IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 190

Originating Summons No 237 of 1992

Between

The Management Corporation
Strata Title No 561

… *Plaintiff*

And

Pontiac Land Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 11 Sep 2026 (01:05 hrs)

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The Management Corporation Strata Title No 561 v Pontiac Land Pte Ltd

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Goh Joon Seng J
11 July 1992

1 **Judgment:**

2 Coram: Goh Joon Seng J.

3 **GROUNDS OF DECISION**

4 The plaintiffs are the Management Corporation Strata Title No. 561, Parklane Shopping Mall (`the building'), situated at No. 35, Selegie Road, Singapore 0718.

5 The defendants are the subsidiary proprietor of Unit #01-01 (`the said premises') within the building.

6 By an agreement dated 23 August 1990, the defendants let the said premises to one S. Chandrasakaran (`the Tenant') for a term of two years commencing on 1 December 1990. The Tenant operates a cafeteria/snack bar known as `Rigger's Tavern' on the said premises.

7 By letter dated 27 September 1991, the plaintiffs' solicitors informed the defendants that the Tenant had `encroached on the common property by placing obstructions therein despite repeated warnings'. A copy of the letter was sent to the Tenant. This was how the defendants came to know of the obstructions which were neither condoned nor agreed to by the defendants.

8 On receipt of the said letter of 27 September 1991, the defendants replied on 1 October 1991 stating that they were not aware of the obstructions and had neither condoned nor agreed to the same. The defendants also pointed out that as their tenant was `a party to the by-laws under the Land Titles (Strata) Act (`the Act') by reason of Section 41(4)(a) of the Act, the proper party' against whom action should be taken was the lessee and occupier of the said premises. On the same day, the defendants also wrote to the Tenant as follows:

9 "...

10 Your act in placing obstructions in the common property is a breach of your covenants under clauses 2(iii), (v), (xxiii) and (xxv) of the Tenancy Agreement dated 23 August 1990 (`Agreement').

11 Under the Agreement we are entitled to forfeit the rental deposit < (clause 2(ii) > and recover possession by reason of such breach.

12 Please note that unless you remove the obstructions to the satisfaction of the Management Corporation, we shall exercise all our rights under the Agreement and all other rights available to us at law. ..."

13 The provisions of cl 2(iii), (v), (xxiii) and (xxv) of the Tenancy Agreement are set out hereunder:

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14 "(iii)At all times during the term hereby created to comply with such requirements as may be imposed on the Tenant by any legislation now or hereafter in force and any orders rules regulations requirements and notices thereunder. (v)To pay the same amount of service charge payable by the Landlord to the Management Corporation of the Building in respect of the demised premises and to comply with all the rules and regulations prescribed by the said Management Corporation from time to time. (xxiii)Not to obstruct or cause or suffer to be obstructed the entrance hall lobby staircases landings leading to the demised premises. (xxv)Not to do or permit or suffer to be done upon the demised premises anything which may be unlawful or be a nuisance or annoyance to the Landlord or the occupiers of the Building or of adjoining or adjacent properties."

15 By letter of 14 November 1991, the plaintiffs' solicitors wrote to the Tenant with a copy to the defendants stating that the Tenant had failed to comply with the by-laws in force and was in breach of the Act.

16 On 10 January 1992, the defendants sent a reminder to the Tenant requiring the Tenant to remove the obstructions.

17 On 17 March 1992, the plaintiffs commenced these proceedings against the defendants for, inter alia, the following reliefs:

18 "(1) an injunction restraining the defendants ... whether by themselves, their servants, agents or occupiers or otherwise howsoever from obstructing or interfering with the lawful use and enjoyment of < the > common property; (2) an order that the defendants at the said premises ... do forthwith remove all

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things or articles placed or stored on the common property by the defendants whether by themselves, their servants, agents or occupiers."

19 The matter came before me for hearing. I dismissed the plaintiffs' application. The plaintiffs have appealed against my decision. I now give the grounds for my decision.

20 The plaintiffs relied on s 41(4) of the Act and by-law 9 set out in the First Schedule to the Act.

21 Section 41(4) reads:

22 "(4) Without limiting the operation of any other provision of this Act, the by-laws for the time being in force bind the management corporation and the subsidiary proprietors and any mortgagee in possession (whether by himself or any other person), or lessee or occupier, of a lot or part thereof to the same extent as if the by-laws had been contained in properly executed agreements on the part of - (a)the management corporation with each subsidiary proprietor, mortgagee, lessee and occupier, respectively; and (b)each subsidiary proprietor, mortgagee, lessee, occupier of a lot or part thereof with the subsidiary proprietor, mortgagee, lessee or occupier of the other lots in the same parcel, to observe and comply with all the by-laws."

23 By-Laws 9 reads:

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

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25 Since the obstructions are caused by the Tenant who is the occupier, the proceedings against the defendants are, in my view, misconceived. The proper party against whom these proceedings should be brought is the Tenant.

Goh Joon Seng J

B Rengarajoo for the plaintiffs
Tang Khin Wai for the defendants

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