IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 59

Suit No 194 of 2017
(Registrar's Appeal No 327 of 2017)

Between

Peter Low LLC

… Plaintiff

And

Higgins, Danial Patrick

… Defendant

JUDGMENT

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

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16 March 2018

Pang Khang Chau JC:

Introduction

1 Registrar's Appeal No 327 of 2017 is the Plaintiff's appeal against *Peter Low LLC v Higgins, Danial Patrick* [2017] SGHCR 18, in which the learned assistant registrar ("the AR") dismissed High Court Summons No 4476 of 2017 ("SUM 4476/2017") and declined to attach the Defendant's interest as a joint tenant in an immovable property ("the Property") in the execution of a judgment debt.

2 In arriving the decision below, the AR considered himself bound by *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*") to hold that a joint tenant's interest in immovable property is not exigible to a writ of seizure and sale ("WSS"). This was despite the decision in

Chan Shwe Ching v Leong Lai Yee [2015] 5 SLR 295 ("*Chan Shwe Ching*") which took a contrary position. The AR reasoned that since *Chan Shwe Ching* and *Chan Lung Kien* concerned the same WSS, *Chan Shwe Ching* ceased to have precedential force once the *ex parte* order granted in *Chan Shwe Ching* was set aside *inter partes* in *Chan Lung Kien*.

3 Before me, the Plaintiff submitted that I am not bound by any of these authorities, and urged me to grant its application for a WSS against the Defendant's interest as a joint tenant in the Property. The Plaintiff instructed Dr Tang Hang Wu, one of the co-authors of Tan, Tang and Low, *Tan Sook Yee's Principles of Singapore Law Land* (LexisNexis, 3rd ed, 2009) ("*Principles of Singapore Land Law*"). Given the complexity of the issue and the Defendant's failure to enter an appearance in these proceedings, I decided to appoint a young amicus curiae to assist the court. I am grateful to Ms Quek Ling Yi for agreeing to take up this appointment. I also invited the mortgagee of the Property, Malayan Banking Bhd, to make submissions, but they decided not to participate in these proceedings.

4 For reasons which I will elaborate on, I agree with Dr Tang that a joint tenant's interest in immovable property is exigible to a WSS under the statutory framework applicable in Singapore. Consequently, the appeal is allowed.

Background facts

5 The Defendant is an Irish citizen while his wife is a Singapore citizen. The Property is a residential unit in a condominium development in Singapore, held by the Defendant and his wife as joint tenants. The Property is held subject to a charge by the Central Provident Fund Board, and a mortgage by Malayan Banking Bhd. The Defendant's wife is not a party to these proceedings.

6 The Plaintiff was the law firm representing the Defendant in two High Court suits ("the Suits"), *vide*, HC/S 244 of 2013 ("Suit 244") and HC/S 733 of 2014 ("Suit 733"). Judgment in the Suits was rendered on 26 September 2016 and reported as *Higgins, Danial Patrick v Mulacek, Philippe Emanuel and others and another suit* [2016] 5 SLR 848 ("the Suit 733 Judgment"). On 24 October 2016, the Plaintiff ceased acting as the Defendant's solicitors in the Suits. On 2 March 2017, the Plaintiff commenced the present proceedings against the Defendant for unpaid legal fees. On 9 June 2017, the Plaintiff obtained judgment in default of appearance against the Defendant for $394,254.14 plus interest and costs ("the Judgment Sum").

7 In the meantime, the plaintiff in Suit 733 ("the Suit 733 Plaintiff"), upon discovering that the Defendant (who was the defendant in Suit 733) and his wife were attempting to sell the Property, applied for and obtained an order attaching the Defendant's interest in the Property to satisfy the Suit 733 Judgment. The order was registered with the Registry of Titles pursuant to O 47 r 4(1)(*a*) Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") on 19 April 2017. On the same day, the Suit 733 Plaintiff filed a WSS in respect of the Defendant's interest in the Property pursuant to O 47 r 4(1)(*e*)(i). The foregoing took place during the period between *10 July 2015*, when the High Court in *Chan Shwe Ching* held that a joint tenant's interest in land was exigible to a WSS, and *10 July 2017*, when a different Judge of the High Court held to the contrary in *Chan Lung Kien*.

8 When the sheriff served the WSS at the Property on 4 May 2017 pursuant to O 47 r 4(1)(*e*)(iii) of the ROC, the Property was found to be tenanted and neither the Defendant nor his wife was residing there. In letters written by the Defendant and his wife to the sheriff in June 2017, they claimed that they were both residing in Ireland. To date, the WSS obtained by the Suit 733

Plaintiff against the Defendant's interest in the Property remains in force and no attempt has been made by the Defendant or his wife to set it aside.

9 On 27 September 2017, the Plaintiff applied for an order attaching the Defendant's interest in the Property to satisfy the Judgment Sum. This application was dismissed by the AR on 8 November 2017. The Plaintiff appealed.

The issue to be determined

10 The sole issue to be determined in this appeal is whether a judgment for the payment of money can be enforced by way of a WSS against the judgment debtor's interest in immovable property which is held under a joint tenancy. I will examine this issue by first setting out a historical overview of the processes by which money judgments have been enforced against immovable property, followed by a survey of the positions in other Commonwealth jurisdictions, and then turning to consider what the legal position in Singapore is and ought to be.

11 For present purposes, the terms "immovable property" and "land" are used interchangeably as nothing turns on the distinction.

Historical overview

Execution of money judgment against land in medieval England

12 In England, prior to the enactment of the Statute of Westminster II (13 Edward 1, c 24) (UK) ("Statute of Westminster II") in 1285, execution of a money judgment could be levied against the land of a judgment debtor only through the writ of *levari facias*. This writ allowed the sheriff to receive the rents and profits derived from the judgment debtor's land until the judgment debt was satisfied, but it did not allow the sheriff to seize possession of the land.

(See William Blackstone, *Commentaries on the Laws of England*, Vol 3 (A Strahan, 15th Ed, 1809) ("*Blackstone's Commentaries (Vol 3)*") at p 417).

13 In 1285, the Statute of Westminster II created the writ of *elegit*, under which a judgment creditor could take possession of *half* of the judgment debtor's freehold land. Thereupon, the judgment creditor became a tenant by *elegit* of the land taken until judgment debt was paid off from the rents and profits derived from the relevant half of the land. The writ of *elegit*, however, did not allow the judgment creditor to sell the land to satisfy the judgment debt. (See *Blackstone's Commentaries (Vol 3)* at pp 418–419; William Holdsworth, *A History of English Law*, Vol 3 (Methuen & Co Ltd; Sweet and Maxwell, 5th Ed, 1942) ("*A History of English Law (Vol 3)*") at p 131).

14 Until this aspect of the law was changed in the mid-19th century, execution by writ of *elegit* was available against all freehold land belonging to the judgment debtor *as at the date of the judgment*, even if the land had been sold by the judgment debtor after judgment. Thus, a money judgment, once issued, became a general lien or charge on the land of the judgment debtor. (See *Blackstone's Commentaries (Vol 3)* at p 418; *A History of English Law (Vol 3)* at p 132; William Holdsworth, *A History of English Law*, Vol 15 (Methuen & Co Ltd; Sweet and Maxwell, 5th Ed, 1942) Vol 15 (1965) at p 114.)

English law allowed execution by writ of elegit against interest of joint tenant

15 In 1607, Sir Edward Coke, who was then the Chief Justice of Common Pleas, published the sixth part of his law reports, *viz*, the *Coke's Reports*, in which was collected *Lord Abergavenny's case* (1607) 6 Co Rep 78b; 77 ER 373 ("*Lord Abergavenny's case*"). This case concerned the execution of a writ of *elegit* on the interest of a joint tenant in land. The land in question was held by

two sisters Margaret Pool and Frances Pool as joint tenants for life. Judgment was obtained by the plaintiff against Margaret in 1592. On 24 May 1595, Margaret released all her estate and right in the said land to Frances. As a result, Margaret ceased to be a joint tenant and Frances became the sole tenant for life of the land. On 27 June 1595, the plaintiff sought execution of the judgment by a writ of *elegit*. It was held that:

> When judgment is given against Margaret one of the joint-tenants for life, in an action of debt, and afterwards she releases to her joint-tenant before execution, although Frances to whom the release is made between them, is now *in* by the lessor, and not by the said Margaret, yet as to the plaintiff who has judgment in the action of debt (***by which the moiety of Margaret was charged to his execution***) she by her own act shall not defeat the plaintiff of his execution, ***but as to him the estate of Margaret hath continuance in law***, although in truth Frances for the release made, had but an estate for her own life: but if Margaret had died before execution, the survivor should hold it discharged of any execution to be sued against her.
>
> [original emphasis in italics; emphasis added in bold italics]

16 *Lord Abergavenny's case* stood for the following propositions:

(a) A judgment gave rise to a lien or charge over a debtor-joint tenant's interest in land (see the phrase "by which the moiety of Margaret was charged to the execution" in the judgment), in the same way that it would over any debtor-landowner's interest in land (see [14] above for the reason for this lien or charge).

(b) Just as this lien or charge could not be defeated by a debtor-landowner selling his land (see [14] above), it also could not be defeated by a debtor-joint tenant releasing his interest in the land to the other joint tenant.

(c) Therefore, even after such release, the judgment creditor would be entitled to proceed with execution by writ of *elegit* against the land as though the judgment debtor had remained a joint tenant of the land (see the phrase "but as to him the estate of Margaret hath continuance in law" in the judgment).

(d) However, there was an exception to the foregoing propositions – if the judgment debtor had died after the issuance of the judgment but before its execution, this would defeat the lien or charge and extinguish the judgment creditor's right of execution against the judgment debtor's interest as joint tenant in the land.

17 Arising from these propositions, a few observations may be made:

(a) The issue in *Lord Abergavenny's case* was whether a judgment debtor could defeat execution against her interest as joint tenant by releasing her interest in the land to the other joint tenant.

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

(c) The same premise underlay the proposition outlined at [16(c)] above, *ie*, notwithstanding the judgment debtor's release of his interest, the plaintiff could proceed with execution as though the judgment debtor

continued to be a joint tenant in the land. It would have served no purpose for the court to hold that the judgment creditor could proceed as though the judgment debtor remained a joint tenant in the land, if the law at that time did not allow a joint tenant's interest in land to be reached by a writ of *elegit*.

(d) The reference to "moiety" in the phrase "by which the moiety of Margaret was charged to the execution" does not sit comfortably with the oft-quoted maxim that each joint tenant holds the relevant estate together with the other joint tenants but holds nothing by himself. It would appear from the use of the word "moiety" that the court was either:

(i) looking ahead to the moiety of interest that would be created by a severance of the joint tenancy as a result of execution by writ of *elegit*; or

(ii) accepting that a joint tenant should be regarded as having an aliquot share (or potential aliquot share) for the purposes of execution of judgments, in the same way that he is regarded as having an aliquot share (or potential aliquot share) for the purposes of alienation (as to which, see discussion at [70]-[88] below).

18 Twenty-one years later, in 1628, Sir Edward Coke published *The First Part of the Institutes of the Laws of England or a Commentary upon Littleton, not the Name of a Lawyer Only, but of the Law Itself* ("*Coke on Littleton*"), in which he wrote at p 184.b. in the chapter entitled "Of Joyntenants" that:

> … if one joyntenant acknowledge a recognisance or a statute, or suffreth a judgment in an action of debt, &c. and dieth before execution had, it shall not bee executed afterwards. But if

> execution be sued in the life of the conusor [*ie*, the defendant], it shall bind the survivor, and it is further implied, that both in the case of the charge and of the recognisance, statute, and judgment, if he that chargeth, &c. survive, it is good forever.

19 Three propositions were made by Sir Edward Coke in this passage:

(a) if a judgment was obtained against a joint tenant and he died before the judgment was executed, there could be no execution against his interest in land;

(b) if the execution was levied while the judgment debtor was still alive, the execution remained effective even if the judgment debtor subsequently died; and

(c) the execution of a judgment against one joint tenant was not affected by the death of the other joint tenant.

The first two of these propositions mirrored the decision in *Lord Abergavenny's case*.

20 As late as 1822, the foregoing passage from *Coke on Littleton* at p 184.b. had been cited with approval and accepted as good law by John Comyns, *A Digest of the Laws of England*, Vol 4 (Joseph Butterworth and Son *et al*, 5th Ed, 1822) ("*Comyns' Digest*") at p 114 in the following passage appearing under the heading "(K 7.) What charges bind the survivor":

> So, if he [*ie,* the joint tenant] acknowledges a statute, recognisance, or judgment, and execution be sued in his life-time; that binds his companion [*ie,* the other joint tenant] who survives. Co. L. 184. b.

English law arrived in Singapore

21 In 1824, the British government acquired sovereignty over Singapore. On 27 November 1826, the British Crown issued the *Letters Patent Constituting the Court of Judicature of Prince of Wales' Island, Singapore and Malacca* ("the Second Charter of Justice"), the effect of which was to introduce the law of England into Singapore (see Andrew Phang, *From Foundation to Legacy: The Second Charter of Justice* (Singapore Academy of Law, 2006) at pp 7–18). It would therefore appear that the legal position outlined at [15]-[20] became part of Singapore law on 27 November 1826.

Writ of* elegit *replaced by WSS in Singapore

Civil Procedure Ordinance 1878

22 The Straits Settlements Civil Procedure Ordinance 1878 (Ordinance No 5 of 1878) ("CPO 1878") replaced the writ of *elegit*, insofar as it applied to execution against land, with a new writ entitled "Writ of Execution against Lands". Section 364 of the CPO 1878 provided for the new writ in the following terms:

> 364. When a decree holder desires to enforce a decree for the payment of money against the immoveable property, whether freehold or leasehold, of a judgment debtor, he may cause a Writ, in the prescribed form, to be issued; and such Writ shall be indorsed with a description of the property intended to be taken in execution, and shall call upon the judgment debtor, and all other persons interested in the said property, to appear, on a day to be named therein, and show cause why the said property should not be sold under such execution.

23 The terms of s 364 of the CPO 1878 made clear that the writ of execution against lands was available against "the immoveable property, whether freehold or leasehold, of a judgment debtor". Section 367 of the CPO 1878 also provided that, when the writ of execution against lands was registered in a book kept at

the courts called the "Executions against Lands Book" (pursuant to s 365 of the CPO 1878), the judgment creditor would have a charge on the judgment debtor's interest in the land described in the writ. The court may direct the sheriff to sell the land so charged upon being satisfied that the parties before the court had good title to the land (see s 371 of the CPO 1878).

24 These provisions represented a departure from the historical position outlined at [13]-[14] above in that, under the CPO 1878:

(a) execution was no longer limited to freehold land;

(b) execution could be effected against all of the judgment debtor's land, instead of just half of his land;

(c) a judgment would bind the judgment debtor's land only after a writ of execution had been registered against the land; and

(d) land taken in execution could be sold.

25 The effect of s 364 of the CPO 1878 was to broaden the categories of interests in land which were exigible to execution. There was no express exclusion of jointly owned lands from execution. There was also no discernible legislative intent to restrict the new writ to a narrower range of interests in land than those previously exigible to the writ of *elegit*. It would therefore appear that a joint tenant's interest in land was just as exigible to this new writ as it had been to the old writ of *elegit*.

Civil Procedure Code 1907

26 Nine years later, the Straits Settlements Civil Procedure Code 1907 (Ordinance No 31 of 1907) ("CPC 1907") replaced the writ of execution against lands with the WSS. The relevant provisions read:

> **617.**—(1) The following property is liable to be seized under a writ of seizure and sale, *viz*;—*lands, houses,* goods, money, Government and bank notes, cheques, bills of exchange, promissory notes, Government and Municipal securities, bonds, or other securities for money, shares in the capital or joint stock or debentures of any public Company or Corporation, debts, and, except as hereinafter mentioned, *all other saleable property, moveable or immoveable, belonging to the judgment debtor, or over which, or the profits of which, he has a disposing power,* which he may exercise for his own benefit, and whether the same be held in the name of the judgment debtor, or by another person in trust for him, or on his behalf.
>
> (2) The following property shall not be liable to seize under such a writ, *viz.*:–
>
> > (*a*) the wearing apparel and bedding of the judgment debtor or his family, and the tools and implements of his trade, when the value of such apparel, bedding, tools and implements does not exceed $50;
> >
> > (*b*) the wages or salary of the judgment debtor
> >
> > (*c*) any pension, gratuity or allowance granted by the Colonial Government.
> >
> > (*d*) the share of the judgement debtor in a partnership, as to which the judgment creditor is entitled to proceed to obtain a charge under section 23 of the Imperial Partnership Act 1890.
>
> […]
>
> **619.**—(1) Where the property to be seized consists of immoveable property *or any interest therein*, either at law or in equity, the seizure shall be made by registering, under "The Registration of Deeds Ordinance 1886," an order of Court, signed by the Registrar and sealed with the seal of the Court, attaching the interest of the judgment debtor in the property described in the order.
>
> [emphasis added]

27 A few observations may be made about the foregoing provisions:

(a) Section 617(2) of the CPC 1907 introduced and expressly provided for a list of items which were not exigible to the WSS. The interest of a joint tenant in land was not listed among them.

(b) Section 617(1) provided that "lands, houses" and "all other *saleable property*, moveable or *immoveable*, belonging to the judgment debtor, or *over which*, or the profits of which, *he has a disposing power*, which he may exercise for his own benefit" [emphasis added] were exigible to a WSS. This wording was wide enough to include the interest of a joint tenant in land. Since a joint tenant was entitled to alienate his aliquot share (or potential aliquot share) in land without the consent of the other joint tenant, his interest in this aliquot share would constitute "saleable property… belonging to the judgment debtor", or "saleable property… over which… he has a disposing power".

(c) The phrase "or any interest therein" in s 619(1) of the CPC 1907 had apparently been interpreted by Hyndman-Jones CJ in 1911 to include the interest of a tenant in common, *a joint tenant* or a co-parcener (see J Bernard Weiss, Bashir Mallal & Nazir Mallal, *Straits Settlements Practice* (Malayan Law Journal Office, 1937) ("*Straits Settlements Practice*") at p 296, citing an unreported written judgment issued by Hyndman-Jones CJ on 6 March 1911 in *Muthoo Karuppan Chitty v Onan & ors., Onan, executor of Rejeedin deceased* (Suit No 688 of 1907) ("*Muthoo Karuppan Chitty*")).

Courts Ordinance 1934

28 The CPC 1907 was repealed by Courts Ordinance 1934 (Ordinance No 17 of 1934) ("Courts Ordinance 1934"). Section 617(1) of the CPC 1907 was re-enacted with modification as s 13(1) of the Courts Ordinance 1934 while s 619(1) of the CPC 1907 was re-enacted with modification as O 41 r 1(1) of the Civil Procedure Rules of the Supreme Court 1934 (S 2941/1934) ("RSC 1934").

29 Section 13(1) of the Courts Ordinance 1934 read:

> A judgment of the High Court for the payment of money to any person or into Court, may be enforced by a writ, to be called a writ of seizure and sale, under which *all the property, moveable or immoveable, of whatever description, of a judgment debtor may be seized*, except –
>
> > (*a*) the wearing apparel and bedding of the judgment debtor or his family, and the tools and implements of his trade, when the value of such apparel, bedding, tools and implements does not exceed fifty dollars;
> >
> > (*b*) tools of artisans, and, where the judgment debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain or produce as may in the opinion of the Court be necessary to enable him to earn his livelihood as such;
> >
> > (*c*) the wages or salary of the judgment debtor;
> >
> > (*d*) any pension, gratuity or allowance granted by the Government;
> >
> > (*e*) the share of the judgment debtor in a partnership, as to which the judgment creditor is entitled to proceed to obtain a charge under section 23 of the Partnership Act, 1890.
>
> [emphasis added]

Again, the interest of a joint tenant in land was not among the items expressly excluded from the reach of the WSS. Further, the phrase "all the property, moveable or immoveable, of whatever description" was so wide that it

indisputably included the interest of a joint tenant in land, since it was undeniable that such an interest constituted "property … of whatever description".

30 Order 41 r 1(1) of the RSC 1934 provided as follows:

> Where the property to be seized consists of immoveable property or any interest therein, seizure shall be effected by registering, under Ordinance No 148 (Registration of Deeds), an order of Court attaching the interest of the judgment debtor in the land described therein.

As mentioned above (at [27(c)]), the beginning phrase "Where the property to be seized consists of immovable property *or any interest therein* …" had been interpreted in the context of the s 619(1) of the CPC 1907 as including the interest of a joint tenant in land. In fact, the passage from *Straits Settlements Practice* cited at [27(c)] was taken from the publication's commentary on O 41 r 1(1) of the RSC 1934.

WSS in its current form

31 Section 13 of the Courts Ordinance 1934 was replaced by s 14 of the Courts Ordinance 1955 (Cap 3, 1955 Ed) which was in turn replaced by s 13 of the Supreme Court of Judicature Act 1969 (Act 24 of 1969). However, apart from minor amendments to the value of the goods exempted from seizure, the provision has remained unchanged to this day, in its form under s 13 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA").

32 With the promulgation of the Rules of the Supreme Court 1970 (S 274/1970) ("RSC 1970"), new provisions for charging orders were introduced and this replaced the WSS as the mode of execution against immovable property. In 1991, the RSC 1970 was amended to:

(a) remove the provisions for charging orders; and

(b) restore the WSS as the mode of execution against immovable property through the introduction of the new O 47 rr 4 and 5.

33 Like s 619(1) of the CPC 1907 and O 41 r 1(1) of the RSC 1934, the new O 47 r 4(1) began with "Where the property to be seized consists of immovable property *or any interest therein*…". The text of this O 47 r 4(1) remained unchanged to this day in its form under the ROC.

Adoption of Torrens system in Singapore

34 In 1956, Singapore adopted the Torrens system of land registration through the enactment of the Land Titles Ordinance 1956 (Ordinance No 21 of 1956) ("LTO 1956"). Section 103 of the LTO 1956 provided for the registration of a writ of execution. Pursuant to s 103(3) of the LTO 1956, such registration enabled the sheriff to execute, *inter alia,* instruments of transfer to effect a sale of the land. Section 106(1) of the LTO 1956 provided that:

> The interest in registered land which may be sold in execution under a writ is the interest which belongs to the judgment debtor at the date of registration of the writ.

35 In commenting on this provision, the draftsman of the LTO 1956, John Baalman, wrote in *The Singapore Torrens System – Being a Commentary on the Land Titles Ordinance, 1956 of the State of Singapore* (The Government of the State of Singapore, 1961) ("*Baalman's Commentary*") at p 218 that:

> 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]

Observations

36 It would appear from the foregoing historical survey that:

(a) when Second Charter of Justice was issued, English law allowed the execution of money judgments against the interest of a joint tenant in land;

(b) this English law position would have been introduced into Singapore by the Second Charter of Justice; and

(c) prior 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.

The current position in other Commonwealth jurisdictions

England

37 The position in England is clear. The authority of *Lord Abergavenny's case* and *Coke on Littleton* at p 184.b. (see [15]-[20] above) has, to the best of my knowledge, never been doubted in England. Thus, even after the writ of *elegit* was abolished by the Administration of Justice Act 1956 and replaced by the charging order, the learned authors of Gray and Gray, *Elements of Land Law* (Oxford University Press, 5th Ed, 2009) ("*Elements of Land Law*") were content to conclude without discussion that "involuntary severance results from the making of a charging order under the Charging Orders Act 1979 in respect of a debtor joint tenant's beneficial interest in land…" (at para 7.4.81).

Australia

38 Australian authorities are particularly relevant and persuasive, given that Singapore has adopted (and adapted) the Torrens system of land registration from Australia. Unlike Singapore, however, Australia uses the writ of *fieri facias* for execution against land, but the distinctions between that and the WSS are immaterial for present purposes.

39 It was held by the High Court of Australia in *Wright v Gibbons* (1949) 78 CLR 313 ("*Wright v Gibbons*") at p 324 that the introduction of the Torrens system of land registration "does not alter the law with respect to joint tenancy. It leaves the incidents of joint tenancy standing as they are determined by the common law and any other relevant statute." The implication is that the pre-Torrens common law position on the incidents of joint tenancy continue to apply in Australia.

40 In this regard, the Australian courts continued to accept the authority of established English precedents such as *Lord Abergavenny's case* – see, *eg*, *Guthrie v ANZ Banking Group Ltd* (1991) 23 NSWLR 672 ("*Guthrie*"), a decision of the New South Wales Court of Appeal which followed *Lord Abergavenny's case*. Meagher JA (as he then was) stated as follows (at [10]):

> The effect of the transfer inter vivos by one joint tenant of his mortgaged share to a co-tenant was decided as long ago as 1607 in *Lord Abergavenny's Case* (1607) 6 Co Rep 78b; 77 ER 373. That case has been constantly followed and never (so far as I know) been doubted. The legal proposition for which it is authority is that where judgment is given against one of two joint tenants and afterwards that one releases to the other before execution such release shall not bar the creditor's execution, whereas if the releasing joint tenant had died before execution the survivor holds the land discharged of any execution.

41 Other Australian authorities have also consistently accepted that a money judgment can be executed against a *joint tenant's* interest in land:

(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 (as he then was) 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.
>
> [emphasis added]

(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 original]

42 That this continues to be the position in Australia is clear from the recent case of *Boyd v Thorn* [2017] NSWCA 210, in which Leeming JA considered

the effect of an execution of judgment on jointly owned property and held (at [78]) that:

> The company also has ordinary rights of execution, based on its existing judgment debt, against the employee's assets. Those assets include the employee's aliquot interests in the holiday house and the family home. *For the purpose of alienation, each joint tenant is conceived as entitled to dispose of an aliquot share*: *Wright v Gibbons* (1949) 78 CLR 313; [1949] HCA 3 at 330; *Cassegrain v Gerard Cassegrain & Co Pty Ltd* (2015) 254 CLR 425; [2015] HCA 2 at [48] and [112], and *this extends to the compulsive alienation effected by execution of a judgment on land* (effected by a sale by the Sheriff pursuant to s 113 of the *Civil Procedure Act 2005* (NSW)): see for example Gowans J's analysis in *Mitrovic v Koren* [1971] VR 479 at 481.
>
> [emphasis added]

Hong Kong

43 In *Yu Pei-Tseng v Mong Wing Ho Alexander* [1978] HKDCLR 15 ("*Yu Pei-Tseng*"), the judgment debtor argued that a charging order could not be made against jointly owned property in execution of a judgment against only one joint tenant. This turned on the interpretation of O 50 r 1 of the Hong Kong Rules of the Supreme Court (Cap 4) which provided that the court may, for the purpose of enforcing a money judgment, impose a charging order on "any land or interest in land of a debtor". The court held that "a joint owner's interest in Hong Kong is an interest in land and may be effectively charged in execution under our O.50 r.1 unless it is expressly made subject to a trust for sale" (at p 19). The reasoning in this regard did not turn on the nature of charging orders, and thus the conclusion remains persuasive for our purposes.

44 In more recent cases, the Hong Kong courts have grappled with the issue of *when* severance of a joint tenancy would occur under a charging order. The judgment creditor's ability to execute its judgment against land held in joint tenancy was not disputed in these cases (see, *eg*, *Ho Wai Kwan v Chan*

Hon Kuen [2015] 1 HKLRD 901 ("*Ho Wai Kwan*") and *Primecredit Ltd v Yueng Chun Pang Barry* [2017] 4 HKLRD 327).

Canada

45 Like Australia, the mechanism of execution of judgments against land in Canada is through the writ of *fieri facias*. A long line of cases has accepted that a money judgment can be executed against the interest of a joint tenant in land. In *Power v Grace* [1932] 2 DLR 793, the Court of Appeal of Ontario held (at p 794) that:

> In the first place, it has been undoubted law for centuries that where a writ under which an interest in land may be taken by the sheriff has been placed in his hands against a joint-tenant, and the joint-tenant dies before execution, the other joint-tenant surviving holds it discharged of the execution. *Lord Abergavenny's Case* (1607), 6 Co. Rep. 78a, 77 E.R. 373. This law has never been doubted …

46 Subsequently, the Supreme Court of Canada held in *Maroukis v Maroukis* [1984] 2 SCR 137 ("*Maroukis v Maroukis*") that there could be no doubt about the exigibility of a joint tenant's interest in land to execution:

> In argument in this Court the appellant submitted that, even if the husband's interest vested in the wife only upon the making of a court order, the wife took the interest free and clear of the claims of execution creditors. *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.* I find no merit in this argument.
>
> 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, …
>
> [emphasis added]

Unlike *Power v Grace*, the exigibility of a joint tenant's interest in land to execution was a main issue in contention in *Maroukis v Maroukis*.

47 The remark in *Maroukis v Maroukis* about possible doubts that could have been cast by the earlier decision of *Re Tully and Tully and Klotz* [1953] OWN 661 ("*Tully*") warrants closer examination. *Tully* was a case of the Ontario High Court and was reported at [1953] 4 DLR 798. The report spanned two pages, most of which was devoted to reciting the facts and the parties' arguments. The headnote ("the DLR headnote") read:

> Where lands are held by joint tenants subject to a mortgage and an execution is filed against one of the joint tenants and subsequently the joint tenants enter into a contract to sell the property subject to the mortgage, the purchaser will get a good title as against the execution creditor of the one joint tenant.

48 This is a carefully crafted headnote. It merely said that a purchaser would get good title in the factual situation described. It did not say that the interest of a joint tenant in land was not exigible to execution.

49 The report of the court's decision consisted of a single sentence:

> Barlow J. delivered judgment, without written reasons, holding that the requisition had been satisfactorily answered.*

50 The asterisk referred to the following footnote ("the DLR footnote"):

> * Our information is that the judgment was based on the first of the arguments advanced by the vendors.

51 The "first of the arguments" referred to in the DLR footnote, as recited at pp 799-800 of *Tully*, went as follows:

> … where lands are held by joint tenants and are subject to a mortgage, the mere filing of a writ of execution against one joint tenant does not bind the lands; and moreover, such filing does not sever the joint tenancy: *Power v Grace* [1932], 2 D.L.R. 793, O.R. 357. The rights of an execution creditor against lands which are subject to a prior mortgage and where the debtor owns only an equity of redemption are set out in ss 31 and 32 of the *Execution Act*, R.S.O. 1950, c 120. Under the applicable case law, these sections apply where there is one mortgagor only. An equity of redemption is a unit, whole and indivisible, and anyone having an interest is entitled to redeem the whole. Hence, where lands are held by joint tenants subject to a mortgage, and an execution is filed against one joint tenant only, his share is not exigible nor is his share in the equity of redemption bound …

52 The following observations may be made about *Tully*:

(a) It was a decision without written reasons. Thus, the actual reasons for the decision remain a matter of speculation.

(b) The drafter of the DLR headnote was careful not to treat this case as authority for a broad proposition that the interest of a joint tenant in land can never be taken in execution.

(c) To the extent that the DLR footnote is to be taken at face value, the decision in *Tully* was a narrow one turning on how certain statutory provisions were to be interpreted in the context of a mortgagor's *equity of redemption*. In other words, this was not a decision which called into doubt the general proposition that, prior to the introduction of the Execution Act 1950 of Ontario (c 120), the interest in land of a joint tenant was exigible to execution.

(d) In the light of the foregoing, *Tully* cannot be regarded as a decision which is capable of throwing any doubt on the long line of Canadian cases holding a joint tenant's interest in land exigible to execution.

Other Commonwealth jurisdictions

53 Cases supporting the view that the interest of a joint tenant in land is exigible to execution can further be found in the following jurisdictions:

(a) Ireland (*Containercare (Ireland) Limited v Geoffrey Wycherley and another* [1982] IR 143; *Judge Alan Mahon and others v Noel Lawlor and another* [2011] IR 311 – both cases dealt with the question of *when* severance had occurred in situations where execution had already been levied against the interest of a joint tenant in land; the latter case also cited with approval *Lord Abergavenny's Case* (at p 320));

(b) New Zealand (*Gateshead Investments Ltd and another v Christopher Michael Harvey as executor of the estate of Michael George Harvey (deceased)* [2014] NZCA 361 – the issue was whether an incomplete transfer of a property by one joint tenant to the other joint tenant amounted to severance such that judgment creditors with a charging order over the interest of one joint tenant were entitled only to half and not the whole of the estate upon the death of the other joint tenant; neither the court nor the parties questioned the registrability of the charging order against jointly owned property in execution of a judgment against only one joint tenant);

(c) Bahamas (*James F Walker v Susan Lundborg* [2008] UKPC 17 ("*Walker v Lundborg*") – the court observed that the making of a

charging order against the interest in land of one joint tenant pursuant to a judgment obtained against him amounted to a severance of the joint tenancy);

(d) Barbados (*Royal Bank of Canada v Jordan; Barclays Bank plc and another v Jordan* (1994) 48 WIR 61 – the court held that *Lord Abergavenny's case* formed part of the received laws of Barbados and further cited *Lord Abergavenny's case* as well as various Canadian authorities in deciding whether a joint tenancy was severed by mere registration of a judgment against a joint tenant under the Registration of Judgments Act without issuance of writ of execution); and

(e) Jamaica (*First Global Bank Limited v Rohan Rose* [2016] JMCC COMM 19 ("*First Global*") – the main issue in this case was whether a joint tenant's interest in land was exigible to execution by a judgment creditor; the court held that it was, citing, *inter alia*, *Comyns' Digest* and *Wright v Gibbons*).

Observations

54 It would appear that in all Commonwealth jurisdictions on which relevant materials could be found, the uniform position is to allow a joint tenant's interest in land to be taken in execution of money judgments. No materials have been placed before me to indicate that there are any Commonwealth jurisdictions which have taken the contrary position.

55 Several of the cases noted above did not merely assume that the interest of a joint tenant in land is exigible to execution. For instance, *Yu Pei-Tseng, Maroukis v Maroukis*, and *First Global* are all examples of cases in which the point was raised squarely and a considered decision made by the court on the

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

Analysis

56 Following the foregoing historical overview and survey of positions in other Commonwealth jurisdictions, I turn now to consider what the position in Singapore is and ought to be. I will begin by outlining the WSS process in Singapore, followed by an examination of the decisions in *Malayan Banking, Chan Shwe Ching* and *Chan Lung Kien*, before turning to consider the appropriate course for this court to take.

The process in Singapore for execution of judgment debts against immovable property

57 There are two sets of statutory provisions which work together to govern the execution of money judgments against immovable property in Singapore: ss 131 to 136 of the Land Titles Act (Cap 157, 2004 Rev Ed) ("LTA") and O 47 rr 4 and 5 of the ROC.

58 After judgment is obtained, the process of execution against the judgment debtor's immovable property would proceed in the following chronological order:

(a) An application is made pursuant to O 47 r 4(1)(*b*) for an order attaching the interest of the judgment debtor in the immovable property.

(b) If the application is in order, the court will grant the order sought. The order, which is to be in Form 96 in Appendix A of the ROC, will state that the interest of the judgment debtor in the immovable property is to be "attached and taken in execution to satisfy the judgment".

(c) The order is then registered under the LTA (O 47 r 4(1)(*a*) of the ROC; s 132 of the LTA). Upon such registration, the interest of the judgment debtor "shall be deemed to be seized by the Sheriff" (O 47 r 4(1)(*a*)). Thereafter, any dealings by the judgment debtor in the land shall not be registered until the registration of the said order is cancelled (s 133 of the LTA).

(d) The judgment creditor will then file a document in Form 83 entitled "Writ of Seizure and Sale in Respect of Immovable Property" (O 47 r 4(1)(*e*)(i)). This writ directs the Sheriff to serve the writ together with the order referred to above on the judgment debtor. The writ also directs the Sheriff to sell the interest of the judgment debtor, if necessary, in order to satisfy the judgment debt.

(e) Thereupon, the sheriff will serve the writ and order together with a notice of seizure in Form 97 on the judgment debtor (O 47 r 4(1)(*e*)(iii)). The notice of seizure informs the judgment debtor that his interest in the immovable property had been seized.

(f) If the judgment debt has been satisfied, the judgment creditor may apply to withdraw the writ. This would result in the cancellation of the registration referred to at [(c)] above (s 136 of the LTA). Otherwise, the sheriff will proceed to sell the judgment debtor's interest in the immovable property (O 47 r 5 of the ROC; s 135 of the LTA).

59 For brevity and in keeping with the usage adopted in *Malayan Banking, Chan Shwe Ching* and *Chan Lung Kien*, the term "WSS" will be used in the remainder of this judgment to refer primarily to the order described at [58(a)]–[58(c)] above and, where the context so requires, to refer collectively to *both* the said order and the writ described at [58(d)] above.

60 Where the judgment debtor is insolvent, then:

(a) in the case of an individual judgment debtor who has gone into bankruptcy, execution against land is deemed complete when the WSS is *registered – ie,* the step described at [58(c)] above (s 105(2)(*c*) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("Bankruptcy Act")); and

(b) in the case of a corporate judgment debtor which has gone into liquidation, execution against land is deemed complete when the land is *sold – ie,* the step described at [58(f)] above (s 334(2)(*c*) of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act")).

61 The discrepancy between the positions under the Bankruptcy Act and the Companies Act arose as a result of the repeal and re-enactment of the predecessor Bankruptcy Act in 1995. Before 1995, the position under both Acts was consistent – see *Official Assignee of the Estate of Lim Chiak Kim, a bankrupt v United Overseas Bank Ltd* [1988] 2 SLR(R) 88 at [22], [29] and [30].

62 The foregoing account of the WSS process throws up a few points which are worth highlighting at this juncture for the purpose of framing the discussion in the next section of this judgment:

(a) "Seizure" occurs when the order issued under O 47 r 4(1) is registered pursuant to O 47 r 4(1)(*a*) of the ROC and s 132 of the LTA – *ie*, no physical seizure is required.

(b) What is being seized under a WSS is not the immovable property *per se*, but *the interest of the judgment debtor* in the immovable property – see language used in O 47 r 4(1)(*a*) and Forms 83, 96 and 97 of the ROC.

(c) What is being sold pursuant to a WSS is also not the immovable property *per se*, but *the interest of the judgment debtor* in the immovable property – see language used in s 135 of the LTA, O 47 r 5(*e*) and Forms 83 and 97 of the ROC.

(d) While the distinction identified at [(b)] and [(c)] above would not matter if the judgment debtor owns the entire estate and interest in the immovable property, *it would be relevant otherwise,* ***as in the case of a joint tenant or tenant in common***.

63 Finally, it will be useful to round up this overview of the WSS process in Singapore by recalling the following remarks by V K Rajah J (as he then was) in *United Overseas Bank Ltd v Chia Kin Tuck* [2006] 3 SLR(R) 322 at [12]–[14]:

> … It bears reiteration that *the common law position in relation to the interest(s) of a judgment creditor is not altered by the LTA* and further that the registration of a WSS does not create a proprietary interest in the subject property. …
>
> …
>
> … Even after registration, the general property and interest in the property remains with the debtor until the execution sale takes place. The Sheriff or the bailiff himself has no interest in the property and is merely conferred the ministerial power to transfer the proprietor's interest subject to any existing notified

> interests to a purchaser. *The Sheriff/bailiff can do this as he is statutorily deemed to be able to act as a registered proprietor to effect the sale and execute an instrument of transfer.*
>
> [emphasis added]

Thus, under a WSS, the sheriff is empowered to act as a registered proprietor of the land in effecting a sale of the judgment debtor's interest in the land.

The decisions in Malayan Banking, Chan Shwe Ching *and* Chan Lung Kien

64 *Malayan Banking* appears to be the first local case which dealt squarely with the issue of whether a joint tenant's interest in land is exigible to execution of judgment debts. The only known Singapore case pre-dating *Malayan Banking* which touched on this issue is *Muthoo Karuppan Chitty* (see [27(c)] above), and that case apparently considered the issue merely in *obiter*. *Malayan Banking* may therefore be regarded as the first authoritative statement of the law on this issue by a superior court in Singapore.

65 In holding that the interest of a joint tenant in land was *not* exigible to execution, the reasoning of the High Court in *Malayan Banking* may be summarised as follows:

(a) The "interest of the judgment debtor" attachable under a WSS under O 47 r 4(1)(*a*) must be a distinct and identifiable one (at [15]).

(b) A WSS should seize only the judgment debtor's interest and no more. Since each joint tenant has no distinct and identifiable share in the land, to seize one joint tenant's interest under a WSS is to seize also the interest of the other joint tenant, *unless a WSS concomitantly severs the joint tenancy* (at [15]).

(c) However, the registration of a WSS effects no such severance. While the Court of Appeal in *Sivakolunthu Kumarasamy v Shanmugam Nagaiah and another* [1987] SLR(R) 702 ("*Sivakolunthu*") recognised that the severance of a joint tenancy could be effected by an order of court, that decision had no application to a WSS because, unlike an order for the sale of property under the Women's Charter (Cap 353, 1985 Rev Ed), a WSS is not an order that must necessarily result in a sale – a WSS could lapse or be withdrawn without the property being sold (at [17]).

(d) Further, given these contingencies, it would be "creating a fine mess" if the court were to hold that a WSS severs a joint tenancy upon registration. If the WSS were to lapse or be withdrawn, would the joint owners become joint tenants again? If the WSS was renewed or a further WSS issued, would the rights of the co-owners change once again? (at [18])

(e) There is also a conceptual difficulty with the notion that a WSS severs a joint tenancy and attaches to the share of the judgment debtor according to the number of joint tenants. The shares of joint tenants must be ascertained with regard to all the circumstances of the case. Once a joint tenancy is severed by a WSS, the joint tenants would be tempted to declare their relative shares in such a way as to minimise the share seized under the WSS and maximise the share retained by the "innocent" joint tenant (at [21]).

(f) Apart from a WSS, a possible recourse which a judgment creditor may have against a joint tenant's interest in land is to appoint a receiver by way of equitable execution (at [23]).

66 The decision in *Malayan Banking* attracted the attention of the learned Professor Tan Sook Yee, who authored the article *Execution against Co-Owned Property* [2000] Sing JLS 52 to express her disagreement with the conclusion reached in *Malayan Banking*. I do not propose to summarise Prof Tan's reasons here separately as the reasons she canvassed will be touched on in the rest of this judgment.

67 Despite Prof Tan's article, *Malayan Banking* stood unchallenged until 2015, when the High Court in *Chan Shwe Ching* disagreed with *Malayan Banking* for the following reasons:

(a) Case law in Commonwealth jurisdictions appeared to support the view that the interest of a joint tenant in land was exigible to execution (at [15]–[16]).

(b) Even though a joint tenant did not have an undivided share of the land, he had an interest in land which was identifiable and capable of being determined – the interest of a joint tenant could be converted into undivided shares by alienation (at [12]).

(c) Since the interest of a joint tenant in land was capable of being identified and since it was commonly accepted that severance of a joint tenancy would occur when the sheriff sold the land, there was no reason why a WSS could not be issued against a joint tenant's interest in land (at [13]).

(d) The challenge of having to particularise the exact interest of the judgment debtor was not insurmountable as the courts were capable of deciding this in the event of a dispute. In any event, the same concern

would arise where a receiver is appointed in respect of a joint tenant's interest in land (at [13]–[14]).

(e) As for the concern expressed in *Malayan Banking* about "creating a fine mess", the relevant question to ask was not whether severance of the joint tenancy would occur when the WSS attached but whether severance could occur in the future. Since it was accepted that severance would occur when the sheriff sold the land (if it had not already occurred), there was no reason why a WSS could not be issued against a joint tenant's interest in land (at [20]).

(f) Concerns about unfairness to the "innocent" co-owner may be overstated (at [21]–[23]):

(i) the judgment creditor could only take whatever the judgment debtor was entitled to and no more;

(ii) even if the sheriff could obtain the court's directions under O 47 r 5(*g*) of the ROC to sell the entire property in spite of the "innocent" co-owner's objections, this was not an outcome unique to joint tenancy situation – the same issue would arise in the context of execution against a tenant in common's interest in land. The court should hesitate to treat judgment debtors differently based on the type of co-ownership by which their property was held; and

(iii) the perceived "unfairness" to the "innocent" co-owner ought to be balanced against "unfairness" to the judgement creditor who could be left without a remedy if the WSS was not granted.

68 Two years later, the High Court in *Chan Lung Kien* disagreed with *Chan Shwe Ching* and decided to follow *Malayan Banking*. Besides endorsing the reasons given in *Malayan Banking*, the court in *Chan Lung Kien* gave the following four additional reasons for disagreeing with *Chan Shwe Ching*:

(a) By focusing not on what was being seized when the WSS was issued but on what could be seized *subsequently* when the joint tenancy was severed, *Chan Shwe Ching* implicitly recognised that there was nothing for the WSS to bite onto until the joint tenancy was converted into a tenancy in common (at [32]).

(b) Before the court ordered the issuance of a WSS, it must be satisfied that the interest sought to be seized was capable of being seized. If the nature of the joint tenant's interest was such that it cannot be seized under a WSS, it could not be an answer to say that the joint tenant's interest would be converted into that of a tenant in common which can be seized under a WSS (at [33]).

(c) The reasoning in *Chan Shwe Ching* appeared to be premised on an ability to sell the entire property after seizing only the debtor-joint tenant's interest. But a seizure of the joint tenant's interest is not the same as a seizure of the property itself. Therefore, it was not possible to sell the property following the seizure of the debtor-joint tenant's interest by WSS as the sheriff would not be able to do so without the agreement of all the joint tenants (at [34]).

(d) The Commonwealth cases cited in *Chan Shwe Ching* proceeded on the assumption that a joint tenant's interest in land was exigible to execution, without any discussion. These cases therefore did not assist in the analysis of the issue (at [41]).

69 From the foregoing summary of *Malayan Banking, Chan Shwe Ching* and *Chan Lung Kien*, the relevant arguments and considerations in determining whether a joint tenant's interest in land is exigible to a WSS may be grouped into the following six clusters:

(a) whether the nature of a joint tenancy means that a joint tenant's interest is not exigible to a WSS;

(b) whether the court would be "creating a fine mess" by allowing the interest of a joint tenant to be taken in execution, given the implications arising from the time at which the joint tenancy would be severed during the WSS process;

(c) whether the sheriff would be able to sell the land and, if not, whether this renders futile the issuance of a WSS against a joint tenant's interest in land;

(d) whether difficulties with ascertaining the relative shares of joint tenants in the land render the issuance of a WSS against a joint tenant's interest in land impractical;

(e) whether allowing the interest of a joint tenant to be taken in execution results in unfairness to the "innocent" co-owner and how this should be balanced against possible "unfairness" to the judgment creditor; and

(f) whether there are good reasons for Singapore to depart from what appears to be the uniform position in other Commonwealth jurisdictions.

Considerations relating to the nature of joint tenancy

70 The key concern arising from the nature of the joint tenancy lies in the oft-cited proposition that all the joint tenants together own the whole property, but no one joint tenant holds any specific or distinct share of the property. This means that every joint tenant must partake in any dealings involving the *whole property* before such dealings can effectively bind the *entire* property. Therefore, for instances, one joint tenant cannot sell the property without the agreement of all the joint tenants.

71 While the foregoing features of a joint tenancy are well established in law, I do not think they necessarily lead to the conclusion that a joint tenant's interest is incapable of seizure by a WSS, or that a WSS issued against a joint tenant's interest has nothing to bite onto. First, it is undeniable that a joint tenant has a real and present interest in the jointly owned property (as opposed to a future, contingent or speculative interest). Secondly, this interest of a joint tenant's can be alienated without the consent or participation of the other joint tenant – when he does so, his very act of alienation severs the joint tenancy and crystallises his interest into an aliquot share which can be sold independently of his co-tenant's interest. Thirdly, it would appear logical that, whatever interest a judgment debtor is capable of selling on his own, the law of execution of judgments could empower the sheriff to sell it on the judgment debtor's behalf.

72 At first blush, the propositions at [71] above appear logically inconsistent with the propositions at [70] above. But scholars and jurists have long acknowledged the existence of this logical paradox *vis-à-vis* the nature of the joint tenancy without being compelled to deny the correctness of either set of propositions. For example, in Barry C Crown, *Severance of Joint Tenancy of*

Land by Partial Alienation (2001) 117 LQR 477, the learned author remarked as follows (at p 478):

> The fact that a joint tenancy can be severed by alienation presents considerable logical difficulties. Neither joint tenant owns a separate interest in the land. Each joint tenant holds everything yet holds nothing. If so, what property does he have to alienate to a third party? One might have thought, therefore, that the only way in which severance could take place would be by some form of agreement between all the joint tenants. In fact, however, severance is effected by the unilateral act of alienation by one of the joint tenants. What appears to happen is that the alienor disposes of an interest that he does not actually have and this "transfer" creates the very interest which was supposedly the subject-matter of the transfer in the first place.

73 The High Court of Australia has also had to confront this logical paradox squarely in *Wright v Gibbons*. The case concerned three sisters who held certain lands as joint tenants. Two of the sisters executed an instrument under which they purported to transfer to each other their respective "one-third share" in the land. The question was whether this mutual transfer between two out of the three joint tenants had the effect of severing the joint tenancy such that all three sisters became tenants in common, even though the third sister had neither participated in the transfer nor agreed to the severance. The trial judge held that this mutual transfer did not sever the joint tenancy. On appeal to the High Court of Australia, Latham CJ, Rich J and Dixon J unanimously held that the joint tenancy had been severed.

74 The trial judge's reasoning was summarised by Dixon J at p 329 in the following manner:

> … in contemplation of law joint tenants are jointly seised for the whole estate they take in land and no one of them has a distinct or separate title, interest or possession. It follows that an attempt on the part of two of three joint tenants mutually to assure each to the other his or her undivided share in the hope that each of their two shares will be taken by a new title and so enure as a several undivided interest, must fail because it can

> accomplish nothing. An alienation by a joint tenant of an undivided interest to a stranger, upon this view, imparts a several interest because such a power is incident to joint tenancy; but that is very different from identifying the respective interest of joint tenants and transposing them.

The essence of the trial judge's reasoning was that the joint tenants' respective interests are not sufficiently identifiable to allow them to be transposed by way of such mutual assurance.

75 In explaining the reasons for his disagreement with the trial judge, Dixon J examined the root of the logical paradox in the following passage at (pp 329–331):

> A sentence in *Bracton*, ***taken to be sure from its context***, has found its way through *Coke* into modern books as an expression of the conception: *Et sic totum tenet et nihil tenet scilicet totum in communi* (or *conjunctim* as *Coke* has it) *et nihil separatim per se.* Braction, fo. 430, Woodbine's ed., vol. 4, p. 336; Co. Litt., 186a. *Nihil tenet et totum tenet* became in Littleton *per my et per tout*, "*my,*" as it appears now to be agreed, being the *mie* still shown in some French dictionaries as a negative expletive particle, and not *mi*, "half" as *Blackstone* seems to have taught many generations of lawyers to believe. (See Serjeant *Manning's* notes to *Daniel v. Camplin* and *Murray v. Hall*: see further *Radcliffe's Real Property Law*, p. 33.) There it is said of joint tenants:– "Each of them has a right shared with his co-tenants to the whole common property, but no individual right to any undivided share in it … for this reason, joint tenants should not be spoken of as holding undivided shares."
>
> Mr Joshua Williams in his *Lectures on the Seisin of the Freehold* (1878), p. 117, went as far as saying that joint tenants in fact were considered by the law as one person for most purposes.
>
> ***Logical as may seem the deduction that joint tenants have not interests which in contemplation of law are sufficiently distinct to assure mutually one to another, there are many considerations which show that, to say the least, the consequence cannot be called an unqualified truth. The fact is that the principle upon which the deduction is based must itself be very much qualified. It represents only one of two not altogether compatible aspects of joint tenancy,*** a form of ownership bearing many traces of the scholasticism of the times in which its principles

> were developed. "Albeit they are so seised" says Coke, (186a) ("*scil. totum conjunctim, et nihil per se separatim*") "yet to divers purposes each of them hath by a right to a moitie." ***For the purposes of alienation each is conceived as entitled to dispose of an aliquot share***. The alienation may be partial. One joint tenant for an estate in fee simple may grant a lease of his equal share and during the lease the jointure is suspended and there is a temporary severance and apparently it would not matter that the lease did not commence until after the death of the joint tenant granting it. A joint tenant may grant an estate for life in his share, though in that case it seems that it works a severance of the entire fee simple. If one joint tenant suffered a forfeiture it was not the whole estate but only his aliquot share that was forfeited. If one joint tenant proved to be an alien the Crown, on office found, took only his share. ***Execution on a judgement 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***. See *Comyns, Digest*, vol. 4, S.V. Estates, K.6 & 7. Each joint tenant could declare uses and they could declare different uses of their respective shares: *Sanders Uses*, Ch. II., s 7, p 218. In two places, *Richard Preston* summed up the result: "Joint tenants are said to be seised *per my et per tout*. They are in under the same feudal contract or investiture. Hence livery of seisin from one to another is not sufficient. For all purposes of alienation, each is seised of, and has a power of alienation over that share only which is his aliquot part": *Essay on Abstracts of Title*, (1824), vol. 2, p. 62. "***The real distinction is, joint tenants have the whole for the purpose of tenure and survivorship, while, for the purposes of immediate alienation, each has only a particular part***"; *On Estates*, 2nd ed (1820), vol. 1, p. 136. …
>
> [Original emphasis in italics; emphasis added in bold italics and bold underlined italics]

76 Sixty-six years later, the foregoing passage from *Wright v Gibbons* was cited with approval and reaffirmed by the High Court of Australia in *Felicity Cassegrain v Gerard Cassegrain & Co Pty Ltd* [2015] HCA 2 ("*Cassegrain*"). In *Cassegrain*, a husband fraudulently procured the conveyance of certain lands from a company to him and his wife as joint tenants. There was no evidence that the wife had participated in or been aware of the husband's fraud. A question arose as to whether the husband's fraud could be imputed to the wife since, against the world, joint tenants were seen as one person. The majority in the

High Court of Australia, comprising French CJ, Hayne J, Bell J and Gageler J declined to do so, reasoning (at [47]–[49]) that:

> 47 In *Wright v Gibbons*, Dixon J described joint tenancy as "a form of ownership bearing many traces of the scholasticism of the times in which its principles were developed". And as his Honour's discussion of the writers shows, the "pedantic, needlessly subtle" [*fn*: *The Oxford English Dictionary*, 2nd ed (1989), vol XIV at 630, "scholastic", sense A4] thinking of that time was often compressed into maxims: especially "*nihil tenet et totum tenet*" (he holds nothing and he holds the whole) and "*per my et per tout*" (for nothing and for everything). But, as *Wright v Gibbons* demonstrates, those maxims cannot and must not be treated as constituting a complete or wholly accurate description of the legal nature of a joint tenancy.
>
> 48 The hinge about which the reasoning of Dixon J turned in *Wright v Gibbons* was that *the maxims (and similar statements by later writers to the effect that joint tenants are "considered by law as one person for most purposes") cannot be taken as the premise for deductive reasoning about the effect of a joint tenancy*. As Dixon J pointed out, by reference to *Coke on Littleton*, "[f]or purposes of alienation each [joint tenant] is conceived as entitled to dispose of an aliquot share". That is because, as Dixon J also said:
>
> > "Logical as may seem the deduction that joint tenants have not interests which in contemplation of law are sufficiently distinct to assure mutually one to another, there are many considerations which show that, *to say the least,* the consequence cannot be called an unqualified truth. *The fact is that the principle upon which the deduction is based must itself be very much qualified.*" (emphasis added)
>
> *Only by recognising the necessity to qualify those statements of principle is it possible to account for the cases of forfeiture suffered by, and execution against, one of several joint tenants referred to by Dixon J.*
>
> 49 Once qualifications of the principle that joint tenants are "considered by the law as one person for most purposes" are admitted to be necessary, bare statement of the principle cannot stand as a premise for deductive argument. …
>
> [emphasis added]

77 The foregoing passages from *Wright v Gibbons* and *Cassegrain* are instructive. As noted by Dixon J, there are "two *not altogether compatible*

aspects of joint tenancy" [emphasis added]. Consequently, the court is not compelled to focus only on one aspect (that a joint tenant holds the whole with the other joint tenant but holds nothing by himself) to the exclusion of the other equally valid aspect (that a joint tenant has a real ownership interest which is capable of immediate alienation without the consent of the other joint tenants). Once both aspects of joint tenancy are given weight to:

(a) it will no longer appear incompatible with the nature of the joint tenancy to hold that a joint tenant's interest in land is exigible to a WSS; and

(b) the seizure of a joint tenant's interest in land by WSS will also need not be seen as a seizure of the other joint tenant's interest – while a WSS would prevent the debtor-joint tenant from dealing with his interest, with the consequence that the other joint tenant would not be able to join the debtor-joint tenant in disposing of the whole property together, the other joint tenant remains free to deal with his aliquot share independently of the debtor-joint tenant.

78 The crucial role played by the second aspect of joint tenancy described at [77] above in the exigibility of a joint tenant's interest in land to execution is illustrated by the decision of the High Court of Australia in *The Registrar General of New South Wales v Wood* [1926] 39 CLR 46 ("*Registrar General v Wood*"), which is the authority cited in the passage from *Baalman's Commentary* quoted at [35] above.

79 *Registrar General v Wood* concerned a parcel of land held by a married couple on a form of co-ownership known as "tenancy by entireties". This form of co-ownership "comprised an *unseverable* joint tenancy between husband and wife, supposedly symbolising the medieval theory of indivisible unity between

marital partners" [emphasis added] (*Elements of Land Law* at para 7.4.110). In other words, tenancy by entireties is a form of co-ownership featuring only the first aspect of a joint tenancy (*ie,* the right of survivorship and the general rule that co-owners must act together when dealing with the property as a whole) but not the second aspect (*ie,* severability of the joint tenancy and the rule that a joint tenant is able to act on his own share without the consent of the other joint tenant).

80 After the wife's interest in the land was seized under a writ of *fieri facias* to satisfy a judgment debt, the husband bought the wife's interest in the land from the sheriff. When the husband sought to register the transfer, registration was refused by the Registrar General on the ground that the wife's interest in the land could not be regarded as her separate property, and therefore could not be taken under the execution. Consequently, the sheriff's sale could not and did not pass the wife's interest to the husband.

81 The High Court of Australia held by a 3-2 majority that the Registrar General was wrong to have refused registration of the transfer. The disagreement between the majority and the dissenting judges turned on the extent to which the Married Women's Property Act 1901 (NSW) ("MWPA") may be said to have transformed the wife's interest under the tenancy by entireties into something more akin to a joint tenant's interest. There was no disagreement among the judges that, had the MWPA not been enacted and the issue were to be decided solely by reference to the characteristics of the tenancy by entireties at common law, the Registrar General would have been right to refuse registration of the transfer. Nor was there disagreement that if the MWPA had indeed clothed the tenancy by entireties with the characteristics of a joint tenancy, the Registrar General would have been wrong to refuse registration of the transfer. The disagreement was thus over the impact of the

MWPA on the characteristics of the tenancy by entireties. The court's *ratio* is succinctly encapsulated in the following passage from Rich J's judgment (at pp 61–62):

> The essential characteristic of the form of co-ownership called tenancy by entireties which distinguishes it from joint tenancy is that there can be no severance. "Neither can sever the jointure, but the whole must accrue to the survivor" (*Greed d. Crew v King* [(1788) 2. Bl. 1211, at p. 1213]). This arises from the fact that the spouses are together seised or possessed of a single estate or interest – "the husband and wife shall have no moieties" (*Co. Litt.*, sec. 291). No right of property is vested in each over the whole, but one right of property over the whole is vested in both. This is expressed by saying they hold *per tout et non per my*.
>
> 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. If this provision applies to an estate which otherwise would be held by tenancy by entireties it operates to destroy its essential characteristic. The wife is to take a separate right of property and *is to have a power of alienation which must in addition involve severance*.
>
> [emphasis added]

82 *Registrar General v Wood* demonstrates that the essential feature of the joint tenancy which renders a joint tenant's interest exigible to execution is its severability, related to which is the ability of one joint tenant to alienate his share without the agreement of the other joint tenant. The inability to sever a tenancy by entireties meant that the interest of a tenant by entireties at common law could not be taken in execution. If the tenancy by entireties became severable as a result of statutory intervention, the interest of a tenant by entireties naturally became exigible to execution. In other words, while the inability to sever a tenancy by entireties meant that a tenant by entireties' interest at common law is not sufficiently distinct and identifiable to be seized in execution, the ability to sever would render such an interest sufficiently distinct and identifiable for it to be seized in execution.

83 In coming to the foregoing view (see [77] above), I also considered two local decisions.

84 The first decision is the Court of Appeal's decision in *Goh Teh Lee v Lim Li Pheng Maria and others* [2010] 3 SLR 364 ("*Goh Teh Lee*"), in which the Court of Appeal described the nature of a joint tenancy as follows (at [11]):

> Joint tenancy is that form of co-ownership where each of the co-owners is entitled to the whole of the interest which is the subject of co-ownership. In a joint-tenancy, each joint tenant holds the whole jointly and nothing severally... Joint tenants have rights inter se, but against the world they are seen as one single owner. Thus, no one joint tenant holds any specific or distinct share of the co-owned interest himself. Rather, the interest of each joint tenant is identical and lies in the whole and every part of the land, and none of that land is held by one joint tenant to the exclusion of the rest. ...

85 Although the foregoing statement focused only on the first aspect of the joint tenancy and did not discuss the second aspect, I do not think the Court of Appeal was thereby implying that Singapore law does not recognise the second aspect of the joint tenancy. The issue in *Goh Teh Lee* was whether it was necessary under the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) for co-owners to act together if they wanted to either support or oppose a proposed collective sale of a strata development. In discussing this issue, the Court of Appeal was not concerned with the question of alienation or severance. Thus the occasion for the Court of Appeal to consider the second aspect of the joint tenancy simply did not arise.

86 The second decision is *One Investment and Consultancy Ltd and another v Cham Poh Meng (DBS Bank Ltd, garnishee)* [2016] 5 SLR 923 ("*One Investment*"), which was also raised by Ms Quek to this court's attention. *One Investment* held that garnishee proceedings could not be brought against a bank

account held in joint names. There are three key differences between *One Investment* and the present case:

(a) the overwhelming weight of Commonwealth authorities is *against* allowing execution on joint bank accounts by garnishee proceedings, while the overwhelming weight of Commonwealth authorities is *in favour* of allowing execution against the interest of a joint tenant in immovable property;

(b) the illiquid nature of immovable property compared to balances in a bank account means that many of the concerns surrounding the potential prejudice to the other joint account holders in garnishee proceedings do not arise in the context of execution against jointly owned lands; and

(c) allowing joint bank accounts to be attached in garnishee proceedings would cause prejudice to banks who have no visibility as to the respective contributions of the joint account holders, while no similar prejudice would be caused to any third party if a joint tenant's interest in immovable property was attached in execution.

87 More generally, a joint bank account is legally no more than a contractual debt owed by the bank to joint creditors, the existence and enforceability of which depends on the contractual relationship between the bank and them. Its nature is fundamentally different from tangible property such as land. I therefore do not consider *One Investment* to be applicable to the WSS context. By the same token, my decision should be confined to a joint tenant's interest in land and has no application in the context of joint bank accounts.

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

Considerations arising from the timing of severance and possible undesirable consequences flowing therefrom

89 If a joint tenant's interest could initially be seized by WSS and if the sheriff could subsequently sell the joint tenant's interest so seized, this implies that severance must have occurred at some point between the time of seizure and the time of sale. Thus, a question may arise as to when exactly such severance occurred.

90 In jurisdictions which employ the device of charging orders, the general position is that the making of a charging order absolute against the interest of a joint tenant in land severs the joint tenancy, although some uncertainty on this issue had arisen in Hong Kong as a result of the recent decision in *Ho Wai Kwan* which departed from the established position by holding that a joint tenancy is not severed by a charging order.

91 In Australia, the cases and textbooks agree that the taking of a joint tenant's interest in execution severs the joint tenancy. However, it is not clear what exactly is meant by "taking in execution" in this context other than that mere registration of a judgment will not suffice.

92 The position in Canada is represented by the decision in *Power v Grace*, which has been cited in both *Malayan Banking* and *Chan Shwe Ching* for the proposition that a joint tenancy is not severed by mere registration of the WSS. This case, however, warrants closer scrutiny. What *Power v Grace* actually decided was that under the law of Ontario severance occurred not when the writ of *fieri facias* was delivered to the sheriff, but only when the sheriff advertised the land for sale. However, with respect, I do not think that the lesson to be drawn by a Singapore court from *Power v Grace* is that severance would occur only at the point of sale or advertisement for sale.

93 The issue in *Power v Grace* concerned the time at which execution was deemed to have occurred under the statutory framework then prevailing in Ontario. In that case, the judgment debtor held certain lands on joint tenancy with her daughter. The judgment debtor passed away after the writ of *fieri facias* was delivered to the sheriff but before the sheriff could commence selling the lands. The question was whether the joint tenancy had been severed by the delivery of the writ of *fieri facias* to the sheriff, such that the judgment debtor's share in the lands did not pass to her daughter by the right of survivorship. This would determine whether the judgment creditor could continue to execute against the judgment debtor's interest in the lands after her death. Riddell JA reasoned (at p 794) that:

> In the first place, it has been undoubted law for centuries that where a writ under which an interest in land may be taken by the sheriff has been placed in his hands against a joint-tenant, and the joint-tenant dies before execution, the other joint-tenant surviving holds it discharged of the execution. *Lord Abergavenny's Case* (1607) 6 Co. Rep. 78b, 77 E.R. 313 This law has never been doubted; and the sole question for decision is whether the delivery of the writ to the sheriff is "execution." *The proposition that such is the case, is conclusively met by the language of the statute and rules.*
>
> That "delivery" of the writ to the sheriff is not the equivalent of "seizure" by him is plain from the Execution Act, R.S.O. 1927,

> c. 112, s. 9(3) in the case of goods and s. 8 in the case of lands – it would savour of absurdity to say that a sheriff "to whom a writ of execution against lands is delivered for execution may seize and sell thereunder" if the delivery itself was equivalent to seizure. But still stronger, if possible, is the effect of our R. 564, corresponding to former statutory provisions; the Rule says that, "The advertisement in the *Ontario Gazette* of any lands for sale under a writ of *fieri facias*, during the currency of the writ, shall be deemed a sufficient commencement of the execution …" This would be nonsense if the delivery of the writ to the sheriff, itself, was *ipso facto*, the commencement of the execution.
>
> [emphasis added]

94 Therefore, *Power v Grace* does not stand for the general proposition that, independent of the statutory context, severance under a writ of execution occurs only when the sheriff commences the process of selling the land. Instead, *Power v Grace* stands for the following, narrower propositions:

(a) Since s 8 of the Execution Act 1927 of Ontario (c 112) provided that a sheriff "to whom a writ of execution against lands is delivered for execution may seize and sell thereunder", it would be absurd to say that mere delivery "for execution" itself constituted execution or seizure. Therefore, delivery of the writ to the sheriff would not have had the effect of severing the joint tenancy.

(b) Since it was provided in R. 564 of the Rules of Practice and Procedure of the Supreme Court of Ontario (in Civil Matters) 1913 that an advertisement for sale shall be deemed sufficient commencement of the execution, severance of the joint tenancy would occur at the time of such advertisement.

95 In the light of the foregoing, the lesson to be drawn from *Power v Grace* is that, in order to identify the time of severance, we need to understand what

constitutes execution or seizure under Singapore's statutory framework. In my view, the answer lies in O 47 r 4(1)(*a*) of the ROC, which provides that:

(a) "seizure shall be effected by registering" the WSS; and

(b) upon registration, the interest of the judgment debtor in the land "shall be deemed to be seized by the Sheriff".

96 This conclusion is fortified by the observation that Forms 83 and 97 of the ROC were drafted on the basis that the interest of the judgment debtor had been seized upon registration of the WSS pursuant to O 47 r 4(1)(*a*). Form 83 of the ROC, which is the writ directed to the sheriff *after* the WSS had been registered pursuant to O 47 r 4(1)(*a*), begins with the phrase:

> Having seized the interest of (name of execution debtor) in the immovable property specified in the Schedule hereto pursuant to the Order of Court dated …

while Form 97 of the ROC, which is the notice of seizure to be served on the judgment debtor, begins with:

> Take notice that on … (date of registration under O. 47, r. 4(1)(*a*)) the interest of (name of judgment debtor) in the immovable property specified in the Schedule hereto has been seized…

97 Therefore, if the reasoning in *Power v Grace* is to be followed, the proposition derived should be that severance would occur under the Singapore statutory framework at the time the WSS is registered. This is also the position urged upon this court by Dr Tang and Ms Quek, with which I agree. Despite differences between jurisdictions over when execution is deemed to have occurred and a lack of clarity in some jurisdictions over when execution is deemed to have occurred, the notion that severance occurs upon execution appears well accepted among Commonwealth jurisdictions. I am therefore

prepared to hold that, in Singapore, severance of a joint tenancy occurs when the debtor-joint tenant's interest is seized and this seizure occurs when the WSS is registered.

98 I turn now to another related concern raised in *Malayan Banking*. It was said in that case that a WSS could not attach the interest of a joint tenant unless it concomitantly severed the joint tenancy, but if the WSS were to sever the joint tenancy upon registration, the following undesirable consequences would ensue (at [18]):

> Bearing in mind that any of the above contingencies could happen, it would be creating a fine mess to hold that a WSS when registered severs a joint tenancy. What would be the position of the co-owners in relation to each other should the WSS subsequently be withdrawn or its registration lapse? Do they revert to being joint tenants again? If the WSS is renewed or a second or subsequent one issued, do the rights of the co-owners change once again? …

99 Dr Tang submitted that this concern over "creating a fine mess" could be addressed by the doctrine of "temporary severance". In brief, this doctrine involved the following tenets:

(a) the registration of a WSS does not permanently sever the joint tenancy;

(b) instead, a temporary severance is effected while the WSS remains in force, during which period the four unities of a joint tenancy are suspended;

(c) if the WSS lapses or is withdrawn, the four unities are restored and the joint tenancy comes back into existence; and

(d) permanent severance occurs only upon an out-and-out sale of the joint tenant's interest by the sheriff.

100 To illustrate the doctrine of temporary severance, Dr Tang referred to the following passage from *Wright v Gibbons* (at pp 328–329):

> For purposes of alienation each [joint tenant] is conceived as entitled to dispose of an aliquot share. The alienation may be partial. One joint tenant for an estate in fee simple may grant a lease of his equal share and during the lease the jointure is suspended and there is a temporary severance …

and the following passage from the Supreme Court of Victoria in *Frieze v Unger* [1960] VR 230:

> But a demise for a term of years by one of two joint tenants in fee does not, according to the preferable view, work a severance of the whole fee; at most it effects a "severance for the time", or "suspends" the joint tenancy *pro tem.* This is the view of Dixon J, loc. cit.; and see Co. Litt. 185a, 318a, and *Megarry and Wade*, loc. cit., note 23, commenting on Coke's doctrine. It is not altogether apparent what is meant by a temporary severance or suspension; but at all events, it is clear that the doctrine involves the proposition that the reversion expectant on the term will pass to the survivor of the joint tenants, so that any "severance" or "suspension" is such only as it necessary to procure for the lessee the enjoyment during the term of the grantor's moiety both after as well as before the grantor's death; cf. Co. Litt., 186a; and *Rolle's Abr.*, 1668, vol 2, p 89, in a note on *Smallman v Agborow* (1617) Cro Jac 417; 79 ER 356. …

101 As a demonstration of the utility and appropriateness of adopting the doctrine of temporary severance in the context of execution of judgments, Dr Tang suggested that the doctrine would allow the Hong Kong case of *Ho Wai Kwan* to be reconciled with earlier Hong Kong cases which consistently held that a charging order absolute made against the interest of a joint tenant in land severed the joint tenancy. In *Ho Wai Kwan*, a bank obtained a charging order absolute against the debtor-joint tenant's interest in land in 1994. The charging order was discharged in 1995. The debtor-joint tenant died in 1998.

The surviving joint tenant sold all her interest in the property in 2005. The question was whether the purchaser obtained good title to the entire property (assuming the joint tenancy had not been severed and the debtor's share had gone to the surviving joint tenant) or to only 50% of the property (assuming the joint tenancy had been severed by the charging order and that the debtor's share had gone to his estate). In holding that the charging order did not sever the joint tenancy, *Ho Wai Kwan* departed from what was thought to be the settled position in earlier Hong Kong cases. Although the reasoning in *Ho Wai Kwan* did not expressly rely on the doctrine of temporary severance, Dr Tang suggested that if *Ho Wai Kwan* was seen in the light of this doctrine, it would allow the Hong Kong cases to be reconciled with each other.

102 After hearing Dr Tang, Ms Quek also agreed that the Singapore courts could adopt the doctrine of temporary severance.

103 In my view, there is some attraction to adopting the doctrine of temporary severance in Singapore in the context of execution of judgments. It is true that the passages quoted at [100] above suggest that the doctrine has arisen only in cases involving leases that were unilaterally created by one joint tenant without the participation of the other joint tenant. It is also true that the doctrine does not offer a panacea for all the practical difficulties that may arise in relation to an execution by WSS against a joint tenant's interest in land. Indeed, the doctrine may give rise to further concerns. For instance, if the joint tenancy could be suspended upon registration of the WSS and could come back into existence upon the lapse or withdrawal of the WSS, large fortunes could change hands as a result of fortuitous events such as whether a joint tenant passes away before or after the lapse or withdrawal of the WSS.

104 Having said that, there appears on balance to be good arguments for the adoption of the doctrine. First, it offers a workable manner of addressing the concern over "creating a fine mess" identified in *Malayan Banking vis-à-vis* a lapsed or withdrawn WSS. Secondly, keeping the severance temporary and allowing the interests of the co-owner to be restored into a joint tenancy upon the lapse or withdrawal of a WSS would better accord with the co-owners' original intention for holding the land on joint tenancy, since it is generally unlikely that the joint tenants' original preference for holding the land on joint tenancy would have changed simply because a WSS had been issued in respect of the land. Thirdly, as with any other area of law, practical difficulties can be clarified and ironed out through the incremental development of case law.

105 In light of the above, although there is no need to decide conclusively on the adoption of the doctrine of temporary severance for present purposes, I am persuaded that the "fine mess" concern raised in *Malayan Banking*, while valid, is not insurmountable and should not in itself preclude the exigibility of a joint tenant's interest in land to a WSS in execution of a judgment.

Concerns over the sheriff's ability to sell and whether the WSS is futile

106 The utility of the WSS when attached to a debtor-joint tenant's interest in land should be considered in two separate respects: (a) the saleability of the joint tenant's interest in the land, and (b) the saleability of the whole property.

107 In *Chan Shwe Ching* it was suggested at [21]–[22] that even though a WSS would effect a seizure of the debtor-joint tenant's interest and nothing more, the sheriff could still apply to court for directions under O 47 r 5(*g*) of the ROC for the sale of the whole property in spite of the objections of the "innocent" joint tenant. It is not clear why the court in *Chan Shwe Ching* saw

the need to make such a suggestion. Perhaps the suggestion arose out of an apprehension that a WSS which seizes only the debtor-joint tenant's interest is of limited utility unless the sheriff is empowered to sell also the interest of the "innocent" joint tenant. Indeed Dr Tang also candidly recognised the difficulties with marketability of a joint tenant's interest in land when he cited the following authorities:

(a) *Elements of Land Law* which remarked (at fn 7 of para. 6.1.32) that "[a] sale of merely the debtor's beneficial share is impractical"; and

(b) *Walker v Lundborg* (see [53(c)] above) in which Lord Walker, delivering the opinion of the Privy Council on appeal from the Court of Appeal of Bahamas, remarked at [49] that "[a]n undivided share of a residential property is not a marketable asset".

108 *Walker v Lundborg* held at [49] that Order 31 of the Bahamas Rules of Supreme Court (c 53) (LRO 1/2006), which is *in pari materia* with O 31 of our ROC, enabled the court to authorise the sale of a jointly owned property as a whole on the application of a judgement creditor who had obtained judgment against only one joint tenant. *Midland Bank Ltd v Pike* [1988] 2 All ER 434 ("*Pike*") was cited in *Walker v Lundborg* as an authority for this proposition.

109 In my view, when evaluating the relevance of *Walker v Lundborg* and *Pike* to Singapore, it is important to have regard to the following points:

(a) Under s 63 of the Bahamas Supreme Court Act (c 53) (LRO 1/2010), a judgment operated as an equitable charge on all of the judgment debtor's lands from the moment the judgment is entered (see *Walker v Lundborg* at [8]). Specifically, s 63(2) provided that such a

charge may be enforced "in the same manner as an equitable charge created by the debtor by writing under his hand".

(b) In England, it is expressly and similarly provided in s 3(4) of the Charging Orders Act 1979 (c 53) that a charge imposed by a charging order may be enforced "in the same manner as an equitable charge created by the debtor by writing under this hand".

110 The nature and effect of a WSS against lands in Singapore is different from that of a judgment-charge in Bahamas or a charging order in England. Nothing in O 47 rr 4 and 5 of the ROC or ss 131–136 of the LTA provides that the WSS operates as a charge on the land seized under the WSS. Given this important difference between Singapore's statutory framework and the statutory framework in those jurisdictions which employ the devices of a judgment-charge or a charging order, the question whether the sheriff may sell the property as a whole under a WSS in Singapore must be answered by reference to the statutory provisions applicable in Singapore and not by reference to case law from these other jurisdictions. The relevant Singapore statutory provisions are:

(a) s 135(1) of the LTA, which provides that the interest in registered land that 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";

(b) O 47 r 5 of the ROC, which in para (e) refers specifically to the sale of the interest of the judgment debtor in any immovable property;

(c) Form 83 of the ROC, which directs the sheriff to "sell the said interest" to satisfy the judgment debt. The phrase "said interest" refers to the interest of the judgment debtor named in the WSS; and

(d) Form 97 of the ROC, which gives notice to the judgment debtor that if the judgment debt is not satisfied "the same will be sold by public auction after the expiry of 30 days from the day of seizure". The phrase "the same" refers to the interest of the judgment debtor named in the WSS.

111 In the absence of any statutory provisions in Singapore to the effect that a WSS against land operates as an equitable charge on the land, it appears that there is no basis for supposing that the sheriff may apply to court for directions under O 47 r 5(g) of the ROC for the sale of the whole property in spite of the objections of the "innocent" joint tenant. However, as this issue does not arise squarely before me, I do not come to a conclusive view on it.

112 Having said that, even if the sheriff cannot sell the property as a whole and can only deal in the debtor-joint tenant's aliquot share, the assumption that there would be limited utility for a WSS to be issued against a joint tenant's interest in land (see [107] above) may not hold true.

113 The starting premise of the analysis is s 135 of the LTA, which provides that the sheriff may sell "the interest which belongs to the judgment debtor at the date of the registration of the writ". In the case of a debtor-joint tenant, that interest would be the interest of the joint tenant in land which, as we have seen from the discussion at [72]-[77] above, comprises two aspects: for the purposes of tenure and survivorship, a joint tenant holds the whole with the other joint tenants but holds nothing on his own, but for the purposes of immediate alienation, each joint tenant is entitled to dispose of an aliquot share. In the context of a writ of seizure and *sale*, the relevant aspect of a joint tenant's interest in land would be that concerning immediate alienation – the aliquot share which the joint tenant is entitled to unilaterally dispose of. Given that the

sheriff is statutorily empowered to act as a registered proprietor to effect a sale under a WSS (see [63] above), the sheriff would (assuming a WSS can be issued against a joint tenant's interest in land) be able to sell the debtor-joint tenant's aliquot share just as the debtor-joint tenant would be able to do so himself.

114 In this regard, while an undivided share in immovable property is difficult to market to third parties and not likely to fetch a good price, that does not mean that the ability to sell an undivided share is not without value or utility. Indeed, even if a WSS does not allow the sheriff to sell the land as a whole, it confers a real benefit to the judgment creditor in at least two ways:

(a) It prevents dealings in the land by the other "innocent" joint tenant. This may create enough of a nuisance for the "innocent" joint tenant to:

(i) settle the debtor-joint tenant's judgment debt so as to get the WSS lifted;

(ii) buy over the debtor-joint tenant's share from the sheriff (see the facts of *Registrar General v Wood* discussed at [80] above); or

(iii) consent to the sale of the whole property by the sheriff in order that the "innocent" joint tenant may unlock the full economic value of his own aliquot share.

(b) As purchases of immovable properties in Singapore are generally financed by mortgage loans, a sale under a WSS is not possible without the mortgagees' consent. In such a situation, the value of a WSS lies not in the judgment creditor's ability to trigger a sale by the sheriff but in the priority which the WSS affords the judgment creditor in the

> distribution of any residual proceeds from a mortgagee's sale. In fact, the dispute in *Malayan Banking* arose out of competing claims by execution creditors over the residual proceeds from a mortgagee's sale. This advantage concerning priority would also apply in the event that an individual judgment debtor is declared bankrupt.

115 For these reasons, I recognise that a WSS against a joint tenant's interest in land confers real, and not merely illusory, value to a judgment creditor. Whether the economics of litigation in each case warrant the judgement creditor taking the step of seeking such a WSS is a matter for the individual plaintiff and judgment creditor to consider. However, even assuming that there is no power for the court to order a sale of the *whole* property, it is not necessary to conclude that the court would act in futility by allowing a WSS to attach against a joint tenant's interest in land. There are other ways in which the WSS may benefit the judgment creditor.

116 Finally, I note that the same concerns with the marketability of a partial interest in land would apply with equal force to the sale of a tenant in common's undivided share in a tenancy in common, which sale is not controversial. Accordingly, the limited marketability of an interest should not in itself be a reason for disallowing execution against the joint tenant's interest in land.

Concerns over difficulties with ascertaining the relative shares of joint tenants

117 I accept that once a joint tenancy is severed by the registration of the WSS, the joint tenants would be tempted to argue that they were holding their interest in unequal shares in equity and that that smaller share belonged to the debtor-joint tenant. In this regard, Ms Quek noted that the Commonwealth authorities which permitted execution against a joint tenant's interest in land did

not regard the issue of apportionment as an insurmountable issue, but rather took the default position that, unless otherwise established, the joint tenants hold in equal shares in tenancy in common upon severance. I agree that this is a sensible approach.

118 In the absence of evidence to the contrary, the court, sheriff and judgment creditor should be entitled to proceed on the basis that the joint tenants would, upon severance of their joint tenancy, hold the land in equal share both at law and in equity. It is a logical consequence of the notion that each joint tenant holds the whole with the other joint tenants but holds nothing by himself that all joint tenants should be regarded as having equal rights and equal status. Consequently, in the absence of contrary indication, each joint tenant should be entitled to an equal share upon severance. So long as a mechanism exists for interested joint tenants prove that their beneficial interests are not held in equal share, no injustice would be caused to any joint tenant. This mechanism exists today because our rules of procedure allow the other joint tenant to either intervene in the suit under which the WSS was issued or commence separate proceedings to assert his right over the land. Alternatively, it is open to the sheriff to bring the matter to court pursuant to O 47 r 5(*g*) of the ROC and seek the court's procedural directions on how any dispute over apportionment of shares should be dealt with.

119 The spectre of such satellite litigation is one complication with allowing execution against a joint tenant's interest in land which is not present in executions against a tenant in common's interest because, in a tenancy in common the respective shares of the co-owners would have been made clear from the outset. In my view, however, while this may be a relevant policy consideration against allowing execution against a joint tenant's interest in land,

it must ultimately be weighed against the authorities supporting the contrary and other relevant considerations.

Considerations arising from possible "unfairness" to the other joint tenant vs possible "unfairness" to judgment creditors

120 A concern was expressed in *Chan Shwe Ching* that if the position in *Malayan Banking* prevailed, debtors may be able to put their immovable properties out of the reach of creditors by holding them on joint tenancy. This view was shared by Ms Quek, who added that the unfairness is exacerbated by the significant rise in property prices in Singapore during the two decades since the decision in *Malayan Banking*.

121 I accept that this may not be a wholly compelling concern. Even if execution by WSS was not allowed, the process of bankruptcy remained available to the creditors, and indeed, as Dr Tang accepted, the joint tenancy would be severed if the debtor went into bankruptcy, and his share of the property would thereafter be vested in the Official Assignee. At that stage, the debtor-joint tenant's aliquot share would be available for distribution to creditors upon realisation by the Official Assignee.

122 However, reliance on the mechanism of a bankruptcy is not uncontroversial. Both Dr Tang and Ms Quek suggested that it would be unfair and disadvantageous to require judgment creditors to enforce their judgments against a joint tenant's interest in immovable property by way of bankruptcy proceedings instead of by a WSS, as the judgment creditors would then have to share the realised assets of the bankrupt debtor *pari passu* with other unsecured creditors.

123 I see some force in this argument of "unfairness" as I accept that judgment creditors are, and should be, generally placed in a more advantageous position than other unsecured creditors insofar as judgment creditors are entitled to levy execution against the judgment debtors' properties.

124 However, it takes a leap of logic to conclude from there that the law would be treating judgment creditors unfairly simply because it ring-fences some categories of property from execution. On the contrary, there is some attractiveness to the idea that the realisation of jointly owned properties to satisfy debts should be postponed until all other assets of the debtor are exhausted.

125 In particular, the right of survivorship that distinguishes joint tenancies from tenancies in common means that co-owners would generally not choose to hold as joint tenants unless there is some sort of familial or analogous relationship. In many cases, these jointly-held properties are likely to be the family residences of the debtors. In response, Dr Tang submitted that the concern with family residences is not pressing in Singapore as more than 80% of our population stay in public housing which, pursuant to s 51(6) of the Housing and Development Act (Cap 129, 2004 Rev Ed), are immune from judgment execution.

126 On balance, I do not think these arguments on purported "unfairness" bring us very far. I therefore do not see these considerations as providing strong arguments either for or against making a WSS available against a joint tenant's interest in land.

Considerations on harmonising local jurisprudence with that of other Commonwealth jurisdictions

127 Dr Tang pointed to the overwhelming weight of Commonwealth authorities in favour of allowing a joint tenant's interest in land to be taken in execution and submitted that Singapore should follow the general position in these other jurisdictions. Ms Quek submitted that there was no compelling reason for not aligning ourselves with the other Commonwealth jurisdictions.

128 I agree that it is generally desirable for common law jurisdictions to learn from each other and for courts to lean in favour of harmonising the development of common law around the world, particularly on issues where other jurisdictions appear to speak with one voice. I also note that the discussions concerning Commonwealth authorities in *Chan Shwe Ching* and *Chan Lung Kien* were rather tentative, presumably because counsel in those cases did not expound on these authorities in as detailed and exhaustive a manner as Dr Tang had done. Having been taken through the Commonwealth cases discussed at [37]- [54] by Dr Tang, I am persuaded that the position taken by these Commonwealth jurisdictions accord with logic and principle. I could not find any local circumstances (not even the scarcity of land and high property prices in Singapore) to persuade me that this an issue on which Singapore should strike out on its own and take a different position from all of the other Commonwealth jurisdictions.

Considerations arising from the scope of Section 13 of the SCJA

129 Dr Tang also submitted on s 13 of the SCJA, which history I have set out above (see [31] above). The proper construction of this provision was not a point considered in *Malayan Banking, Chan Shwe Ching* or *Chan Lung Kien*. Section 13 of the SCJA provides as follows:

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

130 Dr Tang noted that s 13 of the SCJA contemplated the exigibility of "all the property, movable or immovable, of whatever description", and did not specifically exempt jointly owned properties. He argued that it was therefore clear that interests in immovable properties held under a joint tenancy would fall within the ambit of s 13 of the SCJA. I agree with him.

131 However, *Malayan Banking* turned on the interpretation of the phrase "interest of the judgment debtor" in O 47 r 4(1)(*a*) of the ROC. Through a series of logical steps, beginning with the interpretation of the phrase "interest of the judgment debtor" as requiring a distinct and identifiable interest that a WSS could bite onto, to holding that the registration of a WSS does not sever a joint tenancy, *Malayan Banking* concluded that the phrase "interest of the judgment debtor" does not include the interest of a joint tenant in land. The question,

therefore, is to what extent should the interpretation of O 47 r 4 be influenced by the existence and wording of s 13 of the SCJA.

132 In this regard, the decisions in *American Express Bank Ltd v Abdul Manaff bin Ahmand and another and two other appeals* [2003] 4 SLR(R) 780 (at [27]) and *KLW Holdings Ltd v Straitsworld Advisory Ltd and another* [2017] SGHCR 11 (at [13]–[14] and [30]–[31]) suggest that, because the ROC provides for different modes of execution, there is no requirement to interpret any particular provision on execution in the ROC as coinciding in scope with the full ambit of s 13 of the SCJA. Thus, since a garnishee order is suitable only for attaching debts, it would not be inconsistent with s 13 of the SCJA to interpret the ROC provisions on garnishee orders as not applying to tangible property, even though tangible property is within the scope of s 13 itself. Similarly, since a WSS for immovable property is suitable only for attaching immovable property, it would not be inconsistent with s 13 to interpret the ROC provisions on a WSS for immovable property as not applying to chattels, even though chattels fall within the scope of s 13 of the SCJA.

133 This much is uncontroversial, but it begs the further question whether, if the ROC provides for only one mode of execution against interest in immovable property, there is an expectation that the relevant provision should, in the absence of express indication to the contrary, cover all types of interests in immovable property coming within the ambit of s 13 of the SCJA. In my view, this is likely to be the case. Given that the provisions in the ROC on execution by WSS against immovable property employ broad and general phrases such as "immovable property or any interest therein" or "interest of the judgment debtor in the immovable property" without qualification, the most reasonable interpretation is that they are intended to cover all possible interests

in immovable property which come within the ambit of s 13 SCJA. This would include the interest of a joint tenant in land.

Approach towards conflicting decisions of the High Court

134 In his submissions, Dr Tang cited *Attorney-General v Shadrake Alan* [2011] 2 SLR 445 ("*Shadrake*") at [4] for the proposition that horizontal *stare decisis* does not prevail in Singapore and that, consequently, I am not bound by *Malayan Banking*. Insofar as that proposition is concerned, I agree. However, the court in *Shadrake* also went on to state (at [5]) that:

> … I must bear in mind that the decisions of my learned colleagues and predecessors over the past four decades are entitled to the very greatest respect and unless there are compelling reasons to do so, I should not depart from them.

135 This consideration would clearly apply if there had been a consistent line of local High Court decisions holding that a joint tenant's interest in land is *not* exigible to a WSS. Indeed, I believe it would also apply if *Malayan Banking* had been the only local High Court decision on this point. This is because where there is a longstanding decision on a point of law, it is likely that individuals and businesses would have organised their affairs on the understanding that this decision represented the law and in the expectation that, since the decision had not been challenged for many years, it is likely to continue representing the law.

136 That is, however, not the situation we are faced with in the present case. The High Court, especially in recent years, has given conflicting indications as to the issue that was first discussed in *Malayan Banking*. In such a situation, as was the case confronting the High Court in *Shadrake* , it would be a fair characterisation to say that there is no settled approach and that it is not possible to say which earlier decision should be followed as a matter of consistency between High Court decisions. In my view, following the approach adopted in

Shadrake (at [43]), the better and perhaps necessary course is to return to first principles and policy considerations in determining how the court should proceed.

137 There was one final point which troubled me. This concerns the long gap of 17 years between the decisions in *Malayan Banking* and *Chan Shwe Ching* and the possibility that a significant number of persons may have organised their affairs during this 17-year gap with the expectation that a joint tenant's interest in land cannot be reached by creditors by execution. In the end, however, I decided that this is not a sufficiently compelling concern because, even during this 17-year gap, it has always been understood that a joint tenant's interest in land will vest in the Official Assignee on the bankruptcy of the joint tenant, which would in turn result in severance of the joint tenancy. In the circumstances, no debtor can claim a legitimate expectation that his interest as a joint tenant in land is protected absolutely from his creditors. The decision to allow a WSS to be issued against a joint tenant's interest in land merely shifts the timing of when that interest may be reached by the creditors; it does not affect the substantive position of whether that interest can ultimately be reached by these same creditors.

Conclusion

138 Prior to 1826, English law allowed execution against the interest of a joint tenant in land by way of the writ of *elegit*. This became part of Singapore law with the issuance of the Second Charter of Justice. This position under Singapore's common law was unaffected by subsequent statutory developments, from the replacement of the writ of *elegit* with the writ of execution against lands in 1878, to the replacement of the writ of execution against lands with the WSS in 1907, to the replacement of the WSS with the

charging order in 1970, and finally to the reinstatement of the WSS once again in 1991.

139 Nor was the position affected by the introduction of the Torrens system of land registration in Singapore. In fact, the Torrens system was adapted by Singapore from Australia with the specific knowledge that the interest of a joint tenant in land was exigible to execution under Australian law and that the introduction of Torrens legislation would not affect the law on this issue.

140 It is all the more unquestionable that the foregoing represents an accurate description of Singapore common law, since the same position has been received and maintained by all the Commonwealth jurisdictions on which relevant materials could be found. In this regard, allowing execution against a joint tenant's interest in land will bring our law in line with that of other Commonwealth jurisdictions, which in my view would be a desirable development since there appears to be no compelling local circumstances which warrant a different path to be taken on this issue.

141 As a matter of principle, I have no difficulties with the notion that the phrase "interest of the judgment debtor" in O 47 r 4(1)(*a*) of the ROC refers to an interest which is sufficiently distinct and identifiable to be seized in a meaningful way. In my view, a joint tenant's interest in land amply satisfies this requirement. As the discussion at [78]–[82] above demonstrates, unlike a tenancy by entireties which cannot be severed, a joint tenancy is severable. This severability of the joint tenancy is that which renders the interest of a joint tenant sufficiently distinct and identifiable to be seized by a WSS in a meaningful way. The seizure, which is effected at the time of registration of the WSS, will effect a severance of the joint tenancy which in turn enables the sheriff to sell the joint tenant's interest. The fact that a joint tenant's interest in land is of limited

marketability does not constitute sufficient reason to disallow execution against a joint tenant's interest in land. As discussed at [114] above, despite this limited marketability, the ability to execute against a joint tenant's interest in land remains of real value to judgment creditors.

142 I appreciate that allowing execution against a joint tenant's interest in land may lead to some initial uncertainty and perhaps an initial increase in litigation over issues such as the timing of severance and whether such severance is temporary or permanent. However, in my view, as with any other area of law, the uncertainties and difficulties can be clarified and ironed out through the incremental development of case law.

143 Finally, I also appreciate that allowing execution against the interest of a joint tenant in land may give rise to satellite litigation over the relative shares which each joint tenant is entitled to after the joint tenancy is severed by registration of the WSS. While the possible risks and possible costs arising from such satellite litigation is something which a judgment creditor would take into account before deciding whether to issue a WSS against a joint tenant's interest in land, I do not think the prospect of satellite litigation is sufficient to outweigh the other factors discussed in this judgment in favour of allowing execution against a joint tenant's interest in land.

144 For the reasons I have given above, I hold that a WSS may be issued under O 47 r 4 of the ROC against the interest of a joint tenant's in land. I also hold that, when a WSS is issued against a joint tenant's in land, the joint tenancy is severed when the WSS is registered pursuant to O 47 r 4(1)(*a*) of the ROC. While I find the doctrine of temporary severance proffered by Dr Tang to be both sensible and attractive, I make no pronouncement on the point and would leave this to be further explored in a future case. On the issue of whether the

sheriff can sell the entire property (as opposed to merely the debtor-joint tenant's interest) without the consent of the other joint tenant, I tend to agree with *Chan Lung Kien* that this cannot be done, but I decline to make a definitive ruling on this point as the issue did not arise on the facts before me. However, I have no doubt that the sheriff can sell the interest of the debtor-joint tenant which has been seized by a WSS. Finally, my decision is confined to the interest of a joint tenant in land and it does not extend to other forms of jointly held assets, such as joint bank accounts.

145 The appeal is allowed. Order is hereby granted in terms of SUM 4476 of 2017. The Plaintiff is to file written submissions on costs within one week from the date of this judgment.

146 It remains for me to record my appreciation to both Dr Tang Hang Wu and Ms Quek Ling Yi for their able submissions and for the invaluable assistance they have provided to the court.

Pang Khang Chau
Judicial Commissioner

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for the plaintiff/appellant;
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