IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1990] SGHC 106

DA 31/1986

Between

Lee Tat Property Management Pte Ltd

… *Appellant*

And

Management Corp Strata Title No 360

… *Respondent*

GROUNDS OF DECISION

Civil Procedure — Costs; Land — Strata titles — Management corporation; Words and Phrases

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Lee Tat Property Management Pte Ltd v Management Corp Strata Title No 360

[1990] SGHC 106

DA 31/1986
T S Sinnathuray J
07 December 1990

1 In this appeal, the facts are not in dispute. The main issue for determination concerns the interpretation of the word ` quorum` in the statutory provisions of the Land Titles (Strata) Act (Cap 158) (the Act).

2 The respondents are the management corporation of Strata Title No 360 of UIC Building. UIC Development (Pte) Ltd (UICD) owns 51 lots of a total of 81 lots in this strata title. The appellants are the subsidiary proprietors of four lots in UIC Building.

3 On 24 July 1984 an annual general meeting of the subsidiary proprietors was convened. Present at this meeting were eight out of 18 individual subsidiary proprietors, one of whom was a representative of UICD. At the meeting, a resolution was passed to increase the monthly contribution to the management fund from $78 per share to $91 per share with effect from September 1984 in accordance with s 36(3) of the Act.

4 Subsequently, on 20 December 1985, an extraordinary general meeting was convened and, inter alia, a resolution was passed to ratify the resolution passed at the earlier general meeting of 24 February 1984.

5 Under s 36(5) of the Act, any contribution levied under sub-s (3) of this section is due and payable on the passing of a resolution to that effect by the management corporation. The respondents, thus, claimed in the subordinate courts the sum of $2,9 48.81 being the balance sum of the contributions due and payable by the appellants for their four lots in UIC Building, including legal costs and incidental charges necessarily incurred in recovering t he balance sum of the contributions and interest of 10% pa for late payment of this sum.

6 No evidence was led at the hearing in the district court but there the appellants contended that the annual general meeting of 24 February 1984 had not been duly convened as there was no quorum. Consequently, the resolution passed at that meeting was a nullity. Therefore, there was no resolution to ratify at the extraordinary general meeting held on 20 December 1985. For these reasons, the appellants disputed all the claims of the respondents.

7 It was common ground that the main issue for decision before the learned district judge, as was the issue on appeal, was whether there had been a quorum for the holding of the annual general meeting on 24 February 1984.

8 The learned district judge came to the decision that there had indeed been a quorum on that date. This, the appellants` counsel submitted on appeal, was wrong in law as para 12(1) of the First Schedule to the Act is open to the following interpretat ion. He contended that to determine what constitutes a quorum at a general meeting one has to make a list of the number of different

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subsidiary proprietors regardless of how many lots each of them may own, and if one half of this number of subsidiary propr ietors are present they would constitute a quorum. Counsel said that the number of lots each subsidiary proprietor owns is totally irrelevant for the purposes of determining whether a quorum has been constituted.

9 Paragraph 12(1) of the First Schedule of the Act reads as follows:

> *One-half of the persons entitled to vote shall constitute a quorum at a general meeting.*

10 Counsel for the appellants strenuously argued that in the context of para 12(1) the phrase ` persons entitled to vote` referred to the number of persons physically present at the meeting. So, a subsidiary proprietor who owns, say, 99 out of 100 lots would be counted as only one person to form a quorum and would have only one vote at the general meeting. The thrust of the argument was that the learned district judge` s interpretation of the word ` quorum` would lead to the absurdity of UICD being able to constitute a quorum all by itself. Since UICD owned 51 out of 81 lots, there was no need for any other subsidiary proprietor to be present at the general meeting in order to form a quorum.

11 At the conclusion of the hearing, I rejected the submission made for the appellants for these reasons. Quite clearly, the issue had to be determined from first principles. Even the appellants` counsel accepted that the reported cases on the subject of ` quorum` did not really assist me in determining the issue.

12 On the question of interpretation, I was of the opinion that when the Act refers to ` persons entitled to vote ... at a general meeting`, the reference is to individual owners of subsidiary properties in a subdivided building. This is plain because each strata lot is owned by a person, defined in s 2 of the Interpretation

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Act (Cap 1) to include any company. Therefore, what counts at a general meeting is the ownership of a strata lot and not the collective ownership of a number of lots. In the present case, UICD owns 51 lots. When a representative of UICD attends a general meeting, he is entitled to vote at the meeting as owners of 51 lots, because he represents 51 subsidiary properties. He has 51 votes.

13 Viewed in this way, the interpretation urged upon me by counsel for the appellants ignores the reality of the situation. Here, I want to refer to the passage cited by counsel for the respondents in ***Shannon Realties Ltd v Ville De St Michel [1924] AC 185. At p 192 Lord Shaw said:***

> *Where the words of a statute are clear they must ... be followed; but ... where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system.*

14 The construction which the appellants want me to adopt will surely introduce ` uncertainty, friction or confusion into the working of the system` as it means that the owner of a single strata lot has equal voting power with the owner of 51 strata lots. This simply cannot be right. The latter has certainly a greater burden as his liability to pay contributions to the management fund is 50 times more than that of the former. Yet, if they both have equal representation at the general meeting, there would be ` friction` followed by ` uncertainty` and ` confusion` in the management of the subdivided building.

15 So, the learned district judge was right in his decision on the interpretation of para 12(1) of the First Schedule of the Act. I agree with him that the determining factor is not the number of different subsidiary proprietors

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present at a meeting but the number of strata lots owned by the persons attending the meeting as subsidiary proprietors. He found support for this in ss 27 and 39 of the Act.

16 The only other live issue which I have to deal with is the respondents` cross-appeal that the learned district judge had erred in law in holding that the respondents were only entitled to their costs on a party and party basis. As to the proper basis on which costs should be awarded to them, counsel for the respondents relied on s 37(8) of the Act which it was submitted would enable them to recover costs on a solicitor and client basis. This subsection entitles the management corporation `to recover the contribution or amount due and all interest thereon including any legal costs and incidental charges necessarily incurred for the recovery of such contribution or amount ... from the subsidiary proprietor of ... the lot` .

17 On this issue the appellants` counsel argued that the expression ` necessarily incurred` is a reference to costs on a party and party basis. He found support in O 57 r 27(2) of the Subordinate Courts Rules 1986 which refers to the basis of taxation of allowing ` all such costs as were necessary or proper ...` . He submitted that it was for the district court which heard the case to determine the manner in which costs were to be awarded. He contended that no appeal on costs alone ought to be entertained ` unless it can be shown that that court had exercised its discretion in a manner that was absolutely wrong` .

18 In my opinion, s 37(8) of the Act is explicit. It envisages the situation in which a management corporation would be compelled by the refusal of a subsidiary proprietor to pay contributions to the management fund to instruct solicitors to take legal action to recover such contributions. The refusal by that

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subsidiary proprietor to make payment had made it necessary for the management corporation to incur legal costs to recover the contributions. If costs are awarded on a party and party basis the management corporation will be out of pocket, as costs on this basis will not fully compensate the management corporation in respect of the fees it has to pay its own solicitors. In my view, the learned district judge ought to have awarded costs to the respondents on a solicitor and client basis.

19 For all these reasons, I dismissed the appellants` appeal with costs and allowed the respondents` cross-appeal with costs. The costs are to be taxed on a solicitor and client basis, here and below.

20 As a postscript, I would add that since my decision the Act has been amended with regard to the provision relating to ` quorum` . It is now provided in para 3 of the Third Schedule to the 1988 Edition of the Act as follows:

> *(1) No business shall be transacted at any general meeting of a management corporation unless a quorum of members is present.*
>
> (2) For the purposes of this paragraph, the number of subsidiary proprietors present at the meeting either in person or by proxy who own not less than one half of share values for all the lots shown on the strata title plan shall form a quorum … .

21 This new provision accords with the construction I have placed on the meaning of what constitutes a quorum in para 12(1) of the First Schedule to the Act as it then was.

22 ***Order accordingly.***

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T S Sinnathuray J

VG Ramayah and RS Samuel (Wee Ramayah & Pnrs) for the appellants
Tan Kok Quan (Lee & Lee) for the respondents

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