deal squarely with the issue of severance. Instead it stands

predominantly for the proposition that where judgment is given against one of two joint tenants and the debtor-joint tenant subsequently releases his interest to the other joint tenant before execution, such release does not bar the judgment creditor's execution unless the releasing joint tenant died before execution.[12]

38 Therefore, considering how the historical survey and Commonwealth authorities appear to support Pang JC's holding in *Peter Low*, the correctness of *Malayan Banking* (and *Chan Lung Kien*) must be properly reviewed to determine which line of authorities ought to be followed.

A joint tenant's interest is exigible to a WSS

Consistency with the draftsman's intention

39 John Baalman, the draftsman of the LTO, expressly sought to ensure that a joint tenant's interest could be taken under a writ notwithstanding the introduction of the LTO. This can be gleaned from his observations in relation to s 106(1) LTO, which is substantially similarly to s 135(1) of the LTA today (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 added in italics and bold italics]

40 In this regard, s 135(1) of the LTA provides that "[t]he *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" [emphasis added]. As is clear from Baalman's Commentary, it was the drafter's intention that this "interest" included a joint-tenant's interest in land.

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12 ABOA Tab 5.

41 In response, the Appellant submits that *The Registrar-General of New South Wales v Wood* (1926) 39 CLR 46[13] ("*Registrar-General v Wood*") does not stand for as broad a proposition as Baalman appeared to think in his commentary.[14]

42 In *Registrar-General v Wood*, the husband and wife were registered proprietors holding the land as tenants by entireties. Such a form of holding was materially similar to a joint tenancy, save that it was non-severable (see *Registrar-General v Wood* at 61, per Rich J). In 1925, the Supreme Court of New South Wales issued a writ of *fieri facias* in an action in which a plaintiff obtained a judgment against the wife as a defendant. Pursuant to the writ, the sheriff sold the interest of the wife, which was duly purchased by the husband. The Registrar-General refused to register the said transfer as the wife's interest as a tenant by entireties was allegedly not liable to being taken in execution.

43 The issue before the High Court of Australia ("HCA") was whether the tenancy by entireties had been replaced by a joint tenancy by virtue of the Married Women's Property Act 1901 (NSW), as Knox CJ observed in his dissenting opinion (*Registrar-General v Wood* at 50 and 52):

> The Supreme Court [of New South Wales] has in effect decided that, by reason of the provisions of the *Married Women's Property Act* 1901, these transfers, in common with all transfers in similar terms executed after 17th April 1893, must be construed as if the words "as joint tenants" were substituted for the words "as tenants by entireties …
>
> … It is true that, by operation of the *Married Women's Property Act*, property which Mrs. Wood [the wife] acquired in 1910 or 1914 would belong to her for her separate estate. But, being entitled to have these lands conveyed to her, in which case they would have belonged to her for her separate estate, she chose to dispose of them by conveying them or procuring their

13 ABOA Tab 21.

14 AWS at [59]–[60].

> conveyance to herself and her husband as tenants by entireties, and I am unable to find any provision in the *Married Women's Property Act* which prohibited her from so doing. The result of her disposition is, in my opinion, that there is no interest in the land capable of being regarded as belonging to her for her separate estate.

44 In contrast with Knox CJ's dissenting opinion, the majority of the HCA (comprising Isaacs, Rich and Starke JJ) held that the tenancy by entireties had been so replaced by a joint tenancy. As a joint tenant, the wife's interest was exigible to a writ of *fieri facias*, and the husband's purchase of her interest was therefore proper and could be registered (*Registrar-General v Wood* at 62, per Rich J):

> In respect of estates and interests acquired during coverture after the commencement of the *Married Women's Property Act*, it is enacted that the wife is entitled to hold and dispose of all property as her separate property … The legislation known as the *Married Women's Property Act* is therefore *inconsistent with the creation of tenancy by entireties and any attempt to convey or transfer such an estate results in the* ***assurance of a joint tenancy to the spouses*** …
>
> In my opinion the appeal [against the Supreme Court of New South Wales' decision to allow the registration of the transfer of the wife's interest to the husband] should be dismissed.
>
> [emphasis added in italics and bold italics]

45 From the foregoing, it can be seen that as at 1926, the HCA had no doubt that, had the wife held her interest in the land as a joint tenant, such an interest could be taken under a writ of *fieri facias*, and her interest thereunder could thus be sold to her husband. The only disagreement between the judges in *Registrar-General v Wood* was whether the wife's interest, having been registered as a "tenant by entireties", had been transformed into a joint tenancy because of the Married Women's Property Act. The majority thought that her interest had been so transformed, and therefore upheld the Supreme Court of New South Wales' decision that the sale of her interest (as joint tenant) to her husband pursuant to

the writ of *fieri facias* was appropriate and could be registered.

46 Hence, Baalman correctly relied on *Registrar-General v Wood* in his commentary for the proposition that Australian authorities allowed the interest of a joint tenant to be taken under a writ. Baalman also noted that the LTO did not seek to change such a position. 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.

Two conflicting aspects of joint tenancy

47 Nonetheless, as explained in *Chan Lung Kien* at [29], "[e]ach joint tenant holds nothing by himself; he holds the whole estate together with the other joint tenants". Therefore, unless the issuance of the WSS itself amounts to a severance of the joint tenancy, there is simply nothing for the WSS to latch onto.

48 However, as Pang JC observed in *Peter Low*, there are two conflicting aspects of a joint tenancy, each of which must be given weight. Summarising Pang JC's points:

(a) In *Wright v Gibbons* (1949) 78 CLR 313 ("*Wright*")[15] at 329–331, Dixon J noted that the principle that joint tenants do not own sufficiently distinct interests is not an unqualified one, and represents but "one of two not altogether compatible aspects of joint tenancy". The other aspect of joint tenancy which was not considered in *Malayan Banking* and *Chan Lung Kien* was that a "joint tenant has a real

[15] ABOA Tab 20.

ownership interest which is capable of immediate alienation without the consent of the other joint tenants" (*Peter Low* at [77]). This was because "joint tenants have the whole for the purpose of tenure and survivorship, while, for the purpose of immediate alienation, each has only a particular part" (*Wright* at 331).

(b) This second aspect of joint tenancy is demonstrated by *Felicity Cassegrain v Gerard Cassegrain & Co Pty Ltd* [2015] HCA 2 ("*Cassegrain*"). In *Cassegrain*, a husband fraudulently procured the conveyance of land to him and his wife as joint tenants. A question that arose was whether the husband's fraud infected his wife's interest in the land. The HCA adopted Dixon J's finding in *Wright* above, and noted that "[o]nly by recognising the necessity to qualify those statements of principle [that a joint tenant holds the whole with the other joint tenants but nothing by himself] is it possible to account for the cases of forfeiture suffered by, and execution against, one of several joint tenants" (*Cassegrain* at [48]). Hence, the court held that the wife's indefeasible title was not affected by her husband's fraud (*Cassegrain* at [55]).

(c) Given 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 (*Peter Low* at [77]).

49 Recognising the second aspect of joint tenancy (that a joint tenant has a real ownership interest which is capable of immediate alienation), it is therefore not a requirement that the WSS concomitantly severs a joint tenancy before it may attach to a joint tenant's interest in land (*cf*, *Malayan Banking* at [15]; *Chan Lung Kien* at [29]).

50 Instead, as is consistent with the LTO draftsman's intention, the WSS may attach to a joint tenant's interest in land *independent* of severance.

51 This is consistent with the broad wording of the relevant statutory provisions, which do not indicate the need for severance of the joint tenancy before the WSS may be attached for the purposes of enforcing a judgment:

(a) O 47 r 4 of the ROC allows "immovable property or *any interest* therein" to be seized without expressly excluding the interest of a joint tenant.

(b) Section 13 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") contemplates the exigibility of "all the property, movable or immovable, of whatever description" by a WSS. While certain properties such as the wages or salary of the judgment debtor cannot be seized under this provision (s 13(*c*) of the SCJA), a joint tenant's interest in property is not exempted.

(c) Section 135(1) of the LTA allows the "interest in registered land" to be "sold in execution under a writ" as long as such interest "belongs to the judgment debtor at the date of the registration of the writ". Even though the Act clearly distinguishes between the interests of a tenant-in-common and a joint tenant (see s 53 of the LTA), the interest

of the joint tenant is not excluded, as is consistent with the draftsman's intention.

52 These non-exclusory provisions may be contrasted with the position under s 51(6) of the Housing and Development Act (Cap 129, 2004 Rev Ed) and s 68(1) of the Central Provident Fund Act (Cap 36, 2013 Rev Ed), which provide for express restrictions against the use of protected property and Central Provident Fund monies to satisfy an execution.

No judicial overreach despite lack of express wording in statute

53 The Appellant argued that because there are no statutes enabling the seizure of a joint tenant's interest under a WSS, allowing for this would amount to judicial overreach.[16] I disagree.

54 The Appellant referred me to Canadian and Australian statutes that specifically provide for the attachment of the interest of a joint tenant under a writ.

55 In Saskatchewan, Canada, ss 180(3) and 180(4) of the Land Titles Act Saskatchewan 1978 c L-5 (repealed) and s 173.3 of the subsequent Land Titles Act Saskatchewan 2000 Chapter L-5.1 (collectively, the "Saskatchewan Land Titles Acts") expressly allow the attachment of a joint tenant's interest under execution, and stipulate that such execution does not effect severance.[17]

56 In Ontario, Canada, the Execution Act RSO 1950 c 120 did not specify that a joint tenant's interest may be seized via a writ of execution. Section 8 of the statute merely provided that "[t]he sheriff to whom a writ of execution

16 AWS at [72] and [78].

against lands is delivered for execution may seize and sell thereunder the lands of the execution debtor".[18] However, the statute was subsequently amended, and s 8 of the Execution Act RSO 1960 c 126 was extended to specify that it "includ[ed] any interest of the execution debtor in lands held in *joint tenancy*"[19] [emphasis added]. The added phrase has been retained till today (see Execution Act RSO 1990 c E-24 at s 9).[20]

57 However, as observed by the Supreme Court of Canada in *Maroukis v Maroukis* [1984] 2 RCS 137 at 142:[21]

> The appellant argued that due to the special nature of an interest held in joint tenancy the writs of execution did not attach to the husband's interest …
>
> This submission is based on the proposition that the creditor of one joint tenant cannot execute against the interest of his debtor until the joint tenancy is severed and a tenancy in common created. To the contrary, ***the courts have consistently ruled that the interest of a joint tenant is exigible***: see *Re Craig*, [1929] 1 D.L.R. 142 (Ont. C.A.); *Toronto Hospital for Consumptives v. Toronto* (1930), 38 O.W.N. 196 (C.A.); *Power v. Grace,* [1932] 2 D.L.R. 793 (Ont. C.A.); *Re Young* (1968), 70 D.L.R. (2d) 594 (B.C. C.A.) If any doubt was cast upon earlier authorities by *Re Tully and Tully and Klotz*, [1953] O.W.N. 661, as contended by the appellant, it was set at rest by the enactment in the year 1957 of the present s. 9 of the *Execution Act,* R.S.O. 1980, c. 146, in these terms, which now specifically include an interest in property held in joint tenancy …
>
> [emphasis added in bold italics]

58 Hence, the Canadian statutory provisions were not enabling provisions. Instead, they merely clarified that a joint tenant's interest in land was exigible to a writ of execution.

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18 Appellant's Further Bundle of Authorities ("AFBOA") Tab 48.

19 AFBOA Tab 49.

20 ABOA Tab 24.

21 AFBOA Tab 43.

59 Similarly, in Australia, the Civil Judgments Enforcements Act 2004 (Western Australia) expressly provides at ss 80(2)–80(3) that a sheriff may seize and sell property "even if the judgment debtor's saleable interest is held jointly or in common with another or others."[22]

60 However, again, this is not an enabling provision. From as early as 1926 when *Registrar-General v Wood* was decided, it was clear that the Australian courts could attach a joint tenant's interest in land under a writ of execution. The provisions served simply to consolidate the law.

61 Therefore, the court does not require a statutory provision that clearly permits it to issue a WSS against a joint tenant's interest in land before it may do so. Consideration of the Saskatchewan Land Titles Acts (at [55] above) also confirms that severance need not be a pre-requisite for a writ of execution to be attached to a joint tenant's interest in land *(contra*, *Malayan Banking* at [15]; *Chan Lung Kien* at [29]).

Chan Lung Kien (CA)

62 In further arguments, the Appellant highlighted the Court of Appeal's recent decision in *Chan Lung Kien v Chan Shwe Ching* [2018] 2 SLR 84 ("*Chan Lung Kien* (CA)").[23] There, the court declined to adopt the appellant's proposed test that a unilateral declaration that is clear, unequivocal, communicated to the other joint tenant and made public is effective to sever a joint tenancy in equity ("the proposed test") (*Chan Lung Kien* (CA) at [43]). Instead, to effect unilateral severance of a joint tenancy, the three steps as prescribed in ss 53(5) and 53(6) of the LTA must be abided by (*Chan Lung Kien* (CA) at [48]).

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22 AFBOA at Tab 57.

23 AFBOA Tab 32.

63 Given the decision, the Appellant contended that, contrary to *Peter Low* at [97], the mere registration of a WSS could not sever a joint tenancy as this would "create an additional mode of severance not set out by the Court of Appeal" in *Chan Lung Kien* (CA).[24]

64 At the outset, I note that the Court of Appeal in *Chan Lung Kien* (CA) expressly declined to opine on the issue of whether a joint tenant's interest can be taken in execution under a WSS (*Chan Lung Kien* (CA) at [13]).

65 Furthermore, as explained at [50] above, the WSS may attach to a joint tenant's interest in land *independent* of its severance. Hence, even if the registration of a WSS does not sever a joint tenancy, the WSS may still attach to the joint tenant's interest.

66 This finding is tangentially supported by the Court of Appeal's decision in *Chan Lung Kien* (CA). In that case, the court reaffirmed the traditional modes of severance recognised at common law, which are: (a) operating on his own share; (b) mutual agreement; and (c) mutual conduct or course of dealing (*Chan Lung Kien* (CA) at [19]). In relation to (a), the court noted that "operating on his own share" was widely considered to mean selling or assigning a joint tenant's own share (*Chan Lung Kien* (CA) at [19]). While "operating on his own share" did not extend to unilateral declarations by one joint tenant that the joint tenancy should be severed (*Chan Lung Kien* (CA) at [31]–[39]), it certainly contemplates the joint tenant severing the joint tenancy *unilaterally*, albeit not by a declaration. This reaffirms the second aspect of joint tenancy as considered by Dixon J and Pang JC (at [48] above), that a joint tenant has a real ownership interest which is capable of immediate alienation without the consent of the other joint tenant(s).

[24] Appellant's Further Written Submissions at [7].

67 Hence, I do not find that *Chan Lung Kien* (CA) affects my decision that a WSS can attach to a joint tenant's interest.

The Defendant has a beneficial interest in the Property

68 Having found that the WSS can attach to the Defendant's interest as a joint tenant of the Property, I must then consider whether the Defendant has any beneficial interest in the Property. Without any such beneficial interest in the Property, there would be nothing for the WSS to attach to.

69 In this regard, the Appellant submitted that the entire beneficial interest of the Property belongs to him, as he was the only person who paid for the mortgages for the Property and the Defendant had not contributed to the purchase price of the Property.[25]

70 Be that as it may, by virtue of the presumption of advancement, which applies between a husband and his wife, "the law presumes that a gift was intended" (*Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 at [56] and [70]).

71 As the Plaintiffs have adduced evidence of the strong spousal relationship between the Defendant and her husband (the Appellant),[26] and as the Appellant has not adduced evidence to the contrary, I find that the presumption of advancement has not been rebutted.

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25 Non-Party's Submissions at [46]; Ong Boon Hwee's Affidavit (12 Oct 2018) at [20]–[22]; Ong Boon Hwee's Affidavit (2 Nov 2018) at [4], [6]–[9].

26 Cheah Ng Soo's Affidavit at [13]–[14]; Phoey Kaw Moi's Affidavit at [8]–[9], and pp 10–14.

72 In the circumstances, even if the Appellant was the only one who paid for the Property, the Defendant has a beneficial interest in the Property by virtue of the presumption of advancement.

Conclusion

73 In conclusion, I find that a joint tenant's interest is exigible to a WSS. This finding is supported by the history of writs of execution over land and the broad statutory provisions regarding a WSS over land. It is also consistent with decisions in the Commonwealth to this effect, and gives effect to the LTO draftsman's intention.

74 Finally, I emphasise that in my decision, a joint tenant's interest is exigible to a WSS *independent* of the severance of the joint tenancy. I make no finding as to whether the joint tenancy is severed by a *subsequent* registration of the WSS, as Pang JC considered in *Peter Low* at [97].

75 Accordingly, I find that the Assistant Registrar was correct in holding that the Defendant's joint tenancy interest in the Property was exigible to the WSS, and dismiss the appeal.

76 I will hear the parties on costs if not agreed.

Chan Seng Onn
Judge

Lim Yee Ming and Alvan Quek (Kelvin Chia Partnership) for the appellant;
Christopher James De Souza, Lee Junting Basil and Amanda Ong (Lee & Lee) for the respondents.