IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 252

OS 127/1997

Between

MCST Plan No 1917

… Plaintiff

And

Sansin Investment Pte Ltd

… Defendant

GROUNDS OF DECISION

Land — Strata titles — Management corporation; Land — Strata titles — Common property

Version No 1: 20 Nov 2026 (00:35 hrs)

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MCST Plan No 1917 v Sansin Investment Pte Ltd

[1997] SGHC 252

OS 127/1997
Christopher Lau JC
09 October 1997

Judgment:

CHRISTOPHER LAU JC

Cur Adv Vult

In these proceedings the plaintiffs seek the following orders: (i). that the defendants give a full account of any and all sums of money paid to the defendants under two agreements providing for the naming and signage rights to a building presently known as `John Hancock Tower` (the building);

(ii). that the defendants transfer to the plaintiffs any and all sums of money paid to the defendants under these agreements.

2. **Background**

The facts are not in dispute. The defendants were the developers of the building. It has 18 floors of office space and seven floors of car parking space. Under a lease agreement dated 25 November 1992, the defendants agreed with John

Hancock Life Assurance Co Ltd (John Hancock) to lease to John Hancock three floors of the building. In a separate agreement, also entered into on 25 November 1992 (the Skysign agreement), and as an integral component of the agreement to lease, the defendants agreed with John Hancock to name the building `John Hancock Tower` subject to the relevant government authority`s consent, and to have appropriate signages depicting such name to be affixed to the exterior and other parts of the building on the payment by John Hancock to the defendants, of a fee of S$180,000 annually. Subsequently in or about July 1993, on obtaining the necessary government authority`s approval, signages naming the building `John Hancock Tower` were erected on the building`s roof and affixed to other common parts of the building.

3.Clauses 1.4, 1.5 and 2.1 of the Skysign agreement (which referred to the defendants as `the landlord` and John Hancock as `the tenant`) provided:

> 1.4 When the management corporation (as defined in the agreement for lease) comes into existence, the right of the tenant to have the building named John Hancock Tower and to maintain the aforesaid signage shall be subject to the absolute discretion of the management corporation.
>
> 1.5 However, so long as the landlord by reason of being the registered subsidiary proprietor of any of the strata title units in the building has any vote in the matter the landlord shall exercise its vote as members of the management corporation in favour of permitting the tenant to continue to have the building named John Hancock Tower and to maintain the aforesaid signage. In the event that the management corporation shall require the payment of any fee or money as a condition of the management corporation permitting the retention of the name John Hancock Tower and the signage, the landlord shall pay or offer to pay to the management corporation such fee or money provided always that the landlord shall not at any time be required to pay out any more money than it has received from the tenant under cl 2 hereunder. If despite the landlord so exercising its vote and or offering to pay any such fee or money to the management corporation, the management corporation decides to change the name of the building and to require the

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> tenant to remove the aforesaid signage the tenant shall have no claim for any compensation whatsoever against the landlord. The landlord shall be under no obligation to the tenant to be or to remain a registered subsidiary proprietor of any of the strata title units in the building
>
> 2.1 In consideration of the landlord agreeing to doing the things mentioned in cll 1.1, 1.2, 1.3 or 1.5 hereof the tenant shall pay to the landlord each year the sum of Singapore dollars one hundred and eighty thousand ($180,000) or pro-rated for part thereof so long as the name of the building is maintained as John Hancock Tower (or such variation(s) thereof as requested or initiated by the tenant) and the aforesaid signage is not discontinued by the management corporation.

4.In December 1992, several strata units in the building were sold by the defendants to two purchasers. On 31 December 1992, a temporary occupation permit for the building was issued. This was followed soon after by the defendants` sale of a further strata unit on 15 March 1993 to a third purchaser. On 21 August 1995, the plaintiffs were established under Strata Title Plan No 1917 as the management corporation for the building. Until the plaintiffs were established, the defendants, as the developers, were required under ss 9 and 10 of the Buildings and Common Property (Maintenance and Management) Act (Cap 30) (the Act) to establish a maintenance fund, to maintain the building from such fund, to act as trustee of such fund and upon the plaintiffs` formation, to transfer the surplus money (if any) in such fund to the defendants.

5.On 22 February 1996, John Hancock and the defendants, in recognition of the fact that the defendants might not be majority owners of the strata units in the building, entered into a supplemental deed. The supplemental deed provided, inter alia, in cl 1.1:

> *With effect from the date of this supplemental deed, the sum of S$180,000 payable under the provisions of cl 2.1 of the 1992 Skysign agreement shall be revised from time to time proportionately based on the following formula:*
>
> *$180,000 X (current share value/total share value)*

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> *or pro-rated for part thereof (hereafter called `the Revised Naming Rights Fee`) so long as the name of the building is maintained as `John Hancock Tower` and the aforesaid signage is not discontinued by the management corporation.*

6. **Section 10(1)(c) of the Act**

The dispute turns on whether the moneys paid to the defendants by John Hancock under the Skysign agreement and the supplemental deed constitute `income derived from the common property` of the building within the meaning of s 10(1)(c) of the Act. Section 10(1) of the Act provides:

> *A developer shall pay into the maintenance fund :*
>
> (a) all charges received by him from the purchasers of the flats in the development for the maintenance of the common property of the development;
>
> (b) in respect of those flats in the development which have not been sold and for which temporary occupation licences have been issued by the competent authority, a sum equivalent to the maintenance charges payable by the purchasers of the flats to the developer had the flats been sold; and
>
> (c) all income derived from the common property of the development.

7. **The submissions**

Mr Yim, who appeared for the plaintiffs, in essence submitted that these moneys do amount to `income derived from common property` within the meaning of the Act, it being common ground that the parts of the building to which the signages had been affixed and the roof of the building are `common property` as defined in s 2(a) of the Act and s 13(6) of the Land Titles Strata Act (Cap 157, 1994 Ed). Mr Yeap, on the other hand, submitted on behalf of the defendants that such moneys do not fall within s 10(1)(c) of the Act as the moneys paid under the Skysign agreement and the supplemental deed were derived solely from the defendants` own voting rights as subsidiary proprietors

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and were not derived from the defendants granting any rights over the common property to John Hancock.

8. **The Act`s rationale**

Pivotal to the problem is how one prescribes the ambit of the word `derived`. How should one consider the term `derived` in the context of this claim? Mr Yeap advocated a narrow interpretation which is that the moneys received from John Hancock are derived solely from the defendants` own voting rights as subsidiary proprietors and not that they are derived from the defendants` granting any rights over common property. On such an interpretation, as I understood his argument, the moneys paid would fall outside the scope of s 10(1)(c) of the Act.

9.Mr Yeap`s interpretation, at first blush, is an attractive argument. However I think it tells only half the story. It is an argument, with great respect to Mr Yeap, of form over substance; the voting rights would be valueless to John Hancock if the signages could not have been put on the common property of the building.

10.The Act`s raison d`etre is to provide for the proper maintenance and management of a building and its common property. It is the policy of the Act that strata title buildings be upkept and paid for out of a maintenance fund contributed to by the building`s strata title owners, maintained initially by the developer, and subsequently on the management corporation`s establishment, by the management corporation of the building. That this is the policy of the Act is underlined by s 9, s 10 and particularly s 10(6) of the Act which makes a breach of s 10 an offence.

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11.The natural consequence of Mr Yeap`s argument is that it would enable `voting rights` to cloak what is otherwise income derived from common property as income not so derived. That would effectively evade the intended ambit of the legislation. Taking a common sense approach, I do not think the scope of the Act is to be limited in the way submitted by Mr Yeap.

12.The defendants had one further argument. And it is that even if I were to decide the moneys do constitute income derived from common property, the scheme of the Act in any event does not provide for any transfer of such moneys earned by or paid to the defendants after the establishment of the management corporation. I am unable to accept this submission. The Act`s purpose is to ensure that all sums received by the developer if derived from common property, of which the developer is a trustee, is to be paid into a maintenance fund. So whether the moneys are paid before or after the management corporation is established is not in my view material; I do not read such a scheme in the Act.

13. **Conclusion**

In the result, I accept Mr Yim`s submissions. In my view, the sums of money paid to the defendants by John Hancock is `income derived from common property` and fall within s 10(1)(c) of the Act. Accordingly, the orders I make are that the defendants: (i). give an account of any and all sums paid to the defendants in relation to the Skysign agreement and the supplemental deed;

(ii). transfer to the plaintiffs any and all sums of money paid to the defendants in relation to the Skysign agreement and deed.

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14.As for costs, as I have found in favour of the plaintiffs on their claim, I order that the defendants bear the costs of this action, to be taxed, if not agreed.

Christopher Lau JC

Jimmy Yim and Adrian Tan (Drew & Napier) for the plaintiffs
Andre Yeap and Andrew Yeo (Allen & Gledhill) for the defendants

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