# Muthukumaran s/o Varthan and another *v* Kwong Kai Chung and others [2014] SGHC 204

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| **Case Number** | : Originating Summons No 896 of 2013 |
| **Decision Date** | : 15 October 2014 |
| **Tribunal/Court** | : High Court |
| **Coram** | : Lee Kim Shin JC |
| **Counsel Name(s)** | : George Pereira (Pereira & Tan LLC) for the first and second plaintiffs; Adrian Wong and Yan Yijun (Rajah & Tann LLP) for the first and second defendants; Krishanasamy Siva Sambo and Choo Yean Lin (Tan Lee & Partners) for the third defendant. |
| **Parties** | : (1) MUTHUKUMARAN S/O VARTHAN — (2) INDIRA D/O SRINIVASA NAIDU — (1) KWONG KAI CHUNG — (2) KWONG WING YEN CATHERINE — (3) MADRAS INVESTMENT PTE LTD |

*Land – Easements*

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 111 of 2014 and Summons No 6264 of 2014 was dismissed by the Court of Appeal on 30 September 2015. See [2015] SGCA 69.]

15 October 2014

**Lee Kim Shin JC:**

**Introduction**

1 The main issue in Originating Summons No 896 of 2013 ("OS 896") was whether the owners of a two-storey shop-house, which did not have a staircase built within their unit, had an implied easement of a right of way over the staircase of the adjacent unit under s 99(1A) of the Land Titles Act (Cap 157, 2004 Rev Ed) ("the LTA").

2 On 30 June 2014, I dismissed OS 896 because the First and Second Plaintiffs (collectively "the Plaintiffs") had failed to establish that the alleged easement was set apart or appropriated on the subdivision plan that was submitted to the authorities, as required by s 99(1A) of the LTA. I ordered that the Plaintiffs pay the First and Second Defendants' costs, fixed at $10,000 plus reasonable disbursements, and the Third Defendant's costs, also fixed at $10,000 plus reasonable disbursements. I gave the Plaintiffs liberty to apply if complications arose while building a staircase in their shop-house.

3 The Plaintiffs have filed an appeal against my decision. I therefore set out the grounds for my decision.

**Background**

4 The Plaintiffs are the joint registered proprietors of the property known as No 21 Madras Street, Singapore ("No 21"). The First and Second Defendants have been the joint registered proprietors of the property known as No 23 Madras Street, Singapore ("No 23") since 16 July 2010. The Third Defendant was the registered proprietor of No 23 from 1995 to 2010 when it was

transferred to the First and Second Defendants.

5 No 21 and No 23 are part of a row of four two-storey conservation shop-houses in the Little India area (these four shop-houses, collectively, "the Properties"). The other two Properties in the row are No 17 Madras Street, Singapore ("No 17") and No 19 Madras Street, Singapore ("No 19"). Each of the Properties stands on a separate lot and has a separate Certificate of Title.

6 The Properties were all originally purchased by the Third Defendant on 22 November 1993 following a successful tender concluded on 27 August 1993 with the Singapore Government. The Third Defendant's undisputed evidence was that none of the Properties had a permanent staircase at the time the Third Defendant purchased the Properties. Rather, each of the Properties only had a bare ladder.

7 In 1995, the Third Defendant submitted plans to the Building and Construction Authority ("BCA") and the Urban Redevelopment Authority ("URA") for approval to carry out Addition and Alteration Works on the Properties. The scope of these works included:

(a) The building of two new timber staircases, one being inside No 19 and the other being inside No 23.

(a) I shall refer to the staircase inside No 23 as "the No 23 Staircase".

(b) The demolition of a portion of the firewalls on the ground floor between No 17 and No 19, and on the ground floor between No 21 and No 23, to allow access between the units at the ground level.

(c) The demolition of a portion of the firewalls on the upper floor between No 17 and No 19, and on the upper floor between No 21 and No 23, to allow access between the units at the upper level.

(b) I shall refer to the upper floors of No 21 and No 23 as "No 21A" and "No 23A" respectively.

8 The plans were approved by the BCA and the URA on 4 May 1995 and 20 June 1995 respectively. Thereafter, the Addition and Alteration Works were carried out and completed by the Third Defendant. Notably, No 17 and No 21 continued to have no staircase access to their upper floors as this was not covered by the scope of the works, but this also meant that No 17 and No 21 retained relatively larger floor areas. However, it would appear from the plans that access to No 21A could be obtained by using the No 23 Staircase and the opening between No 21A and No 23A created by the demolition of a portion of the firewalls separating them.

9 On 3 June 2004, the Plaintiffs purchased No 21 from the Third Defendant for $435,000. The transfer of No 21 to the Plaintiffs was registered on 10 November 2004. The Plaintiffs acquired No 21 subject to an existing tenancy agreement. At that time, and sometime until February 2010, the Plaintiffs' tenant was also occupying No 19. The Third Defendant claimed that when the Plaintiffs purchased No 21, the Plaintiffs were informed that there would be no staircase access to No 21A. Rather, the Plaintiffs would be required to build their own staircase. The Plaintiffs denied being informed of this.

10 What transpired between 2006 and 2010 was disputed. The Plaintiffs claimed that both they and their tenant were able to use the No 23 Staircase to gain access to No 21A without incident during this time. It was only when their tenant moved out in February 2010 that they discovered that

the lock on the doorway to the No 23 Staircase had been changed. The Plaintiffs also claimed that they discovered that the opening between No 21A and No 23A had been boarded up with wooden planks and sealed sometime in August 2010.

11 The Defendants, on the other hand, claimed that the opening between No 21A and No 23A had been boarded up since March 2006. It would appear that the Plaintiffs' tenant in No 21 was able to gain access to No 21A by using the staircase in No 19 (which the tenant was also occupying) instead.

12 It suffices to state that there was a flurry of correspondence between the Plaintiffs and the Third Defendant between February 2010 and June 2010, with the Plaintiffs asserting their right to use the No 23 Staircase and the Third Defendant denying that the Plaintiffs had such a right.

13 On 19 April 2010, the First and Second Defendants purchased No 23 from the Third Defendant for $640,000. The transfer of No 23 to the First and Second Defendants was registered on 16 July 2010.

14 Shortly after this and sometime in late July or early August 2010, the First Defendant received a call from the First Plaintiff. During the call, the First Plaintiff alleged, amongst other things, that the No 23 Staircase was a common staircase and meant to be shared by the proprietors of No 21 and No 23. The First Plaintiff demanded that he be granted access to the No 23 Staircase. The First Defendant refused to accede to the First Plaintiff's demand.

15 On 5 August 2010, the First Plaintiff wrote to the Singapore Civil Defence Fire Safety Licensing & Enforcement Unit ("the Civil Defence") to complain that he was unable to access No 21A and was concerned about fire safety issues. The Civil Defence carried out an inspection at No 23 on 11 August 2010. They found that the boarding up of the opening between No 21A and No 23A was a violation of fire safety regulations.

16 On 13 August 2010, the Civil Defence wrote to the First and Second Defendants to inform them that a fine of $500 would be imposed on them. In the same letter, the Civil Defence advised the First and Second Defendants to remove the boarding or to apply for approval if they wished to continue boarding up the opening. On 25 March 2011, the Civil Defence approved the First and Second Defendants' application for the boarding up of the opening between No 21A and No 23A.

17 On 12 April 2011, the URA wrote to the First and Second Defendants to say that the URA's approval ought to have been obtained before the opening was boarded up because No 21 was a conservation building. Nothing came of this letter eventually. The First and Second Defendants did not obtain the URA's approval.

18 On 2 August 2013, more than two years after the Plaintiffs last asserted a right of way over the No 23 Staircase, the First and Second Defendants received a letter from the Plaintiffs' solicitors saying that the Plaintiffs would be commencing proceedings against them.

19 On 8 October 2013, the Plaintiffs filed OS 896 against all three Defendants.

20 Thereafter, on 10 December 2013, the Plaintiffs' solicitors wrote to the URA to enquire whether the First and Second Defendants had since obtained the URA's approval to board up the opening. The URA replied on 16 December 2013 to indicate that the First and Second Defendants had not. The URA also stated that they had emailed the First Defendant on 26 August 2013 to suggest that he resolve the matter of the use of the No 23 Staircase with the Plaintiffs first before making a submission for

approval to seal up the opening between No 21A and No 23A.

**OS 896**

21 In OS 896, the Plaintiffs claimed, in the main, the following reliefs:

(a) A declaration that by reason of s 99(1A) of the LTA, the Plaintiffs, as owners of No 21, were entitled to an easement of a right of way over the No 23 Staircase to enable access to No 21A for all purposes and reasons.

(b) An injunction restraining the First and Second Defendants from interfering with the Plaintiffs' reasonable enjoyment of the said right of way over the No 23 Staircase.

(c) Damages for losses suffered by the Plaintiffs by reason of all three Defendants denying the Plaintiffs use of the No 23 Staircase to access No 21A.

(d) An order that the First and Second Defendants reinstate the opening between No 21A and No 23A as shown in the plan approved by the URA on 20 June 1995.

22 The pivotal issue in OS 896 was whether s 99(1A) of the LTA entitled the Plaintiffs to the easement claimed. If it did not, the Plaintiffs' claims for the other reliefs would fall away.

**My Decision**

23 Section 99 of the LTA, insofar as it is material to the case, reads:

**Implied easements for right of way and other rights shown in subdivision plan**

**99.**—(1) Where the competent authority has ***approved the development and subdivision of any land comprised in an estate*** **before or after** 1st March 1994 ***and the subdivision plan has been submitted to the competent authority*** , there shall be implied, in respect of each lot of the estate which is used or intended to be used as a separate tenement, in favour of the registered proprietor of the lot and as appurtenant thereto, all the easements referred to in subsection (1A).

(1A) The easements which shall be implied under subsection (1) are all such easements of way and drainage, for party wall purposes and for the supply of water, gas, electricity, sewerage and telephone and other services to the lot on, ***over or under the lands appropriated or set apart for those purposes respectively on the subdivision plan submitted to the competent authority*** relating to the estate, ***as may be necessary for the reasonable enjoyment of the lot and of any building or part of a building at any time thereon*** .

…

[emphasis added in bold italics]

24 It is evident from the language of s 99(1) and s 99(1A) that these statutory provisions have no application unless the competent authority has approved *both* the development and subdivision of the land over which the easement is claimed. In this regard, the subdivision plan must also be submitted to the competent authority.

25 In *Management Corporation Strata Title Plan No 549 v Chew Eu Hock Construction Co Pte Ltd*

[1998] 2 SLR(R) 934 ("*Chew Eu Hock Construction*"), the Court of Appeal clarified (at [31]) that s 99(1) of the LTA did not require both development and subdivision approvals to be given simultaneously. Hence, the Court of Appeal held that s 99(1) applied in the case before it even though development approval had been granted almost 10 years before subdivision approval. Likewise, in *Cheng-Wong Mei Ling Theresa v Oei Hong Leong* [2006] 2 SLR(R) 637 ("*Oei Hong Leong*"), the Court of Appeal reiterated (at [47]) that there was no need to show a link between subdivision approval and development approval before an easement could be implied under s 99(1).

26 On the facts of the present case, I was satisfied that the approvals the Third Defendant received from the BCA and the URA (see [7] above), for the Addition and Alteration Works to be carried out on the Properties, fell within the meaning of "development approval" under s 99(1). In this regard, I was guided by the broad definition of "development" under the Planning Act (Cap 232, 1998 Rev Ed) which includes the "carrying out of any building, engineering, mining, earthworks or other operations in, on, over or under land".

27 However, it was obvious to me that the true disagreement between parties concerned the issue of whether, and more importantly when, subdivision approval had been granted in respect of the Properties.

28 Counsel for the Plaintiffs, Mr George Pereira ("Mr Pereira"), submitted that subdivision of the land on which the Properties were situate had occurred on 19 June 1997. This was *after* the BCA and URA had approved the Third Defendant's plans to carry out the Addition and Alteration Works on the Properties. Mr Pereira said that the present case was akin to *Chew Eu Hock Construction* where subdivision had occurred after development approval was obtained (see [25] above). To make good these contentions, Mr Pereira referred me to the Certified Plan for Lot No TS 16-881P (*ie*, the lot on which No 23 was situate) dated 19 June 1997 ("the 1997 CP"). According to Mr Pereira, the 1997 CP was the subdivision plan contemplated by ss 99(1) and 99(1A) of the LTA.

29 Mr Pereira's submissions were untenable on two grounds. First, Mr Pereira was mistaken in his belief that the 1997 CP was the "subdivision plan" contemplated by ss 99(1) and 99(1A) of the LTA. As counsel for the Third Defendant, Mr Krishnasamy Siva Sabmo, correctly pointed out, the 1997 CP was nothing more than a survey which showed *pre-existing* subdivided lots. It was not a plan submitted to the competent authority for subdivision approval.

30 The second reason, which is related to the first, was that it was plain from the title documents adduced in evidence that subdivision of the land into the lots upon which the Properties are currently situate had occurred *before* the Third Defendant became the registered proprietor of the Properties. In particular, I note that when the Certificate of Title for No 21 was registered by the Third Defendants on 4 July 1995, No 21 was already situate on its present lot, that is, Lot No TS 16-882T. The plan of Lot No TS 16-882T dated 6 July 1994 ("the 1994 CP") that was annexed to the Certificate of Title for No 21 also showed that subdivision of the land on which the Properties are situate had occurred by that time. For completeness, I should note that I was also satisfied that the 1994 CP was likewise not the subdivision plan contemplated in ss 99(1) and 99(1A) of the LTA.

31 It followed that the Plaintiffs had failed to produce the approved subdivision plan in evidence. In this regard, reference may be made to *Andrew John Hanam v Lam Vui and another* [2013] 4 SLR 554 ("*Andrew John Hanam*") where Belinda Ang Saw Ean J expressed the view (at [29]) that:

> …[I]n my view, the subdivision plan *must be tendered in evidence* if there is to be any reliance on an easement that is "appropriated or set apart" on the subdivision plan … [emphasis added]

32 I agree with Ang J's observations. This flows from the plain language of s 99(1A) of the LTA which states that an easement will only be implied "over or under the lands *appropriated or set apart for those purposes respectively on the subdivision plan* submitted to the competent authority [emphasis added]".

33 The importance of having the subdivision plan produced in evidence is even clearer when regard is had to the phrase "appropriated or set apart for those purposes" under s 99(1A).

34 To ascertain Parliament's intent in using this phrase, counsel for the First and Second Defendants, Mr Adrian Wong ("Mr Wong"), referred to the Report of the Select Committee on the Land Titles Bill (Parl 3 of 1993) which was presented to Parliament on 18 August 1993 ("the Report"). The Report explained the effect of the proposed cl 99(1) of the Land Titles Bill (Bill No 36 of 1992) in the following terms (at [23]):

> Clause 99 seeks to imply certain easements in respect of parts of an estate ***where the approved subdivision plan for the estate contains a legend indicating those easements and the dominant and servient tenements*** . Examples of such easements are a right of way, a right to make connections to electrical sub-stations and party wall rights. By this approach, there is no need to describe the easements in clause 99 as they would be described in the legend. [emphasis added in bold italics and underlined bold italics]

35 The proposed cl 99(1) was enacted as s 99(1) of the Land Titles Act (Act 27 of 1993), which is largely *in pari materia* with the present ss 99(1) and 99(1A) of the LTA.

36 In providing feedback on the proposed Bill, it would appear that the Singapore Institute of Surveyors and Valuers ("the SISV") had suggested that the type of easements to be implied should be described within the proposed cl 99 instead of being set out in a legend endorsed on the approved subdivision plan. The SISV suggested that because the majority of easements were in respect of roads, electrical substations, septic tanks, drainage reserves and party walls, the approval of the use of any lot as a road, or an electrical subdivision and so forth in the subdivision plan should imply an easement for corresponding rights of use. However, the Report, in rejecting this suggestion, states as follows (at [24]):

> The Committee sees some merit in the [SISV's] approach. It is, however, ***not feasible to imply a common set of easements for all developments*** . The Committee therefore recommends that clause 99 describe the common easements ***and these will be implied where indicated in the approved subdivision plans*** . [emphasis added in bold italics]

37 Based on the relevant Parliamentary material, it was clear to me that for an easement to be implied under s 99(1) of the LTA, it had to be both clearly and specifically indicated on the approved subdivision plan (in the sense that the subdivision plan must contain a legend describing the easement and the dominant and servient tenements). In these circumstances, I was of the view that the Plaintiffs' failure to produce the subdivision plan was fatal to its case.

38 Against the view stated above, Mr Pereira submitted that the court was entitled to look at the development plans to determine whether an easement should be implied under s 99(1) of the LTA. He pointed out that the No 23 Staircase was drawn on the plans approved by the BCA and the URA. Mr Pereira cited the Court of Appeal decision in *Oei Hong Leong* as authority for this proposition.

39 In *Oei Hong Leong*, two bungalows were developed on an undivided lot of land. When they were developed, access to the public road for one of the bungalows ("No 48") was only through a short

driveway over the land of the other bungalow ("No 48A"). The lot of land on which the bungalows stood was later subdivided and each bungalow then stood on a separate lot of land. When the Certificates of Title in respect of the subdivided plots were issued, no express easement of way was created. A dispute arose as to whether there was an implied easement of way.

40 In this regard, the subdivision plan in *Oei Hong Leong* showed that the word "Access" was written on the part of the approved subdivision plan where the northerly part of No 48 abutted No 48A. The approved subdivision plan, however, did not mark out the land over which the access was to run. However, there were plans annexed to the Certificates of Title for No 48 and No 48A which marked out the part of No 48A which was to be used to give access to No 48. These plans showed that the path over which the easement of way was to run had been marked out when the subdivision occurred. In these circumstances, the Court of Appeal held (at [33]) that it was permissible to refer to the plans annexed to the Certificates of Title and read them together with the subdivision plan.

41 In my view, *Oei Hong Leong* did not assist the Plaintiffs' case. The circumstances in *Oei Hong Leong* were unlike those in this case as the approved subdivision plan was adduced in evidence in *Oei Hong Leong*. Moreover, the subdivision plan showed the word "Access" where No 48 abutted No 48A. It was in this context that the Court of Appeal held that it would be permissible to read the subdivision plan together with the other plans attached to the Certificates of Title. I did not think *Oei Hong Leong* stood for the proposition that the court was entitled to, as Mr Pereira seemed to suggest, disregard the subdivision plan *altogether* and consider the development plan instead.

42 Even if I were wrong on this, in that the court could consider whether the alleged easement was "appropriated or set apart" by only relying on the development plan, the Plaintiffs' claim remained untenable. In this regard, I agreed with Mr Wong's submission that s 99(1A) of the LTA did not entitle the Plaintiffs to the easement claimed merely because the No 23 Staircase was drawn on the development plan. Instead, keeping with the purposive interpretation of the phrase "appropriated or set apart" that was discussed above (at [34]–[37]), I was of the view that the development plan had to *clearly and specifically indicate that the Plaintiffs were to have a right of way over the No 23 Staircase*. This requirement was not satisfied in the present case.

43 For completeness, I proceed to deal with the parties' submissions as to the meaning of the phrase "necessary for the reasonable enjoyment of the lot" under s 99(1A) of the LTA. When parties first appeared before me, their submissions were made on the footing that s 99(1) of the LTA had the effect of implying an easement where this was necessary for the reasonable enjoyment of the land.

44 Mr Pereira, for example, largely glossed over the requirement under s 99(1A) that the easement be "appropriated or set apart…on the subdivision plan submitted to the competent authority". Rather, he framed the issue as whether access to the No 23 Staircase was necessary for the reasonable enjoyment of No 21 and No 21A.

45 Mr Wong, on the other hand, submitted that the English authorities on implied easements at common law shed light on the meaning of the phrase "necessary for the reasonable enjoyment of the lot" under s 99(1A) of the LTA. I was first referred to the rule in *Wheeldon v Burrows* (1879) 12 Ch D 31 ("*Wheeldon*") which Thesiger LJ stated as follows (at 49):

> [O]n the grant by the owner of a tenement of part of that tenement as it is then used and enjoyed, there will pass to the grantee all those continuous and apparent easements (by which, of course, I mean *quasi* easements), or, in other words, *all those easements which are necessary to the reasonable enjoyment of the property granted*, and which have been and are at the time of the grant used by the owners of the entirety for the part granted. [emphasis added]

46 In *Wheeler and Another v JJ Saunders Ltd and Another* [1996] 1 Ch 19 ("*Wheeler*"), the English Court of Appeal applied the rule in *Wheeldon* but refused to imply an easement on the facts of the case. In that case, the plaintiffs had bought a house that lay adjacent to a farm. The house and the farm were previously in common ownership. There were two routes of access to the house. One entered the property from a road eastward of it. The other (referred to as "the south entrance" in the quotation below) ran over the farm ("the Access Strip"). The defendants, who owned the farm, took the view that the plaintiffs were not entitled to use the Access Strip and obstructed access to it. The plaintiffs commenced proceedings against the defendants claiming they had a right of way over the Access Strip. In dismissing the plaintiffs' claim, Staughton LJ held (at 25):

> For my part, I do not consider that the south entrance was necessary for the reasonable enjoyment of Kingdown Farm House. The east entrance would do just as well. It was said to be four inches or 10 centimetres narrower than the south entrance. That was not critical. The gate at the south entrance, which was usually shut, shows to my mind that it was not the main entrance and was probably only used on rare occasions. I would therefore hold, differing from the judge, that Dr. and Mrs. Wheeler acquired no right of way through the south entrance.

47 In *Moncrieff and Another v Jamieson and Others* [2007] 1 WLR 2620, Lord Neuberger explained why it was important to focus on the requirements of reasonableness and necessity (at [112]):

> … Without the necessity, there would be a danger of imposing an uncovenanted burden on the servient owner, based on little more that sympathy for the dominant owner; without the reasonableness, there would be the danger of imposing an unrealistically high hurdle for the dominant owner. …

48 Mr Wong also relied on several Australian authorities where the courts had interpreted s 12(2) of the Subdivision Act 1988 (No 53 of 1988) (Vic) ("the ASA"). Section 12(2) of the ASA reads as follows:

> (2) Subject to subsection (3), there are implied—
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> (a) over—
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> (i) all the land on a plan of subdivision of a building; and
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> (ii) that part of a subdivision which subdivides a building; and
>
> (iii) any land affected by an owners corporation; and
>
> (iv) any land on a plan if the plan specifies that this subsection applies to the land; and
>
> (b) for the benefit of each lot and any common property—
>
> all easements and rights necessary to provide—
>
> …
>
> (e) rights of way…
>
> if the easement or right is necessary for the reasonable use and enjoyment of the lot or the

common property and is consistent with the reasonable use and enjoyment of the other lots and the common property.

49 In *Body Corporate No 413424R v Peter James Sheppard & Anor* [2008] VSCA 118 ("*Sheppard*"), the Court of Appeal of the Supreme Court of Victoria considered the meaning of the phrase "necessary for the reasonable use and enjoyment of the lot" as contained in s 12(2)(e) of the ASA. There, the appellant, who was the body corporate of a residential building, brought an action for a declaration that they were entitled to a right of way over a penthouse owned by the respondents. Without the easement, the appellant's service personnel would have to walk up sixteen flights of stairs to gain access to the roof of the apartment building. If the appellant was entitled to the easement, then the service personnel would be able to take a lift to the respondents' apartment on the 14th floor and walk through the respondents' apartment to gain access to the fire stairs leading to the roof.

50 The court in *Sheppard* dismissed the appellant's claim for an easement on the ground that it was not *necessary* for the reasonable use and enjoyment of the common area. Although the alleged easement was a *preferable* means of access, the evidence showed that the service personnel could still carry out their tasks adequately without using the easement. Pertinently, the court approved (at [81]) the trial judge's view that:

> … "[N]ecessary" meant that the easement was essential to achieving the specified function, in the sense that no alternative means of achieving the relevant function was feasible or reasonably available. In determining whether an alternative to the easement was reasonably available, all relevant circumstances, including physical factors, legal restrictions, safety considerations and cost should be considered.

51 Based on parties' submissions and the authorities cited at the first hearing, I directed that parties adduce expert evidence on the issue of whether a staircase could be built within No 21. A site visit to No 21 and No 23 was also conducted. By the final hearing before me, it was no longer in dispute that a staircase could indeed be built. To this end, I was satisfied that an easement of way over the No 23 Staircase would not have been necessary for the reasonable enjoyment of No 21.

52 However, upon further reflection on the issue, I took the view that the authorities cited to me were not helpful in the interpretation of the phrase "necessary for the reasonable enjoyment of the lot" under s 99(1A) of the LTA.

53 Under the rule in *Wheeldon*, easements arise under English law by way of necessary implication in the circumstances of the case. In this respect, the rule in *Wheeldon* is regarded as giving effect to the presumed common intentions of the parties: Tan Sook Yee, Tang Hang Wu and Kelvin F K Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) at p 635. Section 12(2) of the ASA is similar in that easements may be implied over subdivided land where the easement is necessary for the reasonable use and enjoyment of the land. Unlike the rule in *Wheeldon*, however, easements under s 12(2) of the ASA are probably better regarded as being grounded in public policy than the presumed intentions of the parties.

54 In contrast, the easements implied under s 99(1) of the LTA are of a fundamentally different kind. As I noted earlier (at [42]), easements under s 99(1) of the LTA arise when they are clearly and specifically indicated on the approved subdivision plan. In this regard, the terminology of an "implied easement" may be somewhat misleading because s 99(1) effectively requires parties to have expressly demarcated these easements on the approved subdivision plan. Such easements are only "implied" to the extent that they are not expressly granted and separately registered under the LTA.

55 It follows that the phrase "necessary for the reasonable enjoyment of the lot" under s 99(1A) of the LTA must mean something different from what is stated in the English and Australian authorities I have referred to above. In *Andrew John Hanam*, reference was made to *Boglari v Steiner School and Kindergarten* [2007] VSCA 58 ("*Boglari*") where the Court of Appeal of the Supreme Court of Victoria considered the meaning of the same phrase in s 98 of the Transfer of Lands Act 1958 (No 6399 of 1958) (Vic) ("the TLA"). This provision, which is very similar to s 99(1A) of the LTA, reads:

> **98. Easements arising from plan of subdivision**
>
> The proprietor of an allotment of land shown on an approved plan of subdivision or a lot shown on a registered plan shall be entitled to the benefit of the following easements which shall be and shall be deemed at all times to have been appurtenant to the allotment or the lot, namely-
>
> (a) ***all such easements of way and drainage and for party wall purposes and for the supply of water gas electricity sewerage and telephone and other services to the allotment or the lot on over or under the lands appropriated or set apart for those purposes respectively on the plan of subdivision as may be necessary for the reasonable enjoyment of the allotment or the lot and of any building or part of a building at any time thereon*** …
>
> (b) …
>
> in all respects as if all such easements had been expressly granted.
>
> [emphasis added in bold italics]

56 In *Boglari*, Neave JA (at [30]) interpreted the phrase "necessary for the reasonable enjoyment of the lot" contained in s 98 of the TLA in the following manner:

> … It seems to me that the statutory requirement that the easement of way be necessary for the reasonable enjoyment of the lot *has a similar effect to the test which applies in determining what amounts to reasonable access to the dominant tenement, where the easement of way is created by an express grant, which does not indicate an access or conclusion point for the easement*. [emphasis added]

57 I found Neave JA's reasoning to be persuasive. Like s 98 of the TLA, the phrase "necessary for the reasonable enjoyment of the lot" under s 99 of the LTA should similarly be read as imposing limits on the use of the easements implied under that section. In contrast to the position under the common law, s 99 should not be interpreted as a basis for implying an easement in the first place. The Plaintiffs' arguments seeking to establish an easement by way of implication under s 99 of the LTA therefore failed in this regard.

58 Finally, I note that the *sui generis* nature of easements implied under s 99 becomes more apparent when regard is had to the other provisions of the LTA that concern easements.

59 The first is s 98 of the LTA. In *Chew Eu Hock Construction*, the Court of Appeal noted (at [29]–[30]) that there was considerable overlap between ss 98 and 99 of the LTA and described s 98 as dealing with "subdivision *simpliciter*". In this regard, s 98 operates to imply a specified set of easements whenever there has been a subdivision of land, without the requirement that the easements be "appropriated or set apart" on the approved subdivision plan. However, it would not have assisted the Plaintiffs in the present case because the section does not provide for the

implication of easements of way.

60 The second provision is s 97(1) of the LTA which reads:

> **Registration necessary for creation of easements**
>
> **97.**—(1) An *easement shall not be acquired over registered land by long-continued user adverse to a proprietor, nor by prescription, nor by any presumption of a lost grant, nor by any implication of law except as may be provided in this Act*; but where an easement is intended to be created, the proprietor may execute an instrument of grant in the approved form, or, if the easement is being created incidentally to a transfer or lease, by appropriate words in the transfer or lease.
>
> [emphasis added]

61 Section 97(1) is pertinent because it largely abrogates the common law relating to easements. This was the view of the Court of Appeal in *Chew Eu Hock Construction* where it held (at [41]) that s 97(1) did not permit an easement to be created by implication under the rule in *Wheeler*, except where the easements arose before the land was brought under the LTA.

62 I conclude with the observation that counsel in future disputes on easements under Singapore law should be mindful that the common law relating to implied easements may not be all that helpful in the interpretation of s 99 of the LTA. Primacy should be accorded to the statutory text and context of s 99 and the local authorities interpreting this provision.

**Conclusion**

63 For these reasons, I dismissed OS 896 in the terms set out at [2] above.