IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 273

MA 166/1999

Between

Management Corporation
Strata Title Plan No 593

… *Appellant*

And

Grandfield Investment
International Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Criminal Procedure and Sentencing — Sentencing

Version No 1: 29 Oct 2026 (23:45 hrs)

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Management Corporation Strata Title Plan No 593 v Grandfield Investment International Pte Ltd

[1999] SGHC 273

MA 166/1999
Yong Pung How CJ
18 October 1999

1 The respondents were charged in the court below, on a private summons, with the following offence:

> *You Grandfield Investment International Pte Ltd [ROC No 199206232W] are charged that you were at all material times the subsidiary proprietor of Unit Nos [num]02-01 to [num]02-11 which are lots within the control and management of the Management Strata Title Plan No 593 (Delta House) (hereinafter called `Management Corporation`), pursuant to the provisions of the Land Titles (Strata) Act (Cap 158), and notwithstanding that the Management Corporation had given to you written demand dated 16 February 1998 to pay up all the arrears of contributions and interest due from you to the said Management Corporation, which arrears were overdue by at least 30 days before 16 February 1998, you have failed to pay the said arrears within 14 days of service of the said written demand, and you have thereby committed an offence punishable under s 42(11) of the Land Titles (Strata) Act (Cap 158).*

2 On 23 June 1999, the respondents pleaded guilty to the charge and were sentenced by the district judge to a fine of $3,000 with a further order that the respondents pay to the appellants all the outstanding arrears. At the time of the appeal, the respondents had since paid the fine but all of the outstanding arrears remained unsettled.

3 The appellants appealed against a particular aspect of the sentence, namely, the district judge`s refusal to order a further fine for future default in the payment of the contributions and interest. The issue raised in this appeal rested essentially on the interpretation of s 42(11) of the Land Titles (Strata) Act (Cap 158) (`LTSA`), which is set out as follows:

> *A subsidiary proprietor who fails to pay any contribution or interest due and owing to a management corporation within 14 days from the date of service of the written demand referred to in subsection (10) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 and* ***to a further fine not exceeding $100 for every day during which the contribution or interest remains unpaid after conviction*** *and the court before which such conviction is had may, in addition to such fine, order the subsidiary proprietor to pay to the management corporation the amount of any contribution together with any interest due thereon or any interest certified by the management corporation to be due from such person at the date of his conviction and such amount may be recovered according to any written law for the time being in force for the recovery of fines. [Emphasis added.]*

4 ***The decision below***

5

6 In the court below, the district judge rejected the appellants` request for a further fine to be fixed for a continuing offence. He was of the opinion that it was inappropriate to sentence someone before the offence has been committed and on the present facts, the liability could only crystallise into an actual punishable offence upon default by the respondents, which would have to be ***after*** the date of conviction. He further held that imposing the sentence prior to the commission of the continuing offence not only meant that the court would, at the time of sentencing, have no means of determining the actual length of default, it also amounted to the accused being deprived of his right of mitigation

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and the opportunity to give his reasons, if any, for the default. The district judge concluded that Parliament could not have intended such an interpretation that would lead to unjust results.

7 The district judge held that a further fine could only be imposed after it was shown that the respondents had continued to fail to pay the contributions and interest ***after*** the date of conviction. In such an event, it would then be open to the appellants to lodge a further complaint and apply for a fresh summons against the respondents for the continuing default.

8 ***The appellants` arguments***

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10 It was argued by the appellants that the district judge had erred in law and in fact when he failed to give effect to the plain and literal meaning of the words in s 42(11), LTSA, which, they submitted, compelled the judge to impose the further fine as part of the sentences to be meted out for an offence under the section. It was contended that the words `and to a further fine not exceeding $100 for every day during which the contribution or interest remains unpaid after conviction` were mandatory in nature and therefore the court was bound to impose the further fine at the time of conviction of the respondents.

11 The appellants further sought to rely on what they interpreted to be the Parliament`s intention in introducing s 42(11), LTSA, in 1987. They submitted that the intention of the Parliament was to strengthen the position of the management corporation against recalcitrant subsidiary proprietors and this would be given effect to by reading the relevant words as being mandatory in nature.

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`... and to a further fine ...`

12 Contrary to what was alleged by the appellants, it is not uncommon to find in our legislation provisions for the imposition of further penalties upon the continual commission of an offence. The expression or its equivalent `... and to a further fine not exceeding $x for every day during which the offence continues after conviction ...` can be found employed in many of our local statutes. To name a few examples, one may wish to look at s 8(6), HUDC Housing Estates Act (Cap 131), ss 5(3) and 23(3) of the Building Control Act (Cap 29) and s 23(4) of the Public Utilities Act (Cap 261). The exact wording may differ slightly between the different legislation and, although s 42(11) LTSA is not expressly worded as providing for a continuing offence`, I had no doubt that the words were clearly intended to deal with such a situation.

13 It was pointed out by both counsel, for the appellants and the respondents, that there was currently a lack of local authority determining the question of whether a court may impose a fine in futuro for continuing offences that have yet to be committed. However, this issue has been settled by several Malaysian authorities. The legal position there is that a sentence for a continuing offence can only be imposed after it has been proved that the offence has been continued. In **R v Lim Heng Soon & Ors** [1954] MLJ 151 , the facts in brief were that the accused persons were found guilty of the offence of disobeying a nuisance order and a daily-rated fine was imposed upon them for future continued non-compliance with the order. This was in fact an in futuro fine since it was for breaches of law (ie continued non-compliance) which the accused persons had not yet committed. The appellate court exercised its revisionary powers to, inter alia, set aside the order imposing the fines and held that `fines for a continuing offence can be imposed only after proof that the offence has

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continued` and the court was the only authority who could determine the issue of whether or not the offence had in fact continued.

14 The case of **Taiping Town Council v Beh Cheng Siew** [1955] MLJ 102 also dealt with the non-compliance of an order and a statutory provision imposing a further penalty for continuing the offence. The unequivocal position taken by the Malaysian court in that case was that a man cannot be punished for an offence which he has not committed. If the offence was indeed continued, then the proper procedure would be to prosecute the offender again under a fresh charge for continuing the offence. The court there recognised the same problems of imposing an in futuro fine as was identified by the district judge in our present case. In the absence of fresh proceedings for the subsequent charge, it would not be possible for the court to determine how long the default had gone on and whether the accused had acquired some perfectly valid reasons for the continued default that were not previously available to him at the time of the initial conviction. These factors would be relevant in determining what daily rate of fine should be fixed with respect to the continued offence. This proper procedure of bringing a fresh charge for continued default was reiterated in the case of **Meow Loong Onn v PP** [1997] 2 MLJ 612 .

15 I was in total agreement with the position established by the Malaysian courts and the reasoning adopted by the district judge. There was no question that the arguments raised by the appellants must inevitably fail. It is a fundamental principle in criminal law that an offender can only be punished for an offence with which he was charged and of which he was convicted. To sentence an offender in advance, for a criminal act yet to be committed, would be going completely against all jurisprudential theory, either of the common law or the civil code. A statutory provision such as that of s 42(11) of the LTSA

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creates, at the time of conviction, a liability for continuing the offence. However, this liability will only be crystallised subsequently, when it has actually been proven that the default has continued after the time of conviction.

16 ***Calculation of amount of further fine***

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18 The appellants had sought to suggest that the problem of indeterminate length of default with respect to the imposition of in futuro fines was not a real one, as the whole purpose of imposing a further fine was to compel the offender to pay up the arrears as early as possible, to minimise the further penalties that would be incurred. They went on to submit that the respondents were in a position to mathematically calculate the period of delay and the total amount of further fine incurred since they were the ones who could fix the length of default by determining when they would pay up all the arrears. I found the reasoning behind such an argument clearly faulty and unacceptable. The reality is that the fact of the offender being able to `control` the length of default does not assist the court, at the time of conviction and prior to the commission of any further continued offence, in determining the culpability of the offender and whether a lenient or deterrent rate of fine should be fixed in light of circumstances which have not arisen yet. It is crucial for the sentencing court to be able to establish at the time of sentencing, a precise calculation of the exact amount of fine to be imposed and which may be enforced against the offender. This would be impossible if the arguments forwarded by the appellants were to be accepted by this court. Furthermore, I was fully prepared to recognise that there could be good reasons leading to the continuation of the default and such factors must be

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taken into account by the sentencing court as an accused should not be unjustly deprived of his right of mitigation.

19 ***Parliament`s intention***

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21 The amendments in 1987 to the LTSA, which introduced s 42(11), then numbered as s 39(11), were intended by Parliament to deal with, among others, the problems encountered by management corporations in the management and maintenance of the property. The appellants were probably not wrong in suggesting that the purpose of imposing such further penalty was designed to help strengthen the position of the management corporation against recalcitrant subsidiary proprietors. However, this still would not lead to the conclusion that the further penalty must then be imposed alongside the primary fine at the time of conviction, before the offence of continued default had even taken place. Similarly, with regard to the interpretations adopted by textbook writers of s 42(11), LTSA, the extracts cited by the appellants merely showed a reiteration of the wording used in the section and did not go any further to suggest that the proper time to impose the further penalty was at the time of the initial conviction.

22 ***Conclusion***

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24 Having considered the legal principles governing the interpretation of such wording in statutory provisions dealing with further penalties, I was

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convinced that the appellants had misconstrued s 42(11) LTSA, and accordingly the appeal was dismissed.

25 **Outcome:**

26 Appeal dismissed.

Yong Pung How CJ

Mahendra Prasad Rai (Cooma & Rai) for the appellants
Kenny Chooi Yue Wai and Mabel Choo (Yeo-Leong & Peh) for the respondents

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