

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHCR 02

Suit No 980 of 2016 (Summons No 6105 of 2019)

Between

Liew Kum Chong

... Plaintiff

And

- (1) SVM International Trading Pte Ltd
- (2) Feasto Pte Ltd
- (3) Mizimegah Pte Ltd
- (4) Scarlett Merida Xi Wei Yuan
- (5) Pan Jiaying

... Defendants

GROUND S OF DECISION

[Civil Procedure] — [Judgments and orders] — [Enforcement]

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Liew Kum Chong
v
SVM International Trading Pte Ltd and others

[2020] SGHCR 02

High Court — Suit No 980 of 2016 (Summons No 6105 of 2019)
Jonathan Ng Pang Ern AR
28 January, 10 March 2020

31 March 2020

Jonathan Ng Pang Ern AR:

1 Summons No 6105 of 2019 (“SUM 6105”) was the Plaintiff’s application under O 47 r 4 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“Rules of Court”) to attach the 2nd Defendant’s interest in a commercial property located at 1 Jalan Dusun #01-26, One Dusun Residences, Singapore (the “Jalan Dusun Property”). The 2nd Defendant was not the registered proprietor of the Jalan Dusun Property. Instead, it claimed, via a caveat (the “Caveat”), an interest as purchaser of the same. What was the nature of the 2nd Defendant’s interest in the Jalan Dusun Property? And could that interest be attached under O 47 r 4 of the Rules of Court? After hearing from parties, I allowed the application. These are the grounds of my decision.

Background

2 The Plaintiff commenced Suit No 980 of 2016 on 14 September 2016. On 22 March 2019, the High Court gave judgment for the Plaintiff against the 1st to 4th Defendants. The grounds of the Court's decision are set out in *Liew Kum Chong v SVM International Trading Pte Ltd and others* [2019] SGHC 163. The extracted judgment, HC/JUD 185/2019, indicated that the 2nd Defendant was to pay the Plaintiff:

- (a) the judgment sum of \$100,000;
- (b) interest at a rate of 5.33% per annum on the judgment sum from the date of writ to the date of judgment;
- (c) costs in the sum of \$90,000 (to be paid collectively by the 1st to 3rd Defendants); and
- (d) disbursements to be fixed if not agreed.

3 On 6 December 2019, the Plaintiff took out SUM 6105. Being originally an *ex parte* application, SUM 6105 came to me as a paper hearing in my capacity as Duty Registrar on 9 December 2019. The orders sought were as follows:

- 1. The interest of the 2nd Defendant in the [Jalan Dusun Property] be attached and taken in execution to satisfy the Judgment No. HC/JUD 185/2019 dated 22 March 2019 by the Honourable Justice Chua Lee Ming; and
- 2. The 2nd Defendant pay the costs of and occasioned by this application.

4 In his supporting affidavit, the Plaintiff claimed that the sum of \$228,300.84 remained outstanding from the 2nd Defendant. It was subsequently clarified that this was a typographical error; the correct figure should have been \$228,301.44. This figure was arrived at by adding together the following sums:

(a) the judgment sum (\$100,000); (b) pre-judgment interest (which the Plaintiff quantified at \$13,419.92); (c) costs (\$90,000); (d) disbursements (which the Court eventually fixed at \$16,561.60); and (e) post-judgment interest (which the Plaintiff quantified at \$8,319.92 as of the date of the supporting affidavit).¹

5 According to the Plaintiff, the 2nd Defendant had lodged the Caveat claiming the interest of a purchaser of the Jalan Dusun Property.² To support this claim, the Plaintiff exhibited a title search conducted on the Jalan Dusun Property on 6 December 2019 (the “Title Search”).³ The Plaintiff further stated that, to the best of his knowledge, information and belief, the Jalan Dusun Property belonged to the 2nd Defendant.⁴

6 The Title Search showed that the registered proprietor of the Jalan Dusun Property was a company by the name of LVND Homes Pte Ltd (“LVND”).⁵ The Caveat was lodged on 29 January 2013, and reflected the following information:⁶

Interest Claimed:	PURCHASER
Purchase Price:	\$ 1,291,200
Contract/Option Date:	19/09/2012
Prohibition Clause:	UNLESS THE CAVEATOR OR SOME PERSON NOMINATED BY HIM IN THE CAVEAT HAS

¹ 17th affidavit of Liew Kum Chong at paras 4-8, as clarified at the hearing on 28 January 2020.

² 17th affidavit of Liew Kum Chong at para 10.

³ 17th affidavit of Liew Kum Chong at pp 23-29.

⁴ 17th affidavit of Liew Kum Chong at para 11.

⁵ 17th affidavit of Liew Kum Chong at p 26.

⁶ 17th affidavit of Liew Kum Chong at p 28.

CONSENTED IN WRITING TO
SUCH REGISTRATION

7 Upon my directions, the Plaintiff’s solicitors wrote in on 23 December 2019 and clarified that the Jalan Dusun Property was an uncompleted commercial property that was purchased by the 2nd Defendant from LVND (the developer) pursuant to a Sale and Purchase Agreement dated 19 September 2012 (the “SPA”).⁷ Further, the Plaintiff’s solicitors also highlighted that in examination of judgment debtor proceedings in Summons No 4083 of 2019, the 4th Defendant, who allegedly assisted in arranging the 2nd Defendant’s affairs, had stated that the 2nd Defendant had paid “\$750,000+” out of the total purchase price of \$1,291,200.⁸ Accordingly, as there were still outstanding instalment payments to be paid and legal completion had yet to take place, legal title to the Jalan Dusun Property still vested in LVND.⁹

8 Having some doubt as to whether the 2nd Defendant’s interest in the Jalan Dusun Property could be attached under O 47 r 4 of the Rules of Court, I fixed SUM 6105 for an oral hearing. This was originally scheduled for 9 January 2020, but was rescheduled at the Plaintiff’s solicitors’ request. The first hearing on 28 January 2020 was an *ex parte* hearing (as SUM 6105 was filed as an *ex parte* application). At this hearing, I indicated to Mr Gavin Neo, who appeared for the Plaintiff, that I was considering fixing SUM 6105 for an *inter partes* hearing. Mr Neo accepted that the issue of whether the 2nd Defendant’s interest in the Jalan Dusun Property could be the subject of an application under O 47 r 4 of the Rules of Court was quite a novel point. However, he submitted that it

⁷ Letter from WongPartnership LLP dated 23 December 2019 at para 3.

⁸ Letter from WongPartnership LLP dated 23 December 2019 at paras 4-5.

⁹ Letter from WongPartnership LLP dated 23 December 2019 at para 6.

was for the 2nd Defendant to apply to set aside any order that was made on SUM 6105, and that it was not for the 2nd Defendant to “block” SUM 6105 at this stage. He also suggested that the 2nd Defendant might seek to sell the Jalan Dusun Property and dissipate the sale proceeds. Alternatively, if the SPA became annulled for the 2nd Defendant’s failure to keep up with the instalment payments, the 2nd Defendant might dissipate any refund paid by LVND. While I appreciated these concerns, I was of the view that the risk of dissipation was somewhat remote. Accordingly, I fixed SUM 6105 for an *inter partes* hearing and gave directions for the filing of reply affidavits.

Parties’ submissions

9 In broad terms, the Plaintiff’s submissions were as follows:

(a) The 2nd Defendant owned an equitable interest in the Jalan Dusun Property. Specifically, the 2nd Defendant’s equitable interest in the Jalan Dusun Property had accrued in line with its instalment payments set out in the SPA and, accordingly, the 2nd Defendant held an equitable interest in the Jalan Dusun Property amounting to approximately \$750,000.¹⁰ Further, the 2nd Defendant also had an equitable interest in the paid up instalments of the Jalan Dusun Property should the SPA be annulled: under the SPA, LVND, after making certain deductions, had to refund the balance of the instalments previously paid by the 2nd Defendant if the SPA was annulled.¹¹

¹⁰ Plaintiff’s Written Submissions dated 6 March 2020 at para 19.

¹¹ Plaintiff’s Written Submissions dated 6 March 2020 at para 20.

(b) The phrase “immovable property or any interest therein” in O 47 r 4 of the Rules of Court included the 2nd Defendant’s interest in the Jalan Dusun Property.

10 As it turned out, the Defendant did not file any reply affidavit. At the second hearing on 10 March 2020, Mr Chua Cheng Yew, who appeared for the 2nd Defendant, cited his inability to obtain instructions as the reason for this. Among other things, Mr Chua emphasised that, notwithstanding his efforts, he had no instructions on how much of the purchase price the 2nd Defendant had paid LVND. Without this information, Mr Chua was unable to express any view on SUM 6105. In short, I understood Mr Chua to have taken no position on SUM 6105.

Issues arising from SUM 6105

11 Arising from the above, SUM 6105 turned on the answers to two issues:

(a) First, what was the nature of the 2nd Defendant’s interest in the Jalan Dusun Property?

(b) Second, could the 2nd Defendant’s interest in the Jalan Dusun Property be attached under O 47 r 4 of the Rules of Court?

12 It is to these two issues that I now turn.

What was the nature of the 2nd Defendant’s interest in the Jalan Dusun Property?

13 I start with the first issue: what was the nature of the 2nd Defendant’s interest in the Jalan Dusun Property?

14 Orthodoxy provides a straightforward answer to this. As observed in Tang Hang Wu and Kelvin FK Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 4th Ed, 2019) (“*Tan Sook Yee*”) (at para 16.84), “a purchaser under a valid contract for sale *has the equitable interest in the land*, while the vendor holds the legal title for him as constructive trustee” [emphasis added]. This flows from the English High Court’s decision in *Lysaght v Edwards* (1876) 2 Ch D 499 (“*Lysaght*”), where it was held (at 506) that:

... [T]he moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold, and *the beneficial ownership passes to the purchaser*, the vendor having a right to the purchase-money, a charge or lien on the estate for the security of that purchase-money, and a right to retain possession of the estate until the purchase-money is paid, in the absence of express contract as to the time of delivering possession. ... [emphasis added]

15 The basis for this is said to be “the confluence of two equitable rules” (*Tan Sook Yee* at para 16.84):

... First, a purchaser of land is usually entitled to the equitable remedy of specific performance on the basis that since each piece of land is unique, damages will not be an adequate remedy. Second, the equitable maxim ‘equity looks on that as done which ought to be done’ accelerates in equity that which is inevitable at law so that completion is anticipated in equity. The result is the conversion of the purchaser into the owner of the land in equity, a process which brings about the operation of the doctrine of conversion. ...

16 The above passages from *Lysaght* and *Tan Sook Yee* appear to imply that a purchaser of land comes to own the *entire* equitable interest in the land upon the conclusion of a contract for sale. However, in *Jerome v Kelly (Inspector of Taxes)* [2004] 1 WLR 1409 (“*Jerome*”), the House of Lords espoused a seemingly more nuanced approach, holding (at [32]) that:

It would therefore be wrong to treat an uncompleted contract for the sale of land as equivalent to an immediate, irrevocable declaration of trust (or assignment of beneficial interest) in the

land. Neither the seller nor the buyer has unqualified beneficial ownership. ***Beneficial ownership of the land is in a sense split between the seller and buyer on the provisional assumptions that specific performance is available and that the contract will in due course be completed, if necessary by the court ordering specific performance.*** In the meantime, the seller is entitled to enjoyment of the land or its rental income. The provisional assumptions may be falsified by events, such as rescission of the contract (either under a contractual term or on breach). *If the contract proceeds to completion the equitable interest can be viewed as passing to the buyer in stages, as title is made and accepted and as the purchase price is paid in full.* [emphasis added in italics and bold italics]

17 It was, in fact, on the basis of *Jerome* that the Plaintiff submitted that the 2nd Defendant held: (a) an equitable interest in the Jalan Dusun Property amounting to approximately \$750,000; and (b) an equitable interest in the paid up instalments of the Jalan Dusun Property should the SPA be annulled (see [9(a)] above).¹²

18 The issue of the *extent* of the 2nd Defendant's equitable interest in the Jalan Dusun Property was an interesting one. Interesting as it was, however, it did not have to be answered at this stage. The High Court's decision in *Peter Low LLC v Higgins, Danial Patrick* [2018] 4 SLR 1003 ("*Peter Low*") makes clear (at [117]–[119]) that in an application under O 47 r 4 of the Rules of Court, the Court only needs to be satisfied that there is *an* interest in immovable property that can be attached; issues relating to the *extent* of the judgment debtor's interest do not arise at this stage. Accordingly, it was sufficient to conclude, in answer to the first issue, that the 2nd Defendant's interest in the Jalan Dusun Property was an equitable interest that arose from a contract of sale.

¹² Plaintiff's Written Submissions dated 6 March 2020 at paras 19-20.

Could the 2nd Defendant’s interest in the Jalan Dusun Property be attached under O 47 r 4 of the Rules of Court?

19 I now turn to the second issue: could the 2nd Defendant’s interest in the Jalan Dusun Property be attached under O 47 r 4 of the Rules of Court? Having considered the relevant authorities and arguments, I was satisfied that an equitable interest in immovable property that arises from a contract of sale can be attached under O 47 r 4 of the Rules of Court. It therefore followed that the 2nd Defendant’s interest in the Jalan Dusun Property could be attached under O 47 r 4 of the Rules of Court.

Relevant statutory provisions

20 First, this conclusion is supported by the relevant statutory provisions in the Rules of Court, the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (“SCJA”) and the Land Titles Act (Cap 157, 2004 Rev Ed) (“LTA”).

21 I start with the Rules of Court. In this regard, O 47 r 4(1) of the Rules of Court opens as follows:

Immovable property (O. 47, r. 4)

4.—(1) Where the property to be seized consists of immovable property *or **any** interest therein*, the following provisions shall apply:

...

[emphasis added in italics and bold italics]

22 The meaning of words “or any interest therein” is plain: O 47 r 4 of the Rules of Court covers the seizure of *any* interest in immovable property. Significantly, there is no limitation placed on the *type* of such interest. Similarly broad language is also found in O 47 r 4(1)(a) of the Rules of Court, which explains how such seizure is effected:

- (a) seizure shall be effected by registering under any written law relating to the immovable property an order of Court in Form 96 (which for the purpose of this Rule and Rule 5 shall be called the order) attaching ***the interest of the judgment debtor in the immovable property*** described therein and, upon registration, such interest shall be deemed to be seized by the Sheriff;

[emphasis added in italics and bold italics]

23 Again, there is no limitation placed on the type of the interest capable of being seized. The wording of O 47 r 4 of the Rules of Court therefore suggests that an equitable interest in immovable property that arises from a contract of sale can be attached under O 47 r 4 of the Rules of Court.

24 Turning to the SCJA, s 13 of the SCJA, in dealing with writs of execution, provides as follows:

Writs of execution

13. A judgment of the High Court for the payment of money to any person or into court may be enforced by a writ, to be called a writ of seizure and sale, under which ***all the property, movable or immovable, of whatever description***, of a judgment debtor may be seized, except —

- (a) the wearing apparel and bedding of the judgment debtor or his family, and the tools and implements of his trade, when the value of such apparel, bedding, tools and implements does not exceed \$1,000;
- (b) tools of artisans, and, where the judgment debtor is an agriculturist, his implements of husbandry and such animals and seed-grain or produce as may in the opinion of the court be necessary to enable him to earn his livelihood as such;
- (c) the wages or salary of the judgment debtor;
- (d) any pension, gratuity or allowance granted by the Government; and
- (e) the share of the judgment debtor in a partnership, as to which the judgment creditor is entitled to proceed to obtain a charge under any provision of any written law relating to partnership.

[emphasis added in italics and bold italics]]

25 In *Peter Low*, the Court noted (at [132]–[133]) that because the Rules of Court provided for different modes of execution, there was no requirement to interpret any particular provision on execution in the Rules of Court as coinciding in scope with the full ambit of s 13 of the SCJA. Notwithstanding this, the Court concluded that the provisions in the Rules of Court on execution by writ of seizure and sale (“WSS”) against immovable property were intended to cover all possible interests in immovable property which came within the ambit of s 13 of the SCJA:

In this regard, the decisions in *American Express Bank Ltd v Abdul Manaff bin Ahmad* [2003] 4 SLR(R) 780 (at [27]) and *KLW Holdings Ltd v Straitsworld Advisory Ltd* [2017] SGHCR 11 (at [13]–[14] and [30]–[31]) suggest that, because the [Rules of Court] provides for different modes of execution, there is no requirement to interpret any particular provision on execution in the [Rules of Court] as coinciding in scope with the full ambit of s 13 of the SCJA. Thus, since a garnishee order is suitable only for attaching debts, it would not be inconsistent with s 13 of the SCJA to interpret the [Rules of Court] provisions on garnishee orders as not applying to tangible property, even though tangible property is within the scope of s 13 itself. Similarly, since a WSS for immovable property is suitable only for attaching immovable property, it would not be inconsistent with s 13 to interpret the [Rules of Court] provisions on a WSS for immovable property as not applying to chattels, even though chattels fall within the scope of s 13 of the SCJA.

This much is uncontroversial, but it begs the further question *whether, if the [Rules of Court] provides for only one mode of execution against interest in immovable property, there is an expectation that the relevant provision should, in the absence of express indication to the contrary, cover all types of interests in immovable property coming within the ambit of s 13 of the SCJA. In my view, this is likely to be the case.* Given that the provisions in the [Rules of Court] on execution by WSS against immovable property employ broad and general phrases such as “immovable property or any interest therein” or “interest of the judgment debtor in the immovable property” without qualification, *the most reasonable interpretation is that they are intended to cover all possible interests in immovable property which come within the ambit of s 13 SCJA.* This would include the interest of a joint tenant in land.

[emphasis added in italics and bold italics]

26 There can be no doubt that s 13 of the SCJA includes equitable interests. Accordingly, this provision, when read alongside *Peter Low*, also suggests that an equitable interest in immovable property that arises from a contract of sale can be attached under O 47 r 4 of the Rules of Court.

27 Such an interpretation is also consistent with the LTA. Section 115(1) of the LTA, in dealing with the lodging of caveats, provides as follows:

Caveats may be lodged

115.—(1) Any person claiming *an interest in land* (whether or not the land has been brought under the provisions of this Act), or any person otherwise authorised by this Act or any other written law to do so, may lodge with the Registrar a caveat in the approved form which shall include the following particulars:

...

[emphasis added]

28 It has been observed that all equitable interests in land would come within s 115(1) of the LTA (*Tan Sook Yee* at para 15.10). What this means is that the reference to “an interest in land” in s 115(1) includes an equitable interest in immovable property that arises from a contract of sale. In my view, there is no reason why the references to the “interest” in immovable property in O 47 r 4 of the Rules of Court should not be consistently interpreted, so as to also include an equitable interest in immovable property that arises from a contract of sale.

Two factors in Peter Low

29 Second, the conclusion at [19] above is also supported by two passages in *Peter Low* which the Plaintiff relied on. The issue in *Peter Low* was whether a judgment for the payment of money could be enforced by way of a WSS

against the judgment debtor's interest in immovable property which was held under a joint tenancy (*Peter Low* at [10]). Although the Court in *Peter Low* was concerned with the attachability of another *type* of interest in immovable property (*ie*, that belonging to a joint tenant), the pronouncements therein are relevant to the present analysis because they shed light on the factors that a Court may look to in determining whether a given type of interest in immovable property can be attached under O 47 r 4 of the Rules of Court.

Whether the interest is capable of being seized by a WSS

30 The first factor is whether the interest in question is even *capable* of being seized by a WSS. In *Peter Low*, the Court, in discussing the issue of whether the nature of a joint tenancy meant that a joint tenant's interest was not exigible to a WSS, held (at [70]–[71]) that:

The key concern arising from the nature of the joint tenancy lies in the oft-cited proposition that all the joint tenants together own the whole property, but no one joint tenant holds any specific or distinct share of the property. This means that every joint tenant must partake in any dealings involving the whole property before such dealings can effectively bind the entire property. Therefore, for instances [*sic*], one joint tenant cannot sell the property without the agreement of all the joint tenants.

While the foregoing features of a joint tenancy are well established in law, I do not think they necessarily lead to the conclusion that a joint tenant's interest is incapable of seizure by a WSS, or that a WSS issued against a joint tenant's interest has nothing to bite onto. *First, it is undeniable that a joint tenant has a real and present interest in the jointly owned property (as opposed to a future, contingent or speculative interest). Secondly, this interest of a joint tenant's can be alienated without the consent or participation of the other joint tenant – when he does so, his very act of alienation severs the joint tenancy and crystallises his interest into an aliquot share which can be sold independently of his co-tenant's interest. Thirdly, it would appear logical that, whatever interest a judgment debtor is capable of selling on his own, the law of execution of judgments could empower the sheriff to sell it on the judgment debtor's behalf.*

[emphasis in original omitted; emphasis added in italics and bold italics]

31 This passage indicates that the question of whether the interest in question is capable of being seized by a WSS is relevant (albeit not conclusive) in determining whether the interest can be attached under O 47 r 4 of the Rules of Court. This must be correct. If, at a *threshold* level, the interest is *incapable* of being seized by a WSS, then it necessarily follows that it cannot be attached under O 47 r 4 of the Rules of Court, and the analysis ends there. It is only if the interest is *capable* of being seized by a WSS that one goes on to consider the *subsequent* question of whether it can be attached under O 47 r 4 of the Rules of Court.

32 To this end, it seems that an equitable interest in immovable property that arises from a contract of sale is capable of being seized by a WSS. The three points highlighted by the Court in *Peter Low*, as emphasised in italics and bold italics in the quoted passage at [30] above, apply with equal force to such an interest. In particular, such an interest can be sub-sold pending completion. An equitable interest in immovable property that arises from a contract of sale is, therefore, to use the language of *Peter Low*, a real and present interest that can be alienated without the consent or participation of another, and the law of execution of judgments can empower the Sheriff to sell the interest on the judgment debtor's behalf. Accordingly, this first factor suggests that an equitable interest in immovable property that arises from a contract of sale can be attached under O 47 r 4 of the Rules of Court.

Whether a WSS against the interest confers a real benefit to the judgment creditor

33 The second factor is whether a WSS against the interest in question confers a real benefit to the judgment creditor. In *Peter Low*, the Court, in

discussing the utility of issuing a WSS against a joint tenant's interest in land, held (at [114]–[115]) that:

In this regard, while an undivided share in immovable property is difficult to market to third parties and not likely to fetch a good price, that does not mean that the ability to sell an undivided share is without value or utility. Indeed, *even if a WSS does not allow the sheriff to sell the land as a whole, it confers a **real benefit** to the judgment creditor in at least two ways:*

(a) It prevents dealings in the land by the other “innocent” joint tenant. This may create enough of a nuisance for the “innocent” joint tenant to:

(i) settle the debtor-joint tenant's judgment debt so as to get the WSS lifted;

(ii) buy over the debtor-joint tenant's share from the sheriff ...; or

(iii) consent to the sale of the whole property by the sheriff in order that the “innocent” joint tenant may unlock the full economic value of his own aliquot share.

(b) As purchases of immovable properties in Singapore are generally financed by mortgage loans, a sale under a WSS is not possible without the mortgagees' consent. In such a situation, the value of a WSS lies not in the judgment creditor's ability to trigger a sale by the sheriff but in the priority which the WSS affords the judgment creditor in the distribution of any residual proceeds from a mortgagee's sale. ... This advantage concerning priority would also apply in the event that an individual judgment debtor is declared bankrupt.

For these reasons, I recognise that *a WSS against a joint tenant's interest in land confers **real, and not merely illusory, value** to a judgment creditor*. Whether the economics of litigation in each case warrant the judgement creditor taking the step of seeking such a WSS is a matter for the individual plaintiff and judgment creditor to consider. However, even assuming that there is no power for the court to order a sale of the whole property, it is not necessary to conclude that the court would act in futility by allowing a WSS to attach against a joint tenant's interest in land. *There are **other ways in which the WSS may benefit the judgment creditor***.

[emphasis in original omitted; emphasis added in italics and bold italics]

34 This passage indicates that in determining whether an interest can be attached under O 47 r 4 of the Rules of Court, it is relevant (but again, not conclusive) to consider whether a WSS against the interest in question confers a real benefit to the judgment creditor.

35 In *Peter Low*, the Court noted (at [114]) that an undivided share in immovable property was difficult to market to third parties and not likely to fetch a good price. It was in this context that the Court examined the *other* benefits that might accrue to a judgment creditor who issued a WSS against a joint tenant's interest in land. However, these concerns over marketability and profitability do not even arise in the case of an equitable interest in immovable property that arises from a contract of sale. As noted earlier, such an interest can be sub-sold pending completion (see [32] above). A WSS against it confers on a judgment creditor a real benefit that is immediately apparent.

36 In the course of oral submissions, Mr Neo highlighted several other benefits that would accrue to the Plaintiff on the specific facts of SUM 6105. I understood these to include the following:

(a) First, the Plaintiff would, apart from having the option of sub-selling the Jalan Dusun Property, also have the option of making instalment payments under the SPA and would, upon completion, become the registered proprietor of the Jalan Dusun Property.

(b) Second, the 2nd Defendant would not be able to unilaterally sell the Jalan Dusun Property and dissipate the sale proceeds. This point was elaborated on in the Plaintiff's written submissions as follows. If an order were made under SUM 6105, the order would be registered under

the LTA pursuant to s 132 of the LTA and O 47 r 4(1)(a) of the Rules of Court. Upon such registration, the 2nd Defendant's interest in the Jalan Dusun Property would be deemed to be seized by the Sheriff (O 47 r 4(1)(a) of the Rules of Court) and any dealings by the 2nd Defendant in the Jalan Dusun Property would not be registered unless the registration of the order were cancelled (s 133 of the LTA).¹³

(c) Third, if instalment payments were not made and the SPA was annulled (see [9(a)] above), any refund would be paid to the Plaintiff instead of the 2nd Defendant. The 2nd Defendant would therefore not be able to dissipate or use any such refund.¹⁴

37 I was in broad agreement with these points. Accordingly, this second factor also suggests that an equitable interest in immovable property that arises from a contract of sale can be attached under O 47 r 4 of the Rules of Court.

Policy considerations

38 Finally, the conclusion at [19] above is also supported by policy considerations. Leaving aside the legal technicalities, an equitable interest in immovable property that arises from a contract of sale is, by virtue of its sub-saleability (see [32] above), of clear value to its owner. If such an interest cannot be attached under O 47 r 4 of the Rules of Court, this would be tantamount to a ring-fencing of the interest from judgment creditors. This, in my view, would be wholly unjust: the owner of the interest would get to enjoy the benefits of ownership, but judgment creditors would not be entitled to the same. This

¹³ Plaintiff's Written Submissions dated 6 March 2020 at para 28.

¹⁴ Plaintiff's Written Submissions dated 6 March 2020 at para 26(b).

difference in treatment is difficult to justify, and is yet another factor suggesting that an equitable interest in immovable property that arises from a contract of sale can be attached under O 47 r 4 of the Rules of Court.

Conclusion on the second issue

39 Having regard to the relevant statutory provisions (see [20]–[28] above), the two factors in *Peter Low* (see [29]–[37] above) and policy considerations (see [38] above), I was satisfied that an equitable interest in immovable property that arises from a contract of sale can be attached under O 47 r 4 of the Rules of Court. Accordingly, and in answer to the second issue, the 2nd Defendant’s interest in the Jalan Dusun Property could be attached under O 47 r 4 of the Rules of Court.

Conclusion

40 In the circumstances, I granted an order in terms of prayer 1 of SUM 6105. After hearing parties on costs, I also granted an order in terms of prayer 2 of SUM 6105, and fixed such costs at \$1,500 (all in).

Jonathan Ng Pang Ern
Assistant Registrar

Tang Shangwei, Gavin Neo and Khoo Kiah Min Jolyn
(WongPartnership LLP) for the plaintiff;
Chua Cheng Yew (Wong Tan & Molly Lim LLC) for the second
defendant.

