

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 143

Originating Summons No 874 of 1991

Between

Ottowest Pte Ltd

... Plaintiff

And

The Management Corporation
Strata Title No 677

... Defendant

GROUND OF DECISION

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**Ottowest Pte Ltd v The Management Corporation Strata Title
No 677**

[1992] SGHC 143

Originating Summons No 874 of 1991
Goh Joon Seng J
27 May 1992

1 **Judgment:**

2 Coram: The Honourable Justice GOH JOON SENG

3 JUDGMENT

4 The plaintiffs are the subsidiary proprietors of the car park at the building known as Golden Mile Tower, 6001 Beach Road Singapore (since 5 September 1990). The car park is comprised in Lot No 358/U178 Town Subdivision 15 under Strata Certificate of Title ('SCT') Volume 126 Folio 68 of the Subsidiary Land-Register. The SCT is unqualified, the caution on boundaries and dimensions having been cancelled on 29 May 1986. There is no notification of any easement or rights of way whatsoever on the SCT.

5 The defendants are the Management Corporation of the Golden Mile Tower.

6 Located next to parking lot 28 of the car park at the 6th storey is a store room which forms part of the common property. The defendants claim that the store room is used by them for 'storing tools and utensils used in the discharge of their duties, including their duties under s.48 of the Land Titles (Strata) Act < 'LT(S) Act' > , Chapter 158, including without prejudice to the generality of the aforesaid:

7 (i) properly maintaining and keeping in a state of good and serviceable repair the common property and any other property vested in the defendants; and

8 (ii) renewing or replacing any fixtures or fittings, comprised in the common property and any other property vested in the defendants.'

9 By reason thereof, the defendants contend that they are entitled to unhindered access to the store room and the only means of access to and egress from the store room is through the plaintiffs' car park at the 6th storey. The defendants rely on By-law 9 of the First Schedule to the LT(S) Act which reads:

10 " A subsidiary proprietor or occupier of a lot shall not obstruct the lawful use of the common property by any person."

11 By this Originating Summons the plaintiffs claim for :

12 (i) 'a declaration that the defendants are not entitled, whether by statute or at common law, to any easement or right of way or implied licence to pass and repass over the property of the plaintiffs at the 6th storey car park of Golden Mile Tower 6001 Beach Road, Singapore 0719 for the purpose of getting

ingress to or egress from the store area located next to car park lot No 28 at the said 6th storey;

13 (ii) an injunction restraining the defendants, whether by themselves their servants or agents or otherwise howsoever from so passing and repassing over the plaintiffs' said property; and

14 (iii) an order that the costs of and incidental to this Originating Summons be taxed and paid by the defendants to the plaintiffs forthwith;

15 (iv) Further and other reliefs.'

16 In support of their claim for unhindered access to and egress from the store under By-law 9, the defendants refer to the decision of Rajendran J in O.S. 231 of 1991 between Chong Kam Len and 8 others as plaintiffs and DFS Singapore Pte Ltd as defendants ('DFS'). In that case all the plaintiffs occupied various lots on the second level of the Meridien Shopping Centre at 100 Orchard Road, Singapore ('the building') where they operated their respective businesses. The defendants occupied the first level where they carried on their retail business in luxury goods. The first level comprised of a single lot. Access to the second level from the first level was inter alia by way of two escalators, one at the side of the building ('the side escalator') and the other at the centre ('the main escalator'). These two escalators were common property.

17 Originally the first level was occupied by Printemps Department Store ('Printemps'). When Printemps was in occupation the landings and exits to the two sets of escalators were open and uncluttered giving shoppers a clear view and unimpeded access to the escalators to get to and from the second level. When DFS became lessees of the first level in place of Printemps they blocked

and covered the exit to the side escalator by a full height shelf displaying their merchandise. Later they erected within the area leased by them a full height partition completely surrounding the landing of the main escalator which blocked the main escalator from the view of shoppers at the first level. In the partition there was a door through which access to the main escalator was possible but this door was constructed in such a way that except to the initiated, shoppers otherwise would not know that there was a door leading to the main escalator providing access to the second level. For reverse traffic of shoppers on the second level there was a sign posted at the door stating 'Entry Welcome to DFS'. The plaintiffs claimed that as a result of the action of DFS the side escalator had been rendered completely useless and the main escalator had become a 'one-way traffic' in that shoppers on the second level would have the use of the escalator to go into the premises of DFS but not vice versa. Rajendran J held that by erecting the partition and camouflaging the presence of the door leading from the first level to the main escalator DFS had been in breach of By-law 9 by obstructing shoppers from making lawful use of the main escalator to go to the second level.

18 In the matter before me the plaintiffs have not put up any erection that interferes with the access to or egress from the store room and hence have not obstructed the 'lawful use of the common property by any person'. The powers of a Management Corporation to enter upon any lot within the subdivided building are governed by section 49 read with section 45(1), (2), (4) or (5), section 48(1)(b), (c) or (d) and 57(a)(ii) of the LT(S) Act. Section 49 reads:

19 "(1) For the purpose of carrying out -

20 (a) any work pursuant to section 45(1), (2), (4) or (5);

21 (b) any work required to be carried out by a management corporation -

22 (i) by a notice served on it by a public authority or statutory board; or

23 (ii) by an order of the Commissioner;

24 (c) any work referred to in section 48(1)(b), (c) or (d); or

25 (d) any work necessary to repair or renew any pipes, wires, cables or
ducts referred to in section 57(a)(ii),

26 the management corporation may, by its employees or agents, enter
upon any lot or part of the parcel for the purpose of carrying out the work, in
the case of an emergency, at any time, or, in any other case, at any reasonable
time after giving notice to any occupier of that lot or part of the parcel.

27 (2) A person who obstructs or hinders a management corporation in the
exercise of its power under subsection (1) shall be guilty of an offence and shall
be liable on conviction to a fine not exceeding \$2,000."

28 Section 45 (1), (2), (4) and (5) read:

29 "(1) Where a notice has been served on the subsidiary proprietor of a lot
by a public authority requiring that subsidiary proprietor to carry out any work
on or in relation to that lot and the notice is not complied with, the management
corporation may carry out the work.

30 (2) Where a subsidiary proprietor, mortgagee in possession, lessee or
occupier of a lot fails or neglects to carry out any work -

31 (a) required to be carried out by him under a term or condition of a by-law referred to in section 41(8);

32 (b) necessary to remedy a breach of the duty imposed on him by section 57(a); or

33 (c) to rectify any defect in any water pipe, sewer pipe within his lot or any cracks in the wall or floor within his lot,

34 the management corporation may carry out that work.

35 (4) Where -

36 (a) any part of a building comprised in a lot contains any structural defect which affects or is likely to affect the support or shelter provided by that lot for another lot in that building or the common property; or

37 (b) any defect occurs in any pipes, wires, cables or ducts referred to in section 57 (a)(ii) within a lot,

38 the management corporation shall carry out such work as is necessary to rectify the defect and it may recover the cost of such work from any person who has a duty to remedy the defect as a debt in any court of competent jurisdiction.

39 (5) Where the management corporation incurs any expenditure or performs any repairs, works or acts that it is required or authorised by this Part or by any other written law to perform (whether or not the expenditure was incurred or the repairs, works or acts were performed consequent upon the service on it by any Government or statutory authority of any notice or order)

and the expenditure or the repairs, works or acts were rendered necessary by reason of any wilful or negligent act or omission on the part of, or breach of any provision of its by-laws by, any person or his tenant, lessee, licensee or invitee, the amount of that expenditure expended by it in performing the repairs, works or acts shall be recoverable by it from that person as a debt in an action in any court of competent jurisdiction."

40 Section 48(1)(b), (c) and (d) read :

41 "(1) A management corporation shall, for the purposes of the subdivided building concerned -

42 (b) properly maintain and keep it in a state of good and serviceable repair -

43 (i) the common property; and

44 (ii) any property vested in the management corporation;

45 (c) where necessary, renew or replace any fixtures or fittings comprised in the common property and any property vested in the management corporation;

46 (d) when so directed by a special resolution, install or provide additional facilities or make improvements to the common property for the benefit of the subsidiary proprietors;

47 Section 57 (a) (ii) reads:

48 " A subsidiary proprietor, mortgagee in possession (whether by himself or any other person), lessee or occupier of a lot shall not -

49 (a) do anything or permit anything to be done on or in relation to that lot so that -

50 (ii) the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially cooled air and other services (including telephone, radio and television services) through or by means of any pipes, wires, cables or ducts for the time being in the lot is interfered with;

51 Section 41(8) reads :

52 " Without limiting the generality of any other provision of this section, a management corporation may, with the consent in writing of the subsidiary proprietor of a lot, pursuant to a unanimous resolution, make a by-law in respect of that lot conferring on that subsidiary proprietor the exclusive use and enjoyment of, or special privileges in respect of, the common property or any part thereof upon such terms and conditions (including the proper maintaining and keeping in a state of good and serviceable repair of the common property or that part of the common property, as the case may be, and the payment of money by that subsidiary proprietor to the management corporation) as may be specified in the by-law and may, pursuant to a unanimous resolution, make a by-law amending, adding to or revoking any by-law made under this subsection."

53 Only if the entry is for the purpose of carrying out the works referred to in the aforesaid provisions of the LT(S) Act will the defendants have the right to enter into any part of the car park owned by the plaintiffs at any time in the

case of an emergency or in any other case at any reasonable time after notice has been given to the plaintiffs, otherwise passing and repassing through the plaintiffs' car park to gain access to and egress from the store does not fall thereunder.

54 Accordingly, an order is granted in terms of prayers 1, 2 and 3 of this Originating Summons.

55 Dated this 27th day of May, 1992.

Goh Joon Seng J

Alvin Yeo for the plaintiffs
Philip Lam for the defendants
