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Creditors who have commenced legal proceedings and obtained judgements or orders against their debtors can now enforce such judgments or orders by obtaining a Writ of Seizure and Sale (WSS) against the judgment debtor's interest in jointly-owned property (regardless of whether such interest is held under a joint tenancy or tenancy in common).

Previously, a judgment for the payment of money could not be enforced by way of a WSS against a judgment debtor's interest in immovable property which is held under joint tenancy. This meant that the creditors' mode of enforcement of judgment debt was limited.

The recent High Court decision in *Peter Low LLC v Danial Patrick Higgins* [2018] SGHC 59 (Peter Low) clarified that a joint tenant's interest in immovable property is exigible to a WSS under the statutory framework applicable in Singapore. This allows creditors to enforce judgment debts by obtaining a WSS against the judgment debtor's interest in jointly-owned property (regardless of whether such interest is held under a joint tenancy or tenancy in common).

Below we discuss (A) the legal arguments accepted by the High Court in *Peter Low v Danial Patrick Higgins*, (B) past cases discussing whether a judgment for the payment of money can be enforced by way of a WSS, (C) prior difficulties when executing WSS against interest in property held in joint tenancy, and (D) the legal effect of registering a WSS after *Peter Low v Danial Patrick Higgins*.

A. Legal arguments accepted by the High Court in *Peter Low v Danial Patrick Higgins*

A judgment or an order may be enforced by way of a WSS, under which the judgment debtor's property can be seized and sold to satisfy the judgment debt. However, execution of a judgment debt by a WSS had its limitations. Namely, a judgment debtor's interest in property held under joint tenancy was not exigible to execution by way of a WSS, as established by the High Court in *Malayan Banking Bhd v Focal Finance Ltd* [1998] 3 SLR(R) 1008 (Malayan Banking). The same position was adopted in *Chan Lung Kien v Chan Shwe Ching* [2017] SGHC 136 (Chan Lung Kien).

In the recent decision of *Peter Low v Danial Patrick Higgins*, the High Court held that a joint tenant's interest in immovable property is exigible to a WSS under the statutory framework applicable in Singapore. It was also held that, when a WSS is issued against a joint tenant's interest in land, the joint tenancy is severed when the debtor's interest is seized and this seizure occurs when the WSS is registered. The High Court made clear that this decision is confined to the interest of a joint tenant in land and does not extend to other forms of jointly held assets, such as joint bank accounts.

The following key considerations (amongst others) led the High Court to hold that a WSS can be executed against a judgment debtor's interest in property held in joint tenancy:

- a. the overwhelming weight of Commonwealth authorities in favour of allowing execution against the interest of a joint tenant in immovable property;
- b. the severability of the joint tenancy and the ability of a joint tenant to alienate his aliquot share (or potential aliquot share) without the consent of other joint tenant(s);
- c. the notion that severance occurs upon execution appears well accepted among Commonwealth jurisdictions;
- d. the limited marketability of a partial interest in land should not in itself be a reason for disallowing execution against the joint tenant's interest in land; and
- e. judgment creditors are, and should be, generally placed in a more advantageous position than other unsecured creditors insofar as judgment creditors are entitled to levy execution against the judgment debtors' properties.

In clarifying that a WSS can be executed against a judgment debtor's interest in property held in joint tenancy, the High Court took a leap forward in holding that a joint tenancy would be severed once a WSS is registered on the subject property.

In the absence of evidence to the contrary, the court, sheriff and judgment creditor should be entitled to proceed on the basis that the joint tenants would, upon severance of their joint tenancy, hold the land in equal shares both at law and in equity. Given that there are avenues for the interested joint tenants to prove that their beneficial interests are not held in equal shares, no injustice would be caused to any joint tenant.

It was previously undisputed that the registration of a WSS over a property held in joint tenancy (if allowed) does not sever the joint tenancy.

B. Past cases discussing whether a judgment for the payment of money can be enforced by way of a WSS

The issue of whether a judgment for the payment of money can be enforced by way of a WSS against the judgment debtor's interest in immovable property held under joint tenancy has been discussed in the following three cases:

<p>1</p> <p><i>Malayan Banking Bhd v Focal Finance Ltd</i> [1998] 3 SLR(R) 1008 (Malayan Banking)</p>	<p>The High Court held that the interest of a joint tenant in land was not exigible to execution by way of a WSS on the following grounds:</p> <ol style="list-style-type: none">a. Given that each joint tenant has no distinct share in the land, to seize one joint tenant's interest under a WSS is to seize the interest of the other joint tenant as well, unless a WSS concomitantly severs the joint tenancy.<ol style="list-style-type: none">i. Each joint tenant holds the whole interest in the property with the other joint tenant(s) but holds nothing by himself.ii. The "interest of the judgment debtor" attachable under a WSS must be a distinct and identifiable one.iii. A WSS should only seize the judgment debtor's interest and no more.b. The registration of a WSS does not effect a severance of the joint tenancy. It would
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		<p>be “creating a fine mess” if a joint tenancy is severed upon the registration of a WSS.</p> <p>i. A WSS can lapse or can be withdrawn without before the sale of the property, thus it is not an order that necessarily results in a sale.</p> <p>c. There is also a conceptual difficulty on the share of the property to attach to the judgment debtor upon severance of the joint tenancy.</p>
2	<p><i>Chan Shwe Ching v Leong Lai Yee</i> [2015] 5 SLR 295 (Chan Shwe Ching)</p>	<p>The High Court, despite agreeing that a WSS does not sever a joint tenancy at the time of registration, took a differing view that a joint tenant’s interest in property can be identified and seized under a WSS on the following grounds:</p> <p>a. Case law in Commonwealth jurisdictions appeared to support the view that the interest of a joint tenant in land was exigible to execution.</p> <p>b. Even though a joint tenant did not have a distinct share of the land, he has an interest that was identifiable and capable of being determined – the interest of a joint tenant can be converted into distinct shares by alienation (i.e. severance of the joint tenancy).</p> <p>c. Given that the interest of a joint tenant in land is capable of being identified and it is commonly accepted that severance of a joint tenancy will occur when the sheriff sells the land, there was no reason why a WSS cannot be issued against a joint tenant’s interest in land.</p> <p>d. The challenge of having to particularise the exact interest of the judgment debtor is not insurmountable as the courts were capable of deciding this in the event of a dispute.</p>
3	<p><i>Chan Lung Kien v Chan Shwe Ching</i> [2017] SGHC 136</p>	<p>The High Court decided to follow <i>Malayan Banking</i>, and also gave additional reasons for disallowing a WSS to attach to a joint tenant’s interest in property:</p> <p>a. By focusing on the interest that could be seized at a later stage after the severance of the joint tenancy instead of the exact interest seized when the WSS was issued, <i>Chan Shwe Ching</i> implicitly recognised that there was nothing for the WSS to bite onto until the joint tenancy was converted into a tenancy in common (i.e. severed).</p> <p>b. Before the court orders the issuance of a WSS, it must be satisfied that the interest sought to be seized was capable of being seized. If the nature of the joint tenant’s interest was such that it cannot be seized under a WSS, it could not be an answer to say that the joint tenant’s interest would be converted into that of a tenant in common which can be seized under a WSS.</p> <p>c. A seizure of the joint tenant’s interest in the property is not the same as seizure of the property itself. Therefore, it would not be possible to sell the property following the seizure of the joint tenant’s interest under a WSS without the agreement of all joint tenants.</p>

C. Prior difficulties when enforcing a WSS against a property held in joint tenancy

Clearly, the main roadblock to allowing a joint tenant’s interest in property to be taken in execution under a WSS is

the nature of a joint tenancy. In a joint tenancy, all joint tenants together own the whole property and are seen as one owner. The interest of each joint tenant is identical and lies in the whole of the property. No one joint tenant holds any specific or distinct share of the property. Therefore, joint tenants must act jointly to bind the estate which they hold jointly.

Further, the hallmark of a joint tenancy is the right of survivorship. A joint tenant has all the rights of ownership except the right to alienate his interest upon his death. A joint tenant cannot devise his interest in his will because the right of survivorship will take precedence over any testamentary disposition. A joint tenant can dispose of his interest only during his lifetime upon severance of the joint tenancy and creation of a tenancy in common, which notionally demarcates his undivided share.

Without severing the joint tenancy, the following inconsistencies between the nature of joint tenancy and the mechanism of a WSS stood in the way:

- a. There would be no distinct interest for the WSS to attach to or be executed against.
- b. Even if a WSS was registered on the judgment debtor's interest, held in joint tenancy, the Sheriff would not be able to sell the judgment debtor's interest without the consent of all joint tenants.
- c. The right of survivorship meant that the WSS may yield nothing if the judgment debtor passes before the joint tenancy is severed.

By holding that a joint tenancy is severed upon registration of a WSS (in execution of a judgment debt on a joint tenant's share in immovable property), the inconsistencies due to the nature of joint tenancy are removed. Upon severance, the judgment debtor's interest in the property (previously held in joint tenancy) becomes identified, and is a distinct one on which a WSS can attach.

A joint tenant has a real ownership interest which is capable of immediate alienation without the consent of the other joint tenant(s). By severing the joint tenancy upon registration of a WSS, it will no longer appear incompatible with the nature of the joint tenancy to hold that a joint tenant's interest in land is exigible to a WSS. Upon severance, the seizure of the judgment debtor's interest would also no longer be seen as a seizure of the interest of the other co-owner(s), who remain free to deal with his / their aliquot share independently of the debtor.

D. Legal effect of registering a WSS after Peter Low v Danial Patrick Higgins

A WSS against a joint tenant's interest in land confers real value to a judgment creditor.

Upon registration of a WSS, the joint tenancy is severed, and the judgment debtor's interest in the property is seized. The sheriff can sell the interest of the debtor, which has been seized by a WSS.

Although the WSS (executed only over the debtor's share) does not allow the sheriff to sell the land as a whole, it confers a real benefit to the judgment creditor. It prevents dealings in the land by the other 'innocent' co-owner(s), which may serve as an incentive for the 'innocent' co-owner(s) to:

- a. settle the judgment debt so as to get the WSS lifted;
- b. buy over the debtor's share from the sheriff; or
- c. consent to the sale of the whole property by the sheriff to unlock the full economic value of his / their aliquot share.

The severance of the joint tenancy may be reversed in the event the judgment debtor makes payment to the creditor (i.e. satisfies the debt) and extinguishes the WSS prior to execution of a sale of the property.

Conclusion

Creditors who have commenced legal proceedings and obtained judgements or orders against their debtors can now enforce such judgments or orders by obtaining a WSS against the judgment debtor's interest in jointly-owned property (regardless of whether such interest is held under a joint tenancy or tenancy in common).

This creates additional avenues of enforcement for creditors and may make it easier to collect on outstanding judgment debts.

Dentons Rodyk's disputes team has extensive experience on debt recovery and enforcement of judgements, and are available to answer any questions you may have.

Dentons Rodyk acknowledges and thanks senior associate Ling Yi Quek for her contribution to the article.

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