

## CASE UPDATE

12 June 2018

# NO UNILATERAL SEVERANCE OF JOINT TENANCY OUTSIDE OF STATUTORY PROCEDURE

*Chan Lung Kien v Chan Shwe Ching*  
[2018] SGCA 24

### SUMMARY

A five-member coram of the Singapore Court of Appeal (“CA”) held that a co-owner of registered land under the Land Titles Act (Cap 157, 2004 Rev Ed) (“Act”) who holds his interest as a joint tenant with other co-owner(s) cannot unilaterally sever the joint tenancy outside of the procedure provided under the Act.

### BACKGROUND

In or around June 2015, the Appellant and Respondent each obtained separate judgments against the same judgment debtor.

On 9 July 2015, the judgment debtor’s husband (“Co-Owner”) took steps to attempt to sever the joint tenancy over their jointly-owned property (“Property”). He executed an instrument of declaration before a notary public in Melbourne, Australia, declaring that he wished to sever the joint tenancy and hold the Property as a tenant-in-common with the judgment debtor (“Instrument”). Crucially, the Instrument was neither served on the judgment debtor nor registered in accordance with the Act.

One day later, on 10 July 2015, the Respondent obtained an order for the attachment of the judgment debtor’s interest in the Property under a writ of seizure and sale (“WSS”) to satisfy the judgment (“1<sup>st</sup> WSS”). The 1<sup>st</sup> WSS was

registered with the Singapore Land Authority (“SLA”) on 24 July 2015.

On 4 August 2015, a notice entitled “Severance Notice”, addressed to the judgment debtor and giving her notice that the Co-Owner intended to sever the joint tenancy, was published in the Straits Times newspaper. After the Appellant came to know of the Severance Notice, the Appellant applied for and also obtained a WSS (“2<sup>nd</sup> WSS”). The 2<sup>nd</sup> WSS was registered with the SLA on 12 November 2015.

The Property was then sold by a bank in a mortgagee sale. The judgment debtor’s half-share of the balance after settlement of the amount due to the bank was paid to the Respondent’s solicitors (“Disputed Sum”). In the meantime, the judgment debtor was declared a bankrupt.

The Appellant commenced proceedings in the High Court for a declaration that the 1<sup>st</sup> WSS obtained by the Respondent was void or unenforceable, and the Disputed Sum should therefore be paid to the Appellant. Alternatively, the Disputed Sum should be split between the Appellant and Respondent in the ratio of the amounts due to each of them from the judgment debtor.

### THE HIGH COURT’S DECISION

The High Court (“HC”) held that a joint tenant has no distinct and identifiable interest that can be attached under a WSS, “*unless the WSS concomitantly severs the joint tenancy*”. In this regard, the HC held that it was “*established law*” that the mere registration of a WSS did not sever the joint tenancy. On that basis, the HC held that the 1<sup>st</sup> WSS was ineffective in attaching the judgment debtor’s interest in the Property as a joint tenant.

The HC went on to hold that the 2<sup>nd</sup> WSS was also ineffective in attaching the judgment debtor’s interest in the Property. This was because the joint tenancy was not severed by the Severance Notice as it did not satisfy the procedure for severance prescribed by the Act. In reaching its conclusion, the HC rejected the Appellant’s argument that a joint tenancy can be severed at common law pursuant to a unilateral declaration of severance by one joint tenant that is clear, unequivocal, and communicated to the other joint

tenant(s) and made public (“**Unilateral Declaration**”), and that this was achieved by means of the Severance Notice.

### THE CA’S DECISION

The Appellant only appealed against the HC’s holding that the Severance Notice was ineffective in severing the joint tenancy. In this regard, the Appellant reiterated that Singapore law recognises a Unilateral Declaration as a valid way of severing a joint tenancy at common law.

Alternatively, the Appellant submitted that the Severance Notice satisfied the test of severance under the Act. This is because following the reasoning of the CA in an earlier decision of *Diaz Priscilla v Diaz Angela* [1997] 3 SLR(R) 759 (“**Diaz**”), all that the Act requires for severance to be effective is that the Instrument is signed by the Co-Owner and served on the judgment debtor, both of which were done. Accordingly, the judgment debtor’s interest having been severed, could be and was attached, under the 2<sup>nd</sup> WSS.

The CA rejected the Appellant’s arguments.

First, the CA held that the common law did not permit severance by means of a Unilateral Declaration.

Second, the CA held that although *Diaz* has given rise to some “*confusion*”, it is clear from a plain reading of the relevant provisions of the Act, *ie* sections 53(5) and 53(6), that for severance of a joint tenancy of registered land to be effective, the following three steps must be fulfilled:

- (a) the joint tenant executes an instrument of declaration in the approved form, *ie* Form 17;
- (b) the executed instrument is served personally or by registered post on every other joint tenant; and
- (c) the instrument is registered in the land register.

In relation to unregistered land, pursuant to the corresponding provisions of the Conveyancing Law of Property Act (Cap 61, 1994 Rev Ed), *ie* sections 66A(3) and (4), severance is effected by fulfilment of the first two steps.

On the facts, as the Instrument had not been registered in the land register, the attempted

severance by the Co-Owner was ineffective. The CA also observed that the Co-Owner did not serve the Instrument on the judgment debtor either personally or by registered post. The attempted severance would therefore have additionally failed on account of that non-compliance. The joint tenancy was, however, severed when the judgment debtor was made a bankrupt. Accordingly, the Disputed Sum ought rightfully be paid to the judgment debtor’s estate in bankruptcy.

### COMMENT

This landmark decision helpfully lays out the clear but strict requirements for severance of joint tenancies over registered and unregistered land.

Owners of property held in joint tenancy should take care in complying with each and every procedural requirement under the Act, including the requirement that the executed instrument of declaration is served personally or by registered post to every other joint tenant, and that the instrument is registered in the land register. As failure to comply with any of the requirements will render the attempted severance ineffective, legal advice should be sought to ensure compliance under the Act.

Additionally, judgment creditors should take note that the CA expressly qualified that its decision **does not** deal with whether a joint tenant’s interest in property can be attached for execution under a WSS if the joint tenancy has not been severed given that the HC’s decision dealing with this issue was not appealed by the Appellant. The CA noted that “*there are High Court authorities which go both ways*”, and clarified that it will opine on this issue if it arises in an appropriate case. In the premises, the issue of whether a joint tenant’s interest in property can be attached for execution under a WSS remains unsettled.

In this regard, see our update on the recent HC decision in *Peter Low LLC v Higgins, Danial Patrick* [2018] SGHC 59 (“**Peter Low**”) at [http://www.drewnapier.com/DrewASPX/media/assets/Legal%20Updates/HC-allows-enforcement-against-interest-in-property-held-under-joint-tenancy\\_9Apr18.pdf](http://www.drewnapier.com/DrewASPX/media/assets/Legal%20Updates/HC-allows-enforcement-against-interest-in-property-held-under-joint-tenancy_9Apr18.pdf), where we discussed the split position taken by the HC on the above issue. It should be pointed out that the HC in *Peter Low* had sought to justify its decision that a joint tenant’s interest in property may be attached under

a WSS, on among other things, the ground that the registration of a WSS under the Act, amounted to a severance of the joint tenancy. It remains to be seen if the CA would agree that the registration of a WSS has such an effect at law.

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