

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1997] SGCA 43

CA 199/1996

Between

L & W Holdings Pte Ltd

... Appellant

And

Management Corporation
Strata Title Plan No 1601

... Respondent

GROUND OF DECISION

Land — Strata titles — Contributions payable; Land — Sale of land; Statutory
Interpretation — Construction of statute — Purposive approach

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**L & W Holdings Pte Ltd v Management Corporation Strata
Title Plan No 1601**

[1997] SGCA 43

CA 199/1996

Karthigesu JA; L P Thean JA; Yong Pung How CJ

25 September 1997

1

Judgment:

2 **Cur Adv Vult**

3 This appeal concerns the duty of a developer in the
collection of maintenance charges for the maintenance fund of a subdivided
building

comprised in Strata Title Plan No. 1601 and known as Bukit Timah Shopping
Centre

('Centre'). The appellants, L & W Holdings Pte Ltd, were the developers of the
Centre

and the respondent is the management corporation of the Centre which was constituted on 8

March 1991. In the proceedings before the High Court the respondent claimed against the

appellants the arrears of the maintenance charges which, it was alleged, the appellants,

in breach of their duty, had failed to collect from certain subsidiary proprietors of the

units comprised in the Centre. The court allowed the claim and entered judgment in favour

of the respondent in the sum of \$956,970.32. Against the decision, the appellants have now

appealed.

4 **The facts**

5 The relevant facts that gave rise to the dispute are these.

The appellants are a company incorporated in Singapore with the issued shares being held

in equal proportions by two persons, Loong Yoke Phin ('Loong') and Wing

Hong How ('Wing').

Ms Loong Sweet Ying ('Ms Loong'), who is the daughter of Loong, is the
appellants' company

secretary and the alternate director of Loong.

6 Sometime around the late 1970s, the appellants developed the

Centre, which consists of a podium (with a car park) and a tower. Shop units are
located

in the podium, while office and residential units are situated in the tower. The
temporary

occupation licence for the podium was issued on 1 May 1978 and that for the
tower on 11

November 1981. Most of the units were sold to purchasers, and pursuant to the
sale and

purchase agreements, the purchasers were obliged under the respective sale and
purchase

agreements to pay the appellants service/maintenance charges at rates provided
therein

with effect from the date when possession of their units was delivered to them.

The _____ agreed
monthly rate of service/maintenance charges for the units in the podium was
\$0.65 _____ per _____ sq
ft, that for the offices in the tower was \$0.50 per sq ft and for the residential
units _____ in
the tower it was a flat rate of \$150.

7 In August 1986 or thereabouts, those units which remained
unsold were sold to Loong's and Wing's respective family holding companies, i
e _____ to _____ Long

Win Investment Pte Ltd ('Long Win') for Loong and to High Power Investment
(High _____ Power')

for Wing. The car park and cinema in the Centre were sold to Dolcen Agencies
Pte _____ Ltd

('Dolcen') which is equally owned by the Loong and Wing families. The units
sold _____ to _____ Long

Win include basements 1 and 2 of the podium; these and the units sold to Dolcen
and _____ also

10 units sold to other purchasers featured in the proceedings below.

8 Under s 7(1) of the Buildings and Common Property
(Maintenance and Management) Act (Cap 30)('the Act') the appellants were not
permitted to

collect any charges for the maintenance and management of the Centre without
the prior

written approval of the Commissioner of Building ('the Commissioner'). In July
1984, the

appellants as the developer applied to the Commissioner pursuant to s 7 of the
Act for

approval to collect charges for the maintenance and management of the Centre.
On 10 August

1984, the Commissioner approved the following rates of monthly maintenance
charges to be

effective from 1 September 1984:

9 (a) Shops/Commercial Units/Emporium = \$6.45/m²

10 (b) Office = \$5.10/m²

11 (c) Flat = \$1.90/m²

12 (d) Cinema = \$3.87/m²

13 (e) Carpark = \$4914.90/mth

14 For the purpose of this appeal only the rate of monthly

maintenance charges approved for units in the podium is relevant. There is no
issue as

regards collection of maintenance charges from the owners or purchasers of the
units in

the tower. The approved rate of \$6.45 per sq m is approximately equivalent to
the rate of

\$0.60 per sq ft. Notwithstanding that the approved rate for the units in the
podium was

\$0.60 per sq ft, the appellants continued to levy and collect from the owners or

purchasers of such units monthly maintenance charges at the rate of \$0.65 per
sq ft as

provided in the sale and purchase agreements.

15 In 1986, the appellants appointed Steven Loh Valuers and Property Managers ('SVPM') as the managing agents of the Centre and they were responsible for the day to day running of the Centre. The sole proprietor of the firm was Steven Loh himself.

16 In the following year the appellants appointed Lee Yeok Chai of Y C Lee & Co as special accountant to act 'as a neutral party in overseeing the financial affairs' of the Centre. He prepared and audited the accounts of the maintenance fund of the Centre covering the period from 1 September 1984 to 7 March 1991. The accounts were made up to 7 March 1991, because the strata title plan of the Centre was registered on 8 March 1991 with the Registry of Titles under s 93 of the Land Titles (Strata) Act,

and the respondent pursuant to s 33 of that Act was thereby constituted with

effect from

that day.

17 **Non-provision of services**

18 In September 1986, Emporium Holdings Ltd, the anchor tenant

of basement 2 terminated their lease. Long Win were unable to find tenants for
the area

and basement 2 was left vacant. However, SVPM as managers of the Centre
continued to

record a monthly maintenance charge at the rate of \$0.65 per sq ft as payable in
respect

of the whole of basement 2. In a letter dated 8 September 1987 to SVPM, Long
Win drew

attention to the fact that during the vacancy of the entire basement 2, services
such as

air-conditioning, common area lighting, escalators, lifts and cleaning services
were not

provided. In view of the non-provision of services, they urged SVPM to reduce
the rate

charged for the unoccupied area, and they proposed a rate of \$0.30 per sq ft as the

monthly maintenance charge. Following that, on 12 September 1987, Steven Loh referred the

matter to the Commissioner seeking his assistance on the question of reduction of the

maintenance charges payable in respect of basement 2. On 28 September 1987, the

Commissioner replied that he had no authority under the Act to approve a reduction. In

addition, he pointed out that even for unsold units, it was a requirement that the

developer should contribute towards the maintenance fund account at the same rate as that

applicable to the units that had been sold. This reply was relayed to Long Win, but on 14

October 1987 they made a second request to SVPM to reduce the maintenance charge. Steven

Loh spoke to Ms Loong of Long Win but no agreement was reached as to the

reduction and no

payment was made. Steven Loh continued to record the maintenance charges as payable by

Long Win based on the rate applicable to other owners or purchasers.

19 **Conversion of staircases**

20 In March 1989, approximately three years after the transfers

had been effected, Long Win, having obtained the necessary planning permission, converted

approximately 999.40 sq ft in basement 1 and 5,692.72 sq ft in basement 2 into additional

staircases. The strata plan registered on 8 March 1991 incorporated these areas as part of

the common property. Maintenance charges for basement 2 in respect of the period prior to

this date remained a disputed issue. In a letter dated 27 June 1991 written to the

accountant, Lee Yeok Chai, the appellants discussed Long Win's request to readjust the

maintenance charge with effect from the date of planning approval for the
construction of

the staircases to take into account the actual physical change in the areas
occupied by

Long Win. The appellants suggested that an adjusted maintenance charge
should be based on

the strata plan which was registered on 8 March 1991. Lee Yeok Chai, however,
decided to

leave the matter to the respondent to decide with the result that the dispute
remained

unresolved. During the months of September and October 1990, on instructions
given by

Steven Loh on behalf of the appellants, letters of demand were issued to the
purchasers

for payment of arrears of maintenance charges, and these purchasers included
Long Win and

Dolcen. But no payment was made. Apart from these letters, no further action
was taken.

21 Although the respondent was constituted on 8 March 1992, its first annual general meeting was held only on 7 April 1993. At that meeting, the audited

accounts for the financial years ending 29 February 1992 and 31 January 1993 were tabled

and discussed. A query was then raised as to why the outstanding sum of \$1,152,416.32

shown in the accounts as at 31 January 1993 as owed by the appellants to the maintenance

fund had not been received. Steven Loh explained that the outstanding sum was not owed by

the appellants but by several purchasers, the major part of which was owed by Long Win,

that there were disputes over the maintenance charges for basement 2, and that Long Win

were making claims for a reduction of maintenance charges for the areas that had been

converted into staircases which were then part of the common property. After further

discussions, the accounts were not passed at the meeting. However, at the meeting, 14

council members were elected.

22 **The claim**

23 Since 31 January 1993, the appellants had made two payments to the maintenance fund: \$4,566.48 on 2 April 1993 and \$190,878.82 on 20 July 1993, thus

leaving a balance of \$956,970.32. At a council meeting held on 24 May 1993, the

outstanding amounts owing by Dolcen and Long Win were discussed. It was decided that the

respondent should demand payment of the entire sums and that Dolcen and Long Win be given

two weeks to effect full payment. In consequence, demands were made but no payments were

forthcoming from both of them. On 23 July 1993, the respondent took out a writ against the

appellants in the High Court in Suit 1560 of 1993, claiming an order for an
account to be

taken and an inquiry be held and a sum of \$956,970.32 or such sum as may be
found due upon

the taking of the account or the inquiry.

24 The principal sum of \$956,970.32 as claimed represented the
shortfall of the maintenance charges which, it was alleged, the appellants as the
developers ought to have collected from the purchasers of the podium units in
the Centre.

The appellants resisted the claim contending that on the true construction of the
Act

there was no duty imposed on them to collect the maintenance charges.

25 The action was heard before Goh Joon Seng J who held that on
the true construction of ss 9(1) and 10 of the Act the appellants were under a
duty to

take reasonable steps to collect the maintenance charges from the purchasers
and that they

had breached the duty and were accountable to the respondent for the shortfall.

Accordingly, he allowed the claim and entered judgment in that sum against the appellants.

26 **The appeal**

27 There are three issues before us, namely:

28 (a) whether there was a duty on the part of the appellants

to take reasonable steps to collect the maintenance charges due from the
purchasers of

units in the Centre;

29 (b) if there was such a duty, whether the appellants had

breached the duty in relation to the collection of the outstanding maintenance
charges

from Long Win, Dolcen and other purchasers; and

30 (c) if such a duty had been breached, the extent of the loss

occasioned to the respondent.

31 **Duty**

32 The first issue turns on the true construction of the relevant provisions of the Act, which govern the developer's rights and obligations to

levy and receive maintenance charges payable by purchasers of the units comprised in the

development, and the application and use of such maintenance charges when received. The

Act was enacted in 1973, and it was initially a simple Act with provisions empowering the

Commissioner to require owners to carry out proper maintenance of their buildings. There

was then no provision relating to maintenance charges or maintenance fund.

33 The first amendment to the Act was made by the Land Titles (Strata)(Amendment) Act 1976, which introduced what is now s 7 of the Act. The amendment

came into effect on 30 March 1976. Under this section a developer is not allowed to

collect any charges for maintenance from purchasers of the units comprised in

his

development without prior written approval of the Commissioner. The effect of this

provision is that although the right of the developer to collect the maintenance charges

from the purchasers is derived from the sale and purchase agreements, the exercise of that

right is subject to the prior approval of the Commissioner.

34 More drastic changes were subsequently made to the Act. In

1982 Parliament enacted the Buildings and Common Property (Maintenance and

Management)(Amendment) Act 1982 ('the amending Act') which introduced, inter alia, what

are now ss 9-19 of the Act. For the purpose of this appeal the material provisions are ss

9, 10, 12, 13 and 18. The amending Act came into force on 1 December 1982.

35 The trial judge considered ss 9(1) and 10 of the Act. He

held that the object of s 9 is the proper maintenance of the common property of the

development pending the formation of the management corporation of that development. He

said in 23 of his grounds of judgment as follows:

36 That the object of s 9 of the BCPA [the Act] is the proper maintenance of the common property by the developer pending the constitution of the management corporation, is clear from the speech of the Minister for National Development

in Parliament on 31 August 1982.

37 He drew support for this conclusion from the following part of the speech made by the Minister for National Development in Parliament in moving the second reading of the bill for the amending Act:

38 In Singapore, purchasers are allowed to take possession of the premises when the Temporary Occupation Licence is issued

by the

Development and Building Control Division and before titles are issued and management

corporations formed. This leads to a situation where developers are required to manage and

maintain the buildings for a period of time. Purchasers will only be responsible for

maintenance when strata titles are obtained and management corporations formed.

39 As long as the present system of sale and purchase

of residential and commercial properties is maintained, we will have to take measures to

ensure that developers maintain the buildings properly before the purchasers can manage

the buildings themselves. From time to time, we have received complaints about the poor

maintenance of buildings by developers. This could be due to insufficient funds for

maintenance, incompetent management, or indifference on the part of the developers. There

are also instances of unscrupulous developers trying to make a profit from the maintenance

of the buildings.

40 Some purchasers are also to be blamed for the dilapidated state of their buildings and the common properties in such buildings. Without

legal backing, developers face the difficult task of compelling some of the recalcitrant

residents or owners to pay maintenance charges. As a result, the common properties are

left in a state of disrepair and the building rapidly becomes dilapidated.

41 The Amendment Bill before the House seeks to ensure that buildings intended for strata subdivision are properly maintained by the developers

during the interim period when such buildings are ready for occupation and before they are

handed over to the management corporation for maintenance.

42 The learned judge then said in 24:

43 24 The bill was seeking to address the problem of
poor maintenance of the common property due inter alia to the inadequacy of
funds for

maintenance purposes and indifference on the part of the developers and also to
prevent

abuse by unscrupulous developers. These objects would remain unaddressed if
the developer

has only a duty to receive whatever is paid and to pay same into the maintenance
fund but

has no duty to take steps to collect payment when the same is due. This
interpretation

would not promote the purpose of ss 9 and 10 of the BCPA and would be against
the

provisions of s 9A(1) of the Interpretation Act (Cap 1) ...

44 He therefore held that there was a duty on the part of the appellants to take reasonable steps to collect the maintenance charges at the uniform rate

from the purchasers. He said in 25:

45 25 In my view therefore there was a duty on the part of the Defendant to take reasonable steps to collect payment at an uniform rate from

(i) the purchasers of the sold units from the date when possession of the sold units could

be delivered to them; (ii) itself in respect of the unsold units from the date of issue of

the temporary occupation licence until they were sold or transferred to Long Win, High

Power or Dolcen as the case may be; and (iii) Long Win, High Power and Dolcen from the

date when the respective units were transferred to them.

46 This conclusion was challenged by Ms Tan on behalf of the

appellants. She contended that under the Act there was no duty imposed on the appellants

as developers to collect the maintenance charges. They were entitled under the sale and

purchase agreements made with the purchasers to collect maintenance charges, but even

under these agreements, they had no obligation to collect the maintenance charges. She

submitted that the learned judge was in error in drawing support from ss 9A(1) and

9A(3)(c) of the Interpretation Act (Cap 1) to rely on the speech made by the Minister in

Parliament in the interpretation of ss 9(1) and 10 of the Act, and had therefore wrongly

construed the provisions to include a positive duty on the part of the developer to

collect maintenance charges from the purchasers. In her submission, reliance on s 9A(1)

should only be allowed when there is an ambiguity as to the meaning of a

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provision or when

the plain and literal meaning of the words used in a provision would lead to an absurd

result that is against the obvious intention of Parliament. She relied on the High Court

decision in *Raffles City Pte Ltd v Attorney-General* [1993] 3 SLR 580 which followed

the Court of Appeal decision in *Tan Boon Yong v Comptroller of Income Tax* [1993] 2 SLR 48 where the court held that parliamentary records may be looked at, if such reference

would greatly facilitate the court in determining the intention of parliament behind a

certain enactment which is ambiguous or obscure or the literal meaning of which would lead

to an absurdity. In her submission, there is no ambiguity in the meaning of 'received' and

the meaning of the words used does not require a developer to exercise a positive duty to

'collect'. On a plain and literal reading of ss 9 and 10 of the Act there is only a

duty

to receive whatever amounts of maintenance charge paid by the purchasers to
the appellants

and to pay such amounts into a maintenance fund, and upon the constitution of
the

respondent, to transfer any surplus moneys in the maintenance fund to the
respondent.

Thus, there is no basis for the learned judge to refer to Parliamentary material.

47 We are unable to accept this argument. The construction of
ss 9 and 10 of the Act as contended by Ms Tan, if accepted, would lead to a
result that is

against the intention of Parliament, as we will now show. We turn first to s 9(1).
Under

this section, the developer is obliged at a certain point in time to establish a
maintenance fund for the development, and is obliged to apply and use the
moneys from the

fund solely and exclusively for the purposes specified therein; these purposes
are mainly

concerned with the maintenance and management of the common property in the development.

48 It is not sufficient merely to require the developer to set up a maintenance fund. It is necessary to ensure that the fund is properly and adequately

funded. This is provided for in s 10(1) which deals with payment of maintenance charges in

respect of the units comprised in the development. In respect of those units which have

been sold, the developer is obliged under para (a) of s 10(1) to pay to the maintenance

fund the maintenance charges received from the purchasers; and in respect of those units

which remain unsold in the hands of the developer, he is obliged under para (b) of s 10(1)

to pay to the maintenance fund a sum equivalent to the maintenance charges which would be

payable by purchasers if the units had been sold. Pausing here, it seems to us

that if the developer is obliged to pay to the maintenance fund the maintenance charges in respect of the units which remain unsold, it must follow by necessary implication that he has equally an obligation to see to it that the purchasers pay the maintenance charges.

49 Section 10 goes further to ensure that the developer is effectively and irrevocably divested of all moneys in the maintenance fund, and this done by impressing a trust on the moneys in the maintenance fund. Accordingly, under s 10(2), all moneys in the maintenance fund are to be held by the developer on trust for the owners and purchasers of units comprised in the development.

50 The control and management of the fund by the developer obviously is only temporary until it is taken over by a more permanent body. The Act

therefore provides by s 10(4) that upon the formation of the management corporation of the

development, the developer is obliged to transfer to the latter the surplus moneys in the

maintenance fund after payment of all the expenditure which may be properly charged to the

fund.

51 Following s 10 are the relevant provisions in ss 12 and 13.

Under s 12, if the Commissioner after due inquiry is satisfied that the management and

maintenance of a development is not carried out satisfactorily by the developer, he is

empowered to appoint a managing agent to manage and maintain the development. And under s

13(4) a managing agent as appointed has, inter alia, the power to institute proceedings

'in the name of the developer' to recover the maintenance charges payable by the

purchasers and also to institute proceedings to recover from the developer maintenance

charges payable by him. Finally, there is s 18, under which the failure or refusal of a

purchaser, without reasonable excuse, to pay the maintenance charges (approved by the

Commissioner) is made an offence.

52 It is true that none of these provisions lay down in

specific terms an obligation on the part of the developer to collect the maintenance

charges from recalcitrant purchasers and to take reasonable steps to recover such charges.

However, looking at these provisions as a whole it is quite evident that their purpose is

to require the developer to maintain and manage his development for a period of time,

until the management corporation is constituted, and to realize this purpose or objective

it is essential that a maintenance fund is properly set up and provided with funds from

which moneys may be used to defray costs and expenses in the maintenance and management of

the development, more particularly the common property. Eventually, when the management

corporation is formed, it will then take possession and control of the maintenance fund

and continue the task of maintenance and management of the development. Until then, as the

developer is in control of and manages the maintenance fund, it must follow that he has a

duty or obligation to maintain and operate the fund properly and is accountable for any

shortfall in the fund.

53 In our opinion, having regard to the underlying purpose of these provisions, there must necessarily be implied a duty on the part of the developer to

collect the maintenance charges from the purchasers. If the developer has no
positive duty

to collect but only a passive duty to receive the maintenance charges, such
purpose will

not be achieved. In that event, it would be open to the developer to collect the

maintenance charges as and when he wishes, to collect from whom he wishes
and to allow

recalcitrant purchasers, for whatever reason, to fall into arrears in their payment
of the

maintenance charges. This would then render illusory the obligations of the
developer

under ss 9 and 10 and would only lead to the probable result that the
maintenance fund

would not be adequately funded for the proper and efficient maintenance and
management of

the development, and that furthermore upon the constitution of the management
corporation

there would or might not be any surplus or significant surplus moneys in the
maintenance

fund to be transferred to the management corporation to enable it to take over the

responsibility of maintaining and managing the development. Such a result is clearly

against the intention of Parliament.

54 We agree entirely with the learned judge that the problems

would remain unaddressed if the developer has only a duty to receive whatever is paid and

to pay the same into the maintenance fund but has no duty to take reasonable steps to

collect payment when the same is due. In the circumstances, the learned judge adopted,

and, in our view, rightly, a construction that would promote the purpose or object

underlying the Act, and referred to the speech of the Minister made in Parliament to

confirm or reinforce his view on the purpose or object of ss 9 and 10 of the Act.

55 In interpreting the relevant provisions of the Act, the court is directed by s 9A(1) of the Interpretation Act to adopt an interpretation that

would promote the purpose or the object underlying these provisions, and s 9A(3) permits

the court to have regard to the speech made by the Minister in Parliament in moving the

second reading of the bill for the amending Act. Section 9A, in so far as relevant, provides:

56 9A.(1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the

written law (whether that purpose or object is expressly stated in the written law or not)

shall be preferred to an interpretation that would not promote that purpose or object.

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58 9A.(3) Without limiting the generality of
subsection (2), the material that may be considered in accordance with that
subsection in

the interpretation of a provision of a written law shall include -

59 ...

60 (c) the speech made in Parliament by a Minister on
the occasion of the moving by that Minister of a motion that the Bill containing
the

provision be read a second time in Parliament.

61 In *Constitutional Reference No 1 of 1995* [1995] 2 SLR 201, the
Constitution of the Republic of Singapore Tribunal quoted with approval a
passage

from the judgment of Dawson J of the High Court of Australia in *Mills v*
Meeking (1990)

169 CLR 214 at p 235. Yong Pung How CJ delivering the judgment of the
Tribunal said, at p

211:

62 In *Mills v Meeking*, Dawson J went further.

In discussing s 35 of the Interpretation of Legislation Act 1984 of Victoria [which

corresponds with s 9A] he said:

63 ... the approach required by s 35 needs no

ambiguity or inconsistency; it allows a court to consider the purposes of an Act in

determining whether there is more than one possible construction. Reference to the

purposes may reveal that the draftsman has inadvertently overlooked something which he

would have dealt with had his attention been drawn to it and if it is possible as a matter

of construction to repair the defect, then this must be done.

64 This passage of the judgment of Dawson J was followed and

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applied by this Court in *Poh Kay Keong v Public Prosecutor* [1996] 1 SLR 209, 220,

and is equally apt and applicable in this case. A reference to the purpose of these provisions (which we have discussed) clearly indicates that the draftsman has inadvertently overlooked something which he could have dealt with had his attention been

drawn to it, and it is possible in this case 'as a matter of construction to repair that

omission'.

65 **Breach of duty**

66 The next issue is whether the appellants had taken reasonable steps to collect from the purchasers the maintenance charges due. The

recalcitrant purchasers who had failed to pay are: (i) Long Win, (ii) Dolcen and, (iii) a

group of 10 purchasers.

67 **Arrears of maintenance charges from Long Win**

68 Ms Tan contended that the appellants had a good reason for not pressing Long Win for payment on the ground that there was a genuine dispute on the payment of the maintenance charges. The main reasons given by Long Win for not paying the maintenance charges were, first, that a substantial area of basement 2 had been converted into staircases and had therefore become common property, and, secondly, that no services were provided by the appellants during the period between March 1987 and October 1990 and therefore they should only be required to pay a reduced amount of the maintenance charges.

On their calculation they proposed to pay the monthly maintenance charges at the rate of \$0.30 per sq ft.

69 In our opinion, neither of these reasons is tenable. Although the planning permission for the conversion of the part of basement 2

to

staircases was given in March 1989, the strata plan incorporating the staircases
as part

of the common property was registered only on 8 March 1991. Hence this part
of the

basement 2 remained the property of Long Win until then, and so did the
obligation of Long

Win to pay the maintenance charges therefor.

70 As for the non-provision of services, that occurred during

the time when the basement was vacant after Long Win's anchor tenant,
Emporium Holding

Ltd, had vacated the premises. The premises then remained vacant for some
length of time

as Long Win could not find a replacement tenant. It seems to us that in all
probability

the fact that the premises were vacant was the reason or cause for the non-
provision of

services. It was not a case where the reason or cause for the failure or refusal by

Long

Win to pay the maintenance charges was the non-provision of services by the appellants.

The non-provision of services was probably agreed or acquiesced to by Long Win.

71 It should be borne in mind that Long Win is an associate company of the appellants; it is owned solely by Loong and members of his family, and

Loong owns half of the issued shares of the appellants and is a director of the appellants

and his daughter, Ms Loong is his alternate director. He and Ms Loong are directors of

Long Win.

72 In these circumstances, the non-provision of services was not a valid ground for refusing to pay the maintenance charges which Long Win were obliged

to pay. If the basement had remained the property of the appellants, they would have been

obliged to pay to the maintenance fund a sum equivalent to the maintenance charges that

would have been payable by the purchasers.

73 In any event, there was no evidence that the appellants had taken any positive steps towards collecting the maintenance charges from Long Win. The

responsibility lies with them. Their representatives, Steven Loh, Lee Yeok Chai and Ms

Loong, who in all probability were coloured by their perceptions of the potential conflict

of interests posed in this dispute, appeared to reach a convenient consensus that it

should be left to the respondent to decide on the viability of Long Win's request for a

reduction in the maintenance charges. In the circumstances, we agree with the finding of

the learned judge that the appellants did not take any reasonable steps to collect the

arrears of the maintenance charges from Long Win.

74 Lastly, Long Win objected to the rate of \$0.65 per sq ft per

month which was in excess of that approved by the Commissioner, the rate
approved being

\$0.60 per sq ft per month. The appellants therefore argued that they were only
entitled to

collect maintenance charges from Long Win at the approved rate. The learned
judge appeared

to have taken the view that, as the appellants had charged the other owners or
purchasers

of the podium units the rate of \$0.65 per sq ft per month, they should similarly
charge

Long Win the same rate. However, in our opinion, the court cannot sanction the
collection

of maintenance charges at a rate which is not approved by the Commissioner.
In our

judgment, the appellants as the developer are only liable for having failed to
take

reasonable steps to collect from Long Win maintenance charges at the rate approved by the

Commissioner, i e \$0.60 per sq ft per month.

75 **Arrears due from Dolcen**

76 There was no evidence of any difficulty or obstacle that appellants had encountered in collecting the maintenance charges from Dolcen. The amount

owing on the maintenance charges is based on the rate approved by the Commissioner and is

not disputed. From the evidence of Ms Loong, it appeared that the appellants did not press

Dolcen for payment, because that company did not have sufficient funds to make the

payment. Dolcen is another associate company of the appellants. It is owned by Loong and

Wing and their respective families in equal proportions effectively the same shareholders

of the appellants. There was no valid reason why the appellants should not have taken the

necessary steps to recover the arrears of maintenance charges due. Again, we agree with

the learned judge's finding that the appellants had breached their duty in failing to

recover the arrears of maintenance charges from Dolcen.

77 **Arrears due from 10 other purchasers**

78 The appellants do not dispute the amount of outstanding maintenance charges from the 10 purchasers but contended that the learned judge did not

find that they had breached their duty to collect from these purchasers the arrears of

maintenance charges. We are unable to accept this contention. There was a duty on the part

of the appellants to collect the maintenance charges from the purchasers and these charges

were outstanding and were owed by the purchasers. The appellants had not

shown any reasons

for having failed to collect such amounts. In these circumstances, prima facie
they had

committed a breach of their duty; the evidential burden has shifted to them and
it is for

them to show why they could not have collected the maintenance charges from
the

purchasers. They have failed to do so.

79 Quantum

80 The learned judge gave judgment in the sum of \$956,970.32 and this
sum was arrived at

as follows:

81 (i) \$827,677.74 being the outstanding amount of the maintenance
charges owed by Long

Win based on the rate of \$0.65 per sq ft per month;

82 (ii) \$122,562.35 being the outstanding amount of the maintenance
charges owed by Dolcen

based on the rate approved by the Commissioner; and

83 (iii) \$6,730.23 being the outstanding amount of the maintenance charges
owed by the 10

recalcitrant purchasers also based on the rate of \$0.65 per sq ft per month.

84 As we have held, the appellants are liable for having failed
to take reasonable steps to collect maintenance charges at the rate of \$0.60 per
sq ft per

month from (i) Long Win and (ii) the 10 purchasers. In the circumstances, the
two amounts

owed by Long Win and the 10 purchasers will have to be reduced to
\$764,010.22 and

\$6,212.52 respectively. As for the sum of \$122,562.35 from Dolcen being
maintenance

charges for the car park, there is nothing illegal about the rate on which that
amount was

based. Accordingly, the full sum claimed in respect of Dolcen is upheld.

85 Conclusion

86 Accordingly, the judgment below is varied by reducing the amount of \$956,970.32 to \$892,785.09. Save for the reduction we have made, this appeal is dismissed with costs. There will be the usual consequential order for the payment of the amount of deposit in court to the respondent to account of costs.

87 *Solicitors: M/s Lee Bon Leong & Co*

Karthigesu JA
L P Thean JA
Yong Pung How CJ

Lee Mun Hooi and Tan Lee Cheng (Lee Bon Leong & Co) for the
appellants
Tang Khin Wai and Kannan Ramesh (Lee & Lee) for the respondent
