

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHCR 18

Suit No 194 of 2017 (Summons No 4476 of 2017)

Between

Peter Low LLC

... Plaintiff

And

Higgins, Danial Patrick

... Defendant

GROUND OF DECISION

[Courts and Jurisdiction] — [*Stare Decisis*] — [Assistant Registrars]

[Judgment and Orders] — [Ex Parte Order Set Aside] — [*Stare Decisis*]

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Peter Low LLC
v
Higgins, Danial Patrick

[2017] SGHCR 18

High Court — Suit No 194 of 2017 (Summons No 4476 of 2017)
Navin Anand AR
19 October 2017; 8 November 2017

13 November 2017

Navin Anand AR:

Introduction

1 This is the Plaintiff's *ex parte* application for an order that the Defendant's interest in an immovable property be attached and taken in execution under a writ of seizure and sale ("WSS"). The Defendant and his wife hold this property as joint tenants.

2 The crux of the Plaintiff's application is whether a joint tenant's interest in immovable property is exigible to a WSS. This issue has divided the courts and academics alike. Nevertheless, based on the submissions before me, I only needed to resolve two issues to determine the Plaintiff's application: (a) whether Assistant Registrars are bound by the decisions of High Court Judges, and (b) whether there are conflicting decisions by different High Court Judges regarding the exigibility of a joint tenant's interest in immovable property by

means of a WSS, such that an Assistant Registrar would be free to decide this matter by preferring one precedent over another. As I held that the answer to the first question was “yes”, and the answer to the second was “no”, I considered myself bound by the decisions in *Malayan Banking Bhd v Focal Finance Ltd* [1998] 3 SLR(R) 1008 (“*Focal Finance*”) 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 WSS.

3 On 8 November 2017, I dismissed the Plaintiff’s application. The Plaintiff has appealed against my decision, and I now set out my full grounds below.

Brief Facts

4 The Defendant and his wife are joint tenants of a condominium at 10 Pasir Ris Link (the “Property”).

5 The Plaintiff is a law firm that represented the Defendant in two High Court Suits – Suit No 244 of 2013 and Suit No 733 of 2014 (the “HC Suits”). On 24 October 2016, the Plaintiff ceased to act for the Defendant in the HC Suits.

6 The Defendant did not pay the Plaintiff’s legal fees for work done in the HC Suits. On 2 March 2017, the Plaintiff commenced Suit No 194 of 2017 (“Suit 194”) to recover outstanding legal fees of \$394,254.14 from the Defendant. The Defendant did not enter an appearance in Suit 194, and on 9 June 2017, the Plaintiff entered judgment in default of appearance against the Defendant for the sum of \$394,254.14 plus interest and costs.

7 The judgment debt in Suit 194 remains wholly unsatisfied. As a result,

the Plaintiff applied under O 47 r 4 of the Rules of Court (Cap 322, R5, 2014 Rev Ed) (“the Rules”) for an order that the Defendant’s interest in the Property be attached and taken in execution under a WSS.

The Plaintiff’s Case

8 The Plaintiff’s case is that a joint tenant’s interest in immovable property can be attached and taken in execution under a WSS. The Plaintiff relies on the decision in *Chan Shwe Ching v Leong Lai Yee* [2015] 5 SLR 295 (“*Chan Shwe Ching*”), where Edmund Leow JC made an *ex parte* order that one joint tenant’s interest in immovable property be attached and taken in execution under a WSS.

9 The Plaintiff pointed out that the decision in *Chan Shwe Ching* was in conflict with two other decisions by High Court Judges, namely, *Focal Finance* by Tay Yong Kwang JC (as he then was) and *Chan Lung Kien* by Chua Lee Ming J. Both decisions held that a joint tenant’s interest in immovable property cannot be taken in execution under a WSS. The Plaintiff submitted that in light of this seeming conflict in the authorities, I was not bound by any of the aforementioned three decisions, and was free to rely on the decision in *Chan Shwe Ching*.

10 The Plaintiff urged me to follow Leow JC’s decision in *Chan Shwe Ching* as (a) it was consistent with the legal position in the jurisdictions of Australia, England, and Canada, and (b) there were strong public policy reasons in favour of finding that a joint tenant’s interest in immovable property can be taken in execution under a WSS.

11 At the first hearing before me, I raised a concern that the authorities were not in fact in conflict. This is because the *ex parte* order granted by Leow JC in *Chan Shwe Ching* was set aside by Chua J in *Chan Lung Kien* after an *inter*

partes hearing and therefore ceased, for the purposes of the doctrine of *stare decisis*, to have any precedential effect.

12 In response, the Plaintiff’s counsel acknowledged that the setting aside of Leow JC’s order is “a potential problem” to the Plaintiff’s position. He then submitted that I ought to adopt the approach by the court in *Chan Yat Chun v Sng Jin Chye & Anor* [2016] SGHCR 4 (“*Chan Yat Chun*”), where the learned Assistant Registrar stated in *obiter* that Assistant Registrars are not bound by the decisions of High Court Judges. In short, the Plaintiff’s alternative submission at the time was that even if *Chan Shwe Ching* ceased to have precedential effect, on the authority of *Chan Yat Chun*, I was not bound by either *Focal Finance* or *Chan Lung Kien* anyway, and he urged me to find that the Defendant’s interest (as joint tenant) in the Property can be taken in execution under a WSS.

13 It subsequently came to my attention that there was another decision by an Assistant Registrar, namely *Actis Excalibur Ltd v KS Distribution Pte Ltd* [2016] SGHCR 11 (“*Actis Excalibur*”), where the court found that Assistant Registrars are bound by the decisions of High Court Judges. I then invited the Plaintiff’s counsel to address me on *Actis Excalibur*. At the second hearing before me, he submitted that the decision in *Actis Excalibur* is correct and that Assistant Registrars are bound by the decisions of High Court Judges. However, the Plaintiff’s counsel maintained that I was not bound by *Focal Finance* or *Chan Lung Kien* as there was conflict in the authorities. In short, he argued that Chua J (as one High Court Judge) could not overrule the decision of another High Court Judge (*ie*, Leow JC), and that I was free to rely on the decision in *Chan Shwe Ching*.

Issues

14 As highlighted in the introduction, there are two issues which I needed to resolve to determine the Plaintiff’s application. I propose to first deal with the issue of whether Assistant Registrars are bound by the decisions of High Court Judges, before considering if I am bound by any High Court decision on the execution against a joint tenant’s interest in immovable property by means of a WSS.

Issue 1: *Stare Decisis* between High Court Judges and Assistant Registrars

15 In 2016, two Assistant Registrars reached different conclusions on the issue of whether Assistant Registrars are bound by the decisions of High Court Judges.

16 In the first decision of *Chan Yat Chun*, Assistant Registrar Zhuang WenXiong (“AR Zhuang”) observed that Assistant Registrars are not bound by the decisions of High Court Judges because (a) the doctrine of horizontal *stare decisis* does not prevail in Singapore and the High Court is not bound by its previous decisions, and (b) O 32 r 9 of the Rules provides that an Assistant Registrar has the same powers and jurisdiction as a Judge in Chambers (see [11]).

17 AR Zhuang’s views were considered by Assistant Registrar Colin Seow (“AR Seow”) in *Actis Excalibur*. In short, AR Seow disagreed with AR Zhuang’s views for two reasons. First, he held that the authorities cited by AR Zhuang, namely *Attorney-General v Shadrake Alan* [2010] SGHC 327 and *Attorney-General v Chee Soon Juan* [2006] 2 SLR(R) 650, were distinguishable and did not deal specifically with whether Assistant Registrars were bound by the decisions of High Court Judges (see [15]). Second, Assistant

Registrars are conferred with powers and jurisdiction to carry out certain functions *on behalf of* High Court Judges as a matter of the internal organisation of judicial work in the High Court, and is therefore juridically ancillary to a High Court Judge in the judicial hierarchy (see [18]).

18 In my view, the different conclusions reached in *Chan Yat Chun* and *Actis Excalibur* is explicable on how the respective courts approached the issue of the *place or status of an Assistant Registrar in the judicial hierarchy*. While the court in *Chan Yat Chun* assumed that Assistant Registrars and High Court Judges are co-ordinate in the judicial hierarchy (see *Chan Yat Chun* at [11]), the court in *Actis Excalibur* found that Assistant Registrars are in fact subordinate to High Court Judges in the judicial hierarchy (see *Actis Excalibur* at [16]–[18]).

19 Hence, the proper characterisation of the place of Assistant Registrars in the judicial hierarchy is key to unlocking the issue of whether Assistant Registrars are bound by the decisions of High Court Judges. In approaching this issue, it will be helpful to briefly consider the doctrine of *stare decisis*, and the jurisdiction and powers of the Assistant Registrar, which I now turn to.

Stare Decisis

20 In essence, *stare decisis*, or the doctrine of binding precedent, consists of rules of practice which guide the courts on the manner of adjudication with reference to decided cases. *Stare decisis* can operate between courts at different levels in the judicial hierarchy (*ie*, vertical *stare decisis*) and between courts at the same level in the judicial hierarchy (*ie*, horizontal *stare decisis*). For present purposes, I am only concerned with vertical *stare decisis* in Singapore.

21 Vertical *stare decisis* simply means that a Judge is constrained to follow

a decision of the courts above him in the judicial hierarchy if the case before him cannot be distinguished from the prior case (see Walter Woon, “The Doctrine of Judicial Precedent” in *The Singapore Legal System* (Kevin YL Tan ed) (Singapore University Press, 1999) (“Woon”) at 298). Under the rules of *stare decisis*, only the *ratio decidendi* of the decision is binding (see Woon at 298). In other words, only the rule of law which was expressly or impliedly treated by the Judge as a necessary step in reaching his or her conclusion is binding (see *Indo Commercial Society (Pte) Ltd v Ebrahim and another* [1992] 2 SLR(R) 667 at [14]).

22 There can be no dispute that vertical *stare decisis* applies in our judicial system. Applied to the present case, if I find that High Court Judges are above Assistant Registrars in the judicial hierarchy (*ie*, like AR Seow in *Actis Excalibur*), it follows that vertical *stare decisis* applies between Assistant Registrars and High Court Judges.

Powers and Jurisdiction of Assistant Registrars

23 The Registrar and the Assistant Registrars of the High Court exercise delegated jurisdiction which is devolved from that vested in a High Court Judge in Chambers (see the Court of Appeal decision in *Tan Boon Heng v Lau Pang Cheng* [2013] 4 SLR 718 (“*Lau Pang Cheng*”) at [13]–[16]). This is clear from s 62(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) read with O 32 r 9(1) of the Rules, which provide that the powers conferred on a High Court Judge in Chambers is exercisable by the Registrar unless the Chief Justice directs otherwise (for an example of such a direction, see para 42(1) of the Supreme Court Practice Directions, where it is stated that the Chief Justice has directed that applications for *Mareva* injunctions and search orders shall be heard by High Court Judges but all other *ex parte* applications for interim

injunctions may be heard by the Registrar and the Assistant Registrars of the High Court). The Registrar, and by extension Assistant Registrars, are delegated such powers, authority and jurisdiction as a matter of *administrative convenience*, to save the time of High Court Judges (see *Lau Pang Cheng* at [14]).

24 All decisions of an Assistant Registrar (whether interlocutory or final) are appealable to a High Court Judge in Chambers under O 56 r 1(1) of the Rules. A Judge in Chambers who hears a Registrar’s Appeal is not exercising appellate jurisdiction but *confirmatory* jurisdiction, and is entitled to exercise his or her discretion afresh (see *Lau Pang Cheng* at [16] and [21]). This stems from the fact that the Assistant Registrar and the Judge in Chambers exercise the same powers and jurisdiction.

My Decision

25 With respect, I do not find the decision in *Chan Yat Chun* persuasive for two reasons.

(a) First, I agree with AR Seow that the authorities relied on in *Chan Yat Chun* are distinguishable and did not specifically consider whether Assistant Registrars are bound by the decisions of High Court Judges (see [17] above), or where Assistant Registrars stand in the judicial hierarchy.

(b) Second, the decision in *Chan Yat Chun* concerned an execution against a tenant-in-common’s interest in immovable property by means of a WSS. AR Zhuang had accepted as “trite” that a tenant-in-common owns a distinct and identifiable interest in immovable property (at [6]), and would have found, either on the authority of *Focal Finance* or *Chan*

Shwe Ching, that the interest of a tenant-in-common is exigible to a WSS (see [33] and [34] below). It was for this reason that the issue of whether Assistant Registrars are bound by decisions of High Court Judges was not argued before AR Zhuang and he did not have the benefit of hearing submissions on the matter.

26 Instead, I prefer the conclusion reached in *Actis Excalibur*. In my view, it must be the case that High Court Judges occupy a higher position than Assistant Registrars in the judicial hierarchy such that the doctrine of vertical *stare decisis* prevails between Assistant Registrars and High Court Judges. I say so for three reasons.

27 First, all decisions of Assistant Registrars are appealable to a High Court Judge in Chambers as of right. In a hierarchical system of courts like ours, this right of appeal is indicative of (a) the lower standing of the Assistant Registrar *vis-à-vis* the High Court Judge in the judicial hierarchy, and (b) the existence of vertical *stare decisis* between Assistant Registrars and High Court Judges. As explained by Professor Walter Woon, vertical *stare decisis* naturally follows from the power of one court to reverse the decision of another court. Professor Woon says (see *Woon* at 306):

Vertical *stare decisis* is ***concomitant of the power of a court to reverse the decision of a lower court. If there is a right of appeal from court A to court B, then court A should treat court B's decisions as binding.*** Otherwise, if court A departs from such decisions it is likely to be reversed on appeal. ***Thus a court should be bound by the decisions of a court to which appeals lie ...*** [emphasis added in bold italics]

28 The same reason was expressed by the High Court of Australia in *Viro v R* (1978) 18 ALR 257, where it was held that the High Court of Australia was no longer bound by the decisions of the Privy Council following the abolition of appeals from the High Court of Australia to the Privy Council. Barwick CJ

explained that “[t]he *essential basis* for the observance of a decision of a tribunal by way of binding precedent is that that *tribunal can correct the decisions of the court which it is said so to be bound*” [emphasis added] (at 260). Similarly, Stephen J stated that “[t]he sanction implicit in the doctrine of precedent is simple and effective: if an inferior court fails to observe the doctrine the superior court will correct its decision on appeal. *Thus the existence of an appeal is inherent in and essential to the doctrine*” [emphasis added] (at 289).

29 The second reason, which is related to the first, is the unfettered standard of review by High Court Judges in Registrar’s Appeals on interlocutory applications. In such applications, the Registrar’s Appeal operates as an actual *rehearing* of the application, and the High Court Judge treats the matter afresh as though it has come before him or her for the first time (see *Herbs and Spices Trading Post Pte Ltd v Deo Silver (Pte) Ltd* [1990] 2 SLR(R) 685 at [12]). The fact that the High Court Judge need not consider how the Assistant Registrar exercised his or her discretion is strongly indicative that High Court Judges stand above Assistant Registrars in the judicial hierarchy.

30 The third reason relates to the delegated nature of the jurisdiction exercised by Assistant Registrars. Assistant Registrars are delegated certain powers, authority and jurisdiction of High Court Judges *for administrative convenience* (see [23] above). This must mean that Assistant Registrars are not co-ordinate with High Court Judges in the judicial hierarchy. As such, there is much force to AR Seow’s remark in *Actis Excalibur* that Assistant Registrars “are necessarily obliged in the discharge of [certain judicial functions on behalf of High Court Judges] not to overreach the very premise upon which such powers, authority and jurisdiction are derived” (see [18]).

31 To conclude on this issue, I find Assistant Registrars are bound by the

ratio decidendi of the decisions of High Court Judges if the case before him or her cannot be distinguished. The Plaintiff has rightly conceded that the decision in *Actis Excalibur* ought to be preferred to that in *Chan Yat Chun*.

Issue 2: Conflicting Decisions on WSS of Joint Tenant's Interest?

32 At the outset, I accept the proposition that an Assistant Registrar is not bound to follow the decision of any one High Court Judge where that decision conflicts with another decision by a High Court Judge (see *Actis Excalibur* at [19]; *Chan Yat Chun* at [10]). The issue here is whether there exists a state of conflict in the authorities. There are three decisions by High Court Judges (cited by the Plaintiff) that have a bearing on this determination.

33 In the first decision of *Focal Finance*, Tay JC held that a joint tenant's interest in immovable property cannot be taken in execution under a WSS because the interests of the joint tenants are not distinct and identifiable, and therefore not capable of being attached under a WSS (at [15]–[18]).

34 In the second decision of *Chan Shwe Ching*, which was decided *ex parte*, Leow JC held that a WSS can be issued against a joint tenant's interest in immovable property because severance of the joint tenant's interest (to create a tenancy-in-common) will occur when the Sheriff decides to sell the immovable property under the WSS (at [13] and [20]).

35 In the third decision of *Chan Lung Kien*, which was decided *inter partes*, Chua J followed Tay JC's decision in *Focal Finance*. Chua J gave three reasons for this (at [29]–[35]). First, there is nothing for the WSS to bite onto at the point when the court makes an order for a WSS to be issued. Each joint tenant's interest in the property is indistinguishable, and the issuance of the WSS does not sever the joint tenancy to create a tenancy-in-common. Second, if there is

nothing for the WSS to bite onto at the point when the court makes an order for a WSS to be issued, it cannot be an answer to say that the joint tenant's interest will *subsequently* be converted into the interest of a tenant-in-common which would be capable of being seized. Third, Leow JC's reasoning in *Chan Shwe Ching* is premised on the ability to sell the property following a seizure of a debtor's interest. However, the seizure of a joint tenant's interest under a WSS (even assuming this can be done) is not the same thing as a seizure of the property itself, and the Sheriff cannot sell the property without the agreement of all the joint tenants.

36 When considering these three authorities, it must be remembered that the latter two concerned the *same legal claim* and considered *the same legal question*. Leow JC in *Chan Shwe Ching* made an *ex parte* order that the interest of one joint tenant (*ie*, the defendant, Leong Lai Yee) in the property at 9 Jalan Tanah Rata be attached and taken in execution under a WSS. In the later case of *Chan Lung Kien*, Chua J, upon the application of a creditor of Leong Lai Yee (*ie*, a non-party to the proceedings in *Chan Shwe Ching*), set aside Leow JC's order *inter partes* under O 32 r 6 of the Rules. In setting aside Leow JC's *ex parte* order, Chua J emphasized that the application under O 32 r 6 is not an appeal (see *Chan Lung Kien* at [18]). O 32 r 6 of the Rules permits an *ex parte* order to be set aside as it recognises that *ex parte* orders are *provisional* in nature and made upon the hearing of one party only (see *Chan Lung Kien* at [18]). In the words of Sir Donaldson MR, in *WEA Records Ltd v Visions Channel 4 Ltd* [1983] 1 WLR 721 at 727:

... *ex parte* orders are *essentially provisional in nature*. They are made by the judge on the basis of evidence and submissions emanating from one side only. Despite the fact that the applicant is under a duty to make full and frank disclosure of all relevant information in his possession, whether or not it assists his application, *there is no basis for making a definitive order and every judge knows this*. He expects at a later stage to

be given an opportunity to review his provisional order in light of evidence and argument adduced by the other side and, in so doing, he is not hearing an appeal from himself and in no way feels inhibited from discharging or varying his original order.
[emphasis added]

37 In my view, the provisional nature of an *ex parte* order is the very reason why the decision in *Chan Shwe Ching* ceased to have precedential force once it was set aside *inter partes*. An *ex parte* order is not a definitive order, and may be discharged or varied in light of evidence and argument from the other side. If a court discharges an *ex parte* order after considering the same legal question(s) further on an *inter partes* basis, it must necessarily follow that the decision initially made *ex parte* is no longer authoritative.

38 In *Chan Lung Kien*, Chua J set aside Leow JC's *ex parte* order as he arrived at a different conclusion from Leow JC on whether a joint tenant's interest in immovable property is exigible to a WSS. Pursuant to the setting aside, the *ex parte* decision in *Chan Shwe Ching* is no longer authoritative. This must be correct, because if it were otherwise, *inter partes* decisions made to set aside *ex parte* orders would *never* be binding on the lower courts, because the *inter partes* decision differs from the *ex parte* one. In my respectful view, this would be a perverse outcome. Even though the circumstances surrounding *Chan Shwe Ching* and *Chan Lung Kien* are a little unique in that (a) different Judges issued the *ex parte* decision and the *inter partes* decision, and (b) the *inter partes* hearing was argued by a non-party (instead of the defendant), this does not change the analysis.

39 In the circumstances, only the decisions in *Focal Finance* and *Chan Lung Kien* are binding on me. On the facts before me, *Focal Finance* and *Chan Lung Kien* cannot be distinguished (and indeed the Plaintiff does not take such a position). Consequently, I am bound to find that the Defendant's interest in

the Property cannot be taken in execution under a WSS as the interest of a joint tenant is not distinct and identifiable.

Conclusion

40 In closing, I thank the Plaintiff's counsel for his submissions. Despite his best efforts, I am bound to so find that the Defendant's interest in the Property cannot be attached and taken in execution under a WSS. The Plaintiff's application is therefore dismissed.

Navin Anand
Assistant Registrar

Tang Hang Wu (Instructed), Choo Zheng Xi, Raj Mannar and Elaine
Low (Peter Low & Choo LLC) for the Plaintiff.
