IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHCR 11

Suit No 1199 of 2015

Between

KLW Holdings Limited

… *Plaintiff*

And

(1) Straitsworld Advisory Limited
(2) Michael ET Chan

… *Defendants*

JUDGMENT

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

KLW Holdings Ltd
v
Straitsworld Advisory Ltd and another

[2017] SGHCR 11

High Court — Suit No 1199 of 2015
Scott Tan AR
12 July 2017

14 August 2017 Judgment reserved.

Scott Tan AR:

Introduction

1 This is the Plaintiff's request for a writ of seizure and sale to be issued in respect of the 2nd Defendant's membership at the Singapore Island Country Club ("the Membership"). The question before me is whether the Membership is property of a sort which is exigible to a writ of seizure and sale. For the reasons which follow, I answer that question in the negative, and I therefore refuse the Plaintiff's request.

Background

2 The facts which are relevant to this application lie within a narrow compass. The Plaintiff, KLW Holdings Limited, is a Singapore company which is in the business of property development. It sued the Defendants – who are, respectively, Straitsworld Advisory Ltd, a company incorporated in the British

Virgin Islands, and its sole director and shareholder, Mr Michael Chan ("Mr Chan") – for the return of a refundable commitment fee of $7m paid under a term sheet signed in May 2015. The Plaintiff successfully obtained summary judgment on 18 October 2016 and the Defendants were ordered to pay the Plaintiff the sum of $7m plus interest and costs. The Defendants' appeal was dismissed by Hoo Sheau Peng JC on 17 November 2016 (see *KLW Holdings Ltd v Straitsworld Advisory Ltd and another* [2017] SGHC 35).

3 Subsequently, the Plaintiff applied to examine Mr Chan to ascertain whether he had the means to satisfy the judgment debt. In the course of the examination, the Plaintiff discovered that Mr Chan was an "Ordinary Member (Transferable)" of the Singapore Island Country Club ("SICC"). The Plaintiff then requested that the Membership be seized and sold in satisfaction of the judgment debt.

The Plaintiff's case

4 Ms Amy Tan, counsel for the Plaintiff, candidly admitted that she was unable to find any reported case, whether in Singapore or in the Commonwealth, in which a writ of seizure and sale had been issued in respect of a club membership (which she admitted was "somewhat troubling"). Nevertheless, she submitted that it was clear, from a plain reading of the relevant provisions, that this could be done. She first pointed me to s 13 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"), which provides:

> 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]

5 Next, Ms Tan pointed me to O 45 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules"), which provides that a judgment for the payment of money may be enforced in four different ways, one of which is through the issuance of a writ of seizure and sale. Ms Tan argued, citing the decision of the Singapore High Court in *ABD Pte Ltd v Comptroller of Income Tax* [2010] 3 SLR 609 ("*ABD*"), that a transferable club membership (such as the Membership) is a chose in action and is therefore a form of movable property which can be seized under a writ of seizure and sale in Form 82, which is the standard form used for the seizure of movable property (see O 45 r 12).

6 In support of this submission, she also pointed out that club memberships have been recognised as being property that is capable of: (a) forming part of the pool of matrimonial assets that is available for division between husband and wife in divorce proceedings (see, *eg*, the decision of the Singapore High Court in *Tan Hwee Lee v Tan Cheng Guan and another appeal and another matter* [2012] 4 SLR 785); and (b) being the subject matter of a worldwide *Mareva* injunction (see, *eg*, the decision of the Singapore High Court

in *Wallace Kevin James v Merill Lynch International Bank Ltd* [1998] 1 SLR(R) 61). That being the case, she submitted, the Membership ought to be capable of being seized under a writ of seizure and sale. That this is possible, she further contended, is also suggested by the fact that question 19 of the standard questionnaire used in examination of judgment debtor proceedings (see Form 11A of the Supreme Court Practice Directions) requires an examinee to state whether he/she is "a member (whether in Singapore or overseas) of any country clubs, timeshare holiday clubs" and to provide details of the same.

Section 13 of the SCJA

7 The distinction between immovable and movable property maps roughly onto the distinction between real property (that is, proprietary interests relating to land) and personal property (proprietary interests which do not relate to land): see Tan Yock Lin, *Personal Property Law* (Academy Publishing, 2014) ("*Personal Property Law*") at para 1.003). Mr Chan's interest in the Membership is clearly not a form of immovable property; so the question is whether it is a form of movable property. Given the intractable debate over the nature of "property" (see, generally, *Personal Property Law* at paras 1.025–1.043), I propose to approach this doctrinally – by considering whether a person's interest in a club membership has traditionally been recognised in the cases as being proprietary in character – rather than theoretically.

8 It is well settled that the relationship between a club and its members is one that is governed by contract, the terms of which can usually be found in the constitution, rules, and bye-laws of the club (see the decision of the Singapore Court of Appeal in *Kay Swee Pin v Singapore Island Country Club* [2008] 2 SLR 802 at [2] ("*Kay Swee Pin*")). Under the Rules of the Singapore Island Country Club ("SICC Rules"), an Ordinary Member (Transferable), such as Mr

Chan, is conferred a range of rights, including the right to use the facilities of the SICC and vote at its general meetings. An ordinary member's right to use the SICC's facilities in accordance with the bye-laws (and I put aside for now the issue of new members, for whom slightly different rules apply) appear to be unrestricted, and may only be taken away if membership is suspended pursuant to the successful initiation of disciplinary proceedings.

9 On the subject of the transferability of the Membership, rule 17A of the SICC Rules provides, in material part, as follows:

> **17A Transfer**
>
> (a) Save as otherwise provided in this Rule 17A, no member may transfer his membership.
>
> (b) (i) an Ordinary Member (Transferable) may transfer his membership to any person subject to the approval of the General Committee and subject to and in accordance with the provisions in the Bye-Laws. …

The Membership & Transfer Bye-Laws of The Singapore Island Country provide, in material part, as follows:

> **3 TRANSFER FEES**
>
> 3.1 The fees payable to the Club for the transfer of membership shall be determined by the General committee from time to time.
>
> …
>
> 3.3 All applications for transfer of membership shall be subject to the approval of the General Committee. No transfer shall take effect except upon payment of the prescribed transfer fees.
>
> …
>
> **5 MONTHLY SUBSCRIPTIONS**
>
> 5.1 The subscription payable to the Club monthly by each member of the Club shall be due and payable in advance on the

> 1st day of each month.
>
> 5.2 The full monthly subscription is payable for the month in which a person ceases to be a member of the Club. Similarly, the full subscription for the month is payable for a person who becomes a member of the Club in that month.

10 In essence, an ordinary (transferable) member of the SICC has a *restrictively assignable licence* to use the facilities of the SICC and participate in its activities. The transferability of this interest is critical, for it means that membership is more than just a mere personal right, but a chose in action – that is, it is a form of personal property the rights to which cannot be asserted by possession or use, but must instead be vindicated by legal action (see *ABD* at [34], citing the decision of the Income Tax Board of Review in *HU v Comptroller of Income Tax* [1999] SGITBR 1 at [65]).

11 If this were the end of the matter, I would readily agree that a writ of seizure and sale can and should be issued in respect of the Membership. However, there is one wrinkle which complicates this seemingly straightforward picture of events. This arises from the decision of the Singapore High Court in *American Express Bank Ltd v Abdul Manaff bin Ahmad and another and two other appeals* [2003] 4 SLR(R) 780 ("*Abdul Manaff*"), where it was held that the expression "writ of seizure and sale" in s 13 of the SCJA carries a wider meaning than the equivalent expression in the Rules.

The writ of seizure and sale in the Rules

12 The question in *Abdul Manaff* was whether the wages and salaries of judgment debtors could be garnished. This turned on whether s 13(*c*) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA 1999"), which was *in pari materia* with s 13(*c*) of the present day SCJA and ostensibly applied only to "writ[s] of seizure and sale", also covered garnishee

proceedings. After a review of the legislative history of the relevant provisions, Lai Kew Chai J held that it did. He explained that the phrase "writ of seizure and sale" in s 13 of the SCJA 1999 referred generally to a process in which the property of the judgment debtor was attached and transferred to the judgment creditor in satisfaction of a judgment debt (at [27]). On this basis, he held that the exemptions in s 13 of the SCJA 1999 applied *both* to the specific legal process identified in O 45–47 of the Rules of Court 1996 (S 71/1996) ("ROC 1996") as a "writ of seizure and sale" as well as the garnishee process, which was governed by O 49 of the ROC 1996 (at [28]).

13 The reasons for the somewhat confusing nomenclature will become evident in the course of this judgment. For now, it suffices for me to make two points. First, whenever the expression "writ of seizure and sale" is used in the Rules, it refers to the issuance of a written order *directing the Sheriff* to seize and sell such property of the judgment debtor "as is liable to be seized under a writ of seizure and sale" to satisfy the judgment debt (see Forms 82 and 83 of the Rules). It is *not* used as a generic term to refer to *all* the means by which a judgment creditor may enforce a judgment for the payment of money, which is the sense in which the phrase is used in the SCJA. (For the remainder of this judgment, I will use the expression "writ of seizure and sale" in this narrow sense to refer to the specific legal process contemplated in O 45–47 of the Rules.) Second, not everything which may be taken in satisfaction of a judgment debt is exigible to a writ of seizure and sale. Lai J made this clear when he explained that while s 13 of the SCJA 1999 contemplated the seizure of debts and equitable interests (which are seizable by the processes of garnishment and equitable receivership respectively), a writ of seizure and sale could *only* be used to seize "chattels, land and securities" (see *Abdul Manaff* at [28]).

14 It follows, therefore, that it will not be sufficient for Ms Tan to show that the Membership is "property" within the meaning of s 13 of the SCJA. Her client's request is for the Membership to be seized and sold in the manner contemplated in Form 82 of the Rules (see [5] above) and in order for this request to be granted, she has to show that the Membership is property of a sort which is exigible to a writ of seizure and sale. The difficulty in this regard is that the Rules do not specify the type of property which can be seized under a writ of seizure and sale nor, to the best of my knowledge, is there any case which is precisely on point. In order to understand what may be seized under a writ of seizure and sale, a discussion of the history of the writ and that of its common law predecessor, the writ of *fieri facias*, is necessary.

The writ of fieri facias in 19th century England

15 At common law, a judgment creditor could avail himself of several different procedures to pursue the assets of the judgment debtor, but the most important by far was the writ of *fieri facias* (see CRB Dunlop, "Execution against Personal Property in England and British Columbia" [1972] 7 UBCLR 171 ("*Execution against Personal Property*") at 172). This was "a command to the person to whom it is directed, that, of the goods and chattels of the party, he cause to be made the sum recovered by the judgment" (see Joseph Chitty, *Archibold's Practice of the Court of Queen's Bench* (9th Ed, 1855) at 591–592, cited in *Execution against Personal Property* at 172). While the *writ of fieri facias* was said to be the "maid of all work in the law of execution" (see G V La Forest, "Some Aspects of the Writ of Fieri Facias" [1959] 12 UNBLJ 39 at 39), it suffered one major limitation: it could only be used to seize *tangible* goods and chattels. This rule was stated by Lord Ellenborough in *Scott v Scholey and another* (1807) 8 East 476 as follows (at 483–484):

> The sheriff's authority is derived under a writ, by which he is commanded to cause to be made of the goods and chattels of the defendant the sum recovered; and which sum is of course to be made by a sale of things taken under the execution. … *The language of these writs and return evidently imports, that the goods and chattels, which are the object of them, are properly of a* ***tangible nature***, ***capable of manual seizure***, *and of being detained in the sheriff's hands and custody, and such also as are convenient* ***capable of sale and transfer*** *by the sheriff, to whom the writ is directed*, for the satisfaction of a creditor. … [emphasis added in italics and bold italics]

16 Thus, Lord Ellenborough held that an equitable interest in a term of years was not exigible to a writ of *fieri facias*. These two restrictions – (a) that the goods must be tangible and capable of being physically seized and (b) the goods must be capable of being sold and transferred – were so strictly enforced that it was held the writ of *fieri facias* could not be used to seize money, for the "quaint reason", as Lord Mansfield put it, that "money could not be sold, and one was required by the writ to take one's debt out of the produce of the goods sold" (see JER De Villiers, *History of the Legislation Concerning Real and Personal Property in England During the Reign of Queen Victoria*, (CJ Clay and Sons, 1901) at 192). It was also held that the writ did not extend to bank notes, securities for money, debts owed to the debtor, future earnings, or choses in action more generally (see *Execution against Personal Property* at 173).

17 This remained the position until the passage of the Judgments Act 1838 (c 110) (UK) ("UK Judgments Act 1838"), which introduced three important changes to the law of execution:

(a) First, s 12 of the UK Judgments Act 1838 extended the writ of *fieri facias* to a variety of intangible assets that had a *documentary aspect* to them: "money or bank notes … cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money" were

henceforth exigible. However, because there was something *tangible* which could be physically seized, there was no need for any change to be made to the nature of the writ and the procedure for its issuance and execution remained the same (see British Columbia Law Institute, *Report on the Uniform Civil Enforcement of Money Judgments Act* (March, 2005) (Chair: Ann McLean) at pp 5–6).

(b) Second, s 13 of the UK Judgments Act 1838 provided that every judgment operated to impose an equitable charge over land belonging to the judgment debtor, preventing either the judgment debtor or any of his successors in title from disposing of the property. If the judgment debt was not satisfied for one year after the order was made, the judgment creditor was permitted to apply for the land to be sold.

(c) Third, s 14 of the UK Judgments Act 1838 allowed for a charging order to be issued over shares in public companies, government stocks, funds, and annuities. The judgment creditor could compel the sale of the shares if the judgment debt was not satisfied in six months.

18 However, the UK Judgments Act 1838 was not a panacea for all the problems of exigibility faced by judgment creditors. In *Harrison v Paynter* (1840) 151 ER 462, the court held mere debts or claims could not be seized under a writ of *fieri facias* because it did not fall within the scope of s 12 of the UK Judgments Act 1838. It was only when the Common Law Procedure Act 1854 (c 125) (UK) ("UK CLPA 1854") that the court was permitted, upon the application of the judgment creditor, to make an order attaching all debts owing or accruing to the judgment debtor by third parties to answer the judgment debt (see s 61 of the UK CLPA 1854, which is the progenitor of the modern garnishee process). However, the limitation of the UK CLPA 1854 was that it only

extended to debts, and did not cover other forms of intangible property such as a patentee's right under a patent (see the decision of the English Court of Appeal in *Edwards and Co v Picard* [1909] 2 KB 903 at 905 *per* Vaughan Williams LJ) or a beneficiary's interest in an insurance policy (see the decision of the Irish Court of Chancery in *Alleyne v Darcy* (1855) 5 l Ch R 56). Most *pure intangible property* (that is, intangible property without a documentary aspect) remained out of reach.

The writ of seizure and sale in Singapore before 1970

19 The first statute which regulated the conduct of civil proceedings in Singapore was the Civil Procedure Ordinance 1878 (Ordinance No 5 of 1878) ("CPO 1878"). Curiously, there were no provisions dealing specifically with the seizure of movable property (perhaps because it was always contemplated that a writ of *fieri facias* could be used). The only provision that made reference to a "writ of seizure and sale" was s 407, which related to the process of "garnishment" and was a form of process used for getting at assets of the judgment debtor which were in the hands of *third parties*. As Prof Jeffrey Pinsler explained, despite the similarity in the names used, the process of "garnishment" bore no resemblance to the garnishee process as it exists in O 49 of our Rules today (see Jeffrey Pinsler, "Section 13 of the Supreme Court of Judicature Act and Enforcement against The Judgment Debtor's Earnings" [2004] 16 SAcLJ 27 ("*Enforcement against Judgment Debtor's Earnings*") at p 30). Garnishment was more akin to a "method of seizure by notification" rather than a process of attachment by court order (at 35). If the judgment debtor was beneficially entitled to any property or was owed a debt by a third party, the Sheriff, in executing the writ of seizure and sale, was to give a notice informing the third party that the assets of the judgment debtor in his possession

are to be held for the benefit of the judgment creditor. However, the CPO 1878 did not contain any provisions relating to the execution of the writ of seizure and sale nor did it require the writ to be issued in a prescribed form.

20 The Civil Procedure Code 1907 (Ordinance No 31 of 1907) ("CPC 1907"), which repealed and replaced CPO 1878, set out the modern framework of our law of execution. Of particular note are sections 569(1) and 617, which provided, in material part, as follows:

> **569**.— (1) A judgment or order of the Court may be enforced in any of the following modes :—
>
> (i) if the judgment or order be for the recovery by or payment of money to any person or into Court:
>
> (*a*) by writ of seizure and sale; or
>
> (*b*) in cases where imprisonment is authorised by this Code, by committal to prison; …
>
> …
>
> **617.**—(1) The following property is liable to be seized under a writ of seizure and sale, viz;— lands, houses, goods, money, Government and bank notes, cheques, bills of exchange, promissory notes, Government and Municipal securities, bonds, or other securities for money, shares in the capital or joint stock or debentures of any public Company or Corporation, debts, *and, except as hereinafter mentioned,* ***all other saleable property, moveable or immovable, belonging to the judgment debtor****, or over which, or the profits of which, he has a disposing power,* which he may exercise for his own benefit, *and whether the same be held in the name of the judgment debtor, or by another person in trust for him, or on his behalf. …*
>
> [emphasis added in italics and bold italics]

21 Section 617 of the CPC 1907 was clearly modelled after s 12–14 of the UK Judgments Act 1838. All the forms of property which were made exigible under the UK Judgments Act 1838 (*eg*, personal property with a documentary aspect; lands; stocks and shares) were likewise identified as being capable of

being seized under a writ of seizure and sale. However, s 617(1) of the CPC 1907 differed from the UK Judgments Act 1838 in two notable respects. First, while a writ of *fieri facias* could not be used to seize land and stocks (for these, different forms of process had to be used), both were exigible to a writ of seizure and sale. Second, a writ of seizure and sale was not limited only to being used against property which was in the legal name of the judgment debtor, but extended also to property which was being held on trust for the judgment debtor or on his behalf. This was to facilitate the process of "garnishment" which had no parallel in England (see [19] above).

22 Chapter 34 of the CPC 1907 then set out detailed provisions for *how* seizure was to be effected under a writ of seizure and sale. There were six different prescribed modes, each corresponding to a different class of property:

(a) *Physical goods and negotiable instruments*: seizure was to be effected by the actual taking of the item into the possession and custody of the Sheriff (s 618) who would, in turn, effect physical delivery of the item to the purchaser following sale (ss 629 and 631).

(b) *Immovable property*: seizure was to be effected by the registration of the judgment creditor's interest in the Registry of Deeds (s 619).

(c) *Securities and shares*: seizure was to be effected by a notice sent to the Government, Municipality, Company or Corporation in question attaching the property for the benefit of the judgment creditor (s 620).

(d) *Property the judgment creditor is beneficially entitled to or debts owed to the judgment debtor*: seizure was to be effected by the process

of "garnishment" (s 621).

(e) *Property in the hands of the Accountant-General*: seizure was to be effected by the making of a direction to the Accountant-General directing him to pay the property to the judgment creditor (s 622).

(f) *Property liable to be seized but which could not be seized under any one of the other five prescribed modes*: seizure was to be effected by the appointment of a "receiver by way of equitable execution or for [an order for] the sale of such property" (s 623).

23 In 1934, the CPC 1907 was repealed. The provisions dealing with substantive law were consolidated and added to the Courts Ordinance 1934 (Ordinance No 17 of 1934) ("CO 1934"). Section 617 of the CPO 1907 was thus re-enacted as s 13 of the CO 1934 which was, in all material respects, identical to s 13 of the SCJA. It no longer enumerated the types of property which could be seized under a writ of seizure and sale and simply provided in summary form that "all the property, moveable or immoveable, of whatever description, of a judgment debtor may be seized". The provisions dealing exclusively with matters of procedure (such as *how* execution was to be levied) were re-enacted in the form of subsidiary legislation – the Civil Procedure Rules of the Supreme Court 1934 (S 2941/1934) ("CPR 1934"). Order 41 of the CPR 1934, which concerned writs of seizure and sale, set out the same six modes of seizure which were first introduced in the CPC 1907 (see [22] above).

The writ of seizure and sale after 1970

24 Matters remained this way until the Rules of the Supreme Court 1970 (S 274/1970) ("1970 Rules") came into force. The 1970 Rules imported the

Rules of the Supreme Court 1965 (SI 1965/1776) (UK) ("UK RSC 1965"), into Singapore with minimal substantive change. In so doing, it introduced a sea change not only in the content but also the structure of the rules on execution. Most notably, for present purposes, is the fact that under the 1970 Rules, the writ of seizure and sale was merely *one of several independent and distinct modes of execution* instead of being as an umbrella term for all the ways in which a judgment for the payment of money could be enforced (which was the way in which the expression had been used since 1907 and is still used in the SCJA). This is clear from O 45 r 1(1) of the 1970 Rules, which read as follows (contrast this with s 569(1)(i) of the CPC 1907: see [20] above):

> Subject to the provisions of these Rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into Court, may be enforced by one or more of the following means, that is to say —
>
> (*a*) writ of seizure and sale;
>
> (*b*) garnishee proceedings;
>
> (*c*) a charging order;
>
> (*d*) the appointment of a receiver;
>
> (*e*) in a case which Rule 5 applies, an order of committal.

25 Although it is not stated expressly, it is clear that the framers of the 1970 Rules intended for the writ of seizure and sale to be the local equivalent of the English writ of *fieri facias*, which was still limited to being used against property which is capable of physical seizure, such as goods, chattels, money, banknotes as well as documentary intangibles (see *The Supreme Court Practice 1999* vol 1 (Sir Richard Scott gen ed) (Sweet & Maxwell, 1999) at para 45/1/20). This much is clear from the fact that of the six classes of property contemplated in both the CPO 1907 and CPR 1934 (see [22] above), the category of "physical goods and negotiable instruments" was the only one in respect of which a

specific mode of execution had not been provided for. Immovable property, shares, and securities now had to be seized through the issuance of a "charging order" (see O 50 of the 1970 Rules). Property in the hands of a third party, including property in the hands of the Accountant-General, was subject to the modern garnishee process (see O 49). Equitable execution by way of receivership was no longer one of the methods through which a writ of seizure and sale may be effected, but a distinct mode of execution in its own right with its own distinct set of rules (see O 51).

26 The fact that *physical* seizure was contemplated by a writ of seizure of sale can also be seen in the provisions which govern the manner in which the writ was to be executed (all of which still exist in our Rules today):

(a) O 46 r 12 provides that where the Sheriff "has to remain in possession of movable property for more than 14 days", the execution creditor must – if requested to do so by the Sheriff – deposit a further sum of money in the Registry to provide for the costs of the execution.

(b) O 46 r 16(2) states that where the Sheriff "removes from a place any movable property that is seized, he must give to the execution debtor … an inventory of the property so removed".

(c) O 46 r 18(1) provides that on a written application by the execution creditor or execution debtor, the Sheriff must prepare a memorandum stating, among other things, the "place of seizure".

27 Further confirmation may be had if one considers the history of the charging order. It will be recalled that ss 13 and 14 of the UK Judgments Act 1838 introduced the charging order as a method of execution against land,

stocks, and securities (see [17(b)] and [17(c)] above). It was only introduced to Singapore in 1970, where it was used as a mode of execution against land, stocks, and securities (which had hitherto been seizable under a writ of seizure and sale: see [22(b)] and [22(c)] above). However, the charging order had a chequered history because of concerns over its compatibility with the SCJA as well as the Land Titles Act (Cap 157, 1985 Rev Ed) (see, Tan Sook Yee, "Execution against Land in Singapore – Some Problems" [1987] 1 MLJ xv). When the charging order was finally removed in 1991 *vide* the Rules of Supreme Court (Amendment No 3) Rules 1991 (S 532/1991) ("1991 Amending Rules"), the Rules Committee also saw fit to amend O 47 of the 1970 Rules to include detailed provisions on how a writ of seizure and sale was to be effected over immovable property and securities. As Prof Pinsler observed, it is clear that the Rules Committee did so because they did not consider that the writ of seizure and sale extended to the seizure of land and securities after 1970, when the nature of the writ of seizure and sale was changed (see Jeffrey Pinsler, *Civil Justice in Singapore: Developments in the Course of the 20th Century* (Butterworths Asia, 2000) at p 437). In a separate article, he opined that (as at 2004) "the [Rules] *clearly limit the writ of seizure and sale to physical goods*, land and securities" [emphasis added] (see *Enforcement against Judgment Debtor's Earnings* at p 38).

28 In 1996, the procedural rules governing proceedings in the Supreme Court and the Subordinate Courts were unified by the passage of the Rules of Court 1996 (S 71/1996). However, the provisions on execution were not amended and have – despite the many changes made to the Rules in the past twenty years – remained largely unchanged to this day.

29 Despite the significant changes wrought by the 1970 Rules, no change

was made to the primary legislation governing execution. Section 13 of the CO 1934, which was discussed at [23] above, next appeared as s 14 of the Courts Ordinance 1955 (Cap 3, 1955 Ed), then as para 9 of the First Schedule to the Courts of Judicature Act 1964 (Cap 161) (M'sia) (which applied in Singapore when we were part of the Federation of Malaysia), and finally as s 13 of the Supreme Court of Judicature Act 1969 (Act 24 of 1969). However, apart from a minor amendment to the value of the goods exempted from seizure under s 13(*a*) of the SCJA (from $500 to $1,000), the provision has remained unchanged to this day. It continues to provide that a judgment for the payment of money may be enforced "by a writ, to be called a writ of seizure and sale" (it should also be noted that s 80(2)(*l*) of the SCJA provides that the Rules Committee may regulate "the modes in which a writ of seizure and sale may be executed, and the manner in which seizure may be made"). The fact that the the SCJA and the Rules continue to use the expression "writ of seizure and sale" in different ways is regrettable, because it has clearly caused some confusion (see *Enforcement against Judgment Debtor's Earnings* at para 16(a)).

Conclusion on the ambit of a writ and seizure and sale

30 The following conclusions can be drawn from legislative history:

(a) Section 13 of the SCJA deals with *what* can be taken in satisfaction of a judgment or order for the payment of money, and it provides that all of the property of a judgment debtor (save for those specifically excepted) may be seized. Although it purports only to deal with "writ[s] of seizure and sale", this expression is used as shorthand for all the ways in which a judgment or order for the payment of money may be enforced under the Rules.

(b) The Rules deal with *how* property which is liable to seizure may be taken in satisfaction of a judgment debt, and it provides for four modes of enforcement: (i) the issuance of a writ of seizure and sale; (ii) garnishee proceedings; (iii) the appointment of a receiver; and (iv) an order of committal (where applicable): see O 45 r 1(1) of the Rules.

(c) A writ of seizure and sale, in its modern iteration, is a form of process that is meant to be used exclusively for the seizure of *tangible* personal property (including documentary intangibles like negotiable instruments: see O 46 r 25), immovable property, and securities.

(d) Save where immovable property or securities are concerned (where alternative provisions are made for how seizure is to the effected: see O 47 rr 4–7), the Rules contemplate that seizure and sale will be effected by the physical taking of the property and the subsequent sale of the same by way of a public auction (see O 46 rr 12, 14–25).

31 Are the Rules therefore *ultra vires* for limiting the generality of s 13 of the SCJA, which provides that "all the property … of a judgment debtor may be seized"? The answer, quite clearly, is "no". As Lai J explained at [27] of *Abdul Manaff*, when the phrase "seizure and sale" is used in s 13 of the SCJA, what is contemplated is the broad concept of the attachment of the interest of the judgment debtor and the transfer of the said interest to the judgment creditor. This capacious definition embraces the full gamut of enforcement measures provided for in O 45 r 1, which collectively permit execution to be carried on all the classes of property identified in s 13 of the SCJA. Equitable receivership is particularly important in this regard, for it is used (as it always has been) as a mode of execution to which recourse may be had when the other specified modes are unsuitable. As G P Selvam J said in the decision of the Singapore

High Court in *Lee Kuan Yew v Tang Liang Hong and another* [1999] 1 SLR(R) 533, there are "various interest in property to which a judgment debtor may be entitled, yet which cannot be taken in execution under the usual form[s] of execution … Appointment of a receiver by way of equitable execution … was conceived by the Court of Chancery to reach such interest" (at [15]).

32 Of course, these other forms of execution may not be as effective as a writ of seizure and sale. This was a point which Ms Tan made during the hearing when she argued that a club membership did not seem to be amenable to equitable receivership. As I understand it, the argument is not that a chose in action cannot be taken into receivership (because it clearly can: see the decision of the Singapore High Court in *Tan Holdings (in creditor's voluntary liquidation) v Prosperity Steel (Asia) Co Ltd and others* [2012] 1 SLR 80 at ("*Tan Holdings*") at [51]), but that the appointment of a receiver will be of limited utility because it does not result in the (immediate) monetisation of the Membership. This is because a receivership order has no proprietary effect and does not vest the property in question in the receiver (see *Tan Holdings* at [44], citing the decision of the English Court of Appeal in *Masri v Consolidated Contractors Int (UK) Ltd (No 2)* [2009] 1 QB 450 at [53]). Thus, a receiver is not empowered to sell the property and apply the proceeds in satisfaction of the judgment debt (see the decision of the Singapore Court of Appeal in *Ooi Ching Ling Shirley v Just Gems Inc* [2002] 2 SLR(R) 738 at [26]).

33 As matter of policy, there is force to Ms Tan's argument that a transferable club membership, particularly one at the SICC, is a highly marketable luxury good which should be capable of being taken and sold in execution. This would comport with modern reality, where intangible personal property has become the principal repository of wealth in the twenty-first

century (see Bridge, Gullifer, McMeel, and Worthington, *The Law of Personal Property* (Sweet & Maxwell, 2013) at para 1-014). However, if there is to be reform, it must come from the legislature, because the court is only empowered to "enforce a judgment of the court in any manner which may be *prescribed by any written law or by Rules of Court or Family Justice Rules*" [emphasis added] (see para 8 of the First Schedule of the SCJA read with s 18(2) of the same).

34 I am also conscious that there are difficult questions relating to the mechanics of seizure, the rights of third parties, and restrictions on assignability which have to be considered if the seizure of pure intangible property is to be effected. Consider the facts of this case. Even if the Membership can be "seized" in some way, it cannot be transferred until the approval of the General Committee of the SICC is first sought and obtained. And even if the approval of the General Committee could be obtained, there is still the matter of the transfer fees and the outstanding monthly subscription fees (if any) which have to be paid before transfer will be effected (see [9] above) – it is not clear who should bear the costs of these. Further to this, the transferor will also have to be willing satisfy the requirements set out in the SICC Rules relating to induction as a new member before he can enjoy the privileges of membership (see Rule 10 of the SICC Rules). Of course, these problems are not insuperable, but trade-offs might have to be made, and the rights of creditors, debtors, and third parties have to be carefully balanced. All of these issues should be the subject of careful consideration and detailed legislation. I note in this regard that in the Singapore High Court case of *One Investment and Consultancy Ltd and another v Cham Poh Meng (DBS Bank Ltd, garnishee)* [2016] 5 SLR 923 at [24]–[25], Kannan Ramesh JC (as he then was) observed to similar effect that even if it might be thought unsatisfactory that money in joint accounts cannot be garnished, reform must be undertaken by the legislature and not the courts.

Conclusion

35 In summary, while it is clear that the Membership is liable to be taken in execution of the judgment debt under s 13 of the SCJA, the Rules do not provide any facility for this to be done by way of its "seizure and sale" in the sense contemplated in Form 82. I therefore refuse the application for a writ of seizure and sale to be issued in respect of the Membership.

Scott Tan
Assistant Registrar

Amy Tan (Drew & Napier LLC) for the plaintiff.