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## Singapore Court of Appeal holds co-owners must act together in collective sales

*Goh Teh Lee v Lim Li Pheng Maria* [2010] SGCA 18

In *Goh Teh Lee v Lim Li Pheng Maria*, the Singapore Court of Appeal explained the differences between joint tenants and tenants in common in the context of a collective sale.

### Background

The appellant (“**Mr Goh**”) commenced proceedings in the High Court to challenge the decision of the Strata Titles Board (the “**Board**”) to allow the collective sale of a development which comprised a four-storey block with 24 flats and nine pre-war terrace houses, making a total of 33 units (the “**development**”). Mr Goh was a co-owner of one of the 24 flats (“**Unit 316D**”) and the sole dissenting voice in the proposed collective sale of the development. The respondents to the appeal were members of the sales committee and represented the majority proprietors for the collective sale of the development.

Mr Goh’s former wife, who was co-owner of Unit 316D, had agreed to the collective sale. Mr Goh and his former wife owned Unit 316D as joint tenants. Mr Goh raised six grounds of objection to the collective sale before the High Court in a bid to halt the collective sale. The High Court dismissed his appeal against the Board’s decision and Mr Goh further appealed to the Court of Appeal.

At the outset, the Court of Appeal felt it should consider a preliminary question - was it necessary, under the existing scheme for collective sales - for co-owners to act together if they wanted to support or oppose a proposed sale? The answer to this question was pivotal as it would determine whether Mr Goh had *locus standi* to lodge his objections before the Board, the High Court and the Court of Appeal.

The Court of Appeal, in seeking to determine whether Mr Goh had *locus standi*, examined the nature of co-ownership in detail.

### The nature of co-ownership

There are two accepted types of co-ownership in Singapore - joint tenancy and tenancy in common.

Joint tenancy is where each co-owner is entitled to the whole of the interest which is the subject of the co-ownership as each joint tenant holds the whole jointly and nothing severally. Joint tenants only have rights *inter se*; 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. When a joint tenant dies, the doctrine of survivorship operates to transfer the deceased’s share to the remaining joint tenant.

Tenancy in common is where each co-owner owns specific but undivided shares in the land. Whilst the tenancy in common continues, each tenant in common has a separate and distinct interest of his own in the land held in common.

### **Effect of co-ownership in a collective sale**

The relevant section of the Land Titles (Strata) Act (the “**Act**”) relating to co-ownership in collective sales is section 84E.

Under the Land Titles (Strata) Act, where a flat is co-owned by joint tenants, as in the case with Mr Goh and his ex-wife, one joint tenant may on his own, support or oppose a collective sale order under section 84E(3) and section 84E(5) as each joint tenant owns the whole of the interest together with the other joint tenants. The court, however, did not find this to be correct as it contradicts the nature of a joint tenancy - joint tenants hold one estate and there is a unity of interest, a unity of title, a unity of time and a unity of possession. A necessary consequence of these unities is that each and every joint tenant must partake in any dealings with the whole legal estate in order to bind the entire estate.

Similarly, in cases involving actions as to the joint estate, one joint tenant may not sue or be sued without joining the other joint tenants. The court stressed that, having considered English, Singapore and Hong Kong jurisprudence, it was clear that joint tenants must act jointly in order to effectively bind the whole estate which they hold jointly, whether that action was by way of a disposition of the said estate or a suit.

In the context of a collective sale, the implication of the requirement for joint tenants to act together is that where a flat is held by joint tenants, none of the joint tenants may support or oppose the proposed collective sale unilaterally. Hence, Mr Goh’s former wife could not on her own consent to the collective sale of the development on behalf of Unit 136D. In the same vein, Mr Goh could not file an objection to the collective sale with the Board without his former wife, as he alone would not have the required *locus standi*. The court noted that if Mr Goh was allowed to object to the sale, whether before the Board, the High Court or the Court of Appeal, the effect would be to disregard the interest of his former wife altogether.

The court went on to state that the correct legal position in relation to Unit 136D was not to hold that there had been an objection to the collective sale. Rather, it was correct to say that the jointly held unit had not taken a position as to the collective sale, *i.e.* it neither supported nor opposed the sale. In the situation involving a jointly held unit where one joint tenant has objected to the collective sale but the other has agreed to the collective sale, the unit cannot be regarded to have either agreed or objected to the collective sale. This proposition stemmed from the rule that joint tenants must act together if they want to either support or oppose a proposed sale before the unit which they hold jointly may be bound. This position was necessary to respect the rights of both co-owners.

## Conclusion

As result, the court found that Mr Goh did not have *locus standi* to commence or sustain this action before the Court of Appeal and dismissed the appeal, without considering the merits of Mr Goh's substantive claim. The court did, however, note that it appeared that Mr Goh's grounds for objecting to the collective sale, alleging procedural irregularities and unfairness, were without merit.

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