Tan Hee Liang v Chief Assessor and Another
[2007] SGHC 210

Case Number : OS 2274/2006

Decision Date : 05 December 2007

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Tan Hee Joek (Drew & Napier LLC) for the appellant; Julia Mohamed (Inland Revenue Authority of Singapore) for the respondents

Parties : Tan Hee Liang — Chief Assessor; Comptroller of Property Tax

Revenue Law – Property tax – Annual value – Whether Chief Assessor correct in not excluding from gross rental the contributions payable towards sinking fund and special levy – Sections 2(1), 2(7) Property Tax Act (Cap 254, 2005 Rev Ed)

5 December 2007 Judgment reserved.

Andrew Ang J:

1 The Appellant is the owner of a commercial unit #01-03 ("the property") located within a shopping complex, City Plaza, at 810 Geylang Road, Singapore 409286. As such he pays separate quarterly contributions to a management fund (referred to by the parties as contributions to "maintenance"), sinking fund and a special levy imposed by the City Plaza Management Corporation Strata Title Plan No 669 ("the MCST").

2 The property was let to a tenant at a monthly rental ("the gross rental") of $4,000 making an annual rental of $48,000. Under cl 30(b) of the Agreement, the landlord was to bear all rates, assessments, property tax (but not goods and services tax) and all other outgoings imposed upon or payable in respect of the property and to insure the same against fire.

3 It is common ground between the Appellant and the Chief Assessor that there is deemed included in the gross rental the contributions made by the Appellant towards maintenance, the sinking fund and the special levy.

4 In assessing the annual value of the property at $45,600, the Chief Assessor allowed to be excluded the contribution towards maintenance of approximately $2,400 payable by the Appellant but not those towards the sinking fund and the special levy.

5 Upon appeal, the Valuation Review Board ("the Board") upheld the assessment of the Chief Assessor. Being dissatisfied with the Board's decision, the Appellant brought the appeal before me.

6 The sole issue in this case was whether, in arriving at the annual value, the Chief Assessor was correct in not excluding from the gross rental the contributions payable towards the sinking fund and the special levy.

7 Section 2(1) of the Property Tax Act (Cap 254, 2005 Rev Ed) ("the PTA") defines annual value as follows:

> "annual value" —

(a) in relation to a house or building or land or tenement, not being a wharf, pier, jetty or landing-stage, means the gross amount at which the same can reasonably be expected to be let from year to year, ***the landlord paying the expenses of repair,*** **insurance*, maintenance or upkeep*** and all taxes (other than goods and services tax) ... [emphasis added]

8 The effect of that definition is that the landlord may be assumed to include, within the rental charged to the tenant, an amount to recoup his expenses of repair, insurance, maintenance or upkeep of the premises let.

9 If, apart from letting the property to the tenant the landlord were to provide services (*eg*, cleaning, air-conditioning and security services) to the tenant, his cost of providing such services ought not to be included as though they were in respect of the letting. If a gross rental was charged which included such services, the cost of providing such services (together with an element of profit thereon) may be excluded from the gross rental in order to arrive at the annual value. This was decided in *Chartered Bank v The City Council of Singapore* [1959-1986] SPTC 1 ("*Chartered Bank*"). In that case, the High Court heard an appeal against assessments made by The City Council of certain premises let by the bank to tenants. The City Council had assessed each unit based on the gross rent received. The High Court allowed to be deducted from the gross rent, the expenses incurred by the landlord for watchmen, cleaning, lifts, air-conditioning and supervision. In addition, the court allowed a further deduction of 15% of those costs to allow for a reasonable return to the landlord for the provision of those services. Also allowed was a deduction in respect of depreciation of the air-conditioning plant and ducting, lift and fire extinguishers.

10 In *Bell Property Trust Ltd v Hampstead Assessment Committee* [1940] 2 KB 543 ("*Bell Property Trust*"), the appellants were the owners of a block of flats let to tenants under agreements providing for payment by the tenant of a comprehensive sum, described as rent, for the occupation of the flat and the benefit of the services and amenities such as constant hot water, central heating provided by the landlord for all their tenants. The English Court of Appeal held that the cost to the appellants of providing the services was deductible from the gross payments made by the tenants for the purpose of arriving at the "gross value" of each flat for insertion in the valuation list. (As defined "gross value" in s 4 of the Valuation (Metropolis) Act 1869 broadly corresponds with "annual value" under s 2(1) of the PTA.) The court also held that such deductions might properly include (a) an allowance for a reasonable profit to the appellants on the provision of such services, and (b) the cost of repairs to and maintenance of the parts of the building not demised to the tenants, such as passages, stairs, lifts and staff rooms.

11 Goddard LJ who delivered the judgment of the court distinguished between the rent payable for the use and occupation of the premises and payment for services and amenities provided by the landlord (at 554):

> … Here we have a gross sum paid by the tenant not only for the occupation of the flat, but also for the various services and amenities provided. We can see no difference in principle between such a case as this and the letting of a furnished flat. In the latter case the law is well settled that you must ascertain how much is paid in respect of the furniture and the things in no way forming part of the rateable premises, such as rates, which are usually paid by a landlord who lets furnished, and the remainder represents the rent of the house itself, for which it is rateable: *Reg* v *Lee*. Exactly to the same effect is Lord Fleming's opinion in *M'Ewan* v *Glasgow Assessor*, where the question for decision was much the same as in the present case. He said: "The yearly rent or value of a flat …. was the proportion of the gross rent paid to the owner which could fairly be attributed to the occupation of the heritable subject." Having then pointed out that the gross

> rent, by which he means the actual sum paid by the tenant, includes various services, he continues: "The tenants periodically pay a lump sum for the personal services and for the use of the heritable subject, and the problem, accordingly, is to ascertain the proportion of the cumulo payment which effeirs to the heritable subject." From these cases, with which we entirely agree, it appears that not only did the rating surveyors and the assessment committee approach the problem correctly, but so did quarter sessions. They set out to find what proportion of the sums reserved by the leases as rent represented the value of the services and amenities provided by the lessors, and deducting that and the rates, the balance left represented the true gross value. The hypothetical tenant, of course, is not concerned with what it costs the landlord to provide these services; he considers only what he can afford to pay for the sum of what he gets, that is, a flat to live in, together with such services and other attractions as may be offered. A man who feels he can pay a rent of about 250*l*., and has been paying that in an old-fashioned flat with open fireplaces, and where the water has to be heated in the kitchen, may well feel that he can pay, say, 275*l*. or 300*l*. for one in which he will be provided with domestic hot water and central heating. He would not concern himself with what it cost the landlord to provide those services, but it is none the less true that what he pays for the use of the flat itself is the rent reserved less a proper remuneration to the landlord for providing him with hot water at his taps and in his radiators. … [footnotes omitted]

12 In *BCH Retail Investment Pte Ltd v Chief Assessor* [2002] 4 SLR 844 ("*BCH No 1")*, the issue was whether contributions made by tenants of shop units in a shopping centre towards the landlord's expenses incurred for advertising and promotion of the shopping centre ("A&P contributions") were to be excluded in the ascertainment of annual value. Lee Seiu Kin JC concluded from an examination of *Bell Property Trust* ([10] *supra*) as follows (at [14]):

> From this it can be seen that the concept of rent in respect of annual value concerns the use or occupation of the heritable subject and this is separate from the provision of other services and amenities.

In line with the earlier cases, Lee JC held that the provision of advertising and promotion activities ("A&P activities") by the landlord was, for purposes of determination of the annual value, no different from the provision of other services as in *Chartered Bank* ([9] *supra*) and *Bell Property Trust* ([10] *supra*).

13 A point of interest that arose in the case was whether the A&P contributions were *bona fide* incurred. Understandably, the Chief Assessor was concerned that the annual value should not be artificially reduced by fictitious or extravagant claims of services provided. The court held that it was for the landlord to satisfy the Chief Assessor that the services were in fact provided and that the costs of providing them were reasonably incurred. However, on the facts of that case, Lee JC was able to conclude that the A&P contributions were reasonable, given that the landlord spent a much greater sum on A&P activities.

14 There was a sequel to *BCH No 1* ([12] *supra*) and it came in the form of a claim by the owner of the shopping centre that its actual expenses incurred in A&P activities (rather than the A&P contributions only) were properly deductible from its gross rental for the purpose of arriving at the annual value. This was rejected by the Chief Assessor whose decision was upheld by the High Court. Before the Court of Appeal in *BCH Retail Investment v Chief Assessor* [2007] 2 SLR 580 ("*BCH No 2*"), the owner maintained that as long as the A&P expenses had been reasonably incurred, they ought, as a matter of principle, to be deducted from the gross rental received to arrive at the annual value.

15 The Court of Appeal dismissed the appeal. It held that as the definition of annual value under s

2 of the PTA focussed on the element of rent and letting, only such elements could be included in the annual value of any given property. It followed that "any expenses that [were] not related to elements of rent or letting ought *not* to be taken into account in the computation of annual value": *per* Andrew Phang Boon Leong JA at [19]. There are, in my view, two aspects to this last statement.

16 First, if the gross rent payable by the tenant included (apart from those landlord's expenses described in the definition of annual value) payment for anything unrelated to the rent or letting, it ought to be excluded in the determination of annual value. This explains the decision in *Chartered Bank* ([9] *supra*) and *BCH No 1* ([12] *supra*). The exclusion is not limited to payment for the types of services provided in those two cases. If, for example, the gross rental included payment for the use of a car, there is no doubt that an amount properly attributable to payment for the use of the car ought to be excluded. On the other hand, notwithstanding that it might be common ground between the landlord and the tenant that the gross rental included payment for something unrelated to the letting or rent, if in truth the tenant derived no service or benefit in respect of that payment, no exclusion should be allowed. In such a case, the consideration for such a payment must be the letting inasmuch as a payment for a fictitious service or benefit should not go to reduce the annual value.

17 The second aspect to the statement ([15] above) is that it is impermissible to deduct from the gross rental the landlord's expenses in the provision of any service or benefit to the tenant beyond the amounts agreed or found to be incorporated in the gross rental. As, *ex hypothesi*, only the latter amount was included in the gross rental, that same amount only should be excluded.

18 In *BCH No 2* ([14] *supra*), the appellant's contention was flawed and betrayed a confusion of the process of ascertaining "income" for income tax purposes with that in the determination of annual value for property tax purposes. In the ascertainment of "income" for income tax purposes, there are specific provisions in the Income Tax Act (Cap 134, 2004 Rev Ed) allowing deduction for outgoings and expenses incurred by the taxpayer in the production of income. For property tax purposes, however, "annual value" of a property is, by definition, in s 2(1) of the PTA, the gross amount at which the property can reasonably be expressed to be let from year to year, *the landlord paying the expenses of repair, insurance, maintenance or upkeep and relevant taxes*.

19 As noted earlier ([8] above), the effect of incorporating the words in italics above is to factor into this hypothetical rental an amount which, it may be assumed, the landlord would seek to recoup for his expenses in relation thereto. Thus, for the purpose of determining annual value, it may be said that there is indirectly *included* the landlord's aforesaid expenses. Nothing else is to be included. Therefore, where there has been included in the gross rental, payment for services or other benefits provided by the landlord to the tenant over and above the letting of the premises for the use and occupation of the tenant, such payment should be excluded for the purpose of ascertaining annual value. It is clear from the definition of "annual value" that these payments ought not to be included as they do not relate to the rent or letting. Hence, the exclusion. It also follows from the definition that if the landlord were to spend more in the provision of these extraneous services than what he charged the tenant for the services, he could not deduct these expenses beyond what had been built into the gross rental for payment by the tenant. To differentiate between the two processes, the Court of Appeal preferred the use of the concept of "exclusion" rather than "deduction" as it more accurately described the process of arriving at the annual value.

20 Returning to the case before me, the reasoning of the Board may be summarised as follows:

(a) The sinking fund and the special levy are collected for purposes beyond the provision of services or profit on those services. Thus payment into the sinking fund and the special levy "do not fall within the categories decided by *Chartered Bank* ([9] *supra*) or [*BCH No 1*] ([12]

supra)".

(b) It was impermissible for the Appellant, relying on *Bell Property Trust* ([10] *supra*), to extend the service charge exception established by *Chartered Bank* ([9] *supra*) and *BCH No 1* ([12] *supra*). *Bell Property Trust* ([10] *supra*) was decided prior to the introduction of the commonhold system (the English equivalent of our strata titles system) and is inapplicable to our strata titles system in so far as the judgment in that case assumed that only the payments for the area within the apartment may be taken into account and therefore differentiated between rent paid for actual occupation of the flat from the remuneration for the benefit of services and amenities provided by the landlord. The Board was also of the view that Goddard LJ was relying upon such assumption when he held that the cost of repairs to "common parts" was deductible.

(c) To differentiate the maintenance of the common parts from that within the four walls of the strata unit would be out of sync with the PTA, the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("LTSA") and the Court of Appeal's decision in *Management Corporation Strata Title Plan Nos 1298 and 1304 v Chief Assessor and Comptroller of Property Tax* [2006] 4 SLR 404 ("*Centrepoint Shopping Centre*").

21 Relying upon *BCH No 2* ([14] *supra*), the Appellant submitted that the relevant criterion for determining whether a sum payable by a tenant is to be excluded in the determination of annual value is whether such payment is unrelated to the elements of rent or letting and not whether such payment is for "services". He therefore submitted that, as the contributions to sinking fund and the special levy relate to the common property and not the strata lot in question, they should be excluded.

22 The Appellant further submitted that the third reason of the Board summarised in [20(c)] above, far from being supported by the Court of Appeal's decision in *Centrepoint Shopping Centre* ([20(c)] *supra*) referred to therein, was actually contrary to the decision in that case. According to the Appellant, the Board's reasoning was based on an argument advanced by the respondent that since "each individual subsidiary proprietor has ownership over the common property, they (*sic*) should also bear any maintenance or repair to such areas, and therefore such costs ought to be included in the assessment of the annual value of individual strata lots".

23 The respondent had cited the Court of Appeal's statement (in [10] of the judgment) where the court stated:

> [W]e would accept that, in practice, the determination of the annual value of a lot would almost inevitably take account of the enjoyment to be derived from facilities and amenities forming part of the common property even though no specific value would be separately ascribed to such facilities and amenities. After all, it is unrealistic to suggest that (following the definition of "annual value" in s 2(1) of the PTA) "the gross amount at which [a lot] can reasonably be expected to be let from year to year" will not have implied therein some value for the enjoyment to be derived from at least some parts of the common property.

From there the respondent then argued that it followed –

> … as a matter of logic, that if some value from the enjoyment of common property ought to be taken into account in the determination of annual value of a strata lot, any expenses incurred in the course of maintaining or repairing such areas should also be borne by the individual strata lot owner. As such, a deduction for contributions to the maintenance and repair of common areas should not be allowed.

The Appellant submitted that the Court of Appeal was merely observing a fact or practical reality and the conclusion sought to be drawn by the respondent therefrom was unwarranted. The Appellant drew attention instead to the Court of Appeal's holding that the words "property which comprises a lot" in s 2(7) of the PTA refer only to the strata lot and that the strata lot and common property are mutually exclusive. From there the Appellant reasoned that as contributions to the sinking fund and special levy were in respect of the common property, they ought to be excluded from the gross rental in the determination of annual value.

Analysis

24 I shall start by considering the opposing views of counsel as to the effect of the Court of Appeal's decision in *Centrepoint Shopping Centre* ([20(c)] *supra*). In that case, the management corporation of a shopping complex ("the MCST" or "the appellant") licensed various parties to use certain areas in the common property ("the Spaces") for a fee. The Chief Assessor included the Spaces in the Valuation List for the assessment of property tax and the Comptroller of Property Tax duly issued notices of assessment in respect of each of those Spaces. The MCST appealed without success to the Valuation Review Board and thence to the High Court where it fared no better. Upon the MCST's further appeal, the question to be considered by the Court of Appeal was, as below, whether the Spaces in the shopping complex were exigible to property tax. This involved an interpretation of s 2(7) of the PTA which provides:

> In assessing the annual value of ***any property which comprises a lot the title of which is issued under the Land Titles (Strata) Act*** (Cap. 158) –
>
> (a) the subsidiary proprietor of the lot shall be deemed to be the owner thereof;
>
> (b) the annual value of the lot shall be determined as if that lot comprised a freehold estate in land; and
>
> (c) no separate annual value shall be attributed to the land upon which the subdivided building stands.
>
> [emphasis added]

25 Counsel for the MCST argued that on a true construction, the subject matter of s 2(7), *ie*, "property which comprises a lot the title of which is issued under the Land Titles (Strata) Act" was not limited to a strata lot. He contended that the property whose annual value was to be assessed was property which included the relevant share of the common property owned by the subsidiary proprietor of the lot. If counsel was correct, it would have meant that once all the strata lots within the shopping complex had been assessed to property tax, the common property would also have been assessed to property tax indirectly under the assessment of the strata lots. Therefore no further assessment could be raised against the Spaces. The Court of Appeal rejected that contention and held after comparing s 2(7) of the PTA with s 3(1) of the LTSA that the strata lot and the common property were mutually exclusive so that there was no impediment to raising the assessments against the Spaces. It reasoned at [6]:

> "Common property" as defined in s 3(1) of the Land Titles (Strata) Act (Cap 158, 1999 Rev Rd) ("LTSA") means:
>
> (a) in relation to any land and building comprised or to be comprised in a strata title plan, such part of the land and building —

(i) *not comprised in any lot* or proposed lot in that strata title plan …

The similarity in the language of s 2(7) of the PTA and this definition rules out the construction advanced by counsel for the appellant. In the same way that the definition of "common property" excludes property comprised in any lot, "property which comprises a lot" in s 2(7) of the PTA excludes common property; they are mutually exclusive.

[emphasis added]

26 *En passant*, the Court of Appeal did allow that it was unrealistic to suggest that (following the definition of "annual value" in s 2(1) of the PTA) "the gross amount at which [a lot] can reasonably be expected to be let" will not have taken into account the enjoyment to be derived from facilities and amenities afforded by the common property. However, that was far from supporting the contention of the appellant in that case that the annual value of each strata lot included a proportion of the gross amount at which the common property could be let. Accordingly, the Court of Appeal held that property tax was chargeable where, instead of being held for enjoyment in common by all occupants of strata lots, parts of the common property were let or licensed for a fee.

27 In the light of the above, the reasoning of the Board (that "[t]o differentiate the maintenance of the common parts from that within the four walls of the strata unit would be out of sync with the approach of the LTSA, PTA and the Court of Appeal") is, with respect, inconsistent with the decision of the Court of Appeal in *Centrepoint Shopping Centre* ([20(c)] *supra*).

28 The Chief Assessor's argument (that since "each individual subsidiary proprietor has ownership over the common property, they should also bear any maintenance or repair to such areas, and ***therefore such costs ought to be included in the assessment of the annual value of the individual strata lots***") [emphasis added] is similarly untenable. That all subsidiary proprietors have to bear their share of maintenance and repair costs for the common property is a truism; it is specifically provided for in the Building Maintenance and Strata Management Act 2004 ("BMSM Act"). What is difficult to understand is how the italicised conclusion follows from that premise. It appears to me to be a *non sequitur*. Ironically, such a contention also appears similar to the argument of the Appellant ([25] above) in *Centrepoint Shopping Centre* ([20(c)] *supra*) which the Chief Assessor successfully resisted.

29 With regard to the reasoning of the Board in [20(b)] above, I do not think *Bell Property Trust* ([10] *supra*) can be said to be inapplicable in the context of our strata titles system. It was followed by our High court in *BCH No 1* ([12] *supra*) and referred to by our Court of Appeal in *BCH No 2* ([14] *supra*) as being consonant with the principle of exclusion enunciated in their judgment. The fact that under the strata titles system, the common property is owned by all the subsidiary proprietors as tenants-in-common in proportion to their respective share value does not, to my mind, blur the distinction between the tenanted premises (*ie*, the strata lot) and the common property. As we earlier noted from s 2(7) of the PTA and the decision of the Court of Appeal in *Centrepoint Shopping Centre* ([20(c)] *supra*), the "annual value" of the strata lot still refers only to the gross amount at which that strata lot can reasonably be expected to be let; the expenses of repair, insurance, maintenance or upkeep, *etc*, which may be included in such gross amount, all relate to the strata lot. I move on to consider the Board's reasoning in [20(a)].

30 In my opinion, the Board took too restrictive a view when it limited allowable "deductions" to what it called the "service charge exception" established by *Chartered Bank* ([9] *supra*) and *BCH No 1* ([12] *supra*). At the time of its decision, it did not have the benefit of the Court of Appeal's decision in *BCH No 2* ([14] *supra*) which came later. That decision, as I earlier noted, makes clear

that what is to be excluded in the determination of annual value is remuneration of any kind paid by the tenant which is unrelated to the elements of rent or letting.

31 On that basis, it ought to follow that no principled distinction could be drawn between contributions to the management fund or (as the parties call it) maintenance contributions (which the Chief Assessor allowed to be excluded) and those to the sinking fund or the special levy (which he disallowed). All of them are unrelated to the elements of rent or letting of the property, *ie*, the strata lot. But, as was discussed earlier ([13] and [16] above), there is the further requirement that the payment by the tenant must, in *character* and *quantum*, be *bona fide* in return for something other than the use and occupation of the property; if the payment, or any part of it, is not, then there is no justification for excluding the payment or (as the case may be) the relevant part from the gross rental in arriving at the annual value. This calls for some elaboration.

32 With regard to the *character* of the contribution borne by the tenant, the management fund, the sinking fund and special levy must be collected for purposes which may reasonably be said to be of service or benefit to the tenant before their exclusion from the gross rental is permitted. The difficulty is that the funds may not be exclusively for such purposes. Take, for example, the management fund. Under s 39(1) of the BMSM Act, one of the purposes for which moneys in the management fund may be used is the payment of insurance premiums. As can be seen from s 71 of the BMSM Act, the management corporation is required to effect insurance –

> (a) in respect of any occurrence against which it is required by law to insure, including that required under the Workmen's Compensation Act (Cap 254, 1998 Rev Ed);
>
> (b) in respect of damage to property, death or bodily injury occurring upon the common property for which the management corporation could become liable in damages; and
>
> (c) against the possibility of the subsidiary proprietors becoming jointly liable by reason of a claim arising in respect of any other occurrence against which the management corporation, pursuant to a resolution, decides to insure.

It can be seen that such insurance benefits the management corporation and the subsidiary proprietors but not the tenant. Strictly, therefore, any part of the contribution to the management fund that is applied towards the payment of the insurance premium should not be excluded from the gross rental.

33 Consider also s 70 of the BMSM Act. This section requires the management corporation to keep every subdivided building insured under a "damage policy" to provide for its rebuilding and replacement or repair in the event of its destruction or damage. To the extent that such insurance is for the benefit of the strata lot and therefore within the definition of annual value, it ought not to be excluded.

34 Be that as it may, since the Chief Assessor has allowed the exclusion of contributions to the management fund, I need go no further. I therefore go on to consider the sinking fund.

35 Section 29(1)(*b*) of the BMSM Act imposes a duty on the management corporation to "***properly maintain and keep in a state of good and serviceable repair***" (and, where reasonably necessary, renew or replace wholly or in part) the common property and, *inter alia*:

> (i) any fixture or fitting comprised or fitting comprised in the common property; or

(ii) any fixture or fitting comprised in any strata lot but intended to be used for the servicing or enjoyment of the common property.

Section 29(1)(*d*), however, goes beyond maintenance and repair, and obliges the management corporation, when directed by a special resolution,

> [T]o install or provide ***additional*** facilities or make ***improvements*** to the common property ***for the benefit of the subsidiary proprietors*** constituting the management corporation. [emphasis added]

36 In line therewith, under s 38(4) read with s 39(2) of the BMSM Act, the contributions towards the sinking fund may be used for ***improvements*** to the common property and the ***acquisition of movable property***. Unlike painting, repairs to the common property or renewal or replacement of fixtures and fittings where necessary (as envisaged in s 29(1)(*b*) of the BMSM Act), expenditure from the sinking fund could extend to the installation of additional facilities or the making of improvements to the common property for the benefit of the subsidiary proprietors constituting the management corporation (as envisaged in s 29(1)(*d*) of the BMSM Act). Contributions towards expenditure for the former would qualify for exclusion in the same way that

(a) in *Bell Property Trust* ([10] *supra*) the cost of repairs to and maintenance of the parts of the building not demised to the tenants were allowed; and

(b) in *Chartered Bank* ([9] *supra*) depreciation of the air-conditioning plant and ducting and the lift and fire extinguishers were allowed.

37 On the other hand, contributions towards expenditure for the latter (*ie*, additional facilities and improvements) would, in my view, not qualify for exclusion as they are, principally at least, for the benefit of the subsidiary proprietors. The burden of such capital outlay is properly that of the subsidiary proprietor (*ie*, the landlord) rather than the tenant. Except where such additional facilities and improvements were installed or effected promptly so that the tenant derived some benefit (which in any event would be small compared to what the subsidiary proprietor gained), the tenant would receive no consideration in respect of his contribution to such expenditure; the contribution would therefore be referable to the use and occupation of the tenanted property. It follows that his contribution towards such expenditure ought rightly to be included in the gross rental.

38 Even where the sinking fund is to be used for a purpose for which exclusion is permissible, the *quantum* of the contribution attributable to such purpose must be reasonable. I shall illustrate by reference to *Chartered Bank* ([9] *supra*). In that case, depreciation for the lift was allowed on the basis that its estimated useful life of 15 years was reasonable. Therefore, the cost of the lift was amortised over a 15-year period. If the landlord had sought depreciation on the basis of an unreasonably short useful life of, say, only five years thus resulting in a larger sum being claimed for depreciation each year, it would have been disallowed.

39 In summary, on principle, contributions to the sinking fund borne by the tenant may be excluded from the gross rental provided that, in *character* and *quantum*, they are *bona fide* unrelated to the elements of rent or letting, *ie*, that they are in return for something other than the use and occupation of the tenanted strata lot. It is for the Appellant to show to the reasonable satisfaction of the Chief Assessor which parts of the contribution to the sinking fund are intended for purposes for which exclusion is permissible on the basis I have outlined.

40 The same reasoning applies to the special levy. The collection of this levy over a period of

three years, from July 2005 to June 2008, is for external ***upgrading*** works. Capital outlay for upgrading works enure to the benefit of the subsidiary proprietor and ought properly to be borne by the landlord rather than the tenant. Although the tenant bears the contribution to the special levy, he receives no consideration other than the use and occupation of the tenanted property. Even if such upgrading is completed during the term of the tenancy, the benefit the tenant derives therefrom would be insignificant compared to the lasting benefit gained by the landlord. As such, it is appropriate that the gross rental includes such contribution. In other words, no exclusion should be allowed.

41 For the foregoing reasons, the appeal is dismissed with costs.