Kuok (Singapore) Ltd v Commissioner of Stamp Duties
[2003] SGHC 81

Case Number : OM 18/2002

Decision Date : 09 April 2003

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Nand Singh Gandhi (Nand Singh Gandhi & Co) for the appellant; Liu Hern Kuan (Inland Revenue Authority of Singapore) for the respondent.

Parties : Kuok (Singapore) Ltd — Commissioner of Stamp Duties

Revenue Law – Stamp duties – Instruments liable to ad valorem duty – Company in liquidation – Transfer of shares from company to sole creditor and shareholder

1 The appellant Kuok (Singapore) Limited ("KSL") set up Hovert Investments Pte Ltd ("Hovert") as a wholly owned subsidiary to acquire all the shares in Pacific Carriers Limited ("Pacific Carriers") which was a de-listed company in order to delist Pacific Carriers. After Pacific Carriers was de-listed, Hovert was placed into members' voluntary liquidation and Wong Kian Kok, Kon Yin Tong and Helen Hee Boe Hian were appointed its liquidators. This was on 20 September 2001.

2 Hovert had assets of $2 cash and 305,626,000 shares in Pacific Carriers worth $409,538,840. However Hovert had a liability to KSL for a sum equal to the value of its shares in Pacific Carriers.

3 By a letter dated 27 November 2001, one of the liquidators Wong Kian Kok wrote to KSL stating:

> We are agreeable to distribute the 305,626,000 ordinary shares of $0.50 each in Pacific Carriers Pte Ltd to the holding company, Kuok (Singapore) Ltd, in full and final settlement of the loan owing to the holding company for the amount of $409,538,840.
>
> Please let us have a letter of agreement from Kuok (Singapore) Ltd pertaining to the above arrangement and proceed to prepare the necessary transfer documents, which we will execute accordingly.

4 By a letter dated 29 November 2001, KSL replied stating:

> We refer to your letter dated 27 November 2001 and confirm our agreement to your distribution of 305,626,000 ordinary shares of $0.50 each belonging to our wholly-owned subsidiary, Hovert Investments Pte Ltd in Pacific Carriers Limited to us, in full and final settlement of the loan of $409,538,840 owing by Hovert to us.
>
> We enclose a share transfer form in respect of the abovementioned transfer of shares, duly executed by us, for your execution and return to us, together with certified true copies of the Forms 52 and 71 filed with the Registry of Companies, for our onward transmission to the Stamp Office.

5 The instrument of transfer stated that the transfer was:

> "by way of distribution in specie of the shares mentioned below to our sole shareholder Kuok (Singapore) Limited of No. 1 Kim Seng Promenade #07-01 Great World City Singapore 237994"

6 KSL then submitted the instrument of transfer to the respondent, the Commissioner of Stamp Duties, together with a cheque for $10 on the basis that the duty payable was $10 pursuant to

Article 3(h) of the First Schedule to the Stamp Duties Act (Cap 312) ("the Act").

7 The Commissioner was of the view that the instrument of transfer should be stamped with *ad valorem* duty under Article 3(c) of the First Schedule to the Act based on a consideration of $409,538,840. The rate under Article 3(c) was 0.2%. This would have attracted stamp duty of over $800,000. However, with a 30% rebate as an off-budget measure, the duty was reduced to $573,354.45.

8 KSL disagreed that Article 3(c) should apply and submitted the matter for adjudication and assessment. The Commissioner assessed the duty to be $573,354.45.

9 By a letter dated 14 August 2002, KSL objected to this assessment and applied for a review of the assessment. By a letter dated 31 August 2002, the Commissioner maintained his assessment.

10 KSL then paid the duty, as assessed, as it was obliged to do under the Act, but remained dissatisfied with the assessment. It then appealed to the High Court by way of the present Originating Motion, requiring the Commissioner to state and sign a case which was then done.

11 The principal question for determination is whether the instrument of transfer is chargeable with *ad valorem* stamp duty as a conveyance, assignment or transfer on sale of shares under Article 3(c) of the First Schedule of the Act or as a conveyance assignment or transfer of any property or any interest thereof not otherwise specifically charged with duty under Article 3(h) of the said First Schedule. I have already stated that the rate of stamp duty under Article 3(c) is 0.2%. With the 30% rebate mentioned above, the stamp duty is $573,354.45, if Article 3(c) applies. Under Article 3(h), the stamp duty is $10. With the same 30% rebate, it would be $7.

12 Although the instrument of transfer states that the transfer is by way of distribution in specie, it was not disputed that the Commissioner and the court could have regard to the exchange of correspondence constituting the agreement which led to the execution of the instrument of transfer. It was also not disputed that in the exchange of correspondence between Mr Wong and KSL, which I have set out above, the shares were to be transferred to KSL in full and final settlement of KSL's loan to Hovert.

Section 17 of the Act

13 As there was also a dispute on the effect of s 17 of the Act, I will deal with s 17 first. Section 17 states:

> 17.(1) When any property is conveyed to any person in consideration, wholly or in part, of any debt due to him or subject either certainly or contingently to the payment or transfer of any money or stock or other property whether being or constituting a charge or incumbrance upon the property or not, such debt, money, stock or other property shall be deemed to be the whole or part, as the case may be, of the consideration in respect of which the conveyance is chargeable with ad valorem duty.
>
> [The explanation below s 17 is not relevant for present purposes.]

14 Mr Liu Hern Kuan, Counsel for the Commissioner, submitted that where a situation comes within s 17, it is implicit that ad valorem duty is payable. He relied on *Ex parte Miller and Gray* [1892] 18 VLR 31. In that case, Hood J gave his view on s 97 of the Stamps Act, which is in pari materia with our s 17. Mr Liu cited part of Hood J's judgment at p 33:

> … It pre-supposes a document liable to duty, and then directs how that duty is to be ascertained, viz., by including the amount of the past debt in the consideration upon which the *ad valorem* duty is assessed.

15 In my view, Mr Liu had cited the above passage out of context. I refer to Hood J's judgment from p 32 to p 33 where he said:

> By the *Stamps Act* an *ad valorem* duty is chargeable on a "conveyance or transfer on sale of any real property," and by sec. 93 this expression is defined as including every instrument whereby any property, upon the sale thereof, is legally or equitably transferred to, or vested in, the purchaser. By sec. 97 it is enacted that when any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, such debt is to be deemed the whole or part (as the case may be) of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty. For the collector's view, it was first argued that sec. 97 covers this case, and itself imposes a duty on this transfer. *With this contention I do not agree. Sec. 97, in my opinion, is merely in aid of the general power of taxation, by affording a mode of estimating the duty in cases of executed considerations. It does not of itself create any obligation to pay duty*. It pre-supposes a document liable to duty, and then directs how that duty is to be ascertained, viz., by including the amount of the past debt in the consideration upon which the *ad valorem* duty is assessed. [Emphasis added]

16 Quite clearly Hood J's judgment militates, rather than supports, Mr Liu's contention. This part of Hood J's judgment was adopted by Fullager J in *Comptroller of Stamps (Vic) v Rylaw Pty. Ltd* 81 ATC 4,411 when Fullager was considering s 68(1) of the Stamps Act 1958 (Vic) which is in pari materia with our s 17.

17 Furthermore, in *Finance Corporation of Australia Ltd v Commissioner of Stamp Duties (Qld)* 81 ATC 4,396, the Supreme Court of Queensland reached a similar conclusion on s 52 of the Stamps Act 1894-1976 which is also in pari materia with our s 17.

18 So, at p 4,400, Campbell J said:

> In *Brewer v. Commr. of Stamps* (1903) Q.S.R. 143, Griffith C.J., in delivering the judgment of the Court, said that sec. 52 simply laid down a general rule for computing *ad valorem* duty in certain cases, that under the Schedule duty is only payable in a case of conveyance on sale and the rule of computation in sec. 52 had no application until the occasion for applying it is established. I consider that the decision in *Brewer's* case is an answer to Mr. McPherson's submission that sec. 52 makes the instrument dutiable because there is simply a conveyance for which the consideration is the discharge of an indebtedness.

19 At p 4,408, Macrossan J said:

> I do not accept one argument in the simple form in which it was put on behalf of the respondent Commissioner, that for a transaction merely to fall within the literal words of sec. 52 ensures that *ad valorem* conveyance duty becomes payable. Reference has still to be made to an appropriate Schedule heading to quantify the rate and further words found in the Schedule heading have to be given their due weight. To hold otherwise would be to act contrary to the statements of principle made in *Brewer and Anor v. Commr. of Stamps* (1903) Q.S.R. 143. …
>
> It was held that if any duty was to be payable it was still necessary for the transaction to match a relevant heading in the Schedule which apparently at that time did not contain the heading "Conveyance or Transfer … by way of gift of any property". It was held that the transaction could not

> be matched with the heading "conveyance on the Sale of any Property". *Brewer's* case also stated that sec. 52 operated as a computing section, although of course it did that only when it was otherwise applicable.

20 As Mr Nand Singh Gandhi, Counsel for KSL, observed, our s 17 does not even state the rate of duty payable.

21 In my view, an instrument does not attract *ad valorem* stamp duty merely because it comes within s 17. Furthermore, s 17 does not give rise to a prima facie presumption that *ad valorem* stamp duty is payable. It is for the Commissioner to first establish that the instrument attracts *ad valorem* stamp duty under some other provision of the Act before s 17 may apply. Accordingly, for the case before me, the Commissioner still had to establish that the instrument in question was caught under Article 3(c) of the First Schedule.

Was the instrument of transfer really a transfer on sale of shares

22 Articles 3(c) and (h) of the First Schedule state:

> 3. CONVEYANCE, ASSIGNMENT OR TRANSFER:
>
> (c) on sale of any stock of shares or any interest thereof, computed on the amount or value of consideration -
>
> for every $100 or any part thereof $0.20
>
> (h) of any property or any interest thereof not $10
>
> otherwise specially charged with duty

23 It was not disputed that the transfer of shares from one party to pay off a debt owing to another party would constitute a transfer on sale of shares. However, Mr Gandhi submitted that the position was different in a situation where the transferor company was in liquidation and the transferee was its sole creditor and also its sole shareholder.

24 In summary, Mr Gandhi submitted that in a liquidation:

> (a) the liquidator holds the assets of a company in trust,
>
> (b) the shareholders of the company are beneficially entitled in specie to the assets of the company, and
>
> (c) accordingly a transfer of the shares in Pacific Carriers by the liquidators of Hovert to KSL was a transfer by a bare trustee to the person beneficially entitled to the shares and hence did not come under Article 3(c) but 3(h).

I would add that Mr Liu did not dispute that if the transfer of the shares was really a distribution in specie instead of being in settlement of a debt, Article 3(c) would not apply.

25 I come now to some of the cases which Mr Gandhi relied on.

26 In *Shaw Savill v IRC* [1956] NZLR 211, the respondent had acquired all the shares in a company which was subsequently wound up voluntarily. All the debts of the company were paid by the

liquidator and the respondent requested the liquidator to transfer the land owned by the company to it. The liquidator duly executed a memorandum of transfer. The District Commissioner of Stamp Duties ruled that the transfer attracted stamp duty of £462 under s 79(a) of the Stamp Duties Act 1923 but the respondent contended that the transfer fell within the exception under s 81(d) being a conveyance by a trustee to a beneficiary and was chargeable with duty of 15 s only.

27 The case came before F B Adams J who said, at p 216 to 217:

> There was considerable argument on the question whether a liquidator is, or is not, a trustee, and numerous cases were cited. It seems that in some respects, or for some purposes, a liquidator is not, or may not be, a trustee, though he may, nevertheless, as in *In re Oriental Inland Steam Co., Ex Parte Scinde Railway Co.,* (1874) L.R.9 Ch.557, 559, be regarded as administering trust property. But, in my opinion, we are not concerned with that question here. It may be conceded that, up to the point of time when the appellant, being entitled so to do, demanded that the property should be transferred to it, neither the liquidator, nor the company could properly be described as holding the property in trust for appellant. The legal title was not in the liquidator, who was merely a person invested with statutory powers and charged with statutory duties which did not, up to the time when the demand or request was made, include a duty to transfer any property to appellant. The company, on the other hand, though the legal title was still vested in it, had no longer any powers exercisable otherwise than by the liquidator, and all its property was subject to his powers. I do not think it necessary to consider whether, during the normal course of the liquidation, it would have been correct to speak either of the liquidator or of the company, or of the two of them together, as holding this property in trust, whether for the appellant or otherwise. But I am clearly of opinion that, once the appellant made it clear, that, *as it was in the circumstances entitled to do*, it required the property to be transferred to it, the situation changed, and there immediately arose a trust for the appellant. No longer was it permissible for the liquidator or the company to do anything with the property but to transfer it to the appellant. The functions of the liquidator in relation to the property were then at an end, save only that there remained the duty to transfer. As for the company, it became a bare trustee of the legal title, its only power - exercisable at the moment by the liquidator - being to transfer it to the appellant.
>
> It will be observed that this view rests, not on the fact that the appellant's right to a transfer arose out of, and in the course of a liquidation, but on the simple circumstance that the appellant, *without any* purchase or *other transaction for value*, became legally entitled to demand a transfer of the property. The essential thing was the absolute legal right to a transfer, and not the relationship existing between the liquidator or the company on the one hand, and the appellant as a shareholder on the other. … [Emphasis added]

28 On appeal, Hutchinson J said, at p 228:

> Once one reaches the position in which the only remaining member of the company, *being in a position to call for the transfer* to it in specie of the land of the company, has called for such transfer, I agree with the other members of this Court and the learned Judge in the Supreme Court, and substantially for the reasons given by them, that, while the legal estate in the property still remains in the company, the beneficial interest in it is taken out of the company and is in the member: *In re Oriental Inland Steam Co., Ex parte Scinde Railway Co.,* (1874) L.R. 9 Ch.557; and that that is sufficient to establish the relation of trustee and beneficiary between the company and the member: *Hardoon v. Belilios*, [1901] A.C.118. That would bring the present transfer, in so far as it was a voluntary conveyance, or, if it were for an inadequate consideration, in so far as the inadequacy extended, within s.81(d). [Emphasis added]

29 Shorland J, another member of the Court of Appeal, said, at p 232 to 233:

> The circumstances which resulted in the beneficial ownership passing from the company to the respondent were, first, the company passed an effective resolution for voluntary winding-up and appointment of a liquidator. The effect was that, whilst the corporate state and corporate powers of the company continued (s.224 of the Companies Act 1933), its control passed into the hands of the liquidator, and its assets became impressed with the charge created by s.243 of the Companies Act 1933 which provides as follows:
>
> ….
>
> Next, *the liabilities of the company having been discharged*, its assets *then* stood charged with the statutory obligation of being distributed among its members.
>
> Finally, as the memorandum of association provided for distribution among the members, of property of the company in specie, the members being then entitled to call for distribution in specie in lien of proceeds on realization, did so; with the result that, from that moment, the company and the liquidator were bound to convey the legal estate which was all that remained vested in the company. [Emphasis added]

30 At p 234, Shorland J also said:

> In my view, once the respondent had required distribution in specie, the beneficial ownership which had been taken out of the company by virtue of the operation of s.243 of the Companies Act 1933 was to be found in the respondent, and the company, holding as it did the bare legal estate, the relationship of cestui que trust and trustee arose between the respondent and the company. It was urged that the relationship between the company and the respondent which arose by virtue of the operation of s.243 was no more than that of debtor and creditor; but, in my view, this submission fails to notice that, before the giving of the transfer, the respondent had become more than a creditor - it had become beneficial owner of property of which the company retained the bare legal estate.

31 It seems to me that *Shaw Savill* does not assist KSL. There is nothing there to suggest that the liquidator becomes a trustee of the company's assets for the shareholder immediately upon his appointment but rather that this situation arises after the debts of the company have been paid. The shareholder's right to require a transfer qua beneficiary arises after all the debts of the company have been paid.

32 In *Miller and Maund Pty Ltd & others v The Commissioner of Stamp Duties* (1959) Tas SR 94, the liquidation of a company proceeded till there was one creditor and one asset being a piece of land mortgaged to the creditor. The creditor agreed to accept the shareholders as its debtors in place of the company. Pursuant to a resolution of the shareholders, the liquidator conveyed the land to the shareholders subject to the mortgage. The Commissioner of Stamp Duties assessed the conveyance for *ad valorem* duty. The Full Court of the Supreme Court decided otherwise.

33 The facts are elaborated at p 96 and 97:

> In March 1958 when the three Miller Brothers were the only shareholders, one of them, Mr. Alan Miller - for himself and as agent for his brothers - interviewed the Manager of the Trustee Company [the creditor]. He told the Manager that the company was in voluntary liquidation and that he and his brothers as the only shareholders wished to take over the land the subject of the mortgage. The Manager asked whether all the brothers wanted was to take over the mortgage in the place of the company. Mr. Alan Miller said, "Yes" and the Manager said, "That's all right". *It is clear that here was an agreement between the Miller brothers and the Trustee Company that the company was to be released from*

> *its covenant to pay principal and interest, and, in lieu thereof, the Miller brothers agreed to pay*. That arrangement was possibly to be effective at once, or possible not until the land was conveyed to the brothers; we do not think that it matters which. The Trustee Company did not prove as a creditor in the liquidation. The Manager knew that if the company was wound up, it would have no assets. On 20 May 1958 the land was conveyed by the Company (by the liquidator) to the brothers as tenants in common in proportion to their respective shareholdings but subject to the mortgage…. The brothers gave no indemnity to the company or the liquidator in respect of the mortgage moneys.

34 At p 99, the Court said:

> In our opinion, the position in a winding-up *after all debts are paid* and the shareholders request a conveyance is well expressed by F B Adams J in *Shaw Savill* …. [Emphasis added]

35 At p 100 to 101, it went on to say:

> The duty of the liquidator, s.187 I., was to apply the property of the company in satisfaction of its liabilities and subject thereto to distribute the property among the members. Here, strictly, one liability was not satisfied out of the property of the company. In the strict sense, it could have been satisfied - by the liquidator - only by selling the land and paying it from the proceeds. If the shareholders had demanded a sale to them at a price sufficient to repay the mortgage and to meet all expenses, the liquidator could not have refused. The shareholders could have borrowed from the Trustee Company and re-mortgaged to them, or borrowed on mortgage from someone else or paid the amount out of cash. We think that the simplest way to test the matter is to regard it as though the shareholders had paid the debt to the Trustee Company and then called for the conveyance. Could the liquidator have refused to convey? In our view, no. The company by its liquidator would *then* have been in the position of having only the shareholders beneficially entitled and of being bound to carry out their directions. There is no difference from the company's point of view between a paying of the debt by the shareholders and a release of the company's liability for the debt (how it is arranged, to the company it does not matter). *Once the debt is released*, the company is a trustee for the shareholders and upon all shareholders giving a direction for conveyance the company is bound to convey. [Emphasis added]

36 At p 102 and 103, it said:

> … In our view, a conveyance from a liquidator on a winding up *in these circumstances* is not a sale or disposition of property for a purchase money or consideration in the nature of a price. The transaction is a conveyance to a person entitled in equity to the property conveyed. It is analogous to a conveyance by a trustee of a will or settlement to a beneficiary calling for a conveyance of the legal estate to him at the appropriate time. The person calling for a conveyance as beneficiary under a settlement may, in fact, have been the person who made the contract by which the settlement was made and may have found the price when the conveyance to trustees upon the trusts of the settlement was made. If he becomes entitled to call for a conveyance, he does so, not by virtue of his price but by the operation of the terms of the trust, a matter quite distinct from the transaction for which there was a consideration. [Emphasis added]

37 At p 104, the Court said that the facts in *Shaw Savill* were similar to those before it. However it must be remembered that in *Shaw Savill*, all the debts of the company had been paid before the transfer was executed by the liquidator.

38 The Court went on to say, at p 107:

> Finally, we consider the effect of the conveyance being subject to the mortgage debt, and the company being then or earlier released from the liability by the arrangement.

It seems to me that the reference to "the arrangement" was a reference to the oral agreement between the Miller brothers and the creditor to release the company from the debt in exchange for the obligation of the Miller brothers to pay.

39 At p 108:

> The conveyance was a disposition not of the land, but of the land subject to the debt. That was the only proprietary interest which was conveyed, the equity of redemption. The [oral] arrangement was nothing to do with the equity of redemption. Without any instrument, the mortgaged debt was released, thus avoiding stamp duty. Without any instrument, the shareholders agreed to pay the amount due under the mortgage, thus avoiding stamp duty. In our view, the release of the liquidator was not a consideration for the conveyance of the equity of redemption. It would have been the consideration for another document which was never prepared. If people can obtain the effect of dutiable instruments without bringing instruments into being, they escape the incidence of duty. …

40 In *Miller and Maund*, the liquidator might have been able to borrow from the shareholder to pay the creditor but that is not the position before me. Before me, KSL is both the creditor and shareholder. Besides, there, the property was conveyed to the shareholders subject to the debt and the debt owing by the company to the creditor was released without any instrument. Those are not the facts before me.

41 Mr Gandhi also relied on *Henty & Constable (Brewers) Ltd v IRC* [1961] 3 All ER 1146. He submitted that in that case, the conveyance by a liquidator to a shareholder (being a transfer from a trustee to a beneficiary), attracted only nominal stamp duty as a "conveyance or transfer … not hereinbefore described" and did not attract *ad valorem* duty as a conveyance on sale (see para 10 of Mr Gandhi's written submission). However, a consideration of that case reveals that the facts there were different from those before me.

42 In *Henty*, vendor shareholders of a brewery company (referred to as the Constable company) entered into an agreement dated 17 April 1921 to transfer all their shares in the Constable company to a purchasing company in return for shares to be issued by the purchasing company. The share transfers were executed but not registered. There was no evidence to establish whether the share transfers had been stamped. If they had, then no *ad valorem* duty would have been attracted by the subsequent conveyance of the licensed premises. In accordance with the sale agreement, the vendor shareholders then resolved to wind up the Constable company voluntarily and authorised the liquidator to transfer the Constable company's assets to the purchasing company. Pursuant to this authority, the liquidator executed a conveyance of the Constable company's licensed premises to the purchasing company.

43 The Court of Appeal agreed that there was a sale by the vendor shareholders of their shares but the issue was whether the conveyance of the licensed premises was a conveyance on sale. In the circumstances, the Court held it was not. Thus, Danckwerts LJ said, at p 1152:

> This seems to me to be a sale of shares in the Constable company for shares in the respondent company as plainly as could be. But it is contended on behalf of the Crown that certain other provisions in the agreement, combined with the fact that the shares sold to the respondent company were never registered in that company's name, show that the true nature of the transaction was not a sale of the shares but a sale of part of the assets of the Constable company - the licensed premises -

> which were conveyed and assigned to the respondent company by the conveyance of Dec. 31, 1921. It is not suggested that there was any dishonest pretence about the transaction.

44 At p 1153, he said:

> … I do not think that the claim of the Crown can succeed unless they can establish that the sale and purchase of the shares was not a real transaction and was a cloak for a different transaction which would amount to a sale of the licensed premises, and, in my opinion, nothing of that sort has been established.

45 At p 1151, Donovan LJ said:

> It seems to me, therefore, essential to the Crown's case to establish that the share agreement was really a sham. If it could be shown that the bargain was really a sale of licensed premises in return for an issue of shares, the sale of the Constable company shares being a mere simulacrum or cloak to hide the real transaction, then, indeed, the conveyance would be a conveyance on sale. But if the share agreement takes effect according to its terms, the acquisition of the licensed premises was simply a consequence of the share transaction. Those premises were not themselves the subject of a sale, and so the words in s.54 "upon the sale *thereof*", are not satisfied.
>
> Since the Crown does not contend that the share agreement is a sham, it follows, in my opinion, that the appeal must fail.

46 I stress that Mr Gandhi did not take the position that the instrument of transfer of the shares executed in favour of KSL was in substance a distribution in specie. He accepted that it was to discharge the debt owed by Hovert to KSL but contended that nevertheless it did not attract *ad valorem* stamp duty for the reasons I have mentioned.

47 Mr Gandhi also relied on *Comptroller of Stamps (Vic) v Rylaw Pty Ltd* 81 ATC 4,411. I have already referred to this case above in the context of s 17 of the Act. Mr Gandhi's submission was that this case is authority for the proposition that the distribution of land to shareholders in satisfaction of a debt owed to them does not attract *ad valorem* stamp duty. However, again, the facts in that case were different from those before me.

48 In that case, Rylaw Pty Ltd ("Rylaw") was the company in liquidation as of 3 May 1979. All its debts had been paid or provided for out of money set aside, except for a mortgage debt, owed to an outside creditor on a piece of land, and a large debt owed to the shareholders of Rylaw. The debt owed to each shareholder was proportional to the number of shares each held in Rylaw. All the shareholders entered into an agreement under seal on 4 May 1979 ("the first agreement") between themselves that, inter alia, all the loans by them to the company were cancelled and that each would acknowledge to Rylaw and its liquidator that the loans had been cancelled and that none of them was entitled to payment upon the liquidation of Rylaw. On the same day, a second agreement was entered into, also under seal, this time between the shareholders and the company, in which the shareholders made the acknowledgement to the company in accordance with the first agreement, and requested the liquidator to transfer to them in specie the mortgaged land. Under clause 4 of the second agreement, the shareholders agreed with the liquidator and each other that they would contribute in appropriate portions "any further sums which may be required to be paid by the Company to satisfy its liabilities". On the next day, i.e 5 May 1979, the liquidator executed a transfer of the land, subject to the mortgage, to the shareholders as a distribution in the winding up.

49 One of the issues was whether the first agreement was a deed of gift which would attract a

certain stamp duty. That is not relevant in the case before me. On the issue whether the transfer of the land was a conveyance on sale, Fullager J said, at p 4,415 to 4,417:

> The question then arises whether the transfer of the present case was a "conveyance on sale". Mr. Nash contended that it was, for the reason that the kinds of "consideration" which will now make a transaction a sale under this legislation have been greatly expanded and include not merely pecuniary considerations (as it was originally confined) but a wide variety of things constituting money's-worth. It was contended that by virtue of sec.46(2) of the *Transfer of Land Act* 1958 there was implied into the transfer of the present case a covenant by each transferee with the transferor, binding the transferee to indemnify the transferor against all liability under the mortgage, and that this implied covenant in the transaction provided valuable consideration for the transfer instrument and made it a conveyance on sale chargeable with duty under sec.17(1) and Heading VI of the Third Schedule, the duty being quantified by application of sec.68(1).
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> In *Ex parte Finlay* (1884) 10 V.L.R. (Eq.) 68, the question was whether each transfer, for natural love and affection, by a father to his children, only some of whom were minors, of land which was subject to a mortgage under the *Transfer of Land Statute*, was, a "transfer not made bona fide for valuable consideration" within the meaning of sec.4 of the *Land Tax Act* 1877. It was held that each transfer was within this negative description notwithstanding that the *Transfer of Land Statute* made each adult transferee liable to indemnify the mortgagor under the mortgage.
>
> *Molesworth* J. at p.76, said this:
>
>> "So far as the adult children are concerned there may be a responsibility when they accept the property, but that will be by operation of law, and I have not a particle of evidence that that responsibility was ever thought of in the entire transaction. It is a valuable consideration which the ingenuity of counsel has discovered, but which the parties themselves never thought of."
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> The decision of *Molesworth* J. was on appeal upheld by the Full Court. *Holroyd* J. speaking for the Court said, at p.81:
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>> "… we are not aware of any case even under the Statute 27 Eliz., in which a settlement of an equity of redemption, made in consideration of natural love and affection only, not merely as expressed but in fact, has been held not to be voluntary because of the equitable obligation on the part of the grantees to indemnify the settlor against the mortgage debt, or even of an express covenant to pay it, which is held to be no more than an indemnity."
>
> His Honour said, of a gift of a mortgaged estate, that "the gift itself is not of an estate clear, but only *cum onere*, and no consideration moves from the donee in accepting the onus which is part of the gift". He added, at p.83, that the statutory obligation to indemnify was -
>
>> "an obligation attached to the gift, an incident of the thing given … The indemnity was not only not valuable to Mr. Finlay (for his children had nothing but the land); but it was not in fact the consideration for the transfers, or any part of the consideration."
>
> In the present case, it was certainly no part of any bargaining between the transferor and the transferees that the latter would indemnify the former against the mortgage debt. In my opinion, the giving of the statutory indemnity "was not in fact the consideration for the transfer, or any part of the consideration", and in my opinion it did not transform a distribution in specie by a liquidator into a sale, any more than the covenant to indemnify could transform a gift into a sale; for reasons indicated by the cases cited, the presence of a mortgage, with the resultant implied covenant to indemnify, is simply

> not the kind of *quid pro quo* which can make a transfer of the kind under discussion into a transfer on sale. …
>
> It seems to me to be quite clear therefore that, on both 4 May 1979 and 5 May 1979, all creditors (other than the mortgagee of the land and the shareholders of the company) had either been paid out or else had adequate provision made for them by the cash sums referred to. It is also clear that, as early as 4 May 1979, the shareholders had requested the liquidator to transfer to them in specie the land in question: see para. 1 of the Agreement being document C.2 [the second agreement] which is, of course, not the critical agreement in these proceedings and which no one contends attracts duty of itself. Therefore, immediately before the execution of the critical transfer dated 5 May 1979, the liquidator was bound to transfer the land to the shareholders, and not by virtue of anything that could be called a sale or a contract for sale but by virtue of the fact that the liquidation of the company was so far as relevant complete except for the distribution of the surplus property (the land) to the shareholders, in specie as requested. I think the better view is that the liquidator held the land on trust to convey it to the shareholders, but whether it was a trust or a mere statutory duty appears to me not to matter for the purposes of the present case. What matters in my opinion is that the liquidator was strictly bound and legally compellable to transfer the land in specie to the shareholders as part of his duty to distribute the assets of the company in the winding-up. In those circumstances it seems to me impossible to say that the implication of covenants implied by the *Transfer of Land Act* could have the effect of turning a distribution in the winding-up into a "conveyance on sale".
>
> The view which I have taken is in my opinion strongly supported by the decision and reasoning of the Full Court of the Supreme Court of Tasmania in *Miller & Maund Pty. Ltd. V. Commr. of Stamp Duties (*1959) Tas. S.R. 94, although of course the relevant statutes are different. …
>
> In the present case, in the winding-up, upon the request of the shareholders for a transfer in specie of a surplus asset, a trust arose binding the liquidator to transfer the asset, and it arose because of the shareholders' right to share in a distribution of assets. The critical transfer in the present case was in consideration of the fact that the property transferred to the transferees was in a real sense their own as soon as the request was made, and the transfer was not made in consideration of any covenants implied under the *Transfer of Land Act*. The springing into existence of the statutory covenants did not, in my opinion, transform the transfer into a transfer on sale, although there was in the language of another distinct statute "adequate consideration and money's-worth". For these reasons I have concluded that the transfer was not the subject of stamp duty.

50 In my view, the facts in *Miller & Maund* were not the same as those in *Rylaw*. In *Miller & Maund*, the shareholders gave no indemnity to the company or the liquidator in respect of the mortgage money. However, in *Rylaw*, the shareholders had agreed with the liquidator under clause 4 of the second agreement to contribute further sums which may be required to be paid by Rylaw to satisfy its liabilities. In my view, this was akin to an indemnity given to the liquidator even if it could be argued that it was not given to Rylaw as such.

51 Secondly, in *Miller & Maund*, the shareholders obtained an oral agreement from the creditor to release the company from the debt in exchange for the shareholders' obligation to pay the debt. There was no such agreement in *Rylaw*.

52 As the debt owing by Rylaw to the outside creditor was not discharged, I do not agree that the liquidator there was obliged to transfer the land to the shareholders even though it was transferred subject to the mortgage and even though clause 4 of the second agreement obliged the shareholders to provide such further sums as may be required to pay Rylaw's liabilities. The liquidator may have chosen to effect the transfer of the land because he was satisfied with the situation but, in my view,

he was not bound to act as requested. Indeed, he took a risk because the creditor might still have looked to Rylaw, and hence the liquidator, for payment of the debt if the shareholders did not pay it and the land was not sufficient to pay the entire debt.

53 It may be that the transfer in the case of *Rylaw* was not a transfer on sale because it was transferred subject to the mortgaged debt but that is not a matter I have to decide on as that is not the case before me.

54 I also note that in *Rylaw*, the debt owing to Rylaw's shareholders was released by the shareholders first and the transfer of the land to the shareholders was not in settlement of that debt. I therefore do not accept Mr Gandhi's submission that in *Rylaw*, the transfer to the shareholders was in satisfaction of a debt owed to them.

55 Mr Gandhi also submitted that in *Ayerst (Inspector of Taxes) v C&K (Construction) Ltd* [1975] 2 All ER 537, the House of Lords held that a company ceases to be the beneficial owner of its assets when it goes into liquidation and this view was accepted by Chan Sek Keong J (as he then was) in *Low Gim Har v Low Gim Siah* [1992] 2 SLR 593 in the context of revenue legislation but not necessarily in other contexts. This was because the facts in *Low Gim Har* did not involve revenue legislation but a dispute between two groups of beneficiaries of a testator who was a shareholder of a company which went into liquidation.

56 However, I am of the view that even if, for the purpose of revenue legislation, a company ceases to be the beneficial owner of its assets upon liquidation, it does not follow, as Mr Gandhi was implying, that its shareholders become the beneficial owners of its assets immediately upon liquidation.

57 For example, in *Ayerst* [1975] 1 All ER 162, Stamp LJ said, at p 165 to 166:

> Now, a liquidator in a liquidation has the duties imposed on him by the Companies Acts. The creditors and contributories are entitled to require him to carry out those duties and to deal with the company's assets in accordance with the statutory provisions. But I cannot equate that right with the beneficial ownership of the assets or of any particular asset falling to be administered in accordance with the Acts. It does not, in my judgment, in the least follow that because a person or collection of persons have the right to have a collection of assets sold and the proceeds applied indirectly for their benefit, he or they are the beneficial owners of each asset. Basic to counsel's submission is the proposition that a company in liquidation holds its assets on trust for its creditors and contributories, and accordingly that the creditors and contributories are the beneficial owners of those assets. Cross J, in the *Pritchard* case, took the view that once a company is in liquidation, the beneficial ownership of its assets is in suspense. With that view I whole-heartedly agree. To describe those for whose benefit the assets of a company in liquidation fall to be administered as beneficial owners of each of those assets is, in my judgment, a misuse of the English language. The creditors and shareholders in such a situation have no rights or powers, even collectively, to deal with a single asset or to direct how it shall be dealt with.
>
> There is some language in some of the cases - we were referred in particular to *Re Oriental Inland Steam Co* - to the effect that after liquidation a company's assets are subject to a trust, which no doubt is a convenient way of saying that the assets cease to belong to the company beneficially and become subject to the statutory provisions contained in the Companies Acts. I share the view of Romer J in *Knowles v Scott* that a liquidator does not hold the company's property on trust for its creditors and contributories; and the company itself, stripped as it is of all its rights, powers and obligations in relation to the property, cannot in my judgment be a trustee of it for the creditors and shareholders. The attempt to apply the conception of trustee and cestui que trust to the law relating to the

liquidation of companies so as to fix a company as a trustee of its assets for its creditors and contributories must, in my judgment, fail.

58 In the House of Lords, Lord Diplock delivered the only judgment and parts of Lord Diplock's judgment were cited with approval by Chan J in the case of *Low Gim Har*.

59 At p 602 to 603, Chan J said:

> … The legal position of a liquidator in England, whether the winding-up is compulsory or voluntary, (and, in this respect, the law in Singapore is the same) is summarized by Lord Diplock in *Ayerst (Inspector of Taxes) v C & K (Construction) Ltd*, at p 177, as follows:
>
> > (1) The custody and control of all the property and choses in action of the company are transferred from those persons who were entitled under the memorandum and articles to manage its affairs on its behalf, to a liquidator charged with the statutory duty of dealing with the company's assets in accordance with the statutory scheme (s 243). Any disposition of the property of the company otherwise than by the liquidator is void (s 227).
> >
> > (2) The statutory duty of the liquidator is to collect the assets of the company and to apply them in discharge of its liabilities (s 257(1)). If there is any surplus he must distribute it among the members of the company in accordance with their respective rights under the memorandum of articles of association (s 265). In performing these duties in a compulsory winding-up the liquidator acts as an officer of the court (s 273); and if the company is insolvent the rules applicable in the law of bankruptcy must be followed (s 317).
> >
> > (3) All powers of dealing with the company's assets, including the power to carry on its business so far as may be necessary for its beneficial winding-up, are exercisable by the liquidator for the benefit of those persons only who are entitled to share in the proceeds of realization of the assets under the statutory scheme. The company itself as a legal person, distinct from its members, can never be entitled to any part of the proceeds. Upon completion of the winding-up, it is dissolved (s 274).
> >
> > The functions of the liquidator are thus similar to those of a trustee (formerly official assignee) in bankruptcy or an executor in the administration of an estate of a deceased person. There is, however, this difference: that whereas the legal title in the property of the bankrupt vests in the trustee and the legal title to property of the deceased vests in the executor, a winding-up order does not of itself divest the company of the legal title to any of its assets.
>
> In *Ayerst*, the House of Lords rejected the argument that in a winding-up the company retained both the legal and beneficial ownership of its assets for the purpose of s 17(6)(a) of the Finance Act 1954. Lord Diplock, delivering the only judgment of the House, said (at pp 178-179):
>
> > The contention is that so long as a person, in whom the full ownership of property has once been vested, continues to retain the legal ownership he can only be divested of the beneficial ownership as a result of its becoming vested in some other person or persons. This does not occur except where a 'trust', in the strict sense as it was recognized in equity, is created in the property. Such a trust is not created by Pt V of the Companies Act 1948 upon the making of a winding-up order: since, for the same reasons as apply in the case of bankruptcy, the person entitled to share in the proceeds of realization of the company's property are not invested with the beneficial ownership of that property while it is still being administered by the liquidator.

> My Lords, I do not see how it can make any relevant difference that the legal ownership remains in the person in whom the full ownership was previously vested instead of being transferred to a new legal owner. Retention of the legal ownership does not prevent a full owner from divesting himself of the beneficial ownership of the property by declaring that he holds it in trust for other persons. I see no reason why it should be otherwise when an event occurs which by virtue of a statute leaves him with the legal ownership of property but deprives him of all possibility of enjoying the fruits of it or disposing of it for his own benefit.

It is clear from the above passage that if a company in liquidation did not have the beneficial ownership of its assets, neither did the shareholders. In reaching that conclusion, Lord Diplock equiparated the status of a liquidator, although not vested with the legal ownership of the company's assets, with that of an executor in the administration of an estate or that of the trustee in bankruptcy, neither of whom, although vested with the legal ownership of the assets under administration, could enjoy the fruits of legal ownership or dispose of the assets for his own benefit. Lacking such right of enjoyment, the company could not be said to have the beneficial ownership of the assets. The beneficial ownership was in suspense or in limbo.

It is important to note the issue that was decided in *Ayerst*. At the conclusion of his judgment, Lord Diplock said (at p 181):

> … there has been a consistent use in taxing statutes of the expressions 'beneficial owner' and 'beneficial ownership' in relation to the proprietary interest of a company in its assets which started with the Finance Act 1927, where the context makes it clear that a company upon going into liquidation ceases to be 'beneficial owner' of its assets *as that expression is used in a taxing statute.*

Their Lordships did not decide that for *all other purposes or in some other context* the beneficial ownership of the assets of a company in liquidation might not still be in the company.

60 At p 604, E to H, Chan J said:

> Neither *Ayerst* nor *Franklin's Selfserve* nor *Re A Caveat* purports to lay down any general principle that a company in winding up, either ceases or does not cease to retain the beneficial ownership of its assets in all other circumstances as between the company and its shareholders, or as between the company and its creditors. None of the said decisions is relevant to, and therefore has nothing to say on, a case, like this case, *where the liquidator has paid or is in a position to pay all the liabilities of the company and has no further function or duty other than to distribute the surplus assets to the shareholders and dissolve the company*. In *Re Calgary and Edmonton Land Co Ltd (in liquidator)*, Megarry J said (at p 359) that: 'Once there is a winding-up, each member becomes instead entitled to an aliquot share of the company's assets after all the liabilities have been discharged'. In *Ayerst*, Lord Diplock said that shareholders did not have beneficial ownership of that property 'whilst it is still being administered by the liquidator'. These two statements might suggest that *after the liquidator has paid all the liabilities of the company*, and there remains surplus assets, such assets, *qua assets*, belong to the shareholders as beneficial owners. *If so*, the position would be a fortiori in a case where the shareholders have passed the requisite resolutions directing the liquidator to distribute the assets of the company in specie to them or where the company had only one shareholder who had given or would be in a position to give such directions to the liquidator. [Emphasis added]

61 Chan J then said that authority for the last stated view can be found in *Shaw Savill* and *Miller & Maund*.

62 At p 607 and 608, Chan J continued:

> On the basis of the decisions I have examined, it is possible for me to conclude that it is still the general rule that in a winding-up of a company, the company retains the legal ownership (and no differentiation needs to be made with respect to its equitable ownership) of all its assets, and that the shareholders are only entitled to an aliquot part of the assets of the company. In a dispute between revenue and the company/shareholders as to liability for stamp duty, income tax and other duties, it will be necessary to differentiate between the legal and equitable ownership of the company's assets *because the operation of the relevant statute requires such a differentiation.* It is not the law that the dualism of estates or rights in property is applicable or should be applied or recognized in every case. A person who owns the legal estate also has the beneficial ownership unless it is vested or may vest in someone else. …

63 Then at p 612, Chan J said:

> *Beneficial title in HCKK's assets*
>
> I now return to the issue of whether the beneficial interest in the relevant properties vested in LYK before he died by virtue of the principle propounded in *Shaw Savill* and *Miller & Maund*. The principle is that a shareholder in a winding-up of a company is entitled beneficially in specie to a particular property held by the company where he is in a position to demand that it be transferred to him. The essential thing was the absolute legal right to a transfer, and not the relationship existing between the liquidator or the company on the one hand, and the appellant as a shareholder, on the other' (per Adams J in *Shaw Savill*). In such a situation, the company is merely a bare trustee.

64 Mr Gandhi relied heavily on the last passage from Chan J which I have cited above. He submitted that even if a liquidator is not, strictly speaking, a trustee of the company's assets, a shareholder is entitled beneficially in specie to its assets where he is in a position to demand that it be transferred to him.

65 However, I accept Mr Liu's counter-argument that this assertion is begging the question, which is, when a shareholder can be said to be entitled to demand that the company's assets be transferred to him.

66 Chan J did not suggest, even in the context of revenue legislation, that, immediately upon liquidation, a shareholder is beneficially entitled in specie to a particular property of the company in liquidation or that the shareholder is entitled to demand that the particular property of the company be transferred to him.

67 It seems to me that if KSL had asked the liquidators of Hovert to transfer the shares in Pacific Carriers to it, without more, the liquidators would not have been bound to do so until the debt owing to KSL by Hovert was resolved. Correspondingly, KSL would not be entitled to demand the transfer until the debt was resolved. Indeed, it was precisely to resolve the debt that one of the liquidators wrote to KSL to suggest the transfer of the shares to KSL "in full and final settlement of the loan owing …" and this suggestion was accepted although the consideration in the instrument of transfer was stated to be otherwise.

68 Accordingly, I am of the view that nothing in *Ayerst* or *Low Gim Har* assists Mr Gandhi's contentions.

69 It may well be that KSL would have avoided *ad valorem* stamp duty under Article 3(c) if it had

simply released the debt owing to it and thereafter the liquidators had transferred the shares in Pacific Carriers to KSL as a distribution in specie. In such a situation, the transfer of the shares to KSL would be in its capacity qua shareholder and not qua creditor. However, that is not the route that was taken. It seems to me that both the liquidators and KSL had assumed that there was no difference between the two routes and had mixed up the status of KSL qua creditor with its status qua shareholder. From one point of view, the end result is the same i.e KSL becomes the legal and beneficial owner of the shares. However, for the purpose of stamp duty, different routes or mechanisms do at times attract different results. Likewise for other revenue legislation.

70 For example, in *Andermatt Investments Pte Ltd v Comptroller of Income Tax* [1995] 3 SLR 451, the appellant taxpayer had obtained a $6m overdraft secured by a mortgage on a Hillview property which it had acquired not by a direct purchase but by buying the shares in Wan Holdings Pte Ltd which owned the Hillview property. $5.8m of the overdraft was used to pay the balance of the purchase consideration which was owing to the vendor shareholders in Wan Holdings. The taxpayer sought to deduct the interest on the overdraft from its trading income. The taxpayer had derived dividend income from its shares in Wan Holdings and rental income from the Hillview property. The taxpayer's contention was that its intention was to acquire the Hillview property and acquiring the shares in Wan Holdings was merely an interim step to take advantage of a concession in the Act. It failed before the High Court and the Court of Appeal. At p 451, Chao Hick Tin J (as he then was) delivering the judgment of the Court of Appeal said:

> We do not think it is in any sense unjust that no deduction is allowed in the present case. If the appellant had effected the transaction in a more direct manner, the interest incurred would have been tax deductible. But because it wished to save stamp duties, it adopted a circuitous route of buying over the Hillview property from Wan Holdings. This double-step made all the difference. It gave rise to two different sources of income. Thus the missing link. Tax planning is largely a matter of form. While there is nothing improper for the appellant to arrange its affairs which best advanced its interest, having regard to the fact that its ultimate objective was to acquire the Hillview property, it has to bear the consequences of its chosen method.

71 So, here, KSL might have avoided the complication with stamp duty if it had acquired the shares in Pacific Carriers directly. Instead, it used Hovert as its vehicle to do so. Although no suggestion was made that it was improper for KSL to do this, it ran the risk of paying *ad valorem* stamp duty in its subsequent steps. Even then, it may well have avoided *ad valorem* stamp duty if it had adopted the route I mentioned in para 69 above. It did not.

72 I now come to *CIR v North British Railway Company* (1901) 4 F 27 which Mr Liu cited for the general proposition that the transfer of an undertaking in consideration for the cancellation of a debt is a transfer on sale.

73 In that case, the North British Railway Company had agreed to acquire the undertaking of the Borrowstounness Harbour Commissioners. The agreement was confirmed by Act of Parliament.

74 The agreement stated that "as the consideration for such sale and transfer the Company shall undertake as from the date of entry, and shall free and relieve the Harbour Commissioners of the whole debts, liabilities, contracts, and obligations and engagements of the Harbour Commissioners …". Prior to the date of the agreement, the company had become creditors of the Commissioners in terms of a guarantee, under which it had made large advances, amounting to £303,376.19s., for a series of years, to meet the interest due on the harbour debentures. This debt was set forth in the preamble of the special Act as one of the debts due by the Harbour Commissioners at the date of the transfer.

75 The Commissioners of Inland Revenue claimed *ad valorem* conveyance on sale stamp duty, inter alia, upon £303,376.19s., the amount of the Company's advances.

76 As the Lord Ordinary (Stormonth-Darling) said in his opinion:

> The real dispute between the Crown and the defenders relates only to the sum of £1517, and that depends on the question whether a sum of £303,376.19s forms part of the consideration for the transfer of the undertaking of the Borrowstounness Harbour Commissioners. There is no dispute that the transfer of the harbour to the defenders effected by the special Act was a 'conveyance or transfer on sale', and therefore the English cases to which I was referred are of no real assistance. The only relevant proposition to be extracted from them is that, in all questions of liability for this kind of stamp-duty, the substance of the transaction is the thing to be looked at. But, of course, the substance of the transaction must be ascertained from the deed of conveyance, or, as in this case, from the Act of Parliament which takes its place, with the aid of such documents as are imported by reference into the one or the other. …
>
> The sums so paid by the Company, with compound interest at 5 per cent, amounted as at 31st July 1900 to the figure which I have already mentioned, as raising the point in dispute, viz., £303,376.19s. The defenders seek to distinguish between that sum and the capital debt of the harbour. They do not deny that the latter forms part of the consideration on which stamp-duty is payable; but they say that the debt due to themselves was a bad debt, and formed no part of the consideration. Now, when a creditor takes over the property of his debtor in consideration of his debt, whether in whole or in part, section 57 of the Stamp Act provides that the debt 'is to be deemed the whole or part, as the case may be, of the consideration, in respect whereof the conveyance is charged with *ad valorem* duty,' and it is of course no answer to a demand for such duty to say that the debt is a bad debt, for that is the common case in which such a transaction takes place. The real question therefore comes to be, not whether the parties believed that the debt would never be paid, but whether the words of the Act are apt to include this debt, whatever its value, or whether, on its true construction, the Act only includes the other debts of the Commissioners, i.e., the debts due to persons other than the defenders.

77 The matter then came before the Lord President who said at p 30 to 31:

> The Inland Revenue authorities claim duty on the £303,376.19s of arrears of interest due by the Harbour Commissioner to the Company, as at 31st July 1900, in respect of the Company having paid that interest to the creditors in the harbour debt under a guarantee given by the Company to these creditors; and the Company maintains that duty is not payable upon that sum on the grounds, as I understand (1) that that debt is not due to other creditors but to the Company; (2) that the effect of the Act of Parliament and of the transfer of the harbour undertaking to the Company was to cancel that debt; and (3) that the debt was of no value, inasmuch as the Harbour Commissioners could never have paid it. It does not, however, appear to me that any of these contentions is well founded. *If the debt had been due by the Harbour Commissioners to anyone else than the Company, I do not think that it could have been disputed that duty was payable in respect of it, even although it was bad in the sense that the debtors were unable to pay it, and it does not appear to me to make any difference that it was due to the Company. …* [Emphasis added]

78 Therefore, if Hovert had not been in liquidation, and Hovert had transferred the shares in Pacific Carriers to KSL in full and final settlement of Hovert's debts to KSL, there would have been no doubt that the transfer would have been a transfer on sale.

79 Does the fact of Hovert's liquidation make any difference? In the circumstances, I am of the view that it does not and nothing in the cases relied upon by Mr Gandhi has persuaded me otherwise. As I

have said, the transfer was, in substance, in full and final settlement of Hovert's debt to KSL

80 Accordingly, I declare that the instrument of transfer dated 3 December 2001 between Hovert Investments Pte Ltd (In Members' Voluntary Liquidation) and Kuok (Singapore) Limited in respect of 305,626,000 ordinary shares of 50 cents each in Pacific Carriers Limited is chargeable with *ad valorem* stamp duty under Article 3(c) of the First Schedule of the Act. By virtue of s 17 of the Act, the consideration is the debt that was settled i.e $409,538,840.

81 I will hear the parties on costs.