

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 336

Suit No 1600 of 1996, RA 293/1997

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

[1997] SGHC 336

Suit No 1600 of 1996, RA 293/1997
Christopher Lau JC
11 December 1997

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Judgment:

2 **GROUND OF DECISION**

3 1. This matter concerned an

application by the defendants for leave to amend their defence in this action to include a

time bar plea. The plea was that as the matters in respect of which the plaintiffs had

brought this action had arisen more than six years before the commencement of this action,

the action was barred by section 6(2) of the Limitation Act, Cap. 163.

4 2. The plaintiffs opposed the

defendants' application. The Assistant Registrar allowed it. I upheld the Assistant

Registrar's decision and dismissed the plaintiffs' appeal with costs fixed at S\$1,500.00. These are my reasons.

management corporation of a development known as Bukit Timah Shopping Centre ("the development"). The defendants were its developers. The development was constructed

between the late 1970's and early 1980's; temporary occupation licence being issued for the development's podium block on 1 May 1978 and on 11 November 1981 for

the tower block. The plaintiffs were constituted on 8 March 1991.

6 4. The plaintiffs commenced this

action on 28 August 1996. The crux of their case was that the defendants had acted in

breach of their statutory duty under section 10(4) of the Building and Common Property

(Maintenance and Management) Act, Cap. 30 ("the Act") in that the defendants had

not transferred to the plaintiffs all the surplus funds as required by section 10(4)
of

the Act. It was alleged this was caused by the defendants' failure to :

7 (a) establish the maintenance fund

each developer was required under the Act to establish, on 1 December 1982,

8 (b) collect from the purchasers of
units in the development each purchaser's share of the maintenance charges or
the

under collection of such share, and

9 (c) pay maintenance contributions

in respect of those units in the development that had not been at the time sold.

10 5. The plaintiffs therefore sought

orders for accounts to be taken or for an inquiry for the period 1 December 1982
and 31

August 1984.

11 6. The basis for the

plaintiffs' objections to the defendants' amendment application was that the

defendants' time bar amendment was clearly unsustainable in law and being

unsustainable, should not have been allowed by the Assistant Registrar. The
plaintiffs

submitted that :

12 (a) their cause of action in

reality was not an action for an account; rather it was a cause of action in tort
for

breach of statutory duty and the claim for an account and inquiry was only the

relief

sought, a relief it was argued, which was akin to an assessment of damages. It was said

that since section 6(2) of the Limitation Act only barred actions for an account, and the

plaintiffs' action was not such an action, section 6(2) of the Limitation Act would

not in such event apply;

13 (b) even if the plaintiffs'

action was construed as an action for an account, the cause of action only accrued when

damage was suffered, that is on 8 March 1991 when the plaintiffs were constituted and when

the defendants' duty to transfer the alleged funds under section 10(4) of the Act

arose. Hence the action was also not time barred; and

14 (c) time under the Limitation Act

could not in any event run against the plaintiffs until after 8 March 1991 that

being the

date when the plaintiffs were constituted and existed in law.

15 7. I did not think that the time

bar plea was plainly unsustainable. It was clearly a triable issue. The appropriate stage

to decide on that issue is at the trial.

16 8. As Chao Hick Tin J. in *Wright*

Norman v Overseas Chinese Banking Corporation Ltd [1994] 1 SLR 513 said at page 524 in

delivering the judgment of the Court of Appeal :

17 "Unless it can be clearly

shown that the plea of justification is unsustainable, namely, that no court could, under

any circumstances, make any such inference, the pleading should be allowed to remain. The

principles to be applied must be similar to those for striking out pleadings under

O 18 r

19. Whether those inferences should, or should not, be made will be a matter which the

trial judge will eventually have to decide, taking into account all the circumstances of

the case. We do not think it would be appropriate for us at this stage to say anything

more."

18 9. Accordingly I saw no basis for
disturbing the Assistant Registrar's decision and dismissed the appeal.

19 Dated the 11th day of December
1997.

20 **CHRISTOPHER LAU JC**

21 *Solicitors : M/s Lee & Lee*

22 *M/s Lee Bon Leong & Co*

*Management Corporation Strata Title Plan No 1601 v L & W Holdings Private
Limited* [1997] SGHC 336

Christopher Lau JC

K Ramesh for the appellants/plaintiffs
Tan Lee Cheng for the respondents/defendants
