NOTES OF CASES

CPF SAVINGS AND BANKRUPTCY

Chase Manhattan Bank (National Association) v. *Central Provident Fund Board & Ors.*[1]

Introduction

ONE of the permitted uses of the moneys standing to one's account with the Central Provident Fund (CPF) is the purchase of immovable properties. The Central Provident Fund Act[2] (the Act) permits its members to withdraw money standing to their accounts to pay for the purchase of immovable property, to service the repayment of a loan taken to finance the purchase and to pay for related costs and expenses such as stamp duty and legal fees.[3] One stated reason for permitting the use of CPF savings for the purchase of property is to enable CPF members to invest in property to offset the effects of inflation[4] since the interest paid by the CPF Board is generally less than the rate of inflation. By permitting withdrawals for this purpose the original objective[5] of ensuring retirement benefits for its members has not been deviated from for the Act has provisions safeguarding the CPF "nest-egg". Repayment of the sums withdrawn together with the interest the sums would have earned if they had not been withdrawn (accrued interest), is required if the property is sold before the CPF member reaches the age of fifty-five. This is ensured by imposing a statutory charge on the property.[6] The provisions governing the statutory charge are found in Part III of the CPF Act and the relevant regulations governing the approved scheme under which the withdrawal is made. If a CPF member purchases private residential property using CPF savings the relevant regulations would be the CPF (Approved Residential Properties Scheme) Regulations.[7]

1 [1989] 3 M.L.J. 335.
2 Cap. 36, 1988 Rev. Ed.
3 Section 21(1).
4 See *Singapore Parliamentary Debates.* (1981) vol.41, col. 210 (Mr.Ong Teng Cheong).
5 See *Proceedings of the Second Legislative Council of the Colony of Singapore* (1952) p. 193.
6 Section 21(1); hereafter the statutory charge shall be referred to as "the CPF charge".
7 No. S.159/1982 as amended by the Central Provident (Approved Residential Properties Scheme)(Amendment)Regulations 1987, No. S.64/1987.

In most instances, where a CPF member purchases residential property the sums withdrawn will only be one source of finance, and the remainder of the purchase price may be borrowed from a bank. A mortgage may be entered into to secure the term loan from the bank. This mortgage may have been executed prior to the withdrawal from the CPF Fund. Where this is the case, the CPF Board normally obtains priority for the statutory charge with the agreement of the prior mortgagees. This is usually achieved by a deed of postponement under which the prior mortgagees agree to rank subsequent to the statutory charge. In the event of the sale of the property by that member before he has attained the age of fifty-five, the CPF Board receives repayment of the withdrawals and accrued interest, and the bank receives the amount outstanding on the loan. The mortgagees and other creditors of the CPF member would thus be interested in the existence of the statutory charge and when it ceases to have effect since it has implications on the amount available to them.

If the sale mentioned earlier occurs after the CPF member has attained the age of fifty-five, the circumstances surrounding the statutory charge would be different. When that CPF member attains the age of fifty-five, he is entitled to withdraw all his CPF savings except for the minimum sum.[8] At such time, he may apply to the CPF Board to have the statutory charge cancelled, or he may do so when he sells the property at which time cancellation would be required by the purchaser.

An instance which would be of particular concern to the CPF member's mortgagees and creditors would be his bankruptcy. The existence of the statutory charge over the property purchased by the CPF member would have great implications for them at that time. Under the Act, where a CPF member is an undischarged bankrupt, the general rule is that no withdrawals of his CPF savings is possible.[9] However, the CPF Board and the Minister for Labour are vested with the discretion to permit the bankrupt CPF member to withdraw his savings subject to certain conditions.[10] Regulation 20(1)(d) of the CPF (Approved Residential Properties Scheme) Regulations provides that all moneys withdrawn by a member together with any interest which have accrued but for the withdrawal shall become due and payable to the CPF Board when the member is adjudged bankrupt. The charge would obviously cease to have effect when repayment is made pursuant to regulation 20(1)(d).

If he becomes bankrupt after attaining the age of fifty-five, the effects of bankruptcy on the statutory charge are unclear. As an undischarged bankrupt he would not be entitled to make withdrawals. This would have a direct effect on any moneys in his CPF account. Yet upon attaining the age of fifty-five, he would have been entitled to withdraw his savings and the sum, the repayment of which is secured by the statutory charge, has already been earlier withdrawn under an approved CPF scheme. The effect of regulation 20(1)(d) seems to be that repayment of the sum withdrawn together with the accrued interest is necessary.

8 See generally sections 15(6), (8), and sections 21(1),(3) and (7).
9 Section 25(1).
10 Section 25(2).

On the other hand, section 21(10) read together with regulation 20(3) and section 15(2)(a) gives rise to the inference that the statutory charge shall cease to have effect. Section 21(10) provides that the statutory charge shall cease in three instances, of which the relevant one is when repayment is no longer required by regulations made under section 56. Regulation 20(3) provides that this sum of money shall cease to be payable to the CPF Board on the death of the member or when the member is entitled under section 15 of the Act to withdraw his savings. Section 15(2)(a) provides that a member is entitled to withdraw his savings when he attains the age of fifty-five.

These provisions give rise to a perplexing issue as to whether the statutory charge ceases to operate once a member reaches fifty-five by virtue of regulation 20(3) and section 15(2)(a), or continues in force with the CPF Board entitled to repayment of the sum. The interesting question of the effect of bankruptcy after the age of fifty-five on the statutory charge was addressed by the recent decision of *Chase Manhattan Bank (National Association)* v. *Central Provident Fund Board & Ors.*, where it arose in the specific context of the CPF (Approved Residential Properties Scheme) Regulations.

The Facts

Two CPF members, L and N,[11] purchased a property using CPF funds withdrawn from their accounts. This resulted in the creation of a statutory charge under section 21 of the Act ("the CPF charge"). A mortgage was also created in favour of the CPF Board to secure the repayment of the amount withdrawn from the CPF ("the CPF mortgage"). An earlier loan had been taken by L and N from the plaintiffs and there was a prior mortgage. A deed of postponement was executed whereby the CPF charge and the CPF mortgage were accorded priority over the plaintiffs' mortgage.

The matters with which the decision concerned itself came about when L became bankrupt one year and three months after attaining the age of fifty-five. Agreement was reached for the sale of the property but the proceeds to be realised were insufficient to satisfy all the secured creditors, namely the CPF Board and the plaintiffs. The plaintiffs made a formal application for the cancellation of the CPF charge and a declaration that the CPF charge had ceased to be in force by operation of law. They also sought directions from the court about the distribution of the proceeds of the sale. They also argued that the CPF mortgage was no longer enforceable. The plaintiffs based their case on sections 15, 21(1) and 21(10), and regulation 20(3) of the CPF (Approved Residential Properties Scheme) Regulations. It was contended on their behalf that according to section 21(10) the CPF charge only continued to have force until, amongst other instances, repayment of the moneys secured by it were no longer required by regulations made under section 56 of the Act to

[11] Lim Tek Pin and Ng Lai Keng respectively.

be repaid. According to regulation 20(3) of the CPF (Approved Residential Properties Scheme) Regulations repayment was not required when the member became entitled to withdraw his CPF savings under section 15 of the Act.[12] Thus the plaintiffs argued that the CPF charge had automatically lapsed and the CPF mortgage was unenforceable as the mortgage incorporated the same provisions of the Act, linking it to the charge, sharing its fate.

The defendant argued the converse that the charge did not lapse nor could it be cancelled. The contention was based on an alternative construction on the provisions of the Act and its regulations in the light of the object of the Act in giving specific protection to the rights of the members. It was argued that regulation 20(3) being delegated legislation "cannot override" the main Act. The key sections of the main Act referred to were sections 23 and 25. Section 23 provided protection of a CPF member's contributions and withdrawal from being attached for any debt or claim. Section 25 restricts withdrawals by bankrupt CPF members from their accounts. Both sections were relied upon to put forward a general argument that the Act was for a special purpose with specific protection for members' rights. The specific argument was that regulation 20(3) was be read subject to section 25 - that is, where the member has become bankrupt after attaining the age of fifty-five, the intention was for the charge to remain until such time the sums it secured have been decided by the CPF Board to be no longer required to be repaid. Hence, even though regulation 20(3) states that the sums "shall cease" to be repayable to the CPF Board it should be construed as "shall be *liable*[13] to cease" to be payable as opposed to the plaintiffs' assertion that they ceased to be payable. The defendant contended that this would be consistent with the "plain words"[14] of the Act namely sections 23 and 25.

The Decision

Yong Pung How J. decided in favour of the plaintiffs, agreeing with the arguments put forward by them. Of the defendant's construction of regulation 20(3), Yong J. held that, on construing the Act as a whole, section 25 only applied where L was an undischarged bankrupt before attaining the age of fifty-five. Further, he held that regulation 20(l)(d), which requires that the sum withdrawn and the accrued interest shall become due and payable to the CPF Board if the member is adjudged bankrupt, only applies where bankruptcy occurs before the attainment of the age of fifty-five. Therefore regulation 20(3) is to be given effect to.

[12] This is one of three contingencies in regulation 20(3) under which repayment is not necessary.
[13] Emphasis added.
[14] See *Chase Manhattan Bank,* above, n. 1, at p. 336G.

Comments

This decision is of great interest for various reasons. It is of interest because of its implications to institutional financing of the purchase of property. Yong J.'s decision favours the banks who need not worry about the CPF charge under section 21(1) securing the purchase of immovable property in instances of a CPF member becoming bankrupt after attaining the age of fifty-five. It is also interesting for underlying the decision is a question of the intention of Parliament and the extent of protection extended to the CPF member's savings, withdrawals and rights acquired therewith.

Effect of Bankruptcy After the Age of Fifty-five on the Statutory Charge

The views of the plaintiffs and the defendant differed primarily on the effect of bankruptcy on the CPF charge where the CPF member has become bankrupt after the age of fifty-five. The plaintiffs' arguments would succeed if the discretion given to the CPF Board when a CPF member becomes bankrupt is limited to bankruptcy prior to the age of fifty-five. Essential for this result, regulation 20(1)(d), which provides that sums secured by the CPF charge had to be repaid in the event of bankruptcy, must be construed to refer to bankruptcy prior to the age of fifty-five. This regulation was the only obstacle to their case because regulation 20(3) could be interpreted literally to give effect to their contention. On the other hand, the defendant was of the view that in cases of bankruptcy after the age of fifty-five, the discretion vested in the CPF Board and the Minister under section 25 still applied. For further support, they also relied on section 23. It is proposed to examine Yong J.'s treatment of the defendant's arguments since the decision on the validity of the CPF charge is contingent on the rejection of the defendant's interpretation of the provisions.

Yong J. dealt with the defendant's arguments briefly. He said that "(t)he Act must be read as a whole, however, and a construction made of all the parts together." In his opinion section 25 must be restricted in its scope to CPF members who were undischarged bankrupts before they attain the age of fifty-five years.[15] He did not address the argument based on section 23, only making mention of it in the early part of his judgment.

On closer examination of sections 23 and 25 it would appear that Yong J. was correct in his conclusions. Section 23 does not advance the defendant's case. Of the four subsections, subsections (2) and (4) are the only provisions which, *prima facie,* confer protection from bankruptcy. Subsection (2) deals with precious metals and securities purchased by a member under an approved scheme for the withdrawal of moneys from the CPF Fund. It provides that the precious metals, securities or proceeds from the sale of the precious metals and securities which

[15] See *Chase Manhattan Bank,* above n. 1, at p.338A-B.

a member is obliged to repay into the Fund "shall not pass to the Official Assignee on the bankruptcy of such member, and if such member is adjudicated a bankrupt or is declared insolvent by a court, such precious metals, securities or proceeds shall be deemed not to form any part of the property of the member." It only protects the precious metals and securities which have been acquired prior to the age of fifty-five since a CPF member need only go through an approved scheme be-fore he attains the age of fifty-five. Section 23(4) concerns itself solely with the contributions to the CPF Fund and the interest thereon. These are protected from bankruptcy. Contributions would include contribu-tions to the CPF Fund after the bankruptcy and past contributions which have not been withdrawn from the CPF Board.

Section 23(1) only provides protection over withdrawals and the rights acquired by a CPF member from being assigned, transferred, attached, sequestered or levied upon for or in respect of any debt or claim whatsoever. It makes no reference to bankruptcy unlike section 23(2). Furthermore, it is stated in the opening words of the subsection that it is to be read subject to any contrary provision in regulations made under section 56 which would include regulation 20. Hence, it does not confer any protection from the Official Assignee.

Section 25, on the other hand, places discretion on the CPF Board to permit withdrawals in the case of members who are undischarged bankrupts. Subsection (1) provides that as a rule no withdrawal by a bankrupt CPF member shall be possible. This rule is qualified by the discretion vested in the CPF Board and the Minister, in subsections (2) and (3) as well as in any regulations made under section 56, to permit withdrawals subject to conditions which may be imposed on the members. Section 25 does not specify whether it is restricted to bankruptcies prior to the age of fifty-five, but it would appear to be logical to restrict its operation to this category. It would be impossible to prevent the withdrawals after they have taken place when the CPF member has withdrawn his moneys at the age of fifty-five and then becomes bankrupt. After all, not all withdrawals are identical to those in *Chase Manhattan Bank* tied up with immovable property on which the CPF Board has a charge and a mortgage. There are those who withdraw their moneys on attaining the age of fifty-five and subsequently become bankrupt.

Therefore the sections relied on by the defendant do not expressly provide protection in instances of bankruptcy after the age of fifty-five except for the case of precious metals and securities acquired with with-drawals prior to the age of fifty-five in section 23(2). *Prima facie,* it would appear that section 23(2) would protect the precious metals and securities from bankruptcy proceedings after the age of fifty-five as there is no "cut-off date for the protection. The proceeds of sale of such precious metals and securities after the age of fifty-five are probably not protected as the member will not be "obliged to repay"[16] such sums into the fund. However, the presence of the words "obliged to repay" qualifying

[16] Section 23(2).

the protection over the proceeds of sale, would incline one to the construction that the protection in the section over the precious metals and securities themselves is similarly limited and that the protection does not extend to bankruptcy after the age of fifty-five.

The defendant's argument based on the "plain words" of the Act is not substantiated by the sections cited by them. The related argument raised by the defendant was that the delegated legislation in the form of regulation 20(3) cannot override the primary Act. This also fails because the intention of the Act, which the regulation is supposed to contravene, cannot be demonstrated in sections 23 and 25. Moreover, the wording in sections 23 and 25 also undermines the argument. In various places, the sections expressly provide that their operation is subject to regulations promulgated under section 56. One glaring instance of this is in section 25(1). It begins with "Subject to ... any regulations made under section 56...." Section 23(1) also begins thus: "Except as may be provided for in regulations under section 56...." The presence of these words are not odd for it is not uncommon for an Act to be subject to the delegated legislation. Delegated legislation has statutory force and is effective so long as it does not, amongst other things, override the enabling Act.[17] However, it cannot be said to be overriding the enabling Act in this case where the enabling Act has been expressly subjugated to the delegated legislation on certain points.

Underlying Policy Considerations: In the light of the foregoing, it is not surprising that the construction advanced by the defendant of the operation of regulation 20(3) was rejected by the learned judge. There is an interesting question posed by this decision - whether there is a gap in the legislation and if there was an intention not evinced in the Act for such protection to be incorporated. Related to this is a question whether protection should extend to instances of bankruptcy after the age of fifty-five in cases similar to *Chase Manhattan Bank.* It would not have been difficult for a lay person to be under the misconception that all CPF savings are inviolate and protected from creditors and bankruptcy. A contributing factor to this idea could be the measures introduced in Parliament to protect the moneys standing to a CPF member's account. One example was the introduction of the Home Protection Insurance Scheme, the aim of which was to prevent instances occurring where CPF members who are using their CPF moneys to repay mortgages lose their homes if repayment of the loans cannot be met because of death or permanent incapacity.

The legislative history of the provisions dealing with the bankruptcy of the CPF member does not reveal a gap in the legislation. The predecessor to section 25 was only recently substantially amended in 1980. Section 14(3) of the Central Provident Fund Ordinance[18] (as it then was) provided that if a CPF member (then called an employee) was adjudicated bankrupt or was declared insolvent by judgment of the Court, his contributions

[17] See Bennion, *Statutory Interpretation* (1st ed., 1984), at p. 133.
[18] *Laws of the Colony of Singapore,* 1955 Ed., Cap. 150.

to the CPF Board and interest thereon should be deemed to be impressed with a trust in favour of the persons entitled to the savings on his death. His future contributions after being adjudicated bankrupt or declared insolvent were not to form part of his after acquired-property. His CPF savings would only go to the persons entitled to them upon his death. The provision did not expressly state that it was confined to bankruptcy before the age of fifty-five. There was no restriction on withdrawal once evidence was furnished that the CPF member had attained the age of withdrawal.[19] Hence, the situation then was no different from the present situation under section 25 and the same arguments raised earlier would apply. The substantial change made in 1980 was to alleviate the hardship to the bankrupt CPF member and his family. The bankrupt CPF member prior to the amendment in 1980 could not have access to his savings to purchase any housing for his family, to sustain himself or his family (particularly in cases where the member has attained the age of fifty-five or is incapacitated from working) even though his savings may be substantial.[20] The amendment was to vest discretion on the CPF Board and the Minister to permit withdrawals by bankrupt CPF members. Nothing was mentioned concerning bankruptcy after the age of fifty-five. If this had been intended there is a gap in the Act.

However, it is doubtful if it is in the scheme of things. The original purpose of the CPF fund is served when the CPF member receives his retirement benefits. On attaining the age of fifty-five, he is entitled to withdraw his retirement benefits. The manner in which he disposes of it should not be of concern. The aim of the Act has been to safeguard these retirement benefits to ensure their safe transmission to the CPF member, or in the event of his death, or bankruptcy prior to the age of fifty-five, to his family or nominees. Protection of contributions, withdrawals and rights acquired therewith[21] from creditors ensure that the retirement benefits go to the CPF member. His creditors may recover their debts through other sources. If his creditors are not satisfied and wish to recover their debts through bankruptcy proceedings, they may do so but they shall not be satisfied by any CPF moneys, whether withdrawals or contributions. Meanwhile, the bankrupt CPF member cannot without difficulty withdraw his moneys.[22] The original intention of these measures in section 14(3) of the Central Provident Fund Ordinance was "to protect his savings from seizure by his creditors, thereby protecting the interest of his beneficiaries when he dies."[23] The present position under the Act still safeguards the interest of his family and his nominees on his death. Herein one sees the CPF scheme looks to interests other than the CPF member's alone. In the event of death or bankruptcy the preference is for the moneys to go to the family members or those who have been nominated. These measures are justifiable on the basis of social responsibility and particularly since the CPF moneys through standing to his account are still in the care of the CPF Board. His interest in it is contingent on certain conditions being satisfied.

[19] Section 15(2).
[20] See *Singapore Parliamentary Debates,* (1980) vol. 39, col. 1416.
[21] Section 23.
[22] Section 25.
[23] See *Singapore Parliamentary Debates,* (1980) vol. 39, col. 1416.

Where a CPF member attains the age of fifty-five, the considerations are different. Once he makes his withdrawal, the CPF moneys withdrawn are no longer in the care of the CPF Board. The member then receives his benefits which have been in the custody of the CPF Board. The use of the moneys is dependent on his wisdom and the soundness of his decisions. Hence, should he become bankrupt there should be no protection. To protect the CPF moneys after the age of fifty-five when they have been withdrawn is neither realistic nor workable. It is not realistic in that protecting the CPF member's moneys from his creditors would disadvantage them in instances where the debts may have arisen from the CPF member's lack of frugality or wisdom in his management of funds. It is also impracticable because it would be an attempt in most instances to protect the savings when it is more likely than not that the CPF member would have squandered his moneys. Any protection then would not secure any moneys for his family except when a CPF charge or security is involved.

The interests of family members should only be protected against mishaps happening to the CPF member prior to the age of fifty-five. Where he has attained the age of fifty-five and withdrawn his savings, the manner in which these savings are to be distributed to his family would be the responsibility of the individual. The issue of the entitlement of his nominees does not come into the picture since the nominations are given effect to should the member die prior to withdrawal. Once withdrawn, the distribution on his demise should be in accordance with his will, if any, or with the Intestate Succession Act.[24]

There is, therefore, no reason for protection of the CPF savings once the CPF member has assumed responsibility for them. Presently under the Act and its regulations as illustrated in *Chase Manhattan Bank,* it appears that the CPF savings leave the care of the CPF Board once the CPF member is entitled to withdraw his savings at the age of fifty-five. The CPF member is deemed to have assumed responsibility for his moneys when he attains the age of fifty-five. Hence, the statutory charge securing the repayment of the withdrawal used to purchase property ceases to have effect.

If the desired result is that the sum be protected and the statutory charge continue to have force beyond that date, legislative change is necessary. It is possible for the sum to be protected until a later date. This later date could be either when the CPF member has applied to withdraw his savings or when an application is made to discharge the charge. Extending the protection to a later date than what is presently under the Act would not be untenable. On the contrary, it is basically a policy decision whether to draw the line at the date of entitlement to withdraw or at a later date. The considerations applicable after a CPF member attains the age of fifty-five have been looked at earlier, and objection to extending protection to the CPF member and his moneys after the age of fifty-five would arise if the measures safeguarded the

[24] Cap. 146, 1985 Rev. Ed.

moneys when they are in his hands - when they should be his responsibility. Setting a later date as suggested would not contravene this. There is little difference, apart from time, in granting the protection until the date of entitlement or extending it to either one of the suggested later dates.

Fixing the date at the date of application to withdraw would merely be observing a distinction between savings which are actually withdrawn and savings which the CPF member is entitled to withdraw but, which are, nonetheless, still in the care of the CPF Board. Such a distinction is possible since there are instances whereby a CPF member may still have funds in the care of the CPF Board after having earlier withdrawn sums to acquire property. Although a CPF member has attained the age of fifty-five, he may opt to only withdraw part of his CPF savings or he may still contribute to the fund if he is employed. Where the CPF member has opted not to withdraw his savings, the provisions under the Act protecting contributions would extend beyond the age of fifty-five; and the CPF charge over any property he may have acquired with CPF funds withdrawn prior to attaining the age of fifty-five should not cease to have effect. The CPF savings withdrawn for the purchase of property prior to the age of fifty-five and represented by the property subject to a CPF charge would be treated on the same footing as CPF savings standing to his account and not withdrawn at the age of fifty-five. The decision by the CPF member not to withdraw his CPF savings would then mean that the CPF savings in his accounts and the property representing his earlier withdrawal are still in the care of the CPF Board.

The second date is also possible since at present some CPF members allow the charge to continue on the land register until the time when they sell the property. At that time, at the behest of the purchaser or according to the circumstances, an application is then made to the CPF Board for the charge to be removed. The step of applying for the discharge of the statutory charge would be an indication from the CPF member that he is assuming responsibility.

The Automatic Lapsing Of The CPF Charge

Having rejected the defendant's construction of the provisions, Yong J. concluded that there was no need to repay the CPF moneys and proceeded to deal with the effect of this on the statutory charge. He held that the CPF charge ceased to continue in force since there was no need to repay the CPF moneys. The CPF mortgage being linked to the CPF charge suffered the same fate.

Leaving aside discussion on the requirements for the removal of the securities from the land register for the time being and looking at the enforceability of the CPF charge and the CPF mortgage, Yong J.'s reasoning is right. It would be in line with the concept of security. Securities, whether in the form of mortgages or charges, are obligations in addition to the primary obligation to repay a sum of money. As additional obligations, they should cease to be enforceable once the primary obligation ceases to exist for whatever reason. This basic nature of a security has been reiterated by various writers. Sykes pointed out that the "general concept of security involves a transaction whereby a person to whom an obligation is owed by another person called the 'debtor' is afforded, in addition to the personal promise of the debtor to discharge the obligation, rights exercisable against some property of the debtor in order to enforce discharge of the obligation."[25] Salmond said of the charge (he called it a lien) that it was "merely the shadow, so to speak, cast by the debt upon the property of the debtor."[26]

This reasoning would appear to apply to the CPF charge and the CPF mortgage where the sum secured is in reality not real debt as such, but, debts created by statute since the CPF savings belong to the CPF member who is under the obligation to repay. The primary obligation to repay in *Chase Manhattan Bank* ceased once L attained the age of fifty-five by virtue of Section 21(10) and regulation 20(3). Thereupon the additional obligations embodied in the CPF charge and the CPF mortgage would also cease to be enforceable.

The fact that the securities in this case involved a charge and a mortgage under the Land Titles Act (the LTA)[27] does not detract from that reasoning. The CPF charge and the CPF mortgage are governed by sections 63(2) and 63(1) of the LTA respectively. The instrument of charge under the LTA may be used to charge registered land to secure the payment of a rentcharge, annuity, or other periodical sum or of any money other than a debt. It is a security device. There is no transfer of property involved. The mortgage under the LTA is not a true form of the classical mortgage in common law for the mortgage under section 63(3) does not involve the transfer of land to the mortgagee. Section 63(3) clearly states that a mortgage shall not operate as a transfer of the land mortgaged but shall only operate as a security and, in this respect, is more in the nature of a charge.[28] Thus the reasoning would apply. The securities, the CPF charge and the CPF mortgage, cannot survive the debt.

Turning attention to the cancellation requirements for the CPF charge, one finds the remarks of the learned judge curious. His remarks were made as he decided on the additional issue whether the CPF charge ceased by operation of law or continues until it is cancelled. He said:

> "The wording of s. 21(10) is not entirely satisfactory, and plaintiffs' counsel took pains to compare the meanings of the words 'until' and 'if' in the sentence, and to comment on the unsatisfactory syntax arising from the use of the latter to introduce the third contingency under that subsection. In my opinion, the third contingency relates to the occurrence of the events mentioned in s. 22(e), and that section specifically requires an application to be made for a statutory charge to be cancelled. There is no such requirement in respect of the first

25 Sykes, *The Law of Securities* (4th ed., 1986) p. 3.
26 Fitzgerald, *Salmond on Jurisprudence* (12th ed. 1966) p. 430.
27 Cap. 157, 1985 Rev. Ed.
28 See Sykes, above, n. 25 at p. 222.

two contingencies where all monies have been repaid, or no longer required to be repaid. In such cases, the statutory charge which came into force by operation of law must cease to continue in force by operation of law."

He seems to be not only of the view that the charge ceases to have effect by operation of law, but also that there is no need for the charge to be cancelled. This can be observed from his specific mention that there is no need for the application for cancellation of the charge with respect to the first two contingencies in the section.

If this is a conclusion intended by the judge, it is objectionable. A differentiation should have been made between the substantial effect of the CPF charge - that it was not enforceable - and the procedural aspects of removing it from the land register. Although he rightly points out that section 21(10) does not refer to an entitlement to have the charge cancelled, he seems to have overlooked the fact that the statutory charge under section 21 on its creation has to be registered or notified in the appropriate register[29] which is effected by the lodgment by the CPF Board of an instrument in the form required by the Registrar.[30] This implies that even if the CPF charge in *Chase Manhattan Bank* should no longer continue to have force, there are steps to be taken to effect the removal of the charge from the relevant register - in this case, the land register under the LTA. The prescribed form is entitled "Application to Notify Discharge of Charge". This conclusion also contravenes one of the cardinal principles of the Torrens System - that the land register is conclusive evidence of the dealings with land on the register; that the register is everything.[31] Once the charge has been registered it would be reflected in the folium of the land register and this would be conclusive as to its existence until its removal.[32] Dispensing with the need for cancellation also goes against the grain for one would suppose that a charge notified or registered on the land register has to be discharged. Under the LTA, this is provided for in sections 71 and 72. The declaration which the plaintiff obtained merely has effect insofar as it states the position that both the CPF charge and the CPF mortgage are unenforceable. It does not and cannot effect the cancellation of the charge.

In the light of the foregoing it would appear unlikely that the learned judge intended to dispense with cancellation of the charge. Instead, the intended effect of the judgment is apparently that the charge would cease to have effect once there was no need to repay, that there is no need to wait till the cancellation is effected. That this is what is really intended, is evidenced by Yong J.'s concluding remarks that the CPF charge and the CPF mortgage both ceased to be enforceable. The fact, that they are both referred to together, implies that cancellation is required, for it is

29 Section 21(5) of the Act.
30 Section 21(4) of the Act.
31 See Baalman, *The Singapore Torrens System* (1961), pp. 44-45.
32 Sections 27 and 28 of the Land Titles Act; also see Baalman, above, n.31, pp. 44-45, and 50-51.

inconceivable that the mortgage need not be discharged. It is unfortunate that the remarks are capable of an alternative meaning.

Conclusion

This decision was probably a rude awakening to those who had assumed that CPF savings were sacrosanct. It has revealed that there is a loophole in the legislation if it is the intention to protect the CPF savings before and after the age of fifty-five. Whether it should be so or not, is another issue of social magnitude whether to penalise the creditors or to uphold a social responsibility, if there is one.

Until such time as legislative change is effected either in the Act or the regulations to extend the statutory charge under section 21 beyond the age of fifty-five, the effect of this decision is that statutory charge ceases to have effect once the CPF member reaches the magic age of fifty-five. The change, if effected, could extend the statutory charge until application for its cancellation which was desired by the defendant.

The decision has an unsavoury aspect from a conveyancing perspective if the decision is read to dispense with the need for cancellation of the charge. It has been earlier argued that this was not the intended effect of the decision.

TAN WEE LIANG*

* LL.B.(Sing.), LL.M.(Cantab.), Lecturer, Division of Legal Studies and Taxation, School of Accountancy and Commerce, Nanyang Technological Institute.