IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 95

Tribunal Appeal No 9 of 2018

Between

(1) HSBC Institutional Trust Services (Singapore) Ltd (trustee of Capitaland Mall Trust)

… *Applicant*

And

(1) Chief Assessor

… *Respondent*

GROUNDS OF DECISION

[Revenue Law] — [Property tax] — [Annual value]
[Revenue Law] — [Property tax] — [Valuation list]
[Evidence] — [Proof of evidence] — [Onus of proof]

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v
Chief Assessor

[2019] SGHC 95

High Court — Tribunal Appeal No 9 of 2018
Mavis Chionh Sze Chyi JC
8 November, 22 November 2018

16 April 2019

Mavis Chionh Sze Chyi JC:

Introduction

1 The appellant in this case is HSBC Institutional Trust Services (Singapore) Limited ("the Appellant"), in its capacity as Trustee of Capitaland Mall Trust ("CMT"). The respondent is the Chief Assessor. I will refer to him as the "Chief Assessor" in these written grounds. The property which is the subject of the appeal ("the subject property") comprises #07-01 to #07-15 on the seventh floor of the mall known as Plaza Singapura at 68 Orchard Road, Singapore 238839. The appeal centres on the annual value of the subject property for the year 2008 – which was $3,292,000.

2 The Appellant had on 29 December 2008 filed a notice of objection against this annual value to the Chief Assessor and sought the amendment of

the 2008 Valuation List. Its objection was rejected by the Chief Assessor. The Appellant then appealed to the Valuation Review Board ("VRB") under s 20A of the Property Tax Act (Chapter 254, 2005 Rev Ed) ("PTA") in respect of the 2008 annual value. In its notice of appeal, the Appellant stated that its desired annual value for the subject property was $2,127,000 with effect from 1 January 2008 and $2,265,000 with effect from 14 February 2008. The VRB dismissed the appeal after a hearing spread over a number of days between October 2016 and April 2018. The Appellant filed Tribunal Appeal No 9 of 2018 ("TA 9/2018") in an appeal to the High Court against the VRB's decision, under s 35 of the PTA. I dismissed the appeal on 22 November 2018, and the Appellant having filed an appeal a month later, I now set out below the written grounds for my decision.

3 In its written judgement of 23 May 2018[1], the VRB has set out a meticulous review of the key facts in this case. The factual summary I set out below draws predominantly from the VRB's written judgement.

Factual background

4 The subject property consists of ten cinema halls and other units on the seventh floor of Plaza Singapura. By way of background, Plaza Singapura was previously owned by Plaza Singapura (Pte) Ltd ("PSPL") and then acquired by the Appellant in August 2004 as one of the properties in CMT's portfolio. Plaza Singapura has nine floors of retail space with a diverse tenant mix which – in 2008 (the assessment year in issue) – included Golden Village Multiplex Pte Ltd ("GV") who occupied the seventh floor, Carrefour (a hypermarket chain), Best Denki (an electronics retailer chain), Yamaha Music School and others.

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[1] Record of Appeal Vol I ("RA Vol I").

5 The subject property was leased by PSPL to GV on 29 April 1999. Two agreements were signed by GV on this date. First, GV signed an Agreement for Lease[2], pursuant to which it undertook to carry out improvements on the subject property, following which PSPL would grant it a lease of the said property. Second, GV signed a Lease for an initial 6-year term from 14 February 1999 to 13 February 2005, with two options to renew for two consecutive six-year terms. I adopt the terminology used by the VRB in referring to this first tenancy agreement as "TA-1".

6 In addition to the first tenancy from 14 February 1999 to 13 February 2005, GV also entered into a second tenancy for three years from 14 February 2005 to 13 February 2008, with an option to renew for three years and a further six-year term ("TA-2"[3]); a third tenancy for six years from 14 February 2008 to 13 February 2014, with an option to renew for three years ("TA-3"[4]); and presently, a fourth tenancy which runs until 13 February 2020. TA-2 and TA-3 are the two tenancy agreements which relate to 2008.

7 When GV first leased the subject property, it was a bare shell, the landlord having put in only standard minimal mechanical and electrical services and building finishes. Between 1998 and 1999, GC arranged for fitting-out works on the subject property at a total cost of $7,829,288.53, in order to fit it out as a fully functional cinema complex. A list of these fitting-out works is set out in the table at [49] of the VRB's written judgement.

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2 Exhibit CYK-3A, RA Vol IIIB at p 41.

3 RA Vol V at p 49.

4 RA Vol V at p 101.

8 In 2008, the subject property was used as a cinema complex, an office space, and a retail space in the following manner:

Component	Description	Area (m^2)
Cinema complex	A cinema complex comprising 10 fully functioning cinema halls with 1,733 seats (including 18 handicapped seats), and ancillary outlets selling snacks, drinks and movie memorabilia which were operated by GV	4,373.59
Office space	An office space used as GV's office headquarters	452.72
Retail space	A retail unit sublet by GV to TKA Amusement (S) Pte Ltd to run a family entertainment centre	536.79
	Total area of subject property	5,363.10

9 In the course of 2008, GV carried out further works on the subject property, this time mainly for the purpose of converting office space it was then using for its office headquarters into additional retail units which it would let out. GV's office headquarters were moved to another, larger unit in Plaza Singapura (#B1-10) under a separate lease with the Appellant. These further works during 2008 were not taken into account by the expert witness called on behalf of the Chief Assessor, Ms Ching Yung Ket ("Ms Ching") when she considered the assessment of the 2008 annual value of the subject property.

10 In 2008, the rent payable by GV for the subject property comprised base rent alone (excluding separate charges such as advertising and promotion fees, service charges and the like) as there was no turnover rent for 2008. The 2008 base rent for the subject property was as follows:

(a) $3.07 per square foot ("psf") per month between 1 January 2008 and 13 February 2008 (TA-2);

(b) $3.27 psf per month between 14 February 2008 and 31 December 2008 (TA-3).

11 Based on the above figures, the actual rent paid by GV for the subject property for the year 2019 was $2,248,541.

12 The annual value of the subject property for 2008 is $3,292,000. This was the same annual value assessed in respect of the subject property in the years 2005 to 2007. In TA 9/2018, the Appellant prayed for the annual value to be revised to $2,265,000 with effect from 1 January 2008[5]. In its submissions in the hearing of TA 9/2018 before me, the Appellant also argued in the alternative that the entry of "68 Orchard Road #07-01/15" (the subject property) should be deleted from the 2008 Valuation List along with the stated annual value of $3,292,000[6].

The four issues put forward by the Appellant in TA 9/2018

13 In TA 9/2018, the Appellant put forward four main issues on which it said the VRB had erred.

14 First, the Appellant argued that the VRB had erred in holding that in the appeal before it, the onus of proof lay on the Appellant to show that the Chief Assessor had come to a wrong decision in his assessment of the 2008 annual value of the subject property. According to the Appellant, although it had

5 Prayer 1(e) of TA 9/2018.

6 Appellant's Submissions at para 333.

brought the appeal before the VRB, it was the Chief Assessor who bore the onus of proving to the VRB that its decision on the annual value was correct. For that matter, the Appellant suggested that it was the Chief Assessor who bore the onus of proving the correctness of its decision in "the present appeal" in TA 9/2018.[7]

15 Second, the Appellant argued that the Chief Assessor's inclusion of a single annual value in the 2008 Valuation List, in respect of the subject property, was an act "prohibited by the [PTA]", when he had in fact assessed the subject property "as three separate tenements instead of one whole tenement"[8].

16 Third, the Appellant argued that the VRB had erred in agreeing with the Chief Assessor's finding that fitting-out works installed by GV on the subject property amounted to fixtures which ought to be included in the assessment of the annual value. The Appellant claimed that GV's fitting-out works were only chattels.

17 Fourth, the Appellant argued that the VRB had erred in accepting the Chief Assessor's determination of the 2008 annual value. The Appellant said that the rental comparison method should have been used to determine the annual value, and that it would have yielded the lower figure of $2,265,000. The Appellant attacked the methodology of the Chief Assessor's expert witness Ms Ching for using what it decried as a "hotch-podge" approach, which had involved using the Profits Method to assess the cinema component of the subject property and the rental comparison method to assess the office and retail components. The Appellant also attacked Ms Ching's use of the Rent Plus

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7 Appellant's Submissions at para 20.

8 Appellant's Submissions at para 31.

Amortised Cost Method as a "check" on the correctness of the annual value figure derived using her first approach.

18 I will explain why I found against the Appellant on each of these four issues.

First issue: Whether the onus of proof in an appeal fell on the Chief Assessor

19 On the first issue, the Appellant's case was built firstly on the fact that the PTA – unlike the Income Tax Act (Chapter 134, 2014 Rev Ed) ("ITA") and the Goods and Services Tax Act (Chapter 117A, 2005 Rev Ed) ("GSTA") – did not contain any provision which expressly placed on the party seeking a review of the respective Comptroller's decision the onus of proving that decision wrong. The Appellant pointed to s 80(4) of the ITA and s 52(3) of the GSTA, which expressly placed the onus of proof on the party seeking such a review. s 80(4) of the ITA reads as follows:

> (4) The onus of proving that the assessment is excessive or that the amount of any unabsorbed losses, allowances or donations that may be carried forward ought to be of a higher amount than that assessed (as the case may be) shall be on the appellant.

20 s 52(3) of the GSTA reads as follows:

> (3) The onus of proving that the decision of the Comptroller on the application for review and revision under section 49 is incorrect shall be on the appellant.

21 In the absence of any similar provisions in the PTA which explicitly provided for the onus of proof to fall on the party seeking a review, the Appellant argued that "the general principles relating to onus of proof should prevail"[9]. In contending that these "general principles" placed on the Chief

Assessor the onus of proving the correctness of his assessment of an annual value each time such assessment was challenged, the Appellant's case rested primarily on s 103(1) of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA"). s 103(1) reads as follows:

> **Burden of proof**
>
> **103.—(1)** Whoever desires any court to give judgement as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.

22 According to the Appellant, although it had brought the appeals before the VRB and the High Court, it was the Chief Assessor who "asserted that the [annual value] of the subject property should be $3,292,000" and who therefore bore "the burden to prove his assertion".[10]

23 I rejected the Appellant's argument on this first issue as it was based on a fundamental misreading of s 103(1). s 103(1) of the EA applies in the context of proceedings before a court. It should be noted that s 103(1) appears in Part III of the EA; s 2(1) of the EA provides that "Parts I, II and III shall apply to all juridical proceedings in or before any court, but not to affidavits presented to any court or officer nor to proceedings before an arbitrator". From the arrangement of the EA, it is plain that Parts I, II and III of the Act were enacted to provide for the receipt of evidence in proceedings before a court. Broadly, Part I provides for what facts are relevant and therefore admissible before a court; Part II deals with the manner(s) in which relevant facts may be proved; and Part III deals with the burden of proving relevant facts to the court and the witnesses who may give evidence of such facts. s 103(1) itself refers to the party who "desires any court to give judgement as to any legal right or liability". In

9 Appellant's Submissions at para 19.

10 Appellant's Submissions at para 20.

this connection, it should also be noted that s 3(1) of the EA defines the term "court" so as to "[include] all Judges and Magistrates and, except arbitrators, all persons legally authorised to take evidence". This definition thus includes the VRB, which is authorised by s 32(4) of the PTA to take evidence in the course of hearing appeals filed under s 20A or s 22(5) of the PTA.

24 That s 103(1) of the EA is to be understood as providing for the onus of proof in proceedings before a court is clear from the judgements of our own courts: see for example the judgement of the High Court in *Westacre Investments Inc v The State-Owned Company Yugoimport SDPR (also known as Jugoimport SDPR) & ors* [2015] 4 SLR 529, at [24].

25 Who, then, in the context of appeals under the PTA, is the party who "desires [the] court to give judgement as to any legal right or liability"? The property owner who brings an appeal to the VRB under s 20A is clearly dissatisfied with the Chief Assessor's assessment of the annual value of his property and desires the VRB to give judgement as to the correctness of the value assessed. s 29(2) of the PTA requires that such an owner state in his notice of appeal, *inter alia*, "the grounds on which the appeal is based" and the "amendments desired". Pursuant to s 103(1) of the EA, such a property owner is clearly the party who "desires any court to give judgement as to any legal right or liability". Similarly, the owner who then files an appeal to the High Court under s 35 of the PTA, against a decision of the VRB, is dissatisfied with that decision and desires the High Court to give judgement as to the correctness of the annual value of the property. Again, the property owner is – pursuant to s 103(1) – clearly the party who "desires any court to give judgement as to any legal right or liability".

26 Again, the judgements of our own courts bear out the above point – that the dissatisfied property owner who appeals to the VRB and/or to the High Court against the Chief Assessor's assessment of his property's annual value bears the burden of establishing the grounds on which he says the assessment is wrong. Thus in *Aspinden Holdings Ltd v Chief Assessor & anor* [2006] 4 SLR(R) 521 ("*Aspinden*"),[11] the Court of Appeal ("CA") dismissed the appellant property owner's appeal against the decision by the High Court which had held that the Chief Assessor and Comptroller of Property Tax were entitled to amalgamate the appellant's property tax accounts and thereby reduce the amount of property tax rebates which it was otherwise entitled to. In so deciding, the CA stated at [68] of its judgement that "the court below was… correct in finding *that the Appellant had not made out its case*" [emphasis added].

27 That the above approach has also consistently been adopted by the VRB is clear from the VRB's past decisions. In *Cho Chih Yee v Chief Assessor* [1968] 2 MLJ xxxii (SGVRB)[12] ("*Cho Chih Yee*") (a decision cited by the VRB in the present case), the VRB ruled on a preliminary point raised by the appellant property owner concerning the latter's entitlement to a copy of the report submitted by the chief assessor to the VRB. This was a report submitted by the Chief Assessor under s 28 of the then Property Tax Ordinance (No 72 of 1960), in which he disclosed to the VRB what steps he had taken to investigate the matter further following the notice of appeal. In ruling that the property owner was not entitled to receive a copy of such report, the VRB (chaired by Mr TS Sinnathuray) held that:

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11 Respondent's Bundle of Authorities ("RBOA") Vol I, Tab 4.

12 RBOA Vol I, Tab 12.

> … an owner / appellant having brought the matter before the board, it is for him to satisfy the board that the chief assessor had come to a wrong decision and not for the chief assessor to justify his decision. The burden of proof is on the appellant.

28 In the present case, the Appellant attempted to explain away the above remarks on the basis that *Cho Chih Yee* "was concerned with whether the appellant there was legally entitled to receive a copy of the Chief Assessor's report prepared under the former section 28"; that having found no provisions in the statute which granted such legal entitlement to the appellant, it was "in this context that the VRB then opined that it is for the appellant to prove his case without the benefit of having the Chief Assessor's report"; and that "the case did not set down an immutable legal rule that the burden of proof is always on the appellant in respect of appeals under the [PTA]"[13].

29 In so far as the Appellant sought to construe the VRB's remarks in *Cho Chih Yee* as being confined to the issue of the appellant owner's access in that case to the Chief Assessor's s 28 report, this construction appeared to me to be impossibly strained. For one, it ignored the fact that the VRB in *Cho Chih Yee* had prefaced the above remarks with the words "… having outlined *the procedure of appeals to the board* and the informal nature of the hearing before the board" [emphasis added]. Plainly, in pronouncing that "it is *for an owner/appellant… to satisfy the board that the chief assessor had come to a wrong decision* and not for the chief assessor to justify his decision", the VRB was addressing its remarks generally to appeals before the board.

30 It should also be pointed out that the VRB's approach in *Cho Chih Yee* to the issue of burden of proof has been followed by successive VRBs in later cases. In *Wave House Singapore Pte Ltd v Chief Assessor* [2016] SGVRB 1

[13] Appellant's Submissions at para 26-27.

("*Wave House*") [14], for example, the owner of the property known as "Wave House" on Sentosa appealed to the VRB against the Chief Assessor's assessment of the property's annual value, claiming that it was excessive. In dismissing the appeal, the VRB noted, *inter alia*, that the Chief Assessor had used a certain figure for the amount of fitting-out costs incurred by the appellant owner as tenant of the Wave House and had amortised this figure over the expected tenure of ten years using 6% per annum as the rate of return (at [56]). Whilst the VRB expressed "reservations" as to whether this amortisation rate of 6% per annum was realistic, it also noted that the appellant owner had failed to place before it "proper justification of a lower rate", and it concluded as follows -

> As the Appellant has failed to discharge its burden to satisfy the Board that the [Chief Assessor's] decision is wrong, we would therefore adopt the figures for the fitting-out cost and the amortisation rate used by [the Chief Assessor].

31 Indeed, it would appear that the present Appellant itself has in previous cases accepted that a party appealing the Chief Assessor's assessment of annual value bears the burden of showing that the Chief Assessor's assessment was wrong. In *HSBC Institutional Trust (Singapore) Ltd (As Trustee of Capitaland Mall Trust) v Chief Assessor* ("*IMM*") [2017] SGVRB 1[15], the present Appellant held the subject property – the carpark of the IMM Building – as trustee of Capitaland Mall Trust. It appealed to the VRB against the Chief Assessor's assessment of the annual value of the subject property for the period 2008–2011. In considering the appeal, the VRB expressly noted (at [13]):

> It is not disputed that the onus is on the Appellant to show that the Chief Assessor had come to a wrong decision in determining

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14 RBOA Vol III, Tab 43.

15 RBOA Vol II, Tab 23.

> the annual value, and "it is not for the chief assessor to justify his decision" (see *Cho Chih Yee v Chief Assessor* [1968] 2 MLJ xxxii).

32 In its written submissions in this appeal, the Appellant sought to rely on the VRB's decision in *HSBC Institutional Trust Service(s) Ltd (as trustee of Frasers Centrepoint Trust) v The Chief Assessor* VRB Appeal No. 197/2009 ("*Causeway Point*") [16]. According to the Appellant, the approach it espoused – that in appeals to the VRB the burden of justifying the assessed annual value lay on the Chief Assessor – was "adopted by the VRB in [*Causeway Point*]"[17]. With respect, this was something of an exaggeration: no such support for the Appellant's approach can be found in the only report we have of *Causeway Point*. That report is a brief 1.5-page bullet-point summary of the VRB's oral findings and contains no reasoned judgement. It was not possible in my view to glean from the summary any coherent line of reasoning which supports the Appellant's argument on onus of proof.

33 The Appellant also suggested that it was "not only not unfair, but eminently reasonable" that the Chief Assessor should have the onus of proving the correctness of its valuation in any appeal brought by a dissatisfied property owner under the PTA because "there is a general lack of transparency on how the annual value of properties are computed"; and the property owner would not know the precise methodology employed by the Chief Assessor in assessing the annual value (*eg*, the contractor's test or profits method, where various assumptions are usually made) [18]. With respect, this submission is again something of an exaggeration. The dissatisfied property owner who appeals

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16 Appellant's Bundle of Authorities ("ABOA") Vol 1, Tab 24.

17 Appellant's Submissions at para 25.

18 Appellant's Submissions at para 29.

under s 20A of the PTA against the Chief Assessor's decision must certainly have his own view as to the appropriate methodology to be applied in the valuation of a property – how else could he have formed the opinion that the Chief Assessor's valuation needed revision?

34 In the instant case, for example, the Appellant contended before the VRB and before me that the rental comparison method was the appropriate valuation methodology; that the annual value should be the actual rent paid by GV for the subject property; and that such an approach would have yielded an annual value figure substantially less than the $3,292,000 figure assessed by the Chief Assessor.

35 It should moreover be remembered that s 103 of the EA is concerned with the legal burden of proof; whilst the Appellant had the *legal* burden of proving in its appeal that the Chief Assessor's decision was wrong, "*the evidential burdens might shift as between the parties, depending on the precise evidence adduced before the court*" [emphasis added] (*per* the CA in *Loo Chay Sit v Estate of Loo Chay Loo v Estate of Loo Chay Loo* [2010] 1 SLR 286 at [14]). In other words, once the Appellant had placed before the court its (*ie*, the Appellant's) computations of the appropriate annual value and the evidence relied on for those computations, the evidential burden shifted to the Chief Assessor. In short, therefore, the Appellant's purported fears about property owners being "in the dark as to how the annual value is computed" were in my view baseless.

36 For the reasons set out above, I found against the Appellant on the first issue and held that it bore the onus of establishing – both before the VRB and

before me – the grounds on which it alleged the Chief Assessor's decision to be wrong.

Second issue: whether the Chief Assessor's inclusion of a single annual value in the 2008 Valuation List was an act "prohibited" by the PTA

37 The second issue arose from Ms Ching's evidence that since the subject property was used as a cinema complex, an office and a retail unit, she took into account the distinct nature, physical condition and specific use of each of these three components and assessed each of these components separately as three discrete tenements. In respect of the office component and the retail component, as there was sufficient rental evidence to reflect the market rent for these two components, she adopted the rental comparison approach. In respect of the cinema component, there being a lack of rental evidence of comparable fitted-out cinemas, she applied the Profits Method as the primary method of assessment and used the rent plus amortised cost method as a check.

38 My reasons for finding against the Appellant on this second issue were as follows. As a preliminary point, it is not accurate to suggest – as the Appellant appears to do[19] – that Ms Ching's evidence amounted to evidence of the manner in which the Chief Assessor had *in fact* arrived at the annual value of $3,292,000 in respect of the subject property in 2008. In the first place, as counsel for the Chief Assessor has pointed out, there was no review by the Chief Assessor of the assessment in 2008: he had simply maintained the annual value at the same figure as it had been since 2005. Second, Ms Ching was not a witness of fact, but an expert witness called for the purpose of giving the VRB her expert opinion on whether the annual value of $3,292,000 was reasonable and fair.

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19 See e.g. Appellant's Submissions at para 40-42.

39 Next, it should be noted that the PTA itself does not prescribe the manner in which the Chief Assessor is to carry out his assessment of the subject property; it certainly does not state that a subject property must invariably be assessed as a single tenement even where it has been divided into different components, each with its distinct physical nature or condition and use. Indeed, where the property under assessment has been divided into several components, each with its own physical nature or condition and use, it would follow from the *rebus sic stantibus* principle that each of these distinct components of the property be assessed as a distinct tenement. The *rebus sic stantibus* principle states that the assessable entity should be valued according to its physical nature and condition as well as its usage: *per* the CA in *Aspinden* at [32]. In *Aspinden*, the appellant had purchased a number of strata lots in a strata divided building in which each strata lot was issued with a separate subsidiary certificate of title. The strata lots were leased by the appellant to various tenants. All in, the tenants operated 45 business units across 155 strata lots. These 155 strata lots formed the subject properties for the purposes of the Chief Assessor's valuation. The Chief Assessor decided to amalgamate the property tax accounts of the subject properties for the purposes of calculating the property tax payable by the appellant. The CA held that he was justified in amalgamating the property tax accounts of the subject properties. Noting that the party walls had been removed between various strata lots in order to create contiguous units, the CA held that "where several strata lots were occupied on a combined basis, it was open to the [Chief Assessor] to value them as a whole" (at [18] of the CA's judgement in *Aspinden*). Noting as well the usage to which the strata lots had been put, CA also held that "[t]he reality of the situation was that the assessment of annual value accorded with the manner in which the strata lots were used. If larger businesses indeed operated as an integral unit over several [strata] lots, they

ought to be and were assessed as a single business entity for property tax purposes" (at [29] of *Aspinden*).

40 The situation in the present case is the diametrical opposite of that in *Aspinden*, since what we have in the present case is a single subject property divided into three different components, each with its own physical condition and each being used for a different purpose. Nonetheless, the *rebus sic stantibus* principle applies with equal force, such that each different component of the subject property should be valued according to its physical nature and condition as well as its usage. Thus in *Kwong Fat Loong Shipyard v Commissioner of Rating and Valuation* ("*Kwong Fat Loong*") (1990) HKCU 344[20], for example, in which the appellant operated a boatyard business, the subject property it occupied could be divided into four elements: the land above sea level, the seabed, buildings and the slipway. The valuation approach taken by the Commissioner of Rating and Valuation, which the Hong Kong Lands Tribunal endorsed in principle[21], was to value the land, the seabed and the buildings using the comparative method, in light of the availability of adequate comparables, whilst the slipway was valued using the contractor's method. The combined values of these four elements was then held to be the rateable value of the subject property; in other words, a single rateable value.

41 In the present case, the Appellant conceded from the outset that it was "not questioning the [Chief Assessor's] power to assess tenements separately" [emphasis in original][22]. Instead, according to the Appellant, where the Chief

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20 RBOA Vol III, Tab 31.

21 Page 3 of Judge Cruden's decision in *Kwong Fat Loong.* In terms of the final figure arrived at in respect of the rateable value of the subject property, the Lands Tribunal reduced the figure after disagreeing with some of the computations done by the Commissioner's survey in assessing the rateable value of the slipway component.

Assessor had gone wrong was that he should have issued three valuation notices instead of one; he was "clearly prohibited" by the PTA from including only one annual value in the Valuation List in respect of the subject property[23].

42 It should be noted that whilst the Appellant claimed that there existed a clear statutory "prohibition" against the inclusion of a single annual value in the Valuation List in respect of the subject property, it was unable to point to any PTA provision which actually contained such a "prohibition". The Appellant argued that s 10(3) of the PTA "required" that "having exercised his powers to assess each tenement separately, the [Chief Assessor] ought to have reflected that accurately in the [2008] Valuation List"; he "ought to have listed each of the three tenements separately in the Valuation List and ascribed individual [annual value] to each of the three tenements"[24].

43 Sections 10(1) and 10(3) of the PTA read as follows:

> **Valuation List**
>
> **10.—**(1) The Chief Assessor shall cause to be prepared a list, which shall be known as the Valuation List, of all houses, buildings, lands and tenements.
>
> …
>
> (3). The Valuation List shall contain in respect of all houses, buildings, lands and tenements —
>
> (*a*) a description or designation sufficient for identification;
>
> (*b*) the name of the owner;
>
> (*c*) the annual value ascribed thereto; and

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22 Appellant's Submissions at para 61.

23 Appellant's Submissions at para 31.

24 Appellant's Submissions at para 31.

> (*d*) such other particulars as the Chief Assessor may from time to time consider necessary.

44 There is nothing in s 10(3) which prescribes the specific "requirement" insisted upon by the Appellant. What s 10(3) requires is that the subject property be sufficiently described and identified in the Valuation List; that its owner be named; and that the annual value ascribed to the subject property be stated. In the present case, the subject property has been described as "68 Orchard Road #07-01-15". It is a description which, to my mind, sufficiently identified the property being valued. As the Chief Assessor has pointed out, it is a description which "covers the entire 7th storey of Plaza Singapura… [A]ll three components of the cinema, office and family entertainment centre are encapsulated in this property description"[25]. As the Chief Assessor has also pointed out, where a subject property is divided into a number of different components, each with its own distinct physical nature, condition or use, "[n]othing in the PTA prohibits the description of several components of a property collective under one address".

45 The Appellant cited three other provisions of the PTA – s 2(1) (on the definition of "property"), s 6(1), and s 9(1) – which it claimed, when read with s 10(1) and (3), required that where a subject property is assessed as several different tenements, "each 'tenement' is to be ascribed one [annual value]… which is to [be] listed clearly and separately in the Valuation List".[26] However, an examination of these PTA provisions, alongside ss 10(1) and (3), fails to reveal any such requirement. Nor, apart from simply citing these provisions, did the Appellant attempt to explain how they should be construed so as to give the

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25 Respondent's Submissions at para 192.

26 Appellant's submissions at para 36.

meaning it argued for. For ease of reference, I set out the relevant portions of s 2(1), s 6(1) and s 9(1) of the PTA below:

Section 2(1) of the PTA

> **Interpretation**
>
> **2.**—(1) In this Act, unless the context otherwise requires —
>
> …
>
> "property" includes houses, buildings, lands and tenements…

Section 6(1) of the PTA

> **Charge of property tax**
>
> **6**.—(1). As from 1st January 1961, a property tax shall, subject to the provisions of this Act, be payable at the rate or rates specified in this Act for each year upon the annual value of all houses, buildings, lands and tenements whatsoever included in the Valuation List and amended from time to time in accordance with the provisions of this Act.

Section 9(1) of the PTA

> **Rates of Tax**
>
> **9.**—(1). The tax payable in respect of each year shall be at the rate of 36%* upon the annual value of every property included in the Valuation List…

46 Quite apart from being unable to explain how the statutory provisions it cited could be construed to afford the meaning it argued for, the Appellant was also – tellingly – unable to articulate with any coherence exactly how it had been prejudiced by the inclusion of a single annual value in the Valuation List in respect of the subject property. In its submissions[27], it claimed that

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27 Appellant's Submissions at para 52.

> …by ascribing only one [annual value] to the subject property when it has been assessed as three tenements and issuing only one Valuation Notice, the [Chief Assessor] has *effectively deprived* the Appellant of its right to lodge objections specific to the tenements. Had the Appellant known that the 7th floor of Plaza Singapura was assessed as three tenements instead of one, the Appellant may not have lodged an objection for all three tenements. As an illustration, Ms Ching has used the actual rent to compute the [annual value] for the retail unit. Had that being [*sic*] made clear to the Appellant from the Valuation List and Valuation Notice, the Appellant may very well have agreed with the Respondent's proposed [annual value] for the retail unit and not lodged an objection.
>
> [emphasis in original]

47 It was not clear what sort of prejudice the Appellant was referring to by the assertion that it had been "effectively *deprived*" of the "*right to lodge objections specific to the tenements*". Oddly, the "illustration" it chose to amplify this point involved contending that had it known that Ms Ching had used the actual rent to compute the annual value of the retail component, it might "very well have accepted" the proposed annual value for the retail unit "and *not lodged an objection*". In any event, the Appellant's actual conduct of the appeal before the VRB appeared to me to make nonsense of these claims, since the record of the proceedings before the VRB showed that the Appellant had in fact challenged the inclusion of the annual rent of the retail unit.

48 As to the authorities relied on by the Appellant, these did not in my view lend any support to its arguments. In *Cho Chih Yee v Chief Assessor (No. 2)* [1969] 2 MLJ iii ("*Cho Chih Yee (No. 2)*") [28], the subject-matter of the appeal before the VRB consisted of two flats. The appellant was the owner of both the flats. Before the VRB, he argued that property tax in Singapore attached to the owner of the property and not the property itself; and that since he was the owner

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28 RBOA Vol 1, Tab 13.

of both the flats, they must be considered as a single unit and assessed as one entity. This argument was firmly rejected by the VRB, which noted that "property tax is levy of tax on immovable property and not on the owner"; and that this being the case, "it is **incumbent** on the Chief Assessor, **under section 9(1)** of the [Property Tax Ordinance], to put on the valuation list **each flat as a separate 'tenement', notwithstanding that the flats are owned by one person, and assign an annual value to each of them as a separate 'tenement**'". I have reproduced the emphasis which the Appellant sought to place on the words underlined and in bold, in quoting this extract from the VRB's decision in its submissions[29]. Regrettably, in failing to consider the facts of *Cho Chih Yee (No. 2)* and the arguments raised in that case for the VRB's consideration, the Appellant has quoted the VRB's decision entirely out of context. The decision in no way provides support for the Appellant's contention in this case that three separate annual values ought to have been ascribed to the subject property in the 2008 Valuation List.

49 The Appellant also relied on two previous VRB decisions – *Toh Kim Soo Realty Co Pte Ltd v Chief Assessor* ("*Toh Kim Soo*") (1992) 1 MSTC 5087[30] and *Seacold Technologies Pte Ltd v Chief Assessor* ("*Seacold*") (1993) 2 MSTC 5178[31] – as "good authority for the proposition that an invalid entry in the Valuation List can be deleted". In reliance on these two cases, the Appellant contended that "the inclusion of "68 Orchard Road #07-01/15" with a single [annual value] in the 2008 Valuation List is invalid and *ultra vires* and as such, ought to be deleted from the 2008 Valuation List".

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29 Appellant's Submissions at para 37.

30 ABOA Vol 1, Tab 29 (referred to by the Appellant as "*Kian Hong*" in its Submissions).

31 ABOA Vol 2, Tab 38.

50 I make three points in this respect. First, in filing TA 9/2018, the Appellant had never prayed for deletion of the subject property from the 2008 Valuation List as a relief. Second, and somewhat astonishingly, the Appellant failed to address the implications of the deletion it proposed of the subject property from the 2008 Valuation List. Any such deletion would render the subject property a non-existent entity to which no annual value could be assigned – with no property tax levied. This seemed to me a wholly absurd and unacceptable outcome, given that nobody was actually disputing that the subject property had market rental value. Third, the VRB's decisions in *Toh Kim Soo* and *Seacold* were arrived at on the basis of facts which differed substantially from the facts in the present case.

51 In *Toh Kim Soo*, the subject property was a single piece of land comprised in Mukim 10 Lot 482. The Chief Assessor issued a total of four valuation notices in respect of Lot 482, purporting to assess different annual values in respect of different portions of the piece of land. On the property owner appealing to the VRB, the VRB held that the Chief Assessor was not authorised under the PTA to give the subject property more than one annual value. In the circumstances, the four valuation notices were *ultra vires*, and the resultant valuations should be deleted from the Valuation List. This case was in fact summarised by the CA in *Aspinden* as follows (at [20]):

> In *Toh Kim Soo*, the Chief Assessor sought to give more than one annual value to a particular property. This was not authorised by the provisions in the PTA, either expressly or impliedly.

52 In *Seacold*, what was in issue was the assessment of excess land under proviso (d) to s 2 of the Property Tax Act (Cap 254, 1985 Rev Ed) (now s 2(5) of the PTA). Pursuant to proviso (d), excess land could be separately assessed

for annual value if the sanction of the Minister for Finance is obtained. In *Seacold*, approval for the separate assessment of the excess land had been given by a civil servant in the Ministry of Finance; there was no evidence of any sanction having been given by the Minister himself. Not surprisingly, the VRB held that the requirements of proviso (d) had not been complied with, and that the notice of annual value given in respect of the excess land was therefore *ultra vires* the PTA.

53 Neither of these two VRB decisions can sensibly be extrapolated so as to provide any support for the Appellant's position.

54 I should also add for the record that I found no merit in the Appellant's allegation that it had been given no forewarning that the Chief Assessor had assessed the subject property as three tenements "[p]rior to Ms Ching's cross-examination"[32]. The affidavit filed by Ms Ching on 30 November 2017 (prior to her taking the witness stand) had made it plain that she had valued the subject property as three different components. Therefore, it could not be true that the Appellant had only realised this in the course of her cross-examination. Nor did I find any merit in the Appellant's allegation that this stance "may have been made in response to the Appellant's written submissions filed prior to the hearing, wherein the Appellant had criticised the Chief Assessor's valuation methodology as "hotch-potch".[33]

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32 Appellant's Submissions at para 58.

33 Appellant's Submissions at para 59.

Third issue: whether GV's fitting-out works on the subject property amounted to fixtures which ought to be included in the assessment of the annual value

55 In respect of the third issue, the parties are agreed that "property tax is a tax on immovable property, and any fixtures in or on such property would be assessable to tax under s 6(1) of the PTA together with the immovable property, as fixtures are regarded under general law (i.e. personal law) as forming part of the immovable property. Chattels, on the other hand, are not assessable to tax under s 6(1) of the PTA, as chattels are not regarded under general law as forming part of the immovable property"[34]. The Appellant disputed the Chief Assessor's decision to treat GV's fitting-out works in this case as fixtures to be included in the assessment of the annual value of the subject property. The Appellant contended that these fitting-out works were chattels.

56 The VRB has set out at [49] of its judgement the list of fitting-out works carried out by GV in the period 1998 to 1999. To recap, these fitting-out works cost a total of $7,829,288.53. Out of this entire list of fitting-out works, the works which were identified by the Chief Assessor's expert witness Ms Ching as amounting to fixtures accounted for $7,374,652.57 of the total cost of $7,829,288.53. These comprised the following items:

Item of fitting-out works	Cost ($)
Leasehold improvements (main contractor cinema fitting-out work [air-conditioning, mechanical and ventilation, architectural, electrical fire protection, etc], glass and shop front, floor screed and wall "plasting", fire protection system, variation order)	4,835,291.36

[34] Appellant's Submissions at para 72; see also Respondent's Submissions at para 41.

Projection equipment (including projectors, screens, sound system, wall drapes and curtains)	1,314,180.30
Cinema seats	651,340.05
Signage	210,045.52
Floor covering (carpets for the cinemas)	193,833.34
Wheelchair lift to cinema	117,000.00
Video display system	52,962.00

57 I will refer to the above items as "the included assets". In explaining my reasons for finding against the Appellant on this third issue, I will first deal with the applicable legal principles and the relevant case law.

The applicable case law and legal principles

58 In so far as the applicable legal principles are concerned, the CA's decision in *Pan-United Marine Ltd v Chief Assessor* [2008] 3 SLR(R) 569 ("*Pan-United*") provides a useful summary. In *Pan-United*, the appellant was the owner of a shipyard and a concrete batching plant ("the Property"). The appeal before the CA related to three floating dry docks which were berthed above the seabed adjacent to the Property, and which were connected to the Property by a ramp. The appellant was dissatisfied with the Chief Assessor's decision to include these three floating dry docks in assessing the annual value of the Property, and appealed to the CA after unsuccessful appeals before the VRB and the High Court. One of the issues which arose in the appeal before the CA was the appropriate test to apply in determining whether the floating dry docks were part of the land and thus assessable to property tax. The appellant argued for the fixture test, whereas the Chief Assessor argued for the

enhancement test. The majority in the CA held that it was unnecessary to decide which test should be the operative test under Singapore law because in its view, the same outcome would be arrived at regardless of which test was applied (at [53]). It did, however, note that the fixture test was "more stringent than the enhancement test" (at [52]) and went on to apply the fixture test to the facts of the case before it, following which it ruled that the floating docks were clearly not only "buildings" within the meaning of s 2(1) of the PTA, but that they also formed part of the Property and were to be included in the assessment of the annual value.

59 I will focus first on the application of the fixture test to the present case. In this respect, it is necessary first to examine some of the more pertinent case law.

60 In *Pan-United*, the CA acknowledged (at [45]) that the *locus classicus* on the application of the fixture test was the English case of *Holland v Hodgson* ("*Holland*") (1872) LR 7 CP 328, in which Blackburn J laid down the following principles:

> There is no doubt that the general maxim of the law is, that what is annexed to the land becomes part of the land; but it is very difficult, if not impossible, to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case, and mainly on two circumstances as indicating the intention, *viz.*, the degree of annexation and the object of the annexation. Where the article in question is no further attached to the land, then by its own weight it is generally to be considered a mere chattel; see *Wiltshire v Cottrell* [(1853) 1 El & Bl 674, 118 ER 589]; and the cases there cited. But even in such a case, if the intention is apparent to make the articles part of the land, they do become part of the land: see *D'Eyncourt v Gregory* [(1866) LR 3 Eq 382].

The fixture test

61 Following the decision in *Holland*, the CA held that in applying the fixture test, the two considerations for determining whether the floating dry docks were fixtures or chattels "rested on: (a) the degree of annexation; and (b) the object of annexation". It added (at [55]) that it was "important to note" that "as a point of general legal principle, the purpose of annexation is an extremely important factor (indeed, so it appears, even more so than the degree of annexation)". In elucidating this point, the CA cited (at [46]) the observations by Boreham J in *Hamp v Bygrave* (1983) 266 EG 720 (at 724) on the object or purpose of annexation:

> The second test is: What was the purpose of the annexation? Was it in order to enjoy the chattel as a chattel or was it to improve the freehold in a permanent way? There is, in my judgement, authority for the following propositions: (a) Items which are firmly fixed to the land may yet remain chattels if (1) the purpose of the annexation was to enjoy them as chattels and (2) the degree of annexation was no more than was necessary for that purpose. See *Re de Falbe, Ward v Taylor* [1901] 1 Ch 523, which was a case concerning valuable tapestries. (b) Articles which are intended to improve, in the sense of being a feature of, the land through their annexation is by no more than their own weight may be regarded as fixtures. See *D'Eyncourt v Gregory* (1866) LR 3 Eq 382. (c) While the earlier law attached greater importance to the mode and degree of annexation, more recent authorities suggest that the relative importance of these considerations has declined and that the purpose of the annexations is now of first importance. In judging the purpose of the annexation regard must be had to all the circumstances, including the manner of annexation and the intention of the annexor or occupier of the land at the relevant time. See *Leigh v Taylor* [1902] AC 157. (d) Nevertheless, in the absence of evidence of a contrary intention, the prima facie inference to be drawn from the mode and degree of annexation will not be displaced…

62 Applying the fixture test to the facts of the case before it, the CA held that although the floating dry docks were each attached to the property by only a ramp,

> 54 …[T]he *purpose* of anchoring these docks where they were was clear beyond peradventure: It was intended that these docks constitute the very pith and marrow of the business conducted by the appellant on the Property. Indeed, without the docks, the lease of the property by the appellant from the JTC would have been an exercise in futility. As the Judge [in the High Court] put it…:
>
> > In the present case the Board observed that the three floating dry docks were integral to the business of ship repair of the appellant. The Board pointed out that as there were no other docks in the appellant's shipyard they were essential to the use of the Property as a shipyard and their presence enhanced its value…
>
> 55 …Put simply, the floating dry docks were *clearly intended to be an integral part of the Property* – particularly from a functional perspective.
>
> [emphasis in original]

63 *Chief Assessor v HSBC Institutional Trust Services (Singapore) Ltd* [2012] 3 SLR 933 ("*Bugis Junction*")[35] illustrates how the fixture test and the principles enunciated by the CA in *Pan-United* have been applied by the Singapore High Court. In that case, the respondent was the trustee of CapitalMall Trust which owned the shopping mall known as Bugis Junction – a mall with 180 units leased out to tenants operating various types of business (collectively, "the Premises"). In assessing the annual value of the various tenanted units for the valuation years 2004 and 2005, the Chief Assessor did not exclude a portion in the gross rent for depreciation arising from wear and tear of the escalators, lifts air-conditioning and fire safety systems installed in Bugis Junction (collectively, "the asset items"). On the respondent appealing to the

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35 RBOA Vol I, Tab 10.

VRB, the VRB reversed the Chief Assessor's decision as it agreed with the respondent that the claim for depreciation of these items was a constituent part of the total cost of the services provided by the respondent, and that it should be excluded from gross rent in the assessment of annual value. The Chief Assessor appealed the VRB's decision. In considering the Chief Assessor's appeal, the High Court was concerned with the question of whether the depreciation of the asset items was an item related to the "rent or letting" of the subject property – and whether this depreciation component should be included in the computation of the annual value of the subject property. The High Court noted at [25] that:

> Under our local property tax regime, tax is payable on immoveable properties… [I]t is the immovable property that is taxed. Thus, a building is assessable together with fixtures that are on or in the building unless the fixtures are manufacturing or industrial machinery exempted under s 2(2) of the PTA…

64 If the relevant asset items in *Bugis Junction* constituted fixtures, they would be assessable to tax together with the building, and in assessing annual value in these circumstances, it could not then be said that depreciation of the asset items had nothing to do with letting of the Premises: the deprecation component in the gross rent would be related to rent or letting (at [27]). The High Court then considered the question of whether the asset items were fixtures such that they formed an integral part of the subject property and were assessable to tax. Following the approach of the CA in *Pan-United*, the court held that there were two alternative tests which could be applied to determine whether an item was a fixture or a chattel for property tax purposes: the fixture test (as embodied in the decision in *Holland*) or the enhancement test (as *per Field Place Caravan Park Ltd v Harding* [1966] 2 QB 484). It ruled that on the facts before it, either the fixture test or the enhancement test "should reach the conclusion that the asset items [were] affixed to land so as to become part of the land and, thus, be assessable to tax together with the building concerned under

s 6(1) [PTA]" (at [42]). For the purposes of the present discussion, I focus on the High Court's treatment of the fixture test in its judgement (I will touch on the enhancement test at a later stage). In allowing the Chief Assessor's appeal, the High Court held (at 30]):

> …The significance of the existence of fixtures in a building is potentially the enhancement in value that is added to the annual value of the building. Conversely, if the plant and machinery is not affixed to the building, the question of including it in the assessment of the building's annual value does not even arise. Hence, the difference between fixtures and chattels is important in relation to the calculation of the annual value for property tax purposes…

65 Citing the CA's decision in *Pan-United* and noting the appellate court's reliance on *Holland*, the High Court found (at [38] and [43]) that

> …(A)ccording to the fixture test as described, the asset items in question are undoubtedly part of the land, being annexed to the building that comprises Bugis Junction. The photographs of the escalators, lifts, air conditioning and fire safety systems adduced as evidence in this case show that these have been built-in or affixed to the buildings. Accordingly, they therefore satisfy the first consideration stated in *Holland v Hodgson*. In regard to the object of annexation, there are no facts in evidence to rebut the *prima facie* inference to be drawn from the fact that the asset items have been annexed to the building. I note that there was not a great deal of difference between the parties on the question of whether the asset items were fixtures or chattels… Given the nature of and the manner in which the escalators, lifts, air-conditioning and fire safety systems are usually utilised, their function or purpose is to be served by annexation to the building, where they will remain in place for a substantial period of time. It is quite clear that escalators, lifts, air-conditioning and fire safety systems are incapable of utility on a free standing basis and cannot be enjoyed as mere chattels. Air conditioners with vents, ducts and piping form a cooling system that function together to cool the building in question. Escalators and lifts are mainly or usually used for shoppers and visitors. In the case of the fire safety system, it consists of several components. For example, the indicator boards, piping, alarms, heat sensors, hose reels, and sprinklers. All these components function together to form the system. Each component also performs its own discrete

> function independent of the others, but taken as a whole, they are affixed to the building to serve as protection from fire and are intended to remain in place for a substantial period of time. As the Board found on the facts in evidence, the asset items were fixtures and they formed integral parts of the building.
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> …
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> 43. …[A]s fixtures, the asset items enhance the value of the building, and they are, thus, included in the assessment of the building's annual value. It follows that the portion of the gross rent for depreciation of the asset items in question has to do with the letting of the Premises, which in turn, means that the depreciation component in the gross rent is related to rent or letting of the Premises. Therefore, the depreciation component in the gross rent has to be included in the computation of annual value in the valuation years of 2004 and 2005.

66 *Chief Assessor & another v Van Ommeren Terminal (S) Pte Ltd* ("*Van Ommeren*") [1993] 2 SLR(R) 354[36] is another case which provides a useful example of how the High Court approached the issue of whether certain structures on a subject property constituted fixtures or whether they were chattels. In this case, the respondent leased from the then Port of Singapore Authority ("PSA") land ("the property") which it used for storage of oil. The issue in dispute before the High Court was whether the Chief Assessor was correct to have taken into account the costs of constructing the storage tanks and pipelines on the property in assessing the annual value. The VRB had agreed with the respondent that he was incorrect to have done so and had directed that the value of the storage tanks and pipelines be omitted in the assessment of the annual value of the property. The Chief Assessor's appeal was allowed by the High Court, which agreed that both the storage tanks and the pipeline had to be taken into account in assessing the annual value of the property. Whilst noting that the storage tanks were not annexed to the land but rested on the land by their own weight and that they could be jacked up for repairs or moved to a

[36] RBOA Vol I, Tab 11.

different location, the High Court held that the fact "whether an article is or is not bolted or cemented to the ground is not necessarily conclusive" (at [26]). Citing *Holland*, the High Court noted that Blackburn J had stated *inter alia*:

> Perhaps the true rule is that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land unless the circumstances are such as to show that they were intended to be part of the land, the onus of showing that they are so intended lying on those who assert that they have ceased to be chattels; and that, on the contrary, an article which is affixed to the land, even slightly, is to be considered as part of the land, unless the circumstances are such as to show that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel.

67 In the High Court's view:

> 28 …the Board in its deliberations placed too much significance on the fact that the tanks are not physically annexed to the ground and could be moved, and did not give sufficient consideration to the purpose for which the tanks are placed on the land. It is clear from the statement of Blackburn J that the fact that the tanks rest on their own weight is not necessarily conclusive that they are chattels and have not become part of the land.
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> …
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> 34 …[I]t seems to me clear that *the storage tanks (and the pipelines) were and are placed on the property to improve or promote the enjoyment of the land rather than the enjoyment of the chattels (the tanks) themselves. Pulau Sebarok is a barren piece of land. In its natural state it could not be of any good practical use other than as perhaps a dumping ground. The siting of the storage tanks on it is no doubt to enhance or maximise the use of the land. It is an improvement made to the land.* I do not think any real significance should be attached to the fact that the tanks are not bolted or cemented to the ground. It is quite unnecessary. Due to their size and weight, the tanks need no bolting or cementing. They are not chattels which can be removed easily… (T)he occasions the tanks have been moved are few and far between. To move or lift them would involve a big operation.
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> 35 In this connection, I think cl.6.4 of the lease granted by PSA to Van Ommeren is pertinent. It provides that on the expiry

> of the lease or earlier determination thereof Van Ommeren are required to surrender the land "together with the said complex and all other improvement, structures and buildings" on it to PSA without any compensation whatsoever. The tanks and the pipelines are certainly improvements and will go to PSA.
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> …
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> 39 I do not think the pipelines should be considered in isolation and separate from the storage tanks. The pipelines cannot be viewed otherwise than as an integral part of the tanks without which the tanks in themselves cannot be of any functional use. The pipelines serve as conduits in the transportation of the petroleum products from vessels to the tanks and *vice versa*. They are necessary adjuncts to the storage tanks.
>
> [emphasis added]

68 To sum up broadly at this point, therefore, in applying the fixture test to the present case, the two considerations for determining whether the included assets were fixtures or chattels rested on the degree of annexation and the purpose of annexation. Whilst the latter is of greater importance than the former, generally speaking, an item which is affixed to the land, even slightly, is *prima facie* to be considered part of the land, unless the party contending otherwise demonstrates that the circumstances are such as to show that it was intended all along to be a chattel. Conversely, items not otherwise attached to the land other than by their own weight are not to be considered part of the land unless the party contending otherwise demonstrates that the circumstances are such as to show that they were intended to be part of the land. In considering what the circumstances may show, it should be asked whether the item in question was placed on the land in order to be enjoyed as a chattel, or whether it enhances the use of the land and therefore its value.

69 In its submissions, the Appellant laid great emphasis on the fact that the included assets in this case were "Tenant's fittings". The inference which the

Appellant apparently sought to have me draw was that that as a tenant, GV was a "temporary" occupant of the subject property; that the "temporary" nature of its occupation militated against its having any intention to dedicate the included assets to the subject property; and that in so far as the included assets were attached to the subject property, there were good reasons for why they were so attached, which had nothing to do with an intention to dedicate the included assets to the subject property; and that in any event these were items which could be fairly easily removed without any damage to the subject property[37]. The Appellant relied in particular on the case of *Leigh v Taylor* [1902] AC 157[38]. However, on examining the facts in *Leigh v Taylor*, as well as the judgements of both the English Court of Appeal[39] and the House of Lords (who upheld the decision of the English CA), I did not find the case to be helpful to the Appellant's attempt to characterise the included assets as chattels.

70 In *Leigh v Taylor*, the issue in contention concerned whether certain tapestries hung by the tenant for life of a mansion-house had become attached to the freehold such that – the tenant for life having passed away – they passed with the freehold to the remainderman. It was not disputed that these tapestries were very valuable. They were hung in the drawing-room of the mansion in such a way that they were only "slightly attached" and "easily susceptible of being removed"[40]. The CA ruled that these tapestries were chattels belonging to the estate of the tenant for life. Notably, in so ruling, the CA made it clear that any inquiry into the object and purpose for which the tapestries had been

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37 Appellant's Submissions at para 84-94.

38 ABOA Vol 1, Tab 30.

39 The decision of the English Court of Appeal in this case is reported as *In re De Falbe, Ward v Taylor* [1901] 1 Ch 523 (RBOA Vol 2 at Tab 25).

40 Per the Earl of Halsbury L.C. at p 160 of *Leigh v Taylor*.

attached to the walls was an objective exercise in which the court asked itself what inferences could be drawn from the evidence available. Thus, for example, Vaughan Williams LJ held:

> I have not the faintest doubt upon the evidence that these tapestries were affixed by the tenant for life to the freehold for the purpose of their enjoyment as chattels, and in no sense for the improvement of the freehold. In dealing with the question of fixtures it sometimes becomes material to consider the object and purpose of the annexation, by which *I do not mean that there must be an inquiry into the motive of the person who annexed them, but a consideration of the object and purpose of the annexation as it is to be inferred from the circumstances of the case*.
>
> [emphasis added]

71 In the same vein, Rigby LJ held that the evidence available, including evidence of the manner in which the tapestries were affixed to the walls, indicated that the intention of the tenant for life was "to have what she considered … beautiful and valuable objects placed in such a position as might please the eye and satisfy her desire for ornament". Similar observations were made by Stirling LJ:

> As regards the object of the annexation the question to be considered is, whether the object is to improve the freehold to which the annexation is made, or whether it is the more complete and better enjoyment of the chattel itself. Here the chattels to be enjoyed are some pieces of tapestry. How are they to be enjoyed? They must be placed so as to be seen by the eye, and in order that they may be properly seen they must, as they are large pieces of tapestry, be placed in a large room. Madame de Falbe [the tenant for life] put them into the best room in the house, the drawing-room. She affixed them, no doubt, to the walls of the room, but she did this in such a way that the tapestries might be removed without any structural damage… Looking at the evidence as to the mode in which the tapestries were affixed and the position in which they were placed, I feel no doubt that everything which was done was done for the better enjoyment of the tapestries as chattels, and not for the purpose of making an addition of some thousands of pounds to the value of the mansion-house.

72 In upholding the English CA's decision, the House of Lords also held that the tapestries were put up purely to be enjoyed as ornaments in themselves, and did not become part of the freehold. Thus, for example, the Earl of Halsbury L.C. held that whilst these tapestries were very valuable, they were at the end of the day really pictures "made for the purpose of ornamentation"[41]; and Lord Shand similarly likened the tapestries to pictures "affixed…to the walls for the purpose of ornamentation"[42].

73 The point, therefore, is that the decision in *Leigh v Taylor* was specific to the facts of that case and did not support in any way the Appellant's argument that the included assets in this case would be regarded as chattels. I would add that Vaughan Williams LJ's observation that an inquiry into the object or purpose of annexation of items to the land involves "a consideration of the object and purpose of the annexation *as it is to be inferred from the circumstances of the case*" – rather than "an inquiry into the motive of the person who annexed them" – is a useful reminder that declarations of subjective intention by the landlord and its tenants – particularly in the context of testifying on appeal before the VRB – are usually of limited evidential value in themselves.

74 Vaughan William LJ's comments were echoed by the House of Lords in *Elitestone Ltd v Morris & another* [1997] 1 WLR 687[43] ("*Elitestone*"). In that case, the House of Lords held that the answer to the question whether a structure had become part and parcel of the land itself depended on the degree and the object of annexation to the land, and in the course of their judgements, made it

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41 At pp 159-160 of *Leigh v Taylor*.

42 At p 162 of *Leigh v Taylor*.

43 RBOA Vol II, Tab 18.

clear that this was an objective inquiry. Thus Lord Lloyd for example, held that "the intention of the parties is only relevant to the extent that it can be derived from the degree and object of the annexation. The subjective intention of the parties cannot affect the question whether the chattel has, in law, become part of the freehold" (at 693F). Lord Clyde too, in referring to Blackburn J's remark in *Holland* about whether there was an apparent intention "to make the articles part of the land", cautioned that "intention in this context is to be assessed objective and not subjectively... As Lord Cockburn put it in *Dixon v Fisher* (1843) 5 D. 775, 793 'no man can make his property real or personal by merely thinking it so'" (at 698E-698H).

75 I note that the Appellant has tried to suggest that "*Elitestone* should be read with caution as the case was primarily concerned with the principle of accession, which is not relevant to the present appeal"[44]. I rejected this suggestion. In the first place, the Appellant failed to elaborate upon this statement. The Appellant also failed to acknowledge that both the judgements delivered in that case actually invoked the test laid down by Blackburn J in *Holland* in answering the question of whether the disputed structure had become part and parcel of the land itself. Blackburn J's judgment in *Holland* has been widely accepted as the leading authority on the application of the fixture test (see for example *Pan-United* at [45]). In any event, as counsel for the Chief Assessor pointed out in her reply submissions, Lord Clyde himself had noted that the origins of the law of fixtures were in fact to be found in the principle of accession:

> As the law [of fixtures] has developed it has become easy to neglect the original principle from which the consequences of attachment of a chattel to realty derive. That is the principle of

44 Appellant's Submissions at [147].

> accession, from which the more particular example has been formulated, *inaedificatum solo cedit* [literally, "whatever is affixed to the soil belongs to the soil"].

76 In the light of the existing case law authorities, I did not think it helpful for the Appellant – in seeking to apply the fixture test – to put weight[45] on the declaration by its witness Mr Sticca (General Manager (Design & Development) of Village Cinemas Australia Pty Ltd) in examination-in-chief that the fitting-out works were all installed "for GV's benefit" and that GV "would remove it" at "the end of the tenancy"[46].

77 As to the other two cases on which considerable weight was placed by the Appellant, *Billing v Pill* [1954] 1 QB 70[47] ("*Billing*") concerned the question of whether the appellant had been wrongly convicted of larceny in respect of his act of dismantling a hut which had been constructed on a piece of land and re-erecting it on his own land. Due to the manner in which the relevant provision in the Larceny Act, 1916, had been drafted, the issue turned on whether the hut should be considered as being attached to or forming part of the realty. The hut itself was one of a number erected by the War Office during World War II for use as a gun emplacement: it rested on a concrete foundation, the floor of the hut being secured to the foundation by bolts let into the concrete. At the conclusion of the war, the army had vacated these huts, and the local authority had been instructed to demolish them but had not yet done so. In affirming the appellant's conviction for larceny on appeal, the English CA held that the hut had not become attached to nor formed part of the realty and remained a chattel capable of being stolen. Lord Goddard CJ, who delivered the CA's judgement,

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45 Appellant's Submissions at [92].

46 RA Vol IIIC, pg 34 line 24 to pg 37 line 4.

47 ABOA Vol I, Tab 10.

affirmed the importance of the object or purpose of annexation of an item to the land in the court's consideration of whether the item formed part of the land:

> If the object and purpose was for the permanent and substantial improvement of the land or building, the article will be deemed to be a fixture, but if it was attached to the premises merely for a temporary purpose or for the more complete enjoyment and use of it as a chattel, then it will not lose its chattel character and it does not become part of the realty.

78 In *Billing*, what the court found significant was the fact that the hut had been erected to serve a wartime purpose which had since run its course with the end of the war – in other words, a temporary purpose. Its attachment to the land via the bolts set in the concrete foundation was simply for the purpose of stabilising it. These propositions do not help the Appellant in its attempt to characterise the leasehold improvements, projection system, cinema seats and other included assets as mere chattels. The following observations by Lord Goddard CJ make it clear that the decision in *Billing* was specific to the facts of that case:

> Can anybody doubt that the hut in question was erected for a temporary purpose? It can be removed without doing any damage to the freehold at all. It rests upon a concrete bed which is let into the land. I should say that there is no question but that the concrete bed has become part of the land, but *the hut which stands upon it has not become part of the land merely because some bolts have been put through the floor of the hut to stabilise or steady it. It was erected merely for a temporary purpose so that the Army personnel who were going to the site for a presumed temporary purpose, to man a gun emplacement during the war, would have somewhere to sleep…*
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> [emphasis added]

79 In *Ball-Gyumer v Livantes & another* ("*Ball-Gyumer*") [1990] 2 FLR 327[48], the subject-matter of the dispute was an office constructed by the

[48] ABOA Vol I, Tab 7.

plaintiffs within a warehouse owned by the defendant. The plaintiffs had obtained a licence (which was *not* a lease) from the defendant to occupy the warehouse, and had erected the office on the warehouse premises. The office had partition walls and a ceiling. After ten weeks in occupation, the plaintiffs terminated the licence agreement. The defendant subsequently refused the plaintiffs access to the office and occupied it himself, claiming that the office was a fixture and thus part of the realty. Miles CJ, sitting as a single judge in the Supreme Court of the Australian Capital Territory, upheld the magistrate's decision that the office was not a fixture and not part of the realty. It was noted that the office was constructed of prefabricated wall frames, doors and windows; that whilst its removal would cause some damage to the premises, such damage was not irreparable. On the other hand, the office itself would, on severance of the licence, "cease to have the character of an office": it would be merely a "collection of re-usable building materials most of which" could "without much difficulty be re-assembled and used for the erection of a similar office elsewhere"[49].

80 Whilst it is true that Miles CJ cited the comment by Lord Kenyon CJ in *Penton v Robart* (1801) 2 East 88 that "persons in occupation of land are unlikely to effect improvement without an expectation that they do not lose the whole of the benefit of the improvements upon ceasing occupation", his reliance on this comment must be seen in the context of the facts of *Ball-Gyumer* itself, where the licence agreement under which the plaintiffs occupied the warehouse premises was *determinable by a mere week's notice on either side*. As Miles CJ noted, "the plaintiffs had *no real security of tenure*"; it was therefore unsurprising that in these circumstances, it was held that "any erection by [the

[49] At p 331 of *Ball-Gyumer*.

plaintiffs] of a structure upon the premises was intended to be of a temporary nature".

81 I should clarify that I did not agree with counsel for the Chief Assessor that it was wholly immaterial[50] whether the person who had annexed the disputed item or article to the land stood in the capacity of landlord or some other capacity such as a tenant or a licensee. I think it is common sense to say that the capacity in which such person carried out the act(s) of annexation may be one of the evidential clues from which the court draws inferences as to the purpose of the annexation. This does not, however, mean that so long as the occupant of the land is a tenant or a licensee, he can *never* be held to have intended to confer a permanent benefit to the land – which was what the Appellant seemed to be suggesting at one point[51]. This would be too simplistic a proposition. The capacity in which the annexor carries out the act of annexation is only one factor to be considered alongside other evidence.

82 In *Material Trading Pte Ltd v DBS Finance Ltd* [1988] 1 SLR(R) 141[52], for example, the plaintiff was the lessee of land on which two warehouses had been erected; the defendant was the mortgagee of the land and the premises. Following the liquidation of the plaintiffs, a dispute arose between the liquidator and the defendants as to whether three overhead cranes installed by the plaintiffs on the warehouse premises constituted fixtures forming part of the land, or whether they were chattels belonging to the plaintiffs. Thean J (as he then was) cautioned (at [8]) that in determining whether annexation had taken place, physical attachment was only one of the considerations to be kept in mind, as

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50 Respondent's Submissions at para 137.

51 See e.g. Appellant's Submissions at para 136-140, 154.

52 RBOA Vol III, Tab 33.

an article not physically attached to the land could in certain circumstances become part and parcel of the land and lose its chattel nature: the question of annexation "depends on a number of circumstances… and… each case must be considered and decided on its own circumstances". Having regard to the physical nature of the cranes, the manner in which they had been installed, and the functions they served, he held that they were "intended to serve, and they [served], only the warehouses where they were installed"; they were "an adjunct to the warehouses"; and they "[improved] the usefulness of these warehouses and [enhanced] their values" (at [12]). In the circumstances, he found these cranes to be fixtures which had become part of the warehouses.

83 Bearing in mind Thean J's injunction that each case must be considered and decided on its own facts, the facts of *Ball-Gyumer* were clearly distinguishable from the case before me. In the present case, given the length of each tenancy agreement entered into by GV and the multiple renewals of its tenancy[53], it could hardly be said that GV had "no real security of tenure" and/or that its purpose in installing the included assets was necessarily a mere "temporary" purpose.

The application of the fixture test to the included assets in this case

84 I next address specifically the application of the fixture test to the included assets in this case.

85 The largest item of included assets consisted of the leasehold improvements: namely, the main contractor cinema fitting-out work which included the air-conditioning, mechanical and ventilation ("ACMV") works, the

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[53] See [??] above.

architectural and electrical works, the fire protection system, and other items such as the floor screed and variation works. It could not be seriously disputed that these fitting-out works were physically attached to the subject property to a degree sufficient to pass the first limb of the fixture test; that is, the degree of annexation. As to the purpose of their annexation, it was clear from Mr Sticca's testimony[54] that these were works which had been carried out on the subject property by GV for the purpose of fitting it out for use as a cinema complex. None of these leasehold improvement works appeared to me to be capable of being described as having been installed in order to be enjoyed as a mere chattel in itself. The ACMV, architectural and electrical works constituted basic infrastructure[55] without which the property would have remained a bare shell. The fire protection system was integral to the secure functioning of the subject property. The floor screed and the wall plastering would have provided the essential finishing works on the floors and the walls of the subject property. As for the glass and shop front, I agreed with counsel for the Chief Assessor that these items having been described as leasehold improvements in GV's 1998/1999 list of assets, the inference to be drawn must be that these were works carried out for the subject property as a whole. As the Chief Assessor noted, although Mr Sticca alleged that these were only applicable to the office and the retail units, no evidence was actually adduced by the Appellant to substantiate this (and it would not have been difficult for the Appellant to produce such evidence, whether in the form of photographs or some other form).

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54 RA Vol IIIC, pg 93 line 13 to pg 97 line 6.

55 This was not disputed by the Appellant's expert witness Ms Ng: RA Vol IIIC, pg 132 line 10 to line 15.

86 For the above reasons, I was satisfied that the leasehold improvements constituted fixtures which formed part of the subject property and had to be included in the assessment of its annual value.

87 The second largest item among the included assets was the projection system which comprised projectors, screens, sound system, wall drapes and curtains. The projectors were very heavy pieces of equipment weighing between 100 kg and 200 kg. In addition to resting on their own weight, they were physically attached to the subject property as they were attached to the ceiling via exhaust pipes to which they were connected. It was not disputed that they were integral to the operation of the cinema complex[56]. As such, whilst it was possible to move them, in the same way that the storage tanks in *Van Ommeren* were capable of being jacked up for repairs or moved, they were – like the storage tank in *Van Ommeren* – clearly meant to stay put in the locations where they were placed for the duration that the subject property functioned as a cinema complex.

88 Similarly, the screens too were physically affixed to the walls of the cinema halls and were also clearly meant to remain in place for the duration that the subject property functioned as a cinema complex. They too were indisputably integral to GV's operation of cinemas on the subject property[57].

89 As for the sound systems, it was not disputed that they were affixed to the subject property[58]: they were sited in the projection room and wired up to

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56 RA Vol IIIC, pg 82 line 32 to pg 83 line 3.

57 RA Vol IIIC, pg 86 lines 7 to 10.

58 RA Vol IIIC, pg 92 lines 24 to 27.

the speakers in each cinema hall. It was also not disputed that they were integral to GV's operation of cinemas on the subject property[59].

90 Finally, as for the wall drapes, these were fairly bulky items (being floor-to-ceiling length), which were affixed to the walls of the cinema halls. Again, it was not disputed that these items were meant to remain where they were for the duration that the subject property functioned as a cinema complex and were not supposed to be shifted about from one place to another[60]. Unlike the tapestries in *Leigh v Taylor* which were found to be "akin to pictures" and of great ornamental value in themselves, these wall drapes were not ornamental items put up to be enjoyed as chattels *per se*. Instead, they served the function of sound absorption[61] and were thus integral to enhancing the acoustics of the cinema halls – in other words, enhancing the use of the subject property as a cinema complex.

91 On its own, each of the above items was clearly incapable of utility on a free-standing basis: combined, they formed an integrated movie projection system without which GV would have been unable to operate its cinemas on the subject property.

92 For the above reasons, I was satisfied that these various components of the projection system constituted fixtures which formed part of the subject property and had to be included in the assessment of its annual value.

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59 RA Vol IIIC, pg 92 lines 28 to 30.

60 RA Vol IIIC, pg 80 lines 25-30.

61 RA Vol IIIC, pg 73 lines 29 to 32.

93 Together, the leasehold improvements and the projection system accounted for more than $6,000,000 of the total cost of the included assets ($7,374,652.57). The cinema seats (costing $651,340.05) constituted the next item of included assets. It was not disputed that these were plush cushioned seats which were physically affixed to the floor of the subject property and which were not shifted about on a regular basis[62]. That these seats might be susceptible to being shifted or removed for cleaning or repair did not detract from the fact that their purpose was really to enable and enhance the use and enjoyment of the subject property as a cinema complex – GV could hardly have its customers view movies while seated on bare floors or rickety stools. After all, as counsel for the Chief Assessor put it, the whole *raison d'être* of a cinema complex is to sell tickets for seats at a movie screening[63].

94 In characterizing the cinema seats as fixtures, the Chief Assessor relied *inter alia* on *Vaudeville Electric Cinema Ltd v Muriset* [1923] 2 Ch 74 ("*Vaudeville*")[64], in which chairs in a cinema were held by Sargant J to constitute fixtures. The Appellant attacked the Chief Assessor's reliance on *Vaudeville* by seeking to explain away the case as one which turned on the fact that the person who had installed the chairs was also the owner of the property – "unlike the present case where the fittings in question were installed by the Tenant"[65]. With respect, however, this omitted a considerable portion of Sargant J's reasoning. Whilst it is true that Sargant J found the capacity of the person installing the seats to be one relevant factor, he also expressly found on the facts that the chairs were "being affixed for the permanent benefit and equipment of

62 RA Vol IIIC, pg 71 lines 5 to 28.

63 Respondent's Submissions at para 85.

64 RBOA Vol III, Tab 42.

65 Appellant's Submissions at para 136.

the property". There was "no doubt" that the chairs were placed in the cinema hall for "*the purposes of the permanent use of the cinema, as a cinema*". It was on this basis that Sargant J contrasted the case before him with the earlier case of *Lyon & Co. v London City and Midland Bank* [1903] 2 KB 135 ("*Lyon*")[66], where the owner of a hippodrome had hired chairs for use for a period of 12 weeks with an option to purchase which was never exercised. In *Lyon*, in finding that the chairs remained chattels despite having been fastened to the floor of the hippodrome during the period of hire, Joyce J found that "the purpose of the annexation [was] only temporary". This aspect of "a mere temporary user" was what appeared to Sargant J to distinguish *Lyon* from the case before him, where – as noted – he had found that the chairs were annexed for the permanent use of the hall as a cinema (at p 87).

95 For the above reasons, I rejected the Appellant's attempt to depict *Vaudeville* as a case turning solely on the "the owner of the property [being] also the owner of the chairs".

96 I also rejected the Appellant's attempt to depict *Colledge v HC Curlett Construction Co Ltd* ("*Colledge*") [1932] NZLR 1060[67] as another case turning solely on the "the owner of the property [being] also the owner of the chairs"[68]. Again, this characterisation of the decision regrettably omitted material aspects of the court's reasoning. In *Colledge*, the subject-matter of the dispute also concerned the seats in a cinema (referred to as a "motion-picture theatre building" in the judgement). An issue arose as to whether these seats were fixtures or chattels, as the registered proprietor of the cinema had executed a

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66 RBOA Vol III, Tab 32.

67 RBOA Vol I, Tab 15.

68 Appellant's Submissions at para 140.

mortgage of the cinema to the defendant bank while also executing an instrument by way of security to the plaintiff over, *inter alia*, the cinema seats. In holding that the seats were fixtures and therefore property of the defendant company, Smith J found on the evidence before him that the seats were "screwed to the floor"; that they were "chairs for the audience"; and that "(t)he theatre could not have been opened without them" (at p 1068). On such evidence, he held that the seats had been sufficiently affixed to the freehold to raise a *prima facie* inference that they were fixtures and to cast upon the plaintiff the onus of showing that they remained chattels – which onus he found the plaintiff to have failed to discharge. In short, whilst Smith J did refer in passing to the fact that the "owner of the chairs" who had affixed the chairs "also owned the land", this factor in itself was clearly not the sole – indeed, not even the decisive – reason for his decision.

97 Having regard to the guidance afforded by the case law discussed above, and in light of the evidence available, I was satisfied that the cinema seats constituted fixtures which formed part of the subject property and had to be included in the assessment of its annual value.

98 As to the signage, carpets, wheelchair lifts to cinemas, and video display system, there did not appear to me to be any real controversy that each of these items was physically affixed to the subject property. More importantly, I agreed with counsel for the Chief Assessor that each of these items had been so affixed in order to enhance the use of the subject property as a cinema complex, and not for the enjoyment of the items as chattels in themselves. As to the signage, it was not disputed that they served the function of indicating to GV's customers important directions such as the exits and entrances to the cinemas and the directions to the toilets, and also of informing customers of upcoming movies[69].

As for the carpets which covered the entire floor area of the cinema halls, these served the function of enhancing the ambience of the subject property as a cinema complex (as opposed to bare concrete floors)[70] and also served to absorb sound[71]. As to the wheelchair lifts, these obviously served to enable access to the cinemas by less able-bodied customers. Finally, as to the video display systems, these served the function of indicating to GV's customers which sections of the cinemas had tickets available for each movie[72], which information would be critical to the sale of movie tickets at the box office.

99 In short, on the evidence available, each of these items was integral to GV's operation of cinemas on the subject property. These items were not installed in order that they might be enjoyed as chattels in themselves, but rather, to enhance the experience of GV's customers in viewing movies on the premises. In the circumstances, I was satisfied that these items constituted fixtures which formed part of the subject property and had to be included in the assessment of its annual value.

100 Lastly, as to the professional fees paid to consultants in relation to the mechanical, electrical and architectural works and for project management, I agreed with counsel for the Chief Assessor that these fees formed part of the costs of the main contractor works under the item "Leasehold Improvements"[73].

As for the stamp duty, legal fees and construction insurance, Ms Ching's evidence that these costs had been categorised by GV under the description

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69 RA Vol IIIC 107, Day 2, pg 5 line 30 to 108, Day 2, pg 6 line 5.

70 RA Vol IIIC 64, 67, Day 1, pg 56 lines 5 to 10 and pg 59 lines 5 to 7.

71 RA Vol IIIC 64, 67, Day 1, pg 56 lines 24 to 26 and pg 59 lines 14 to 15.

72 RA Vol IIIC 111, Day 2, pg 9 lines 9-15.

73 Respondent's Submissions at para 76.

"Leasehold Improvements" was not disputed[74]. I also agreed with counsel for the Chief Assessor that the inference to be drawn should be that these costs were also incurred in connection with the fitting-out works. In the circumstances, I saw no reason to impugn the Chief Assessor's decision to include these costs in the assessment of the annual value.

Clause 2.46 of TA-2 and TA-3

101 In the course of its judgement, the VRB referred to clause 2.46 of TA-2 and TA-3[75]. On appeal, the Appellant contended that the VRB had erroneously:

> [I]nterpreted clause 2.46… to mean that the Tenant [GV] was not entitled to remove the Tenant's Fittings and therefore relied on clause 2.46 to determine that the Tenant's Fittings were fixtures… By interpreting clause 2.46 to mean that the Tenant was not entitled to remove the Tenant's Fittings, when the clause does not specifically refer to the Tenant's Fittings but to "alteration or addition made installed or fixed by the Tenant", the VRB was effectively pre-determining and assuming that the Tenant's Fittings were fixtures in laws that would fall within the ambit of the phrase "alteration or addition made installed or fixed by the Tenant"[76].

102 I did not find any merit in the Appellant's contention. An examination of the relevant passage in the VRB's judgement showed no basis for the Appellant's allegation that the VRB "was effectively pre-determining and assuming that the Tenant's Fittings were fixtures in laws that would fall within the ambit of the phrase "alteration or addition made installed or fixed by the Tenant". The key point which the VRB appeared to have been making in [67] of its judgement was that pursuant to clause 2.46, GV as tenant "did not have

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74 RA Vol IIIE 16, Day 6, lines 160 to 163.

75 RA Vol I at [67].

76 Appellant's Submissions at [155] to [158].

the overriding right" to remove fitting out works which had become part of the land. This was in light of the provision in clause 2.46[77] that:

> … where the Landlord requires any alteration or addition made installed or fixed by the Tenant in or about the Premises to be retained, the Tenant shall not remove the same whether prior to or at the expiration or sooner determination of the Term. For the avoidance of doubt the Tenant may remove furniture and chattels belonging to the Tenant from the Premises.

103 Moreover, it appeared that the VRB's observation as to the absence of any "overriding right" on GV's part to remove fitting out works which had become part of the land was made in response to the Appellant's repeated assertions in the proceedings before the VRB that the fitting-out works installed by GV were to be removed by GV at the end of its tenancy. I have mentioned earlier, for example, the statement by GV's Mr Sticca in his examination-in-chief that GV would remove the fitting-out works at "the end of the tenancy"[78].

On appeal, the Appellant continued to assert repeatedly that all the fitting out works such as the cinema seats, the projection equipment, the floor screed and wall plastering, and the wheelchair lifts to the cinemas "would be removed upon the end of the tenancy"[79]. This assertion ignored the fact that under clause 2.46, GV did not have the last say on removal of fitting-out works from the subject property at the end of its tenancy. GV could be required by the landlord to refrain from removing any fitting-out works which did not fall within the description of "furniture and chattels" – a point which the VRB was entirely justified in highlighting. It did not appear to me that in referring to clause 2.46, the VRB had somehow relied on the provision to "pre-determine" that the

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77 RA Vol V at p 72.

78 RA Vol IIIC Day 1, pg 34 line 24 to pg 35 line 4.

79 Appellant's Submissions at para 108–122.

disputed included assets in this case amounted to fixtures. Indeed, by the time the VRB referred to clause 2.46 at [67] of its judgement, it had already made the express finding that the included assets amounted to fixtures: see [47] to [58] of its judgement.

The enhancement test

104 In relation to the third issue raised by the Appellant, it was also argued by the Appellant that the VRB had erred in holding that the enhancement test was applicable in Singapore.

105 In *Pan-United*, the CA noted (at [44]) that there were two alternative tests which could be adopted in order to resolve the issue of whether a structure (such as the floating dry docks in that case) constituted part of the land. The first was the fixture test, as embodied in Blackburn J's judgement in *Holland*. The second was the enhancement case, as embodied in English case law (at [48]):

> … notably, in the House of Lords decision *of London County Council v Wilkins* [1957] AC 362 ("Wilkins") and the English Court of Appeal decision of *Field Place Caravan Park Ltd v Harding* [1966] 2 QB 484 ("*Field Place Caravan Park*"), as well as in the more recent (also) English Court of Appeal decision of *Rudd v Cinderella Rockerfellas Ltd* [2003] 1 WLR 2423 ("*Rudd*")… Briefly put, pursuant to the enhancement test, if a *chattel* is *enjoyed with the land and enhances its value*, it forms part of the land for property tax purposes.
>
> [Emphasis in original]

106 In *Pan-United*, the dissenting judge in the CA[80] had in hearing the appeal expressed reservations about the applicability of the enhancement test in Singapore, on the basis that this test was derived from English rating principles which in the court's view ought not to be applied in Singapore because "rating

[80] ABOA Vol II, Tab 32.

in UK is based on occupation (beneficial use of the land) and not on ownership" (at [102] to [104]).

107 The majority in the CA acknowledged (at [50]) that the enhancement test tended "by its very nature, to have a much wider reach compared to the fixture test" and that in the application of this test, it sufficed to show occupation or possession of the relevant premises (albeit occupation or possession which satisfied certain requirements):

> 50 …By its very nature, the enhancement test also does not require the court to find that the structure concerned is in fact part of the land, applying (as it does) to *chattels*.
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> …
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> 52 If, in fact, the enhancement test is adopted, it does not… matter whether the floating dry docks were part of the land or not. They would be subject to tax under the Act if it could be demonstrated that they had enhanced the value of the land (the other requirements laid down in the relevant case law…having, in our view, also been satisfied, *viz*: (a) actual occupational possession; (b) occupation or possession which is exclusive; (c) occupation or possession which is of some value or benefit to the occupier or possessor (this particular requirement overlaps with a core characteristic in the enhancement test); and (d) occupation or possession which has a sufficient quality of permanence… (I)t would appear that the fixture test is *more stringent* than the enhancement test – not only because it (the fixture test) has rather strict requirements… but *also* because it appears that, in order for the fixture test to result in chargeable property tax, there must also be *enhancement* of the value of the property as well. *In other words, the fixture test not only incorporates (in substance at least) the enhancement test but also lays down independent criteria of its own…*
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> [emphasis in original]

108 Critically, having acknowledged the material differences between the fixture test and the enhancement test, the majority in *Pan-United* did not reject the latter, nor did it rule the latter to be inapplicable in Singapore. Instead, the

majority ruled that for the purposes of the appeal before it, it was unnecessary to decide whether or not the local legislature had intended the more stringent fixture test to apply before property tax could be levied. This was because in its view, "the same result would be arrived at even if it is assumed that the fixture test applies" (at [53]).

109 Essentially the same approach was taken by the High Court in *Bugis Junction*. I have earlier (at [63]-[65] above) set out the facts in *Bugis Junction* and summarised the High Court's decision in that case. It will be remembered that in that case, the High Court held that there were two alternative tests – the fixture test and the enhancement test – which could be applied to determine whether certain asset items were affixed to land such as to become part of the land and thus be assessable to tax together with the land. It ruled that on the facts before it, "either" the fixture test or the enhancement test "should reach the conclusion that the asset items [were] affixed to land so as to become part of the land and, thus, be assessable to tax together with the building concerned under s 6(1) [PTA]" (at [42]). On the High Court's decision being appealed to the CA in *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2013] 2 SLR 173[81], the CA held that in determining whether certain expenses (such as depreciation) related to the use or occupation of the property being assessed for property tax and thus whether these expenses formed part of the gross rent:

> 46 …the starting point must be to see whether a particular expense falls within the qualifying words in s 2 of the PTA. This is the first stage… [T]he qualifying words are a statutory impetus to *include* in the annual value any component of the gross rent that is to cover the expenses that the qualifying words expressly enumerate, *ie*, the landlord's expenses for repair, insurance, maintenance or upkeep and all taxes (other

[81] RBOA Vol II, Tab 24.

> than goods and services tax). If the expense belongs to one of these categories, it has to be included in determining annual value, and no further question arises.
>
> 47 It is only if an expense does not fall within any of the categories in the qualifying words that the test of "rent or letting" comes into play. This is the second stage… In our view, where the expense in question forms a part of the gross rent *it must relate to the use or occupation of the heritable subject* if it is to qualify as one relating to "rent or letting" and so be included in the annual value…
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> 48 In this regard, the fixture and/or enhancement tests may be helpful. As the test for "rent or letting" is whether the expense is related to the use or occupation of the heritable subject, it follows that expenses related to fixtures which are components of the heritable subject itself (apart from fixtures falling under s 2(2) of the PTA) are related to rent or letting… We agree with the Judge's reasoning… and would only add one rider to it. It is important not to lose sight of the fact that while a fixture becomes part of the land or enhances the value of the land, the fixture and/or enhancement tests are not the key focus. It is the rent at which the premises or property may reasonably be expected to be let which is the touchstone of s 2(1) of the PTA.
>
> [emphasis in original]

110 The long and short of it is that at the appellate level in our courts, the enhancement test has not been disavowed as an applicable test for determining whether an item or a structure forms part of the land so as to become assessable to property tax together with the land. As such, I did not think the VRB erred when it disagreed with the Appellant's argument below that "the enhancement test should not apply in the context of our PTA"[82]. In any event, I would add that in dealing with the present appeal, as I had found the disputed included assets to be fixtures pursuant to the more stringent fixture test, I did not find it necessary to rely on the alternative enhancement test to determine whether these included assets should be treated as being assessable to tax together with the subject property.

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82 RA Vol 1 at [75].

Fourth issue: whether the VRB erred in accepting the Chief Assessor's determination of the 2008 annual value.

111 I come to the fourth and last issue raised by the Appellant: whether the VRB erred in accepting that the annual value of $3,292,000 assessed by the Chief Assessor for 2008 was a fair and reasonable figure. The Appellant's key objection related to the methodology adopted by the Chief Assessor in assessing the annual value. It will be helpful therefore to start with the definition of "annual value" in the PTA. s 2(1) of the PTA defines "annual value" as follows:

> (*a*) [I]n relation to a house or building or land or tenement, not being a wharf, pier, jetty or landing-stage, means *the gross amount at which the same can reasonably be expected to be let from year to year*, the landlord paying the expenses of repair, insurance, maintenance or upkeep and all taxes (other than goods and services tax)
>
> …
>
> [emphasis added]

The Appellant's arguments for the adoption of the Rental Comparison Method

112 The Appellant argued that in assessing the annual value in this case, the Chief Assessor should have adopted the Rental Comparison Method, which "involves the comparison of rents of properties comparable to the subject property, so as to arrive at a rent for the subject property which is reasonable in a hypothetical tenancy"[83]. Applying the Rental Comparison Method, the Appellant submitted that the "actual rent passing between the landlord and GV" would give "the best indication of the reasonable rent in a hypothetical tenancy" because this was a figure which would have been agreed at arm's length[84].

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83 Appellant's Submissions at para 176.

84 Appellant's Submissions at para 178.

113 I did not accept the Appellant's submissions for the following reasons. First, as a matter of general principle, as the CA pointed out in *Chief Assessor v Glengary Pte Ltd* ("*Glengary*") [2013] 3 SLR 339[85] (at [31]), since the annual value of a property is typically the "gross amount at which the same can reasonably be expected to be let from year to year" –

> 31 …[T]his is an objective exercise and the actual rent which is paid by the tenant to the owner may not be decisive of the property's annual value. Indeed it is trite law that the determination of rental value follows the hypothetical rent and not the actual rent. Property tax is a tax on ownership and the definition of "annual value" in s 2(1) of the [PTA] reflects that. As Lord Pearce opined in Dawkins (Valuation Officer) v Ash Brothers and Heaton Ltd [969] 2 AC 366 (at 381):
>
> > *Rating seeks a* ***standard by which every hereditament in this country can be measured in relation to every other hereditament. It is not seeking to establish the true value of any particular hereditament, but rather its value in comparison with the respective values of the rest****…*
>
> 32. Features upon the land which affect the hypothetical rent, such as easements and zoning laws, may be taken into account, but the *actual bargain concerning the land may well be irrelevant in establishing* ***the value of the land in comparison with the values of other similar lands****.*
>
> [emphasis added]

114 The Appellant did not dispute the statements of principle set out in italics above. In its written submissions, it conceded that "[a]ctual rents may not necessarily be conclusive evidence of the [annual value] of a property, since the [annual value] is a reflection of the hypothetical rent in a hypothetical tenancy"[86].

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85 RBOA Vol I, Tab 8.

86 Appellant's Submissions at para 178.

115 The statements highlighted in bold italics in the above extract lead to my second point. The Rental Comparison Method requires that there be "adequate comparables for assessment": see for example the VRB's decision in *IMM* (at [100]). In *Robinson Brothers (Brewers) Ltd v Assessment Committee for the No 7 or Houghton and Chester-le-Street Area of the County of Durham* ("*Robinson Brothers*") [1937] 2 KB 445[87] (a case cited by the Appellant), whilst Scott LJ stated that "[w]here the particular hereditament is let at what is plainly a rack rent or where similar hereditaments in similar economic sites are so let… that evidence is the best evidence" in the valuation of the hereditament, he cautioned that the rent at which the similar hereditaments were let had to be "truly comparable" (at p 469):

> Where such direct evidence is not available, *for example, if the rents of other premises are shown to be not truly comparable*, resort must necessarily be had to indirect evidence from which it is possible to estimate the probable rent which the hypothetical tenant would pay.
>
> [emphasis added]

116 In the present case, the Appellant's expert Ms Ng Poh Chue ("Ms Ng") testified that she had based her assessment of the annual value of the subject property on the actual rent paid by GV to the landlord, and taking into consideration the rental evidence of three other cinemas: Shaw Theatres at Bugis Junction, GV at Tampines Mall, and GV at Junction 8[88]. It was not disputed, however, that GV had rented the subject property from the landlord as a *bare shell* before proceeding to carry out various works to fit it out as a cinema complex. It was also not disputed that the three cinemas which Ms Ng chose for comparison were all properties rented as *bare premises* without any cinema

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87 ABOA Vol II, Tab 36.

88 Paragraph 3 and exhibit NPC-1 of Ms Ng's affidavit, RA Vol IIIA pg 48

operator's fitting-out works. Nor was it disputed that "very few if any cinemas are actually let"[89]. Consequently, there was a dearth of evidence as to rents paid for *fitted-out cinemas*. This was a material issue because as the VRB pointed out, the *rebus sic stantibus* principle of valuation required that the assessable entity be valued according to its physical nature and condition as well as to its usage: *per* the CA in *Aspinden* at [32]. The subject property being valued in 2008 was a fully operational cinema complex with the added feature of retail space available for sub-let. In the circumstances, the rents paid for premises let as bare shells could not constitute "adequate comparables for assessment".

117 The Appellant sought to overcome this impediment to its case by arguing that even if the subject property were to be assessed in its fully fitted-out state in 2008, the value to be ascribed to all the fitting-out works installed by GV would be nil because "the hypothetical tenant would not reuse the fittings specific to GV (not to mention that the fittings were already 9-year[s'] old)"[90]. With respect, this suggestion appeared to me to be not only self-serving but also entirely baseless. The attempt to suggest that the hypothetical tenant would reject all the fitting-out works installed by GV because they would not want works purportedly in GV's "style"[91] ignored the fact that the great majority of the included assets appeared to be "generic items bought from third party vendors that the other cinema operators could use, bearing in mind the physical constraints of the subject property…with the dimensions, configurations, and contractual and regulatory requirements and limitations as set out in the lease" (to quote the VRB)[92]. No evidence was produced by the Appellant to establish

89 RA Vol I at [132].

90 Appellant's submissions at para 186-189.

91 Appellant's Submissions at [187].

92 RA Vol I at [94].

that fitting-out works such as the leasehold improvements (which included the ACMV works, the electrical and architectural works, the fire protection system, floor screed and wall plastering), the projection system, the drapes and the wheelchair lifts were somehow customised in a style so peculiar to GV that a hypothetical cinema operator would have found all these fittings unusable. Nor was any evidence produced by the Appellant to show that the fitting-out works had so deteriorated due to their being "already 9 year[s'] old" that a hypothetical cinema operator would have found them unusable. Such evidence – if it existed – would surely have been easily available to the Appellant. The fact that no evidence was adduced to substantiate the assertions by the Appellant's witnesses was telling, especially when the Appellant bore the onus of proving the Chief Assessor's decision wrong.

118 Finally, insofar as the Appellant sought to rely[93] on the decision of Wee Chong Jin J (as he then was) in *Chartered Bank v The City Council of Singapore* [1956-1986] SPTC 1 ("*Chartered Bank*") [94], I did not find this case to be of much help to it. In *Chartered Bank*, the subject properties in issue included a number of properties known as Chartered Bank Chambers. The question to be decided in respect of each of these properties was, what was the gross amount at which each property could reasonably be expected to be let from year to year. Although some evidence was led by the respondents to show that the rents paid in respect of Chartered Bank Chambers were lower than the rents paid in respect of other buildings which they claimed were comparable buildings, Wee J noted that "the appellants' evidence that all the letting except that of [one][95] were at

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93 Appellant's Submissions at [179].

94 ABOA Vol I, Tab 12.

95 It was admitted by the appellants in *Chartered Bank* that No. 45 was not a letting at arm's length. Both parties' expert witnesses submitted their calculations of the

arm's length was not seriously challenged", and accordingly accepted that the annual value of those properties should be assessed on the basis of the actual rents paid. From his judgement, it is clear that this ruling was one based on the specific facts before him:

> I am…satisfied that the actual rents paid are the best evidence on which to arrive at the true annual values of *these properties*.
>
> [emphasis added]

119 The ruling provided no real guidance in the present case, where the Appellant was advocating that the rent paid for bare premises be adopted as the "best evidence" of the value of fully fitted-out premises.

120 For the above reasons, I found the VRB to have been justified in rejecting the Appellant's argument for the annual value to be assessed on the basis of the rent paid by GV for the bare premises.

The Appellant's criticism of Ms Ching's use of both the Profits Method and the Rental Comparison Method

121 Having eschewed the use of the rent paid by GV for the bare premises as the basis for assessing annual value, the Chief Assessor's expert witness Ms Ching also gave evidence that the valuation of $3,292,000 could be shown to be fair and reasonable using the Profits Method to assess the cinema component of

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estimated gross rent; and while Wee J held that he preferred the figure put forward by the respondents' expert witness, he did not give his reasons for this preference: see p 3 of the judgement at [B]-[C]. Another set of properties – Nos. 22/30 Battery Road – were occupied by the appellants themselves; and while Wee J eventually accepted the evidence put forward by the appellants' expert witness of the comparative rents of two other buildings nearby, he also gave no reason for this decision apart from stating that the "whole matter [was] one of extreme difficulty": see p 6 at [B] to p 7 at [C] of the judgement.

the subject property and the Rental Comparison Method to assess the office and the retail components.

122 Ms Ching's evidence was attacked by the Appellant on the following basis[96]:

> [O]ur main criticism of Ms Ching's Profits Method Plus Rental Comparison Method is that it is fundamentally wrong to use such a piece-meal (hotchpotch) method when the Subject Property is supposed to be assessed as a single tenement given that there is only a single entry and single [annual value] for the Subject Property in the 2008 Valuation List. In other words, having adopted the Profits Method, Ms Ching ought to have applied the method consistently for the entire Subject Property without any carve-outs…

123 I did not find any merit in the above argument. As I noted earlier, the PTA itself does not prescribe *how* the Chief Assessor is to carry out his assessment of the subject property; it certainly does not prescribe that a subject property must invariably be assessed as a single tenement even where it has been divided into different components, each with its distinct physical nature or condition and use. Rather, where the property under assessment has been divided into several components, each with its own physical nature or condition and use, the *rebus sic stantibus* principle would require that each of these distinct components of the property be assessed as a distinct tenement (see *Aspinden* at [32]). In this connection, the PTA also does not prescribe that the Chief Assessor must use the same methodology to assess each distinct tenement, nor does it prescribe which methodologies the Chief Assessor is to use. In the present appeal, therefore, what was pertinent was whether Ms Ching provided sound and sensible reasons for the methodologies she adopted. I agreed with the VRB that she did.

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96 Appellant's Submissions at para 208.

The application of the Profits Method in the present case:

The "hypothetical tenant"

124 I will first address Ms Ching's use of the Profits Method to assess the cinema component of the subject property. Her methodology in this respect has been summarised in the VRB's judgement at [122] to [125][97]. The VRB's judgement also summarised the computational formula employed[98]:

Gross Receipts
Less: Cost of sales
Gross Profits
Less: Allowable working expenses
Divisible Balance
Less: Tenant's share
Annual value (attributable to the Landlord as "rent")

125 Conceptually, the Profits Method seeks to determine the rental value of a property on the basis of the profits which may be expected to be generated by the business occupying the property. To quote Lord Dunedin in *Port of London Authority v Assessment Committee of Orsett Union & Others* ("*Port of London Authority*") [1920] AC 273[99] (at p 295) it seeks:

> …to consider what profit this hypothetical tenant could make out of the hereditament, not in order to rate that profit, but in order to find out what he was likely to give in order to have the opportunity of making that profit.

126 In this context, the hypothetical tenant would be the average occupier. This point was made emphatically by the House of Lords in *Cartwright v The*

[97] RA Vol I at [122]-[125].

[98] RA Vol I at [123].

[99] RBOA Vol III, Tab 36.

Guardians of the Poor of the Sculcoates Union in Kingston-Upon-Hull ("*Cartwright*") [1900] AC 150, which concerned the assessment of the value of a licensed public-house for the purposes of the poor-rate. In considering the question of what a hypothetical tenant would pay for the premises, Lord Morris held:

> [A]lmost the very first question that the hypothetical tenant would ask, namely, is this a house doing a good business or a bad business; is it a house with what is popularly called a roaring business, or is it a house that is going down for some reason or other, such as there being other houses in the neighbourhood? That is the very first question that a hypothetical tenant would put to himself: What have been the profits that have been made in it? Because that is the best proof as to whether it is doing a good business or not. True it is said A.B. might make good profits, but C.D. might lose. All that it is to be presumed the arbitrator would consider; he would not value it on the principle that it was always to have superlatively good occupiers, or the worst of occupiers. I suppose he would, as a sensible man, take a sort of average between them.

127 In the present case, the Appellant objected to Ms Ching's evidence that GV was an average occupier. According to the Appellant, GV "was a leading cinema operator"[100]. Ms Ching had arrived at her conclusion after comparing GV's gross receipts on a per seat basis for the year 2008 with those of comparable cinemas along Orchard Road. As may be seen from the table summarising her findings[101], both Orchard Cineleisure at 8 Grange Road and The Cathay at 2 Handy Road (both operated by Cathay) showed higher gross receipts on a per seat basis in 2008. In computing her findings, Ms Ching relied on the data compiled in the affidavit of Ms Rachel Ng, Ms Rachel Ng being a witness originally listed by the Chief Assessor who was eventually not called

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100 Appellant's Submissions at para 218.

101 Respondent's Submissions at para 248.

due to her falling ill[102]. Not surprisingly, the Appellant also attacked the use which Ms Ching made of actual gross receipt figures as well as her reliance on data in Ms Rachel Ng's affidavit.

128 As to the reliance placed on the data in Ms Rachel Ng's affidavit, I did not think the VRB erred in permitting Ms Ching to refer to such data and in subsequently accepting the findings she made based on such data. It was not disputed that Ms Rachel Ng was in fact medically unfit to give evidence. In the circumstances, I did not think it could be seriously disputed that it would have been open to the VRB to admit her affidavit into evidence pursuant to s 32(1)(j) EA. Given that the Appellant's witness Ms Ng was asked about various aspects of Ms Rachel Ng's affidavit in cross-examination, I also did not think it could be seriously disputed that the Appellant would have been well aware – even before Ms Ching took the witness stand – that the Chief Assessor was relying on data from that affidavit. It was open to the Appellant to produce evidence refuting the data in Ms Rachel Ng's affidavit; even to seek leave from the VRB to call evidence in rebuttal of such data after Ms Ching's testimony. It did neither of these things. In the circumstances, I did not find any merit in its objections on appeal to reliance being placed on such data.

129 Similarly, it was open to the Appellant to adduce evidence that GV was – contrary to Ms Ching's findings – a "leading cinema operator". It did not. In the circumstances, the Appellant's complaint on appeal that the VRB should not have accepted Ms Ching's findings about GV's "average occupier" status was wholly unmeritorious.

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102 RA Vol IIIE 91, Day 6 line 1154.

The estimation of the rental which a hypothetical client would pay and the use of "hindsight"

130 Since the evidence indicated that GV was an "average occupier", I agreed with the VRB that it was reasonable to use GV's profits and loss statements to determine the amount of rent that a hypothetical tenant would be willing to pay the subject property. In this respect, the Appellant argued that "Ms Ching's approach to take the average of the gross profits for 3 years from 2005 to 2007 [was] flawed" because it failed to account for "the persistent downward trend in financial result suffered by GV and the onset of the global financial crisis in late 2007"[103]. Further, so the Appellant contended, Ms Ching could not be permitted to support the valuation of the 2008 annual value by having regard to GV's actual gross profits for the year 2008 itself and/or the later years of 2009 to 2011. According to the Appellant, there could be "no benefit of hindsight" because the Profits Method involved a "hypothetical tenant who [was] trying to project and estimate the earnings as at 1 January 2008". This hypothetical tenant would not "have the benefit of relying on actual figures for the year 2008 to come up with the projections"[104].

131 In considering the above arguments, it should be reiterated as a preliminary point that Ms Ching was called as an expert witness to opine on the reasonableness and fairness of the 2008 valuation. She was not testifying as a factual witness on the actual mode of assessment adopted by the Chief Assessor in 2008. In any event, as earlier observed, there was no actual assessment carried out in 2008, the 2008 annual value having been maintained at the same figure it was at from 2005 to 2007. The argument that Ms Ching could not be permitted

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103 Appellant's Submissions at para 234.

104 Appellant's Submissions at para 235.

the benefit of hindsight should accordingly be evaluated in this light. It should also be noted that Ms Ching in fact prepared two sets of calculations[105] using the Profits Method: one set using GV's figures for the 3 preceding years of 2005 to 2007, and the other set using GV's 2008 figures.

132 In advancing the proposition that there could be "no benefit of hindsight", the Appellant relied firstly on the previous decision by the VRB in *Underwater World Singapore Pte Ltd v Chief Assessor & another* ("*Underwater World*") (VRB Appeal No. 72 of 2001) (SGVRB)[106]. In *Underwater World*, the subject property encompassed an aquarium, a restaurant, a souvenir shop and a quarantine building. Parties were agreed that the Profits Method should be used as the basis of assessing the annual value for the year 2000. In deriving the divisible balance, the VRB stated that it was "taking into account the figures for the years 1996 to 1999 (*without the hindsight of the figures for the year 2000*" (at [25])". The italicised words were what the Appellant relied on in citing *Underwater World* as an authority – which (with respect) was not very helpful since the phrase in question appeared to be no more than a factual description of the data referred to. Certainly there was no suggestion by the VRB that there existed some general principle prohibiting resort to hindsight in determining the reasonableness of an annual value derived from the Profits Method.

133 The Appellant also cited the case of *Barking Rating Authority v Central Electricity Board* ("*Barking*") [1940] 2 KB 494[107]. In that case, which involved the rating of a public utility undertaking (the Central Electricity Board) for the valuation list made by the rating authority on 1 April 1934. The Profits Method

105 RA Vol IIIB 23, Table C-1.

106 RBOA Vol III, Tab 41.

107 ABOA Vol I, Tab 8.

was adopted as the appropriate rating methodology. In the assessment, evidence of the Central Electricity Board's profits subsequent to 1 April 1934 was excluded. On appeal, the Divisional Court – and after that, the English CA – upheld the exclusion of the profit figures post 1 April 1934. In the English CA, Goddard LJ stated:

> …the profits basis has to be calculated not on what may happen in the future, but on the profits ascertained down to the latest period before the date of the rate or, in this case, the preparation of the valuation list and, therefore, the quarter sessions were right in excluding evidence as to events subsequent to 1934 as being irrelevant. The accounts to April 1, 1934, were relevant and those subsequent to that date were irrelevant.

134 I make two points in respect of the Appellant's reliance on *Barking*. First, an examination of Goddard LJ's judgement shows that the rating authority had actually called for the Central Electricity Board's profit estimates subsequent to 1934, and the Board had declined to produce them on two grounds: first, that these were private papers which it could not be obliged to produce for the purpose of enabling the rateable value to be ascertained; and second, that only the accounts down to 1 April 1934 were relevant. Goddard LJ's comment that the accounts post 1 April 1934 were irrelevant was made in the context of his having found that the Board could not in any event have been obliged to produce and did not produce the estimates for subsequent years. As he stated in the same passage in his judgement:

> Moreover, ***as it was conceded that the respondents could not have been obliged to produce and did not produce the estimates for subsequent years, the question whether they contained anything relevant or irrelevant does not arise. They were not in evidence*** and the respondents [the Board] were entitled to take the objection that they were private documents and exempt from production…
>
> [emphasis added]

135 The words in bold italics show that Goddard LJ's statement as to the irrelevance of the accounts post 1 April 1934 was not intended to be a broad statement of general principle, but rather, a comment based on the facts of the case before him; in particular, the finding that the Board could not have been obliged to produce and did not produce the estimates for the period post 1 April 1934.

136 Second, it did not seem to me sensible as a matter of principle to insist that in considering whether the 2008 valuation of $3,292,000 was reasonable and fair, neither the expert witness Ms Ching nor the VRB should be permitted to consider evidence of GV's profit and loss figures post-2008. It is correct to say that the Profits Method is premised on a hypothetical tenant's estimation of the earnings he may obtain from carrying out his business on the subject property for a particular year in order to project the rent he is willing to pay for that property in that year. However, as the CA has repeatedly emphasised, the assessment of "the gross amount at which [a subject property] can reasonably be expected to be let from year to year… is an objective exercise" (see *Glengary* at [31]). In evaluating whether the rental figure derived from the application of the Profits Method is a reasonable one, it would be needlessly pedantic to insist that evidence of the actual earnings for that year – or in the ensuing years – be completely disregarded. Thus, for example, in *Robinson Brothers*, Scott LJ held (at pp 482-483):

> You have in each case to find out in the best way you can what is the rent which a tenant may reasonably be expected to give, and if the best way under the particular circumstances is to ascertain the use which a tenant might expect to be able to make of the premises, the facility afforded by the premises for the carrying on of a trade appears to me to be a primary and elementary consideration in the case. If you are to take into account the fact that the premises command a trade, you must surely ask what trade. Is it a large trade, or is it a small trade?

> And I do not know myself any better test of what trade they may be expected to command than the trade which they actually do command. It is not that you rate the profits, it is not that you rate the man's skill and judgement or discretion in the mode of carrying on the business, but you have to ascertain what sort of trade the hypothetical tenant, as he is called, may reasonably expect to be able to carry on on those premises as an element in determining the rent he would be willing to offer… I entirely agree in a passage in the Lord Chancellor's judgement, which I will take the liberty of quoting and adopting as the expression of my own mind. His Lordship says: 'It would be to my mind one of the most extraordinary things in the world if you could give expert evidence that such and such a house would be likely to command such and such a business, and yet not be able to verify that a priori opinion by proof of the fact that it did command such a business.'

137 In *China Light & Power Co Ltd v Commissioner of Rating & Valuation (No. 1)* [1997] 4 HKC 461, the Hong Kong Lands Tribunal had to consider the use of the Profits Method in the valuation of power stations owned by the appellant company which was in the business of electricity generation. The valuation was in respect of the year commencing 1 April 1991. The Lands Tribunal noted that both the valuers who gave evidence before it had taken into account a number of trends in the growth of revenue and customer base which had become evident by 1 July 1990; and that in taking into account those trends, each valuer had also sought to reduce the subjectivity of his assessment and to improve the accuracy of valuation by relying on an element of hindsight – for example, by considering if the *projected* growth and depreciation rates could be achieved, having regard to the actual growth and depreciation figures taken from the annual accounts up to 30 September 1991. The Land Tribunals viewed this reliance on hindsight with approbation, stating as follows (at p 478 E-H):

> Both valuers' approaches involved exercising varying degrees of hindsight. Hindsight may be available to a valuer depending on the statutory or other terms of reference. Where hindsight can be used it is obviously desirable, if the material is available, to achieve greater accuracy by using actual figures, rather than falling back on assumption based projections. This Tribunal

> has for many years encouraged valuers to take advantage of hindsight where, as a matter of law, that course is permissible. At times valuers too readily ignore post-relevant date evidence, by self-imposed rules of practice, which have no basis in law.
>
> If authority for taking advantage of the benefit of hindsight is required, it is to be found in the judgement of Lord Macnaghten in *Bwllfa v Merthyr Dare Steam Collieries* (1891) Ltd v Pontypridd Waterworks Co [1903] AC 426. Although the House of Lords was concerned with an arbitration compensation award, the judgement is of wider application. Lord Macnaghten declared at p 431:
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> > In order to enable him to come to just conclusion it is his duty, I think, to avail himself of all the information at hand at the time of making his award which may be laid before him. Why should he listen to conjecture on a matter which has become an accomplished fact? Why should he guess when he can calculate? With the light before him, why should he shut his eyes and grope in the dark?

138 In the present case, the Appellant did not identify any provision in the PTA which prohibited reliance on hindsight in the assessment of the appropriate annual value for a subject property.

139 For the above reasons, I rejected the Appellant's argument that Ms Ching had erred in taking account of GV's post-2008 figures in her application of the Profits Method, or that the VRB had erred in considering this evidence.

140 As noted earlier, the Appellant had criticised Ms Ching for allegedly failing to take into account that as at 2008, GV's profits were on a downward trend, and that this would have been exacerbated by the global financial crisis in 2007–2008. However, an examination of GV's receipts and expenses over the entire period of 2005 to 2011[108] would show that GV's operating profit in fact rose in 2009; the operating profit figures for 2010 and 2011 also exceeded

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108 See the summary table reproduced at [254] of Respondent's Submissions.

the 2008 figures. As the VRB observed[109], while the Appellant made various assertions about the dire effects of the global financial crisis in 2008, no evidence was ever adduced to show that the crisis had impacted the local cinema industry in 2008. On the contrary, the Appellant's expert witness Ms Ng conceded – in response to questions posed by the VRB – that the impact of the global financial crisis was felt by the local cinema industry only "in the later part" of "2009, 2010"[110].

The allocation of the tenant's share versus the landlord's share of the divisible balance

141 Next, the Appellant also objected to Ms Ching's allocation of 40% of the divisible balance as the tenant's share, on the basis that 40% was far too low. I rejected the Appellant's objections for the following reasons. First, the Appellant's assertion that Ms Ching "did not give enough weight to the fact that GV is the leading cinema operator in Singapore"[111] was not substantiated by any evidence of GV's status as "the leading cinema operator in Singapore". I have dealt with this point earlier (see [129]).

142 Second, and more importantly, based on the evidence available, it appeared to me that Ms Ching was able to explain clearly and cogently her reasons for allocating a 40% share to GV versus a 60% share to the landlord. As has been observed in *Halsbury's Laws of Singapore* vol 16 (LexisNexis, 2015) at para 200.637 (cited by the Chief Assessor and the VRB below):

> [T]he tenant's share depends very much on the contribution of the tenant in increasing the magnitude of the divisible balance

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109 RA Vol I at [140].

110 RA Vol IIIC 205 lines 29-32, 206 lines 1-25.

111 Appellant's Submissions at para 259.

> itself. If the tenant's contribution is mostly in the mere administration of the property (as in the case of many car parks and other infrastructure projects where the customer is captive) then, the tenant's share will likely…be very much less than the 50% mark… This is because the landlord is unlikely to want to settle for a lower proportionate rent with the tenant taking a sizeable proportion of the divisible balance… when [the landlord] has to invest substantial sums in the immovable property"[112].

143 As the VRB noted[113], Ms Ching had put forward three important factors leading to her allocation of the landlord's and tenant's shares:

(a) The hypothetical landlord had sunk in substantial costs of $7.374 million to improve and fit out the subject property for use as a cinema complex;

(b) The superior location of Plaza Singapura in Singapore's Orchard Road shopping belt, above a major transport hub (the Dhoby Ghaut MRT Interchange Station) and surrounded by many tertiary institutions and the civil and cultural district;

(c) The strong market positioning of Plaza Singapura due to its large retail element (9 levels of retail, comprising more than 200 retail tenants in 2008), strong tenant mix and presence of key tenants including Carrefour hypermarket, Best Denki electronic store, Yamaha music school and Spotlight home furnishing.

144 Each of these factors was in my view well-grounded in the evidence available. Of course the Appellant objected to the first factor on the basis that the fitting-out works installed by GV should be regarded as "Tenant's Fittings"

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112 RBOA Vol III, Tab 45.

113 RA Vol I at [143].

and should not be considered fixtures forming part of the subject property[114]. I have earlier dealt with this under the Third Issue (see above at [55]-[110]).

145 As to the second factor, I did not think it could be seriously disputed that the prime location enjoyed by the subject property in this case constituted a major contributor in the generation of revenue by GV. The Appellant argued that in taking locational advantage into account in the allocation of the tenant's share, Ms Ching had "effectively double-counted" for the effects of the factor because she had already "chosen to use actual profits of GV in her application of the Profits Method" and had in so doing expressed the view "that the location of Plaza Singapura contributed substantially to the profits of GV"[115]. I did not find any merit in this argument. That Ms Ching might have (quite rightly) acknowledged locational advantage to be one of the factors contributing to GV's gross receipts did not in principle preclude her from taking into account locational advantage as one of the factors relevant to her assessment of the relative contributions of landlord and tenant in increasing the size of the divisible balance. As counsel for the Chief Assessor pointed out, there would really only be double-counting of the effects of locational advantage if Ms Ching had "allowed the landlord a first bite of the divisible balance, leaving the remainder to be split between the landlord and tenant". She did not: the "entire divisible balance [was] split between the hypothetical landlord and the hypothetical tenant"[116].

146 As to the third factor, the Appellant criticised Ms Ching for "blatantly" disregarding GV's status as "a key tenant of Plaza Singapura". I found this

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114 Appellant's Submissions at para 263.

115 Appellant's Submissions at para 267.

116 Respondent's Skeletal Arguments at para 58.

criticism to be entirely baseless and unfair. On the evidence available, I did not find Ms Ching to have deliberately, much less "blatantly", ignored the fact that GV was a key tenant of Plaza Singapura. Rather, her focus in putting forward the third factor was Plaza Singapura's strong positioning as a retail hub and its overall good tenant mix, all of which – from any commonsensical perspective – would have contributed significantly to drawing high human traffic.

147 The Appellant sought belatedly – and without leave – to introduce fresh evidence at the appeal before me, by including an academic study[117] which was said to have considered "the strength of a Cineplex in terms of attracting shoppers to a shopping mall"[118]. The Appellant sought to argue that this study showed that "accommodating a Cineplex within a shopping mall enhances the shopping centre's magnetism by attracting a specific user group to visit it more frequently and also, entice them to stay longer". Whilst I did not disallow the Appellant's reference in their submissions to the paper, I did not accord any real weight to its contents, given that these contents had not been probed or tested by being put to either of the expert witnesses below. In any event, the paper concerned a survey of *suburban* malls; the Appellant did not produce any evidence to support its contention that the "Cineplex effect" referred to in the paper would apply with equal force to an Orchard Road mall such as Plaza Singapura.

148 Finally, in respect of Ms Ching's allocation of 40% for the tenant's share, I found it reasonable for her to have drawn comparisons with the decision in *Underwater World*. In *Underwater World*, the VRB considered the appellant

117 Joseph Ooi Thian Leong & Sim Loo Lee, *The Magnetism of Suburban Shopping Centres: Do Size & Cineplex Matter?* [2007] Journal of Property Investment & Finance 111, at ABOA Vol II, Tab 48.

118 Appellant's Submissions at para 257.

tenant's counter-argument that its tenant's Share of the divisible balance should be 80% in view of the high risks involved in operating a theme park, as evidenced by the failure of high-profile theme parks such as the Tang Dynasty Village, Haw Park Villa and the Chinese Garden. Whilst acknowledging the risks inherent in operating a theme park, the VRB nevertheless concluded (at [37]) that the Chief Assessor's allocation of 50% as the Tenant's Share was "already a reasonable amount". The VRB noted that Sentosa had been "specially developed as a place for pleasure and leisure", and held that "[i]n this case, the location played the crucial role in the generation of the income of the theme park" (at [35]). Given the risks inherent in operating a theme park involving live animal exhibits and performances, I did not think it at all unjustifiable for Ms Ching to suggest that the tenant's business in *Underwater World* was more risky than GV's business as a cinema operator in the present case. Since the Appellant had the onus of proving the Chief Assessor's decision wrong in this appeal, and since it objected to the allocation of 40% for the tenant's share as being too low, it should have been the party to adduce the necessary evidence if it asserted that GV's business as a cinema operator carried higher risks than that of a theme park operator like the tenant in *Underwater World*.

149 For the above reasons, I did not find any merit in the Appellant's objections to the allocation of 40% for the tenant's share in this case.

The application of the Rental Comparison Method in respect of the office and retail components

150 As to Ms Ching's use of the Rental Comparison Method in respect of the office and retail components of the subject property, the Appellant only took issue with its application to the office component. The Appellant argued that

she had "double-counted for the office unit" because she had relied on GV's actual profits in her application of the Profits Method to the cinema component; and those profits "must necessarily encompass the office space as the office was ancillary to the use of the premises as a cinema complex"[119]. In addition, the Appellant attacked Ms Ching's opinion that the rental rate for the office component should be $3.50 psf /month, and argued that "the offices selected by Ms Ching [were] not good comparables"[120].

151 As to the first objection, beyond asserting that it was "not unreasonable" to assume that GV's gross profits "must necessarily encompass the office space", the Appellant provided no evidential basis to substantiate its objection. As counsel for the Chief Assessor pointed out in her submissions, rather than the office unit being "ancillary to the use of the premises as a cinema complex" as the Appellant claimed, the unchallenged evidence was that the office unit was used by GV as its headquarters and not as a backroom office supporting only the cinema at GV[121].

152 As to the other objections, the Appellant criticised Ms Ching for not adopting the rate of $3.27 psf/month, which was the rent paid by GV for the office space in Basement 1 of Plaza Singapura (which it relocated its office to in June 2008). I did not find the Appellant's criticism to be made out. Ms Ching had explained that generally a smaller area would mean a higher dollar rate of rental. Since the office in Basement 1 was 623m^2 compared to the 7th floor office unit which was 452.72m^2, she estimated the office rental for the 7th floor office

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119 Appellant's Submissions at para 273.

120 Appellant's Submissions at para 277.

121 Respondent's Submissions at para 370; See also RA Vol IIID 194-196, Day 5 lines 562-569.

unit to be slightly higher at $3.50 psf/month, taking into account the rental evidence of comparable office properties in the vicinity. I did not see anything illogical or unreasonable in this approach. Indeed, the Appellant's own expert Ms Ng did not disagree with the concept that the rental rate for a larger area would be lower due to size adjustments[122]. As for the rental evidence of comparable office units in the vicinity, whilst there might have been some physical differences between those other office units and the present 7th floor office units (for example, the availability of window views in those other office units), I did not find that these differences were so substantial as to render these other units unfit for comparison, nor did I find the rate adopted of $3.50 psf/month by Ms Ching to be unfairly excessive in comparison. In any event, as Andrew Ang J pointed out in *First DCS Pte Ltd v Chief Assessor & another* ("*First DCS (HC)*") [2007] 3 SLR(R) 326[123] (at [51]):

> It is a question of fact what are comparable properties. An appellate judge should be slow to intervene in findings of fact made by a lower court.

153 For the above reasons, I did not find any merit in the Appellant's objections to Ms Ching's use of the Rental Comparison Method for the office component.

154 To sum up, therefore, I accepted Ms Ching's evidence that applying the Profits Method in respect of the cinema component of the subject property and the Rental Comparison Method for the office and retail components, the 2008 annual value of $3,292,000 was shown to be reasonable and fair.

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122 RA Vol IIID 18, 148, 162 – Day 3 line 188; Day 5 lines 41 & 182.

123 Respondent's Supplementary Bundle of Authorities ("RSBOA"), Tab 6.

The use of the Rent Plus Amortised Cost Approach as a "check"

155 Apparently out of an abundance of caution, Ms Ching also applied in the alternative the Rent Plus Amortised Approach to the assessment of the 2008 annual value, as a means of "checking" the correctness of the conclusion she had reached. Having regard to my findings on the Appellant's arguments for the application of the Rental Comparison method versus Ms Ching's use of the Profits Method for the cinema complex and the Rental Comparison Method for the office and retail components, I did not find it necessary to rely on Ms Ching's evidence of her backup "check" in order to dismiss the present appeal. For this reason, I have not found it necessary to address in detail the assorted objections raised by the Appellant to the application of the Rent Plus Amortised Cost Approach. In any event, a good number of the objections were in respect of findings of fact by the VRB (for example, the finding that the circulation area of the subject property "largely serves the cinema patrons and is critical to the cinema operations"[124]) on which I found no reason to interfere with the VRB's findings, and/or matters dealt with earlier in these written grounds (for example, the Appellant's continued assertion that GV was "the leading cinema operator in Singapore" rather than an average occupier, and that its fitting-out works therefore could not be said to have the same value as those of other cinema operators)[125].

156 I will, however, address in these grounds, the two key arguments advanced by the Appellant:

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124 RA Vol I at [179(e)]; Appellant's Submissions at para 325–330.

125 RA Vol I at [176]; Appellant's Submissions at para 300-302.

(a) The argument that the use of the Rent Plus Amortised Approach is "precluded" by the PTA and disavowed by the VRB in its previous decisions; and

(b) The argument that Ms Ching erred in adopting 18 years as the period of amortization and 6% per annum as the rate of return.

Whether use of this approach is precluded by s 2(4) PTA

157 In respect of the argument as to the preclusion of the Rent Plus Amortised Approach under the PTA, the Appellant cited s 2(4) of the PTA as having such an effect. s 2(4) reads:

> In estimating the annual value of any house, building, land or tenement, the annual value of the house, building, land or tenement shall, at the option of the Chief Assessor, mean the annual equivalent of the gross rent at which the same is let or licensed to the occupier or occupiers, as the case may be, and in arriving at that annual equivalent the Chief Assessor may also give consideration to any capital or periodical sums or any other consideration whatsoever, if any, which, it appears to the Chief Assessor, may also have been paid.

158 According to the Appellant:

> [Section 2(4)] only provides for the taking into consideration of amortised cost or annual equivalent of 'any capital or periodical sums or any other consideration' paid to the landlord… [s 2(4)] does not provide for the application of the 'amortised cost' or 'annual equivalent' on the facts of the present appeal where the Tenant has incurred costs on its furniture and fittings (even if they are fixtures, which is not admitted). Clearly, section 2(4) does not apply to the present case. Given that the Rent Plua Amortised Cost Method is specifically provided for in section 2(4) of the Act… this method has no application outside the scope of section 2(4)[126].

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126 Appellant's Submissions at para 281-282.

159 I rejected the above argument for the following reasons. First, apart from the vague assertion that "Parliament does not legislate in vain", the Appellant could not cite any authority for the above proposition as to the effect of s 2(4).

160 Second, and in any event, the Appellant's characterisation of the effect of s 2(4) showed a misunderstanding of its purpose. The plain and literal reading of s 2(4) is that it allows the Chief Assessor to take the actual rent or licence fee payable for the subject property as its annual value – and further, in so doing, to take into account any "capital or periodical sums or any other consideration". *Halsbury's Laws of Singapore* vol 16 (LexisNexis, 2015) at para 200.585 (cited by the Chief Assessor) says as much[127], and notes moreover that the provision is "sparingly used", but that "where the property is a unique one and there is no comparable property which has been similarly let, the Chief Assessor may resort to this provision and use the actual rent to determine the annual value of the property". The point to be emphasised, though, is that there is nothing in s 2(4), or for that matter, in the rest of the PTA, which "precludes" the Chief Assessor from including – in his assessment of the annual value – the annualised cost of fitting-out works which constitute fixtures and form part of the subject property. Indeed, as counsel for the Chief Assessor pointed out, to exclude this cost would "fly in the face of the legislative purpose of the PTA, which is to levy tax on immoveable properties"[128].

161 The Appellant sought to rely on two previous decisions of the VRB – *Causeway Point* and *First DCS Pte Ltd v Chief Assessor* [2006] SGVRB 2

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127 RSBOA, Tab 9 (at p 83).

128 Respondent's Skeletal Arguments at para 61.

("*First DCS (VRB)*") [129] – which it claimed showed the VRB's previous rejection of the Rent Plus Amortised Cost Approach.

162 As to *Causeway Point*, I have earlier noted that the report of the VRB's decision in this case is extremely brief and provides little if any guidance to the VRB's reasoning. It was not clear from this report whether the VRB's reference to "the notional rent approach" was a reference to the Rent Plus Amortised Cost Approach. Even assuming it was a reference to the Rent Plus Amortised Cost Approach, nothing in the report suggested that the VRB had found this methodology to be – generally and in principle – inappropriate for use in the assessment of annual value. Indeed, it was plain from the report that the VRB intended its refusal to use the "notional rent approach" to be confined to the case before it, as it expressly stated that it felt this approach "was not the correct approach *in this case*" [emphasis added] (at [5]). The VRB further stated that it "was not shown" that there "was a correlation between how much a particular tenant was willing to pay for his improvements, and the amount a hypothetical tenant would be willing to pay" (at [6]); and it expressed some concern about the evidence from the Chief Assessor's witness that there was "no limit" with the "notional rent approach and that even extravagant renovations would lead directly to an increase in the Annual Value". These remarks showed that assuming the VRB in *Causeway Point* was referring to the Rent Plus Amortised Cost Approach, its refusal to use this approach was due to the evidential difficulties in that case, and not to the approach being generally unsuited for use in assessing the annual value.

163 As for *First DCS (VRB)*, the subject property was a district cooling plant used for the production of chilled water for the air-conditioning needs of other

[129] ABOA Vol 1, Tab 20.

buildings in Changi Business Park. In upholding the Chief Assessor's decision to use the Contractor's Test Method for the assessment of the annual value in that case, the VRB found that there was no real comparable rental evidence: even the rental paid for a Biopolis property retrofitted for a district cooling service was found not to provide "cogent rental evidence of a like district cooling plant" because of the differences in its design (at [10]). The appellant property-owner argued for the application of what it called "an 'Elemental approach', comprising a rental value for the premises and the value of the tank structure". This, the present Appellant submitted, was really the same thing as the Rent Plus Amortised Cost Approach. In *First DCS (VRB)*, the Chief Assessor had expressed the concern that the "Elemental approach" was at that point "as yet unprecedented in Singapore", and had cited several earlier cases in which the VRB had allegedly declined to use the approach. Notably, the VRB's response to this was that "(t)he present case [did] not require [it] to decide on the cases cited"; and that for its "present purposes, where [it had] held that there [was] no relevant, reliable and competitive comparable rental", the "Elemental approach" – "which requires elements of the rental method to be combined with elements of the contractor's test – would clearly not be appropriate" (at 12]). Again, therefore, the VRB's refusal to adopt the "Elemental approach" in *First DCS (VRB)* was also confined to the specific facts of the case before it. This is also made clear in Andrew Ang J's judgement on appeal. At [49] of his judgement, he noted that the "Elemental approach" comprised two elements: first, a rental value for the premises based on that of a comparable property; and second, a value based on the contractor's test method for the tank structure on the land. As noted earlier, Ang J declined to interfere with the VRB's finding that no comparable rental evidence existed, and accordingly held (at [52]):

> In the absence of rental evidence of comparable properties, the first element of the elemental approach cannot be ascertained. The elemental approach therefore cannot be used.

164 For the reasons set out above, I rejected the Appellant's argument that the use of the Rent Plus Amortised Approach in this case was "precluded" by the PTA and /or that it had been disavowed by the VRB in previous decisions.

Whether the use of 18 years as the period of amortisation and 6% per annum as the rate of return was reasonable and fair

165 In applying the Rent Plus Amortised Cost Approach as a "check" in this case, Ms Ching adopted 18 years as the period of amortisation and 6% per annum as the rate of return. This was attacked by the Appellant as being "unprincipled" and "unreasonable". Having examined Ms Ching's evidence, however, I was satisfied that she was able to explain her reasons cogently and sensibly.

166 In respect of the adoption of 18 years as the period of amortisation, Ms Ching explained that she had proceeded on the basis that all renewal options would be exercised because in her experience, for cinema leases where substantial fitting-out costs were generally incurred, the cinema operator would usually look to a lease period of more than 10 years[130]. Moreover, as counsel for the Chief Assessor highlighted (and as the VRB also noted[131]), adopting the full 18-year lease period (including the exercise of all renewal options) was actually more advantageous to the Appellant because it meant the lowest possible amortised costs on a per year basis.

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130 RA Vol IIIE 27, Day 6 lines 324-326.

131 RA Vol I at [177].

167 As for the adoption of 6% per annum as the rate of return, Ms Ching explained that it was supportable by reference to the capitalisation rates and property yield rates seen in CMT unitholder reports for 2007 and 2008[132]. From these reports, it could be seen that CMT obtained a rate of 5.4% in the period 2007 to 2008 from its investment in a freehold property like Plaza Singapura. Ms Ching explained that a hypothetical landlord who had invested $7.373 million (the total cost of the included assets) in the subject property would hope to recoup the principal sum and returns as a rate of return similar to what CMT had derived from Plaza Singapura, subject to the following: since Plaza Singapura was a freehold whereas the subject property was leased for a total period of 18 years (assuming all renewal options were exercised), a hypothetical landlord looking at the subject property would require a rate of return higher than 5.4% in order to recoup its total investment. Seen in this light, Ms Ching's assessment was that 6% was a reasonable rate of return.

168 The Appellant complained that Ms Ching should not have relied on the capitalisation rates shown in CMT's unitholder reports because "those rates were based on valuations for which Ms Ching conceded she had no information on"[133]. In my view, this objection was spurious since the Appellant did not actually say at any point that these capitalisation rates were inaccurate or wrong.

169 The Appellant also argued that "tenure does not have an absolute effect on amortization rate", as "capitalisation rates could be influenced by factors other than tenure"[134]. Again, this objection was in my view spurious. Ms Ching

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132 RA Vol IIIE 33, 110, Day 6 lines 404, 1385; also para 69 of Ms Ching's affidavit.

133 Appellant's Submissions at para 313.

134 Appellant's Submissions at para 314-316.

did not claim that tenure was the only factor which could influence capitalisation rates. The upshot of her evidence, as I understood it, was really that all other things being equal, the shorter the time frame the hypothetical landlord had to recoup his investment, the higher should be the rate of return required on the capital investment. I did not think this was a proposition that could be faulted in terms of logic and common sense. That the 6% rate of return was ultimately a value judgement was inevitable; the question was whether this value judgement was supported by credible reasons. The VRB accepted that it was[135], and I found no reason on appeal to disagree. As Lord Diplock observed in *Collector of Land Revenue v Alagappa Chettiar* [1971] 1 MLJ 43:

> …(L)and valuation inevitably involves an element of appreciation and impression. There is room for divergence of opinion. As in the case of appeals against assessments of damages or against apportionment of blame in actions for negligence an appellate court ought not to reject the judge's assessment and to embark upon a fresh valuation of its own unless it is satisfied for good reason that the judge's assessment must be wrong.

170 The above passage was also relied on by Andrew Ang J in *First DCS (HC)*, at [51] of his judgement.

171 Finally, as counsel for the Chief Assessor highlighted, while the Appellant carped at virtually every aspect of Ms Ching's evidence on her application of the Rent Plus Amortised Approach, the Appellant's own expert Ms Ng did not offer any evidence as to viable alternatives to the amortisation factors of 18 years and 6% per annum as the rate of return. Ms Ching's testimony thus remained the only evidence before the VRB and before me.

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135 RA Vol I at [158(b)] and [177].

172 To sum up, therefore: on a review of the evidence, the VRB's reasoning and the arguments advanced on appeal, I did not find the Appellant to have demonstrated any fatal flaw in Ms Ching's application of the Rent Plus Amortised Cost Approach. In any event, as stated earlier, given my findings on the Appellant's arguments for the application of the Rental Comparison method versus Ms Ching's use of the Profits Method for the cinema complex and the Rental Comparison Method for the office and retail components, I did not find it necessary to rely on Ms Ching's evidence of this backup "check" method in order to dismiss the present appeal.

Conclusion

173 For the reasons set out above, I dismissed the Appellant's appeal against the VRB's decision and awarded costs of the appeal to the Chief Assessor, such costs to be taxed if not agreed within two weeks from my order.

Mavis Chionh Sze Chyi
Judicial Commissioner

Tan Kay Kheng and Soh Zi Qing Jeremiah (WongPartnership LLP) for the appellant;
Quek Hui Ling, Pang Mei Yu and Chong Wai Teng Victoria (Inland Revenue Authority of Singapore (Law Division)) for the respondent.