

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 25

Suit No 1561 of 1993

Between

Management Corporation
Strata Title Plan No 1601

... Plaintiff

And

L & W Holdings Private
Limited

... Defendant

GROUND OF DECISION

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Management Corporation Strata Title Plan No 1601 v L & W Holdings Private Limited

[1994] SGHC 25

Suit No 1561 of 1993
Lai Siu Chiu JC
31 January 1994

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Judgment:

2 Coram: Lai Siu Chiu JC

3 **GROUND OF DECISION**

4 The background

5 The plaintiffs were constituted on 8 March 1991 under s 33 of the Land Titles (Strata)

Act Cap 158 (the Act) in respect of a development known as the Bukit Timah Shopping Centre

(the Complex) which had been developed by the defendants. The defendants are also the

registered subsidiary proprietors of certain units in the Complex (hereinafter referred to

as the units) which are the subject of this claim.

6 The plaintiffs commenced proceedings against the defendants for arrears of maintenance

contributions amounting to \$413,675.60 and interest thereon at 10% per annum 30 days from

the date the same became due and payable together with costs on an indemnity basis. The

application was supported by an affidavit of the manager of the Complex one Teo Poh Siang

(Teo). Upon the defendants entering an appearance to the writ, the plaintiffs applied for

summary judgment. The learned deputy registrar granted the application and awarded the

plaintiffs judgment

7 a. in the sum of \$386,319.01; b. interest at 10% per annum on \$413,675.60 from 7 April

1993 to 23 August 1993; c. interest on \$386,319.01 at 10% per annum from 24 August 1993

until Judgment, and d. costs on an indemnity basis as between solicitor and client.

8 The defendants appealed against the decision of the learned deputy registrar. When the

appeal came up for hearing before me I dismissed the appeal with costs. The defendants

have appealed against my decision and I now give my reasons.

9 The affidavits The relevant facts as adduced from the affidavits filed by the parties

were as follows: 1. by a resolution passed by the defendants' board of directors on 25

June 1991 one Lee Yeok Chai (Lee) was authorised to a. open a bank account in the name of

the plaintiffs, and b. to transact all business and maintain all funds related to the

plaintiffs until the formation of and handing over to, the Management Council;

2. on or

about 23 August 1993 Long Win Investment Pte Ltd (Long Win) paid the sum of \$82,069.77 in

respect of some of the units for the months of June, July and August 1993 and the

plaintiffs apportioned \$27,356.59 therefrom as part payment on a without prejudice basis,

towards their claim in these proceedings, the plaintiffs' claim was thereby reduced to

\$386,319.01; 3. the other units to which the plaintiffs' claim pertained had been sold to

another company Dolcen Agencies Pte Ltd (Dolcen) but completion had not taken place for

any of the units sold by the defendants who remained the registered subsidiary

proprietors; 4. at the first annual general meeting (AGM) of the plaintiffs held on 7

April 1993 the following resolutions were passed: a. that interest at the rate of 10% per

annum and calculated on a daily basis be levied on all maintenance

contributions due and

owing to the plaintiffs and that such interest shall accrue from the expiry of 30 days

after the date when the said contributions became due and payable, and b. that legal costs

incurred by the plaintiffs in recovering the said contributions be borne by the defaulting

subsidiary proprietor on a solicitor and client basis. Amongst the council members elected

at the AGM was Loong Sweet Ying (Loong) who was then the company secretary of the

defendants. Loong filed an affidavit on the defendants' behalf opposing the plaintiffs'

claim both on liability and quantum for the following reasons: (i) the defendants were

unable to ascertain how the claim amount had been arrived at nor the period that it

covered as the same included sums which had been carried forward; (ii) the extract

exhibited in Teo's first affidavit (exh TPS2) for the claim amount did not refer to the

defendants and the plaintiffs had accepted that Long Win and Dolcen were the parties

responsible for the charges; (iii) the plaintiffs' charges were based on \$0.65 psf which

exceeded the rate of \$0.60 allowed by the Commissioner of Buildings. The charges levied

were also based on the contractual area which was bigger than the actual area shown in the

subsidiary strata certificates of title. It was only in May 1993 that the plaintiffs

rendered invoices for share values based on the actual areas shown in the subsidiary

strata certificates of title; (iv) it is very likely that Long Win and Dolcen will

commence recovery of the excess sums paid to the plaintiffs; (v) the sum of \$82,069.77 was

not paid by the defendants but by Long Win and the plaintiffs arbitrarily recorded the

payment as coming from the defendants.

10 In response to Loong's affidavit, Teo filed a second affidavit on the plaintiffs'

behalf as follows: 1. the plaintiffs' claim related to units sold by the defendants to

Dolcen and Long Win but which sales had not yet been completed and hence the defendants

remained liable for the maintenance charges; 2. in the light of the resolution of the

board of directors of the defendants passed on 25 June 1991 the defendants were

responsible for the collection of maintenance charges until the plaintiffs' formation and

their taking over on 7 April 1993.

11 At the appeal counsel for the defendants repeated the arguments raised in Loong's

affidavit as the triable issues that warranted the claim proceeding to trial. Further he

contended that the plaintiffs had elected to hold Dolcen and Long Win liable for the

charges. Another argument counsel raised was that the plaintiffs had rendered maintenance

charges for the basement area which had been converted into common property.

In so far as

the interest claimed was concerned, he questioned whether the plaintiffs are entitled to

charge the same retrospectively pursuant to the resolution of 7 April 1993.

12 I saw no reason to disturb the order made by the learned deputy registrar and

accordingly I dismissed the appeal on the following grounds:

13 a. (i) in so far as liability is concerned, I accepted the submission of counsel for

the plaintiffs that as the defendants were the developers and were also the subsidiary

proprietors of the units, they were liable for the outstanding maintenance charges

(Singapura Developments (Pte) Ltd v Management Corporation Strata Title Plan No 446 <

1992 > 1 SLR 525); (ii) there was no question of the plaintiffs having elected to pursue their claim against Dolcen and Long Win merely because of a computer print-out/extract (see exh TPS2 of Teo's first affidavit) which identified that the units

were those of Dolcen and Long Win as the defendants remained the units' subsidiary

proprietors, the plaintiffs in their letter to the defendants on the payment had accepted

the sum of \$82,069.77 from Long Win on a without prejudice basis and had expressly

reserved their rights against the defendants (see exh TPS3 of Teo's first affidavit).

There was no other evidence to show that the plaintiffs had indeed made the election and

that the defendants had acted to their detriment in reliance on such election; (iii)it was

irrelevant to the issue of the defendants' liability that Dolcen and or Long Win may or

will claim against the plaintiffs for excess payments they had made; b. apart from the

bare statement in Loong's affidavit no evidence was produced to substantiate the

defendants' contention that the wrong rate had been used by the plaintiffs in their

computation of maintenance charges. I should also point out that the letter from the

Commissioner of Buildings to the defendants dated 10 August 1984 (see exh L 2 of Loong's

affidavit) stated that the approved monthly maintenance charge with effect from 1

September 1984 was at the rate of \$6.45 psm and not calculated on a psf basis; c. it did

not lie in the mouth of the defendants to feign ignorance of the sum claimed and the

period that it related to as the defendants were collecting the maintenance

charges

themselves prior to the formation of and taking over, by the plaintiffs on 7 April 1993.

The defendants were also obliged under s 34(b) of the Act to maintain proper accounts for

the management corporation commencing from the date of registration of the strata title

plan and ending on a date not earlier than 3 months before the first annual general

meeting; the accounts of the defendants exhibited in a related suit (Suit No 1560 of 1993)

were certified by public accountants who did not query or qualify the accounts. Hence the

defendants should have the records to verify their allegations as well as the plaintiffs'

claim. It is also noteworthy that at the first AGM Loong as the defendants' representative

did not query let alone object to the claim amount when it was raised under item 2.0 of

the agenda relating to the audited accounts which had been prepared by or for the

defendants; d. as for the contention that the wrong area had been used for the calculation

of maintenance charges it was pointed out by counsel for the plaintiffs that the strata

title plan was registered on 8 March 1991 and it was the plan not the strata certificates

of title that shows the share value for each individual unit. Therefore if indeed the

wrong area had been used again it was during the time the defendants were in charge. By

virtue of cl 22 of the agreement for sale and purchase for units in the Complex the

defendants as subsidiary proprietor are in any event not entitled to a refund of excess

maintenance payments if any, made. Clause 22 states: the area of the unit is only an

estimate. If a difference in area is shown in the Subsidiary Strata Certificate of Title

of the unit or is found on completion of Government Resurvey of the unit there will be no

adjustment in the purchase price and or maintenance fee and service charge herein

provided. A similar clause was interpreted in *Collins Corporation (Pte) Ltd v Chong Gay*

Theatres Ltd < 1992 > 1 SLR 503 to the effect that it disentitled the subsidiary proprietor from claiming any excess contributions paid; e. touching on the maintenance

charges for the basement area, it was for the defendants if they were unhappy to take up

the issue of the conversion of the same into common property with the Commissioner of

Buildings but until such time as the issue was resolved, the defendants' liability remained.

14 The other allegations raised by the defendants were equally without merit and I do not

propose to review them. It seemed clear that the defendants had scant regard for their

obligations first as developers and then as subsidiary proprietors and their arguments

were mere attempts to avoid their liability; part of the plaintiffs' claim comprised of

charges which had been accumulated and carried forward over a two year period. It was only

fair that the plaintiffs should have judgment for their claim as ordered by the learned

deputy registrar.

15 Schedule of affidavits filed

16 1. Affidavit of Teo Poh Siang filed on 13.9.93.

2. Affidavit of Loong Sweet Ying filed on 7.10.93.

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3. Affidavit of Teo Poh Siang filed on 21.10.93.

Lai Siu Chiu JC

Lee Mun Hooi (Lee Bon Leong & Co) for the defendants
Kannan Ramesh & Karam Singh (Lee & Lee) for the plaintiffs
