

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 35

Suit 1560/1993

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

[1997] SGHC 35

Suit 1560/1993
Goh Joon Seng J
13 February 1997

1

Judgment:

2 **GROUND OF JUDGMENT**

3 The Plaintiff is the management corporation of the subdivided building comprised in Strata Title Plan No. 1601 and known as Bukit Timah Shopping Centre < 'BTSC' > . It was constituted upon the registration of the said Strata Title Plan on 8 March 1991 pursuant to s 33 of the Land Titles (Strata) Act (Cap 158) < 'the Strata Act' > .

4 2 The Defendant is a company incorporated in Singapore. The issued shares were held in equal proportion by Loong Yoke Phin and Wing Hong How. The

Defendant was the developer of BTSC.

5 3 BTSC consists of a podium with a tower. The podium consists of shop units. The tower consists of office and residential units. The Temporary Occupation Licence for the podium was issued on 1 May 1978 and that for the tower on 11 November 1981.

6 4 The majority of the units in BTSC were sold. Under the agreements of sale and purchase, the purchasers had to pay maintenance charges at a specified rate from the date on which possession of their units could be delivered to them. Pursuant to this clause the Defendant collected maintenance charges for the maintenance of the common property within BTSC.

7 5 On 28 June 1983 as required by s 7 of the Buildings and Common Property (Maintenance and Management) Act (Cap 30) < 'BCPA' > , the Defendant as the developer applied to the Commissioner of Buildings for approval to collect maintenance charges in respect of the podium at the rate of \$0.65 per square foot.

foot. The Defendant however continued with its collection of maintenance charges at \$0.65 per square foot from the purchasers of the sold units in the podium.

appointed
managing agent for BTSC.

Yoke Phin and Wing Hong How to act 'as a neutral party in overseeing the financial

appointment. In

How. On occasions he

was the secretary and

financial years 1 September 1987 to 31 August 1990 and for the period 1 September 1990 to 7 March 1991.

11 9 Notwithstanding the constitution of the Plaintiff on 8 March 1991, the Defendant

through Lee Yeok Chai and Steven Loh continued to manage the affairs of the Plaintiff until 7 April 1993 when the First Annual General Meeting of the Plaintiff was held and a council elected to manage the affairs of the Plaintiff.

12 10 In the meantime, some of the unsold units, by way of distribution of assets between

Loong Yoke Phin and Wing Hong How, were transferred to Long Win Investment Pte Ltd <

'Long Win' > , the family holding company of the former, some to High Power Investment

Pte Ltd < 'High Power' > , the family holding company of the latter. Some were

transferred to Dolcen Agencies Pte Ltd < 'Dolcen' > which is equally owned by Loong

Yoke Phin and Wing Hong How. For the same purpose and functions for which Lee Yeok Chai

was appointed to oversee the affairs of the Defendant, Lim Lam Choon was appointed by

Loong Yoke Phin and Wing Hong How for Dolcen.

13 11 The units transferred to Long Win included basements 1 and 2 of the podium. These and the units transferred to Dolcen featured in these proceedings.

14 12. At the First Annual General Meeting of the Plaintiff, the Defendant presented the audited accounts of the Plaintiff prepared by Lee Yeok Chai and Steven Loh. The accounts showed the sum of \$1,152,416 due as at 31 January 1993 to the Plaintiff from the maintenance fund operated by the Defendant. By its Debtor's Confirmation, the Defendant acknowledged owing the maintenance fund the sum of \$1,152,415.62 as at 31 January 1993. There is also no dispute that this debt accrued from the maintenance charges not collected from Long Win and Dolcen from as far back as 1984.

15 13 Before handing over the management of the common property to the Plaintiff, the Defendant on 2 April 1993 paid into the maintenance fund the sum of \$4,566.48. This was followed by payment of a further sum of \$190,878.82 on 6 July 1993 thereby reducing the shortfall due to the maintenance fund to \$956,970.32.

16 14 On 23 July 1993, the Plaintiff commenced these proceedings. By its Amended Statement

of Claim the Plaintiff claimed the said sum of \$956,970.32 being the shortfall in the surplus moneys that ought to have been handed over by the Defendant pursuant to s 10 of the BCPA. It is the Plaintiff's case that the Defendant had a duty to 'collect' the maintenance charges from Long Win and Dolcen and that the Defendant did not do so because of the personal interest of Loong Yoke Phin and Wing Hong How. If reasonable steps had been taken, payment could have been collected. The Defendant contended that it had no duty to 'collect'. Its duty was only to pay into the maintenance fund what it 'received'. In any case Long Win had good reasons to withhold payment. They were:

17 (i) part of basements 1 and 2 < after the transfer to Long Win > had been converted to additional staircases for better access to the basements;

18 (ii) suspension of electricity, air- conditioning and security services to basement 2 when it was not occupied;

19 (iii) the rate of \$0.65 per sq ft was \$0.05 in excess of the approved rate of \$0.60.

20 15 At the end of the hearing, I found for the Plaintiff as follows:

21 (i) judgment in the sum of \$956,970.32;

22 (ii) interest at 6% per annum on \$1,152,415.62 from 8 March 1991 when
the Plaintiff was
constituted to 1 April 1993;

23 (iii) interest at 6% per annum on \$1,147,849.14 from 2 April 1993 when
\$4,566.48 was
paid to 5 July 1993;

24 (iv) interest at 6% per annum on \$956,970.32 from 6 July 1993 when
\$190,878.82 was paid
to date of judgment;

25 (v) costs to the Plaintiff on an indemnity basis. The Defendant has
appealed against my
decision. I now give my reasons.

26 16 The maintenance fund was established by the Defendant pursuant to
s 9 of the BCPA.
Section 9 reads:

27 9.(1) Subject to this section, the developer of a development to which
this section
applies shall, with effect from the date when a temporary occupation
licence is issued by
the competent authority in respect of any flat in the development or such

other subsequent
date when this section applies to the development, establish a maintenance
fund for the
development which shall be used solely and exclusively for all or any of
the following
purposes:

28 (a) to maintain the common property of the development in a state of
good repair;

29 (b) to pay for the expenses incurred in providing cleaning services for
the common
property and security services and amenities for the occupiers of the flats
in the
development;

30 (c) to maintain, repair and renew fixtures and fittings (including lifts) in
the
development not being fixtures and fittings installed in a flat sold or
intended for sale
to a purchaser;

31 (d) to maintain, repair and renew sewers, pipes, wires, cables and ducts
used or
capable of being used in connection with the enjoyment of two or more
flats in, or the
common property of, the development;

32 (e) to pay any premiums for the insurance of the development against
damage by fire and
other risks;

33 (f) to pay rent and rates (if any);

34 (g) to pay any fee incurred for the auditing of the maintenance fund;

35 (h) to pay all charges reasonably incurred for the administration of the
maintenance
fund and the common property of the development.

36

37 (4) Where temporary occupation licences have been issued for any flats
in a development
at any time prior to 1st December 1982, the developer shall establish a
maintenance fund
for that development with effect from such date as the Minister may, by
notification in
the Gazette, appoint.

38 The date appointed pursuant to s 9(4) is 1 July 1983. By s 2, 'flat' is
defined as 'a
horizontal stratum of any building or part thereof, ... which is used or
intended to
be used as a complete and separate unit for the purpose of habitation or
business or
any other purpose.' Section 9 thus imposes a duty on the developer to

establish a
maintenance fund for the purposes set out therein. These principally are to
maintain the
common property and insure the development pending the constitution of
the management
corporation.

39 17 Section 10 of the BCPA sets out the duties of the developer relating
to the
maintenance fund. It reads:

40 10(1) A developer shall pay into the maintenance fund -

41 (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;

42 (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

43 (c) all income derived from the common property of the development.

44 (2) A developer shall hold all moneys in the maintenance fund on trust
for the owners
and purchasers of all the flats in the development.

45 (3)

46 (4) Where a management corporation for the development has been
constituted in
accordance with section 30 of the Land Titles (Strata) Act, the surplus
moneys in the
maintenance fund after payment of all the expenditure which may be
properly charged to the
maintenance fund shall be transferred to the management corporation.

47 (5)

48 (6)

49 18 Thus by s 10(4) upon the constitution of the management corporation
the surplus
moneys in the maintenance fund are to be transferred to the management
corporation.

Similar obligation is imposed on the developer as the proprietor of the land
on which
development stands by s 34(a) of the Strata Act which reads:

50 Upon the establishment of the management corporation, the proprietor
shall -

51 (a) forthwith open a bank account in the name of the management corporation and shall pay into the account any surplus moneys in the trust fund set up by the proprietor pursuant to section 9 of the Buildings and Common Property (Maintenance and Management) Act for the maintenance of the subdivided building and the common property prior to the establishment of the management corporation;

52 19 The receipt of the surplus moneys will thus enable the management corporation to immediately carry out its duties under the Strata Act which until then have been performed by the developer under the BCPA. These duties are primarily to administer, manage and maintain the common property for the benefit of all the owners of units within the subdivided building.

53 20 By s 10(2) of the BCPA, the developer is constituted the trustee of the moneys in the maintenance fund. Section 34(a) of the Strata Act also refers to the maintenance fund as a trust fund. The beneficiaries of this trust fund under s 10(2) of BCPA and s 34(1) of the Strata Act would be the owners at the material time of all the units within the

development. The trustee is the developer. 21 A trustee must act impartially. See

Underhill & Hayton on Law of Trusts and Trustees (14th Ed) p 441 which states:

54 A trustee must be impartial in the execution of his trust, and not exercise his powers so as to confer an advantage on one beneficiary or class of beneficiary at the expense of another.

55 22 As trustee the developer has to account for the maintenance charges that it should and could have collected if reasonable steps had been taken to recover the same at the rate applicable to units for the same use from the defaulting owners including itself in respect of the unsold units.

56 23 Without this maintenance fund or if the fund is inadequate, the developer would not be able to carry out its duties or do so satisfactorily under s 9 of the BCPA. Without adequate surplus moneys the management corporation would not be able to function satisfactorily when it takes over the maintenance duties under the Strata Act. That the object of s 9 of the BCPA 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. In moving the second reading of the bill which became inter alia ss 9 and 10 of the BCPA he said:

57 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.

58 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.

59 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.

60 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 corporations for maintenance.

61 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) which states:

62 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.

63 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:

64 (i) the purchasers of the sold units from the date when possession of the sold units could be delivered to them;

65 (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

66 (iii) Long Win, High Power and Dolcen from the date when the respective units were transferred to them.

67 26. Did the Defendant discharge this duty in so far as Long Win and Dolcen are concerned? The arrears due from Long Win and Dolcen had been mounting since 1984. No proceedings to recover the arrears were taken by Steven Loh who took a 'practical view' and because of the personal interest of Loong Yoke Phin and Wing Hong How. See the evidence in chief of Steven Loh:

68 Q: From 31.8.84 to 7.3.91 the maintenance fees in arrears climbed from \$138,323 to \$1,703,719?

69 A: Yes.

70 Q: Any legal proceedings taken to recover the arrears?

71 A: No.

72 Q: Did you ask why no action was taken against Long Win and Dolcen?

73 A: I did not ask because they controlled the defendant company. When I was short of funds I would approach any of these three persons viz Y C Lee, Loong Sweet Ying and Lim Lam Choon and I would be given funds to meet the expenses. In addition I was also advised that when strata title was eventually issued the defendants as 'developers' would be in funds from the last 5% under the various sale and purchase agreements. There would then be some form of settlement of the arrears.

74 Q: Who advised you of that?

75 A: Miss Loong Sweet Ying and also Mr Lee Yeok Chai.

76 Under cross-examination, Steven Loh said: Q: Did you recommend legal proceedings?

77 A: No.

78 Q: Why not?

79 A: I was looking at the likely practical results of such action.

80 Q: What do you mean?

81 A: Long Win itself had financial problems and they might not be able to pay.

82 Q: Financial problem was only a cash flow problem?

83 A: Yes, I took a practical view because Miss Loong was wearing two hats.

84 Q: As your employers, did defendants give you instructions to reduce the rate applicable to Long Win's B2 unit?

85 A: No.

86 Loong Sweet Ying, Loong Yoke Phin and Wing Hong How also failed to give instructions to take proceedings against Long Win and Dolcen to recover the arrears. See the evidence of Loong Sweet Ying:

87 Q: See P2 the summary of the maintenance fund audited account, see the 'arrears' column by 7.3.91, it had gone up to \$1,703,719, did Lee Yeok Chai bring this state of affairs to your attention?

88 A: Yes.

89 Q: What did he say?

90 A: He said the amount has to be collected.

91 Q: What did you do then?

92 A: I told him as special accountant he could do as he deemed necessary.

93 Q: Did you tell him to go ahead and collect the arrears?

94 A: No, I did not.

95 Q: Why not?

96 A: As special accountant I left it to him.

97 Q: Both Loong and Wing were often away in Malaysia?

98 A: Yes.

99 Q: With whom would Lee Yeok Chai speak to in their absence?

100 A: To me when my father Mr Loong was not around but for Mr Wing,
Lee Yeok Chai would
speak to Mr Wing if he was in Singapore. But if Mr Wing was in Malaysia
he would speak to
him over the telephone.

101 Q: When Lee Yeok Chai brought these arrears to your attention were
you aware the
arrears were due from Long Win and Dolcen?

102 A: Yes.

103 Q: Were you concerned as the company secretary of Loong & Wing Holdings about the arrears not being paid?

104 A: Yes.

105 Q: You reported to your father?

106 A: Yes.

107 Q: What did he instruct you to do?

108 A: He left it to Lee Yeok Chai to decide.

109 Q: Your father did not instruct you to take action?

110 A: Decision has to come from both Mr Loong and Mr Wing.

111 Q: Did your father instruct you as company secretary of Loong and Wing to take legal action?

112 A: No.

113 Although Loong Sweet Ying was the secretary and the only resident director of the Defendant she was more concerned with protecting the interest of Long

Win. This is clear
from her evidence:

114 Q: Long Win Holdings is Mr Loong Yoke Phin's (your father) holding company?

115 A: Yes.

116 Q: See P1, you were and are one of the three directors?

117 A: Yes.

118 Q: Mr Loong Yoke Phin is also the managing director?

119 A: Yes.

120 Q: Who is Loong Shin?

121 A: My brother.

122 Q: The shareholders are your family members?

123 A: Yes.

124 Q: You were and still are the secretary of Long Win?

125 A: Yes.

126

127 A: Long Win did not reply but took the stand that the charges were excessive and did not pay. Excessive because (1) it covered the area converted to two additional staircases; (2) there was no provision of services to basement II at all; (3) rate of \$0.65 was in excess of the approved rate of \$0.60 < 'the three reasons' > . See DB188 189 and 183 to 185.

128 Q: Long Win took the view that because of these three reasons, it needed not pay?

129 A: Long Win would pay only after the disputes were resolved.

130 Q: What efforts were made by L & W and Long Win to resolve these disputes?

131 A: There were many meetings between Long Win and L & W.

132 Q: Were minutes recorded of these meetings?

133 A: No.

134 Q: Who were present at these meetings?

135 A: Lee Yeok Chai, Steven Loh, Wing Hong How and myself.

136 Q: Who represented whom?

137 A: I represented Long Win, the others represented L & W Holdings.

138 27 Of the three reasons, the first one applied only to basements 1 and 2. They were transferred to Long Win in 1986. In 1989, 5,692.72 square feet of basement 2 and 999.49 square feet of basement 1 were converted to additional staircases to create better access to the two basements. This was for the sole benefit of Long Win and it was effected long after the basements had been transferred to Long Win. The burden of maintaining those converted areas should therefore not fall on the management corporation.

139 28 On the second reason, see the evidence of Steven Loh:

140 Q: DB188-189 (8.9.87) from Long Win signed by Miss Loong Sweet Ying to your firm requesting for the maintenance rate to be reduced to thirty cents psf giving the reason that unit B2 was vacant, what did you do?

141 A: I met Miss Loong. I expressed the view that I might not agree to the reduction. I explained among other reasons that what we shut down was the air handling unit (AHU) blowing the cold air into B2. There was no significant savings. The decision to shut down

the AHU came from me. I could have restarted the AHU the moment the basement is reoccupied. Miss Loong knew the AHU to basement II had been shut down. She did not raise any objection because it was unoccupied.

142 Q: See DB187, did you write that to Building Administration Unit (BAU) this letter?

143 A: Yes. They replied per DB186. BAU could not assist in variation of an approved rate to apply specially to B2 only. I sent copy of BAU's letter to Long Win. See DB16, Miss Loong still in DB16 asked for reduction in the rate.

144 Q: Did you reply to Long Win?

145 A: I spoke to Miss Loong S Y. See my hand written note in DB16 and I continued to record the maintenance charges according to the rate applicable to other purchasers.

146 Q: What did you say to Miss Loong?

147 A: The gist would be I disagreed.

148 Q: What was Miss Loong's reaction?

149 A: We could not convince each other.

150

151 Q: You said that after receiving BAU's letter DB186 you continued to
levy the same rate
against Long Win's unit?

152 A: Yes.

153 Q: You were doing so as the managing agents on behalf of the
defendants?

154 A: Yes.

155 Q: Your conversation with Miss Loong was in her capacity as
representative of Long Win?

156 A: This is not clear, I was conscious that she represented both defendants
and Long
Win. So on this issue of the A.C. services I had to speak for the
maintenance fund.

157 Q: So you spoke for the developers?

158 A: Yes.

159 29 If a reduced rate had been applied to basement 2 just because it was
not occupied,
it would have been discriminatory against the owners of other unoccupied
units if they
were not given the same reduction.

160 30 On the third reason, the Defendant applied for approval to collect maintenance

charges at the rate of \$0.65 per square foot on 28 June 1983. The Commissioner of

Buildings reverted on 10 August 1984 approving the rate of \$0.60 per square foot.

Notwithstanding that, the Defendant continued its levy of \$0.65 per square foot on the

units at the podium. Cross-examined on the Defendant's failure to apply the approved rate,

Loong Sweet Ying attributed it to Steven Loh:

161 Q: You said the rate of \$0.65 psf exceeded the approved rate of \$0.60 psf. See

PB1/49-50, the rate was approved on 10.8.84. Mr Steven Loh was appointed managing agent in

1986, before Steven Loh was appointed who in L & W implemented the erroneous rate?

162 A: In L & W we were not familiar with calculating the rate. We sought Steven Loh's

advice before his official appointment and he advised to charge \$0.65 psf.

163 Q: When was this advice given?

164 A: May be in 1985.

165 Q: Put to you that this answer is totally untrue.

166 A: I disagree.

167 Q: See the rate in PB1/50 is \$6.45 < per > sq metre if you divide it by 10.764

will give \$0.59999, why did you have to seek Mr Loh's advice?

168 A: The amount of \$0.65 was decided by Steven Loh.

169 The rate of \$0.65 per square foot could not have been decided by Steven Loh. He became the managing agent in 1986, the rate had been applied at the latest since 1983. On further cross- examination, Loong Sweet Ying admitted having received a carbon copy of the letter from the Commissioner of Buildings of 10 August 1984 giving the approved rate of \$6.45 per square metre. On that copy appeared the hand written conversion to imperial system of this rate at \$0.60 per square foot. Loong Sweet Ying therefore knew that the approved rate was \$0.60 per square foot but chose to ignore it where the same concerned the sold units. This was what she said:

170 Q: See PB1/49, this was received by L & W on 13.8.84. See note 'BYL cc to Mrs Leong' < Loong Sweet Ying > . So you got a copy receipt of this approved

rate, did
you instruct the company to collect according to the approved rate?

171 A: Yes.

172 Q: Who was instructed?

173 A: A Miss Lee, the company accountant.

174 Q: Did you tell Miss Lee to use the rate of \$6.45 psm or \$0.65 psf?

175 A: We continued to bill according to \$0.65 psf.

176 31 The Defendant should therefore be accountable for the maintenance charges it should have collected from Long Win and Dolcen at the rate applied by it to the podium.

Accordingly I found for the Plaintiff in terms of its claim. On costs, I awarded the Plaintiff costs on an indemnity basis as otherwise the other subsidiary proprietors would be penalised in costs.

177 Dated this 13th day of February 1997.

178 GOH JOON SENG

179 JUDGE

*Management Corporation Strata Title Plan No 1601 v L & W Holdings Private
Limited* [1997] SGHC 35

Goh Joon Seng J

Tang Khin Wai/Kannan Ramesh for the plaintiffs
Tan Lee Cheng/Lee Mun Hooi for the defendants
