IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 223

Suit No 858 of 2012
(Summonses Nos 4955 of 2015 and 2169 of 2016)

Between

Rosemawati Binti Rafdi

… *Plaintiff*

And

(1) Buang Bin Ani
(2) Salbiah Binti Othman
(3) Rashidah Binte Buang

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure]—[Amendments]—[Judgments]

Rosemawati bte Rafdi
v
Buang bin Ani and others

[2016] SGHC 223

High Court — Suit No 858 of 2012 (Summonses Nos 4955 of 2015 and 2169 of 2016)
Audrey Lim JC
17 August; 9 September 2016

10 October 2016

Audrey Lim JC:

Introduction

1 Summons No 4955 of 2015 ("SUM 4955") and Summons No 2169 ("SUM 2169") were, in essence, an application by the plaintiff to vary a consent judgment entered into by the parties on 19 April 2013 ("the Consent Judgment") in respect of the main suit, Suit 858 of 2012 ("the Suit"). I dismissed the application after hearing the parties. Dissatisfied with my decision, the plaintiff has appealed. I now provide my detailed grounds of decision beginning with an outline of the Suit based on the pleadings and affidavits filed.

Background

2 The Suit concerned the sale and purchase of a Housing and Development Board flat ("the Flat"). The defendants are the joint owners of the Flat. They obtained possession of the Flat from the Housing and Development Board ("HDB") on or about 1 August 1999. The first and second defendants are husband and wife, respectively, and the third defendant is their daughter.

The statement of claim

3 According to the plaintiff, sometime in July 2000, the first and second defendants agreed to sell the Flat to the plaintiff for $300,000, at a date to be fixed in the future. It was also agreed that in the meantime, the plaintiff and her family would move into the Flat around January 2001. The first and second defendants further agreed not to sell the Flat to anyone else for 13 years. Pending the transfer of the Flat to the plaintiff, the plaintiff would be responsible for all housing loan instalments and would make some payments of the purchase price of the Flat to the first and/or second defendants. Any payments made by the plaintiff to the first and/or second defendants or towards the housing loan instalments would be deducted from the purchase price to be paid when the Flat was transferred. The agreement was partly oral and partly in writing, and included an agreement signed by the first defendant and a blank Option to Purchase signed in escrow by the first and second defendants.

4 Sometime in January 2001, the plaintiff moved into the Flat with her family. The plaintiff also made various part payments to the first and second defendants. In addition, she bore various expenses in relation to the Flat, including paying for the housing loan instalments for approximately 12 years

from 2000 to 2012, and made substantial improvements and renovations to the Flat. According to the plaintiff, all these payments amounted to $238,352.60.

5 However, the first and second defendants did not effect the sale of the Flat to the Plaintiff and instead demanded in 2012 that the plaintiff vacate the Flat. The plaintiff subsequently discovered that the third defendant was also a joint owner of the Flat. The plaintiff thus sued the defendants, essentially for specific performance of the agreement or, alternatively, in the event that the Flat was not or could not be transferred, for the return of the sum of $238,352.60.

The defence

6 The defendants stated that they occupied the Flat soon after they took possession of it but the third defendant moved out upon her marriage in February 2000. The first and second defendants continued to stay in the Flat until around July 2000. As they could not afford the monthly housing loan instalments, they allowed the plaintiff and her mother ("Mdm Rukaiah") to occupy the Flat as the plaintiff and Mdm Rukaiah had offered to pay for the monthly instalments and all outgoings of the Flat. Subsequently, Mdm Rukaiah offered to purchase the Flat for $288,000, in the plaintiff's name. The first defendant accepted this offer in the mistaken belief that the defendants had purchased the Flat for that sum. While the first defendant signed an agreement that was in English, he claimed that he could not read and understand it.

7 The second defendant claimed that she left all matters concerning the Flat to the first defendant, whilst the third defendant did not concern herself with the Flat after she moved out. Accordingly, the second defendant denied

entering into any agreement to sell the Flat. The first and second defendants also denied signing an Option to Purchase. Even if they did sign such a document, they claimed that they did not understand what they were signing. The defendants further stated that the plaintiff at all times knew that the third defendant was a joint owner of the Flat.

8 In a nutshell, the defendants denied that there was a valid or binding agreement for the sale and purchase of the Flat. In any event, such an agreement contravened the Housing and Development Act (Cap 129, 2004 Rev Ed) ("HDB Act"). Even if the plaintiff were entitled to the sum of $238,352.60 or any other sum, such sum should be set off by the benefit that the plaintiff and her family members obtained by possessing and occupying the Flat.

The Consent Judgment and subsequent events

9 On 19 April 2013, the parties reached a settlement in respect of the Suit and recorded the Consent Judgment before an Assistant Registrar as follows:

> 1. [The Flat] shall be transferred to the plaintiff upon full refund, with accrued interest, of all CPF monies utilised by the defendants towards the purchase of the Property.
>
> 2. The plaintiff shall bear the outstanding mortgage loan and any other arrears, penalties, interests or outstanding payments due to HDB and/or Town Council. The plaintiff shall also bear the costs and expenses of the transfer.
>
> 3. The above transfer shall be completed within 6 months of the date of the Order of Court herein, failing which [the Flat] shall be sold in the open market within 4 months thereafter and the net proceeds of sale, after redemption of the outstanding mortgage loan and other arrears, penalties, interests or outstanding payments due to HDB and/or Town Council, shall be paid to the plaintiff. The plaintiff shall bear

> the costs and expenses of the sale and shall have sole conduct of the sale.
>
> 4. Upon the transfer or sale of [the Flat], the 1st defendant shall pay the sum of S$40,000.00 to the plaintiff in monthly instalments of S$500.00 per month commencing on 01st January 2014 and on the 1st day of each successive month until the full outstanding sum is paid. In default of payment of any of the aforesaid instalments, the 1st defendant shall be immediately liable for the sum outstanding.
>
> 5. The above shall be in full and final settlement of all claims between the parties.
>
> 6. Each party shall bear their own costs.

10 Pursuant to the Consent Judgment, the plaintiff's solicitors applied on 11 October 2013 to the HDB for the Flat to be transferred to the plaintiff. On 27 November 2013, the HDB stated that under the prevailing policy the transfer of an HDB flat referred to a change of ownership between family members and without monetary consideration. The plaintiff then submitted an option, dated 14 February 2014, to purchase the Flat for $240,000. After various correspondences between the HDB and the parties' solicitors, on 3 March 2015, the HDB rejected the application for the sale and purchase of the Flat as the defendants had not fulfilled the minimum occupation period ("MOP") of five years. Although the defendants had occupied the Flat in 1999, they vacated it in 2000 when the plaintiff moved into the Flat and continued to reside there until 2015. According to the plaintiff, she vacated the Flat on 12 August 2015. The HDB also demanded that the first and second defendants resume occupation of the Flat and the third defendant effect a transfer of her interest in the Flat to the first and second defendants as she was then an authorised occupier of her husband's flat. It appeared from the first and second defendants' letter to the HDB that they resumed occupation of the Flat on 24 August 2015.

SUM 4955 and SUM 2169

11 On 9 October 2015, the plaintiff filed SUM 4955 to set aside the Consent Judgment and to have it replaced with new orders. For ease, I reproduce the orders sought by the plaintiff:

> (1) That the Judgment (JUD 187/2013) dated 19 April 2013 be set aside and for the following orders to be made:
>
> (a) [The Flat] shall be transferred to the plaintiff upon full refund, with accrued interest, of all CPF monies utilised by the defendants towards the purchase of the Property.
>
> (b) The plaintiff shall bear the outstanding mortgage loan and any other arrears, penalties, interests or outstanding payments due to HDB and/or Town Council. The plaintiff shall also bear the costs and expenses of the transfer.
>
> (c) The above transfer shall be completed within 6 months of the completion of [the Flat's] *Minimum Occupation Period*, failing which [the Flat] shall be sold in the open market within 4 months thereafter and the net proceeds of sale, after redemption of the outstanding mortgage loan and other arrears, penalties, interests or outstanding payments due to HDB and/or Town Council, shall be paid to the plaintiff. The plaintiff shall bear the costs and expenses of the sale and shall have sole conduct of the sale. *The defendants shall not sell or transfer [the Flat] to any other parties except as set out in this order.*
>
> (d) Upon the transfer or sale of [the Flat], the 1st defendant shall pay the sum of S$40,000.00 to the plaintiff in monthly instalments of S$500.00 per month commencing on *01st January 2020* and on the 1st day of each successive month until the full outstanding sum is paid. In default of payment of any of the aforesaid instalments, the 1st defendant shall be immediately liable for the sum outstanding.
>
> (e) *The terms of this order of court shall be made known to and be binding on the respective successors, assigns, licensees, affiliates of the defendants including any person or relative who inherits and/or purchases [the Flat]. This order of court shall enure to the benefit of the successors in title, assigns, licensees, sub-licensees of the plaintiff.*
>
> (f) *That parties shall have liberty to apply.*
>
> (g) Each party shall bear their own costs.
>
> [emphasis added]

12 The added emphasis denotes the parts of the Consent Judgment that the plaintiff was seeking to vary or add to. The plaintiff explained that as the Flat could only be transferred after the defendants fulfilled the MOP, which would be sometime in 2019, the Consent Judgment could not be complied with because it stipulated that the transfer of the Flat had to be effected within six months from the date of the Consent Judgment. Hence, the plaintiff said that the Consent Judgment had to be varied to take into account the MOP "while leaving the substantive provisions of the Judgment untouched". At this juncture, it should be noted that despite knowing of the HDB's policy that an HDB flat can only be transferred between family members, the plaintiff nevertheless applied for the transfer of the Flat to her.

13 On 6 May 2016, the plaintiff filed SUM 2169 for leave to amend prayer (1) of SUM 4955 to read as follows:

> (1) That the following orders be made pursuant to the orders made in Judgment (JUD 187/2013) dated 19 April 2013 (the "Judgment"):
>
> (a) The transfer mentioned in paragraphs (1) to (3) of the Judgment is to be carried out within 6 months of October 2019 or within 6 months of the completion of the Minimum Occupation Period for [the Flat];
>
> (b) Alternatively, the sale of [the Flat] mentioned in paragraphs (3) and (4) of the Judgment be completed within 6 months of October 2019 or within 6 months of the completion of the Minimum Occupation Period of [the Flat] with the payment terms in accordance with paragraph (4) of the Judgment to be carried out commencing January 2020;
>
> (c) The HDB shall register any transfer in accordance with the order herein;
>
> (d) The Registrar, Deputy Registrar or Assistant Registrar of the High Court under section 14 of the Supreme Court of Judicature Act (Cap. 322) is empowered to execute, sign, or indorse all necessary documents relating to matters contained in this order on behalf of

> either party should either party fail to do so within seven days of written request being made to the party.

14 Counsel for the plaintiff explained that the intent behind SUM 2169 was to seek an extension of time to comply with the Consent Judgment rather than a variation of the Consent Judgment. At the hearing of the applications, counsel stated that he was no longer seeking an order for the transfer of the Flat due to the HDB's policy of disallowing the transfer of HDB flats between unrelated persons. For this reason, the plaintiff did not pursue prayers (a) and (c) of SUM 2169. In addition, counsel for the plaintiff applied for the order for the sale of the Flat to be made "subject to HDB's consent".

15 The combined effect of SUM 4955 and SUM 2169 was thus for the Consent Judgment between the parties to provide:

> (a) that *subject to the HDB's consent*, the Flat be sold *within 6 months of October 2019 or within 6 months of the completion of the MOP*;
>
> (b) that the net proceeds of sale, after redemption of the outstanding mortgage loan and other arrears, penalties, interests or outstanding payments due to the HDB and/or Town Council, be paid to the plaintiff, who shall have sole conduct of the sale and will bear the costs and expenses of the sale; and
>
> (c) that upon the sale of the Flat, the first defendant is to pay to the plaintiff the sum of $40,000 in instalments of $500 per month commencing in *January 2020,* and on the first day of each successive month until the full outstanding sum is paid. If the first defendant defaults on payment of any instalments, he will be immediately liable for the sum outstanding.

16 The defendants did not object to the plaintiff's application *per se* in SUM 2169 for leave to amend SUM 4955. However, regardless of whether the application was made under SUM 2169 or SUM 4955, the defendants objected to the Consent Judgment being amended or to the grant of an extension of time. According to the defendants, the plaintiff's application, if allowed, would amount to making substantive amendments to the Consent Judgment. The proposed amendments would make the sale of the Flat "subject to HDB's consent". There was no certainty that the Consent Judgment (if amended) could be executed at the time of the intended sale of the Flat, as the sale would still be contingent on the HDB's consent (which may or may not be given) at that time.

17 The first and second defendants further stated that the proposed amendment to, or extension of time to comply with, the Consent Judgment would be unfair to them. They claimed that the plaintiff had assured them that she would settle all the outstanding mortgage repayments while residing at the Flat but did not in fact do so. As a result, the third defendant had to pay off the outstanding loans (of more than $20,000) through her Central Provident Fund ("CPF") account. Moreover, when the third defendant was required to transfer her interest in the Flat to the first and second defendants in 2015, the first and second defendants had to refund a sum of $52,091.76 to the third defendant's CPF account. If the Consent Judgment was amended, the first and second defendants would not be able to recover from the plaintiff the amount refunded to the third defendant.

18 The first and second defendants also claimed that the plaintiff and her family enjoyed rent-free occupation of the Flat from 2001 until September 2015. The first and second defendants had also utilised the sum of $138,261.68 and $61,730.87, respectively (including accrued interest up to

June 2016), from their respective CPF accounts as at 23 July 2016 towards the payment for the Flat.

19 The plaintiff replied that she had expended a total of $238,352.60 (the breakdown of which was elaborated in her Statement of Claim). It was on the basis of the plaintiff's substantial contributions that the Consent Judgment was entered into in 2013 for the defendants to transfer the Flat to the plaintiff, or to sell the Flat, with all net proceeds going to the plaintiff. Counsel for the plaintiff further stated that if the Consent Judgment was varied, the plaintiff would reimburse the defendants for all expenses they had incurred in relation to the Flat when the Flat was sold. The plaintiff submitted that the defendants should thus not be allowed to renege on the settlement agreement.

My decision

20 I granted the prayer in SUM 2169 for leave to amend SUM 4955 because, in my view, the plaintiff's approach in asking for an extension of time was not incorrect nor was there any prejudice caused to the defendants if the plaintiff was permitted to amend SUM 4955. The main issue was therefore whether I should grant the amended prayers set out in SUM 2169. The plaintiff relied on O 45 r 6(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) to extend the time for the sale of the Flat and repayment of the $40,000. In dealing with this submission, I also considered whether to exercise the inherent power under O 92 r 4 of the Rules of Court to vary the Consent Judgment, as what the Plaintiff sought was, in substance, a variation of the Consent Judgment.

21 In this case, I found that the Consent Judgment represented a real contract between the parties and was not of the type of consent judgments

where parties merely did not object to the order being made. The Consent Judgment thus fell within the first category of "by consent" orders referred to by Lord Denning MR in *Siebe Gorman & Co Ltd v Pneupac Ltd* [1982] 1 WLR 185 ("*Siebe Gorman*") at 189.

22 As a preliminary point, I was of the view that it would have been more appropriate for the extension of time application to be brought under the general provision, O 3 r 4, rather than under O 45 r 6(1). Order 45 r 6 had to be read in the context of enforcement of judgments under O 45, which was not what the plaintiff was seeking to do.

23 Be that as it may, the principles for extending time in relation to consent orders were generally as follows. Where the consent order represented a real contract, the court would interfere only on the same grounds as it would with any other contract. Where the parties had agreed in clear terms on a certain course, the court should, when considering an application to extend time, place great weight on the agreement and should be slow, except in unusual or exceptional circumstances, to depart from it: see *Siebe Gorman*; *Fivecourts Ltd v JR Leisure Development Co Ltd* (2001) L & TR 5; *Ropac Ltd v Inntrepreneur Pub Co (CPC) Ltd* [2001] L & TR 10; *CSR South East Asia Pte Ltd v Sunrise Insulation Pte Ltd* [2002] 1 SLR(R) 1079 and *Yeo Boong Hua v Turf City Pte Ltd and others and another suit* [2008] 4 SLR(R) 245 ("*Yeo Boong Hua*"). The principles for extension of time in respect of a consent judgment were, to my mind, largely aligned with the principles that guide the exercise of the court's inherent power to vary or amend a consent judgment under O 92 r 4. Ultimately, the power had to be exercised judiciously where it was *necessary* to do justice between the parties (see *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821 at [27]).

24 On the facts, I was not persuaded that the plaintiff's application should be granted. At the outset, the plaintiff's pleaded claim in the Suit was that the agreement to sell or transfer the Flat was not contrary to section 49A of the HDB Act since the agreement would only be performed after the prescribed MOP. When parties entered into the Consent Judgment, they were apparently under the impression that there was no breach of the HDB Act, presumably because the Consent Judgment was entered into more than five years after the Flat was purchased by the defendants and the parties merely assumed that the MOP was fulfilled. It was puzzling how the parties, with the benefit of legal advice from their respective counsel, could have reached such a conclusion, at the time the Consent Judgment was recorded. Whether the MOP had been satisfied by the defendants was a fact well within the knowledge of both parties; this much was clear even from the pleadings.

25 Whatever the case was, it seemed that either the plaintiff or defendants, if not both, (and their respective counsel) were labouring under mistakes of sorts when the Consent Judgment was recorded. First, they were mistaken as to effect of s 49A of the HDB Act on the agreement reached between the parties. Section 49A provided that no owner of an HDB flat shall, within the prescribed MOP, by contract, agreement or otherwise, sell or agree to sell the flat except with the prior written consent of the HDB. Section 49A(1) had to be interpreted to include an *agreement to sell* that was made during the MOP, even if the sale was intended to take place after the completion of the MOP. Otherwise the words "agree to sell" in that provision would be otiose, since the word "sell" in the same provision already encompassed a sale within the MOP. Any such agreement, made without the HDB's prior written consent, would be null and void by virtue of s 49A(3). As explained during the second reading of the Housing and Development (Amendment) Bill in 1998, when

section 49A was introduced, the "amendment aims to curb speculation by providing that Sales and Purchase Agreements *entered into before the seller has occupied the flat for the minimum occupation period* shall be void" [emphasis added] (*Singapore Parliamentary Debates, Official Report* (12 October 1998) vol 69 at col 1063). In the light of this, the Consent Judgment should not have been recorded in 2013 to give effect to an agreement which was null and void under s 49A of the HDB Act.

26 Second, it seemed that the parties were unaware that under the prevailing HDB policy, the Flat could not be transferred to the Plaintiff. Otherwise it made no sense for them to have recorded the Consent Judgment in its current form. Third, it seemed that at the time the Consent Judgment was recorded, parties assumed that the MOP had been satisfied when in fact, it had not been fulfilled and continues to be unfulfilled even as of today.

27 The Consent Judgment thus embodied an agreement between the parties that was inoperative for breach of ss 49A and 50 of the HDB Act. According to the HDB's letter dated 10 August 2016 to the plaintiff's solicitors, the MOP would expire on 12 September 2019 (provided that the defendants reside at the Flat continuously up till that date), after which the defendants would be allowed to resell the Flat. The plaintiff was thus seeking to rectify a fundamental error – in order to compel the defendants to comply with the Consent Judgment – by seeking an extension of time *for the defendants* to effect the sale of the Flat. Furthermore, the extension period sought by the plaintiff was unduly long. Under the Consent Judgment, the Flat should have been sold by 19 February 2014 (*ie*, the defendants had six months from the date of the Consent Judgment to transfer the Flat failing which the Flat was to be sold within four months thereafter). The plaintiff's application to extend time until around March 2020 would amount to an extension of time

for compliance with the Consent Judgment to some six years from the entering of the Consent Judgment or more than three and a half years from the filing of SUM 2169.

28 Further, to have allowed the plaintiff's application would have resulted in varying the Consent Judgment substantively such that it would no longer accurately reflect the intention of the parties at the time the Consent Judgment was entered into (I will return to this at [31]–[33] below). The plaintiff was also seeking to add to the Consent Judgment by stipulating that such (future) sale be "subject to HDB's approval". This constituted more than a mere extension of time, and the execution of the Consent Judgment (even if time was extended) was still contingent on the HDB's approval. If the HDB's approval was not forthcoming, the Consent Judgment would still not operate as how the plaintiff envisaged. There was also the matter of whether section 49A of the HDB Act had been complied with (which I will also elaborate on at [34] below). In my view, the proper course of action was for the plaintiff to apply to set aside the Consent Judgment (which she was still not precluded from doing) and not to seek a variation of or extension of time to comply with the Consent Judgment.

29 Turning to whether I should exercise the inherent power under O 92 r 4 of the Rules of Court to amend or vary the Consent Judgment, it has been recognised that in a contractual consent order, the court retains a residual discretion to vary its terms where this is necessary to prevent injustice: see *Airtrust (Singapore) Pte Ltd v Kao Chai-Chau Linda* [2014] 2 SLR 693. For example, the court would exercise its inherent power to vary the terms of a contractual consent judgment if the amendments were necessary to accurately reflect the true intent or consensus of the parties at the time the consent judgment was entered into: see *Yeo Boong Hua*. In this regard, I was not

satisfied that the amendments, if made, would accurately reflect the agreement or consensus reached at the time the Consent Judgment was entered into, or would be necessary to prevent injustice. Indeed, if I were to have allowed the amendment, this would have altered the original intent and position of the parties when they entered into the Consent Judgment.

30 The plaintiff's primary motivation in bringing the Suit was to seek return of the monies she had paid over to the defendants. The parties recorded the Consent Judgment on the basis that either the transfer of the Flat (after a full refund of all CPF moneys and accrued interest to the defendants) or the net proceeds from the sale of the Property in around 2013 or early 2014, with an additional $40,000 cash to be paid by the first defendant to the plaintiff, would have yielded a satisfactory outcome to both parties.

31 Counsel for both parties confirmed that the terms of the Consent Judgment were structured in such a way so as to accurately reflect the intention of the parties. The parties desired to give effect to their respective positions vis-à-vis each other *at that time*, bearing in mind: (a) the contributions made by the plaintiff and defendants towards the Flat; (b) the fact that the plaintiff and her family had stayed in the Flat rent-free from July 2000; and (c) the amounts advanced to the first and/or second defendant. Counsel also accepted that in reaching this arrangement, parties would have taken into account the estimated value of the Flat *in 2013*.

32 If I granted the plaintiff's application, this would have effectively altered the intention of the parties as reflected in the Consent Judgment. The amendments could not be said to be merely consequential or incidental as they would have affected the substantive rights of the parties. The Consent Judgment envisaged that the Flat would be transferred to the plaintiff by 19

October 2013 or sold by 19 February 2014 and ***all*** the net proceeds paid over to the plaintiff. However, when the Consent Judgment could not be executed, the plaintiff and her family members remained in sole occupation of the Flat rent-free for approximately a further 18 months, from February 2014 until around 12 August 2015, before the defendants resumed occupation. This much was not disputed. Therefore, this benefit that accrued to the plaintiff, at least on or after February 2014, would not have been factored into the arrangement arrived at by the parties as reflected in the Consent Judgment entered into in April 2013.

33 Moreover, the amendments would clearly have altered the risk allocation between the parties, which they had previously agreed on with the benefit of legal advice. When the parties entered into the Consent Judgment, they would have had in mind, the value of the Flat *at that time*. That value was to be realised shortly after the Consent Judgment was entered into either by a transfer of the Flat or by a sale (which was to occur within 10 months from the entering of the Consent Judgment). Come 2019 or 2020, the value of the Flat might not be the same as the value that the parties had in mind at the time of the Consent Judgment. If the value of the Flat fell, the loss (and risk) would lie with the plaintiff who might get back less than what she envisaged when the Consent Judgment was entered into. If the value of the Flat rose and substantially at that, the plaintiff would obtain a windfall. The plaintiff might be enriched to the extent that the value of the Flat would be far in excess of the sum the defendants were prepared to settle for. Moreover, the first defendant would still have to pay the plaintiff an additional $40,000 in cash. While it was not for me to speculate, the point was that the parties only had in their minds the value of the Flat at the time the Consent Judgment was entered into and not the possible value of the Flat in 2019 or 2020. In the circumstances, the

court should not, without the consent of both parties, be the one re-allocating risks between the parties by an amendment of the Consent Judgment.

34 Further, there was also the issue of whether section 49A of the HDB Act, which imposed a distinct and separate requirement from s 50, had been contravened. All correspondence with the HDB focused on s 50 of the HDB Act, which provided that the HDB's consent had to be obtained when the Flat was to be sold (*ie*, for the sale of the flat). It appeared that parties had not in fact complied with s 49A since no prior written consent of the HDB, for the *agreement to sell* the HDB flat (made during the MOP), was ever sought. The court should be slow to endorse such an agreement by court (consent) order as, without more, such an agreement to sell would, by operation of law, be null and void if the HDB's prior written consent was not obtained. This was to my mind an additional and independent reason, from the reasons already expressed, for not granting the plaintiff's application.

35 Hence, for the reasons expressed, I was not persuaded that the Consent Judgment should be varied or amended, or that an extension of time should be granted. On the face of it, this might seem to cause some injustice to the plaintiff as she would not be able to rely on the Consent Judgment to recover her moneys. However the same can be said in relation to the defendant if I were to amend the Consent Judgment, particularly if the value of the Flat had increased or will increase in 2019 or 2020 and given that the plaintiff has resided in the Flat rent-free for a further 18 months. I should reiterate that my decision does not preclude the plaintiff from applying to set aside the Consent Judgment.

36 Finally, I was of the view that the cases cited by counsel for the plaintiff in relation to matrimonial proceedings orders which allowed the court

to invoke its powers to vary an order that was "substantively unworkable *ab initio* because of a fundamental misunderstanding at the time the order was made" (see *AYM v AYL* [2013] 1 SLR 924 at [29]) did not apply. The court's powers and the principles guiding the exercise of such powers in those cases were founded under the provisions of the Women's Charter (Cap 353, 2009 Rev Ed) (*eg*, ss 118 and 119).

Conclusion

37 For the above reasons, I dismissed the plaintiff's application with costs, fixed at $2,000 (inclusive of disbursements) to the first and second defendants and at $3,500 (inclusive of disbursements) to the third defendant. The first and second defendants were awarded lower costs as their solicitors only came on board much later. With regard to the quantum of costs, I was of the opinion that the sums awarded were reasonable given that they included disbursements and that the hearing took a half day.

Audrey Lim
Judicial Commissioner

Lee Ming Hui (WNLEX LLC) for the plaintiff;
Kishan Pratap (Ho Wong Law Practice LLC) for the first and second defendants;
Rajan Nair (Rajan Nair & Partners) for the third defendant.