

Sum Lye Heng (also known as Lim Jessie) v Management Corporation Strata Title Plan No 2285 and Others
[2003] SGHC 245

Case Number : OS 757/2003

Decision Date : 20 October 2003

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Lim Chor Pee and Rani Krishna (Chor Pee & Partners) for the plaintiff; Peter Low (Peter Low, Tang & Belinda Ang) for the defendants

Parties : Sum Lye Heng (also known as Lim Jessie) — Management Corporation Strata Title Plan No 2285; Loke Mei Peng Amanda; Tan Kim Siang Raymond; Chan Tian Soo; Lim Teck Chay; Wong Oong Kwong; Chua Choon Huat; Chua Boon Chye

Courts and Jurisdiction – Jurisdiction – Inherent – Power to stay in respect of criminal prosecution – Whether private summons against plaintiff abuse of process of court justifying stay

Land – Strata titles – Management council – Council member interested in proposed contract with management corporation – Whether compliance with ss 66(1) and 67(2) of Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

Introduction

1 This application was filed by the plaintiff Sum Lye Heng also known as Jessie Lim ("Ms Lim") to restrain the first defendant, Management Corporation Strata Title Plan No 2285 ("the MC") "from prosecuting or proceeding with further action in Private Summons No 138 of 2003 ... issued against the Plaintiff pursuant to the Complaint filed by the 4th Defendant on behalf of the 1st Defendant ... on the ground that the said Complaint and the Private Summons amount to an abuse of the process of the Court".

2 The second to seventh defendants were Council Members of the MC with the following difference: the fourth to seventh defendants were also Council Members of the previous Council whereas the second, third and eighth defendants were not Council Members of the previous Council. I will refer to the fourth to seventh defendants collectively as "the Existing Council Members" and the second, third and eighth defendants as "the New Council Members". The Existing and New Council Members were included as defendants by Ms Lim as she had wanted them to be liable personally to pay costs of her present application as well as costs of the Private Summons.

3 After hearing arguments, I granted the order to restrain the MC ("the primary relief") and ordered a permanent stay of the Private Summons. I adjourned the question of costs to be dealt with at another hearing so that Mr Peter Low, Counsel for the MC, could take further instructions. Since then, I made certain orders on costs after hearing arguments thereon. The MC has appealed against my substantive decision.

The Complaint

4 The Complaint pursuant to which the Private Summons was initiated was that Ms Lim had breached s 66(1) and s 67(2) of the Land Titles (Strata) Act ("the Act").

5 Section 66(1) states:

66.(1) Subject to this section, every member of a council who is in any way, directly or

indirectly, interested in a contract or proposed contract with the management corporation shall as soon as practicable after the relevant facts have come to his knowledge declare the nature of his interest at a meeting of the council.

6 Section 67(2) states:

(2) A member of a council, or an officer or agent or a managing agent of a management corporation, shall not use his position as a member of the council or as an officer, agent or managing agent of the management corporation to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the management corporation.

7 It was not disputed that the complaint in respect of s 67(2) arose from and was rooted in the same facts leading to the complaint in respect of s 66(1).

Background

8 Ms Lim and the second to eighth defendants were subsidiary proprietors of various units in Harbourlights Condominium. The condominium was developed by Liang Court Technopark Pte Ltd ("the Developer") and then managed initially by Premas International Limited ("Premas"). According to Ms Lim, both the Developer and Premas were part of the Capitaland Group.

9 At the first Annual General Meeting ("AGM") of the MC on 19 May 2001, Ms Lim and the Existing Council Members were elected as members of the Council of the MC. In August 2001, the then Chairman of the Council, Mr Lee Chee Kiong, resigned from the Council and Ms Lim was appointed Chairperson on 13 November 2001.

10 The second AGM was scheduled to be held in the middle of 2002. According to Ms Lim, the Council was dissatisfied with Premas and decided to call a fresh tender for the appointment of a new managing agent at the second AGM.

11 Around April 2002, Premas was instructed to prepare tender documents for the selection of the managing agent. On 9 May 2002, Premas wrote to Ms Lim as Chairperson of the Council to state that it would not be submitting a tender. In its letter dated 28 May 2002 to all subsidiary proprietors of the condominium, Premas said it would not be continuing its services after the second AGM.

12 Ms Lim claimed that even before she was appointed Chairperson, she had told the other Council Members that she was a full-time director and shareholder of SCMS Property Management Pte Ltd ("SCMS"), a property management company. She also claimed that the other Council Members kept encouraging her to persuade SCMS to submit a tender to be the new managing agent and she had made it clear that if SCMS were to submit a tender she would not want to be involved in the tender exercise. Apparently a tender sub-committee was formed but she was not a member of it. In the meantime, her niece Janet Lim (whose married name is Janet Au) was the Secretary of the Council.

13 Tender documents were collected by various building managing agents and a memo dated 7 May 2002 was sent by Janet to all Council Members listing the names of these agents, including the name of SCMS. I will refer to these managing agents as "interested parties". The memo stated:

Re: Tender for Managing Agent Services

We append the list of companies that has collected the tender documents for your necessary

information.

[12 names were inserted including SCMS' name.]

We would like to highlight Section 66(1) of the Land Titles (Strata) Act which states:

"subject to this section, every member of a council who is any way, directly or indirectly, interested in a contract or proposed contract with the management corporation shall as soon as practicable after the relevant facts have come to his knowledge declare the nature of his interest at a meeting of the council."

Copy of the section 66 of the LTSA is enclosed for your easy reference.

Members are expected to disclose your interest (if any) for the above.

Regards

14 Ms Lim then sent an e-mail dated 13 May 2002 to Janet and the fifth to seventh defendants stating that she would declare her interest and would not be involved in the evaluation of tenders. She also offered to tender her resignation as Chairperson and Council Member at the next Council meeting. She would also decline nomination for election at the second AGM irrespective of whether SCMS was appointed as managing agent or not.

15 By a letter dated 15 May 2002, SCMS submitted its tender for the provision of managing agent services.

16 On 24 May 2002, a meeting was purportedly held of Council members whereby Ms Lim declared her interest as one of the directors and shareholders of SCMS. However, Premas did not consider that to be a valid Council Meeting as a formal notice and agenda had not been sent prior thereto.

17 Accordingly, it was agreed that another Council meeting be called for Ms Lim to formally declare her interest in SCMS. There were various e-mail to this effect but I need refer to some only:

(a) An e-mail dated 15 May 2002 from Chua Choon Huat, the seventh defendant, to Ms Lim and copied to some other council members stated, *inter alia*:

2. *Immaterial as to outcome of tender results, I feel Jessie must not resign as chairman until after AGM, but she still has to declare her interests before ballot opening.* These issues must be settled beforehand and we must remember MOST IMPORTANTLY continuity and successful compensation of claims against developer. 7 years is almost up!

[Emphasis added]

(b) An e-mail dated 17 May 2002 from Wong Oong Kwong, the sixth defendant, to Ms Lim and some other council members, stated, *inter alia*:

Following the advice by the Management Agent (MA) on 15 May 2002 that declaration, in accordance with the LSTA, must be done at a formal council meeting, I suggest that we hold a Council meeting urgently to allow our Chairperson to make a declaration to regularise procedures. The Secretary of the Council had indicated on 15 May 2002 that she would also like to declare her relationship with the Chairperson. I respect and agree with her decision and feel that a

formal Council meeting would be most appropriate for the above agenda.

(c) However, the most significant e-mail was one from Chan Tian Soo, the fourth defendant, which was quoted by Wong Oong Kwong to Ms Lim and copied to some council members. Mr Wong's e-mail dated 21 May 2002 stated, *inter alia*:

Below is Mr Chan Tian Soo's email (highlighted in blue).

Dear Jessie Lim, Chairperson (MCST 2285):

I refer to your faxed letter dated 20 May 2002 inviting us for comments.

Taking your chronology, my comments are as follows:

1) It is my considered opinion that the claim against Liang Court should be pursued vigorously and I strongly feel that the services of Ms Thio Ying Ying of M/s Kelvin Chia & Partners should be retained. So far, I have no reason to doubt Ms Thio Ying Ying's professionalism, more so when she was recommended by you - an experienced business woman. *It is therefore regrettable that statutory requirement makes it impossible for you to carry on as chairperson should your company be selected as MA for Harbourlights Condo. In any event, I sincerely hope that your company is successful in the tender exercise.*

....

On the question of finger pointing, I am always reminded by Prime Minister Goh Chok Tong's remarks. He said, "Always stand by the Law and you will never go wrong". *Indeed, we Council members spared no effort to comply with the LSTA.* I believe we have achieved it to the Letter of the Law and hence we should not fear any finger pointing.

[Emphasis added]

18 In an e-mail dated 21 May 2002 to Ms Lim and copied to some council members, Chua Choon Huat said the e-mail from Chan Tian Soo made sense to him and he agreed with Mr Chan's comments. Likewise, in an e-mail dated 21 May 2002 from Wong Oong Kwong to Ms Lim and copied to some council members, Mr Wong also said he agreed and supported Chan Tian Soo's comments.

19 In the meantime, the Commissioner of Buildings sent a letter dated 21 May 2002 to the MC stating that it had received feedback on the tender for managing services of the condominium and drew the MC's attention to s 66 of the Act and that it was to comply with the Act strictly.

20 Also in the meantime, there was a dispute between Janet and Premas as to why no proper notice had been given for the meeting held on 15 May 2002. However, nothing material turns on whether Premas was at fault or not for the omission because another council meeting was held on 29 May 2002. At that meeting, Ms Lim again declared her interest to comply with s 66(1) of the Act and no one disputed at that time that that was a meeting validly convened.

21 Accordingly, Chan Tian Soo then sent a letter dated 30 May 2002 to one Mr Quek of Premas stating:

HARBOURLIGHT COUNCIL MEETING HELD ON 29 MAY 2002

I refer to the above meeting.

This is to thank you for your attendance at the above meeting during which you have enlightened us on the various points raised relating to the issue of the chairperson's tender for MA services and the query from BCA. Indeed, we are pleased you have clarified the situation.

For good order sake, I shall be grateful if you would please ensure that the following are recorded in accordance with your advice:

I) That the chairperson's declaration under section 66(1) LSTA made at the above meeting *was and will continue to be valid*.

II) That consequent to the declaration of the chairperson and the voluntary declaration of other members of the Council, Council members are now qualified to short list the tenders for MA services which include the tender from the chairperson's company.

Following the above declarations listed in (I) and (II), you have kindly agreed to reply, on our behalf, to the BCA *with emphasis that the members of the Council including the chairperson have complied to the letter of the law outlined under section 66(1) LSTA*. And the chairperson will not participate in the short listing of the tenders.

Thank you once again for your invaluable assistance and advice at the meeting. I trust the above is in order.

[Emphasis added]

This letter was copied to Janet and all council members.

22 By a letter dated 31 May 2002, Ms Lim wrote as Chairman of the Council to the Commissioner of Buildings to inform him that one of the tenderers was SCMS and that she was a director and shareholder of SCMS and had declared her interest in SCMS at the Council meeting of 29 May 2002. She also said she had sent a letter dated 24 May 2002 to Council Members declaring her interest. Her letter of 29 May 2002 was copied to all other Council Members.

23 As it turned out, four of the Council Members, ie the ones whom I have referred to as the Existing Council Members, took issue with the fact that Ms Lim had sent her letter of 29 May 2002 to the Commissioner. They were of the view that she should not have done so as she was the one with an interest in SCMS. Moreover, the Council had agreed that Premas should give the reply to the Commissioner. This was the start of the break-down in the relationship between Ms Lim and the Existing Council Members, which had been otherwise friendly.

24 Two subsequent letters were then sent to the Commissioner.

25 The first was a letter dated 5 June 2002 from Premas to the Commissioner. It stated, inter alia:

We refer to your letter dated 21 May 2002 (reference: BCA BC BMSC-2285).

We write to inform that during the 6th council meeting of the 1st management council held on 29 May 2002,

a) Mdm Sum Lye Heng, the chairperson, has declared that she is a director and shareholder of SCMS Property Management Pte Ltd, one of the tenderers participating for the appointment as managing agent in the forthcoming Annual General Meeting.

b) Ms Janet Lim Ching, the secretary, has declared that she is related to Mdm Sum Lye Heng under Section 66(7) of the Land Titles (Strata) Act.

c)

26 The second was a letter dated 7 June 2002 from the Existing Council Members. Their letter to the Commissioner stated that Ms Lim should not have given the reply as she was one of the directors and shareholders of SCMS. Nevertheless, their letter also stated that Ms Lim had made a declaration of her interest as director and shareholder in SCMS during the 6th Council meeting of 29 May 2002.

27 Subsequently, at a Council meeting on 12 June 2002, the relationship between Ms Lim and Janet on the one hand and other Council members on the other hand took an even worse turn. Ms Lim alleged that Chan Tian Soo had shouted at both Janet and her and refused to allow them to speak. Janet and her then walked out of the meeting. This was followed by a letter dated 17 June 2002 from Ms Lim tendering her resignation as Chairman of the Council and a letter also dated 17 June 2002 from Janet tendering her resignation as Secretary of the Council.

28 The Existing Council Members then sent a notice dated 19 June 2002 to all the subsidiary proprietors. The notice stated, *inter alia*:

HARBOURLIGHTS CONDOMINIUM - MANAGING AGENT SERVICES

The 1st Management Council term is coming to an end and the 2nd Annual General Meeting (AGM) had been scheduled to be held in July 2002. One of the items to be discussed during the AGM will be the appointment of the managing agent. The 1st Management Council had called for an open tender for the managing agent services on 2 May 2002. For your information, our current managing agent, M/s PREMAS International Limited, had served notice that they are unlikely to continue their services after this coming AGM.

The tender was closed on 15 May 2002. The companies that participated in the tender exercise are listed below in alphabetical order.

[11 names were inserted including SCMS']

During the 6th Council Meeting on 29 May 2002, the following declarations were made:

a) Mrs Jessie Lim nee Mdm Sum Lye Heng, Chairman of the Management Corporation, has declared that she is a director and one of the shareholders of M/s SCMS Property Management Pte Ltd, one of the tenderers for the appointment of the managing agent for the Management Corporation.

b) Ms Janet Lim Ching, Secretary of the Management Corporation has declared that she is related to Mrs Jessie Lim nee Mdm Sum Lye Heng under Section 66 (7) of the Land Titles (Strata) Act.

c)

The council members are of the opinion that the selection of the managing agent be left to the subsidiary proprietors at the AGM. As the issues to be discussed at the AGM will affect your interest, we hope that you will make an effort to attend the meeting.

29 The Existing Council Members also sent a reply dated 19 June 2002 to Ms Lim and to Janet to assert that Chan Tian Soo did not shout but was only giving his views aloud and that it was Ms Lim and Janet who stormed out of the Council meeting of 12 June 2002. They referred to this act of storming out as a blatant act of arrogance and raised again the point that Ms Lim had sent her reply to the Commissioner without the approval of the Council.

30 There followed an acrimonious exchange of correspondence in which allegations of defamation were made.

31 I would add that at the second AGM on 27 July 2002, the incoming Council was authorised to appoint a managing agent. The new managing agent subsequently appointed was not SCMS but another managing agent.

32 On 18 October 2002, the Existing Council Members filed an action in the High Court against Janet for defamation.

33 Between 16 October 2002 to 23 January 2003, there were newspaper reports concerning a controversy at People's Park Centre and SCMS's role in it. Ms Lim alleged that the third to fifth defendants circulated copies of these reports to the subsidiary proprietors to discredit Janet and her.

34 Then, on or about 13 January 2003, Chan Tian Soo lodged the Complaint which gave rise to the Private Summons in question. As I have mentioned, the Complaint alleged a breach by Ms Lim of s 66(1) and s 67(2) of the Act. The circumstances of the alleged breaches pertained to Ms Lim's involvement as a director and shareholder of SCMS and the intention to engage a new managing agent at the second AGM as well as the calling of tenders for that exercise.

35 Ms Lim's position was that the allegations in the Complaint were frivolous and vexatious, malicious and full of venom. She said that its objective was to use the funds of the MC to smear her character and make her incur legal costs. This was an abuse of the process of court.

36 Accordingly, Ms Lim filed an action in OS 230 of 2003 ("the first OS") naming Chan Tian Soo as the defendant. In the first OS, Ms Lim sought an order to restrain Mr Chan from prosecuting or proceeding with the Complaint and a declaration that he was not entitled to use the MC funds to pay for his solicitors' fee in respect of the Complaint and the defamation action and all other proceedings instituted by the MC. She also sought other consequential orders.

37 The first OS was heard by me. After hearing arguments, I dismissed Ms Lim's application in so far as it related to the Complaint because I was of the view that the Complaint had not been made by Chan Tian Soo personally but on behalf of the MC and in his capacity as an officer of the MC. However, I made a declaration that Mr Chan was not entitled to use the funds of the MC in the defamation action. Consequential orders were also made. I did not make a ruling as to whether the Complaint was an abuse of the process of court. I also urged the parties to resolve their differences amicably.

38 However, that was not to be. Ms Lim's solicitors wrote on 17 April 2003 to the MC's solicitors

to ask if the MC still intended to proceed with the Private Summons. The MC's solicitors reply dated 5 May 2003 was that all seven Council members, meaning the Existing and the New Council Members, had voted unanimously to proceed.

39 Accordingly, Ms Lim then filed the present application this time to restrain the MC from proceeding with the Private Summons and to seek costs against the Existing and the New Council Members.

Jurisdiction

40 Ms Rani Krishna, Counsel for Ms Lim, relied on a number of cases for the proposition that the High Court did have the jurisdiction to order a stay of further proceedings in the Private Summons which was to be heard by a subordinate court. I need refer to only two of the cases.

41 In *Heng Joo See v Ho Pol Ling* [1993] 3 SLR 850, the parties were married in 1991. In 1993, the wife filed a petition for nullity on the ground of non-consummation of the marriage due to the wilful refusal by the respondent ie the husband to consummate it. The respondent confirmed this allegation in oral evidence and on affirmation. Accordingly, a decree nisi was granted and a certain order was made for the surrender of an HDB flat by the parties. Some three and a half months after the decree nisi was extracted, the solicitors for the respondent applied to vary the order made regarding the flat. The respondent wanted an order that the petitioner's interest be transferred to him upon his refunding her CPF withdrawals for the purchase of the flat. When the application was adjourned to open court for clarification of certain matters, the respondent gave evidence that in fact he did consummate the marriage. The allegation about his refusing to have sex with the petitioner was true only in respect of the one year before the filing of the petition. The petitioner was called and gave evidence and she admitted that the marriage had been consummated during the first six months of the marriage. As the facts which grounded the decree nisi were untrue, the court considered the issue of its jurisdiction to rescind the decree nisi and its order regarding the flat.

42 Punch Coomaraswamy J said:

Section 91 of the Women's Charter enables the Attorney General to intervene in a matrimonial cause either on the initiative of the court or of any person who gives him information. Section 93(2) enables any person to show cause why a decree nisi for divorce, or by s 103 for nullity, 'should not be made absolutely by reason of the material facts not having been brought before the court' and the court may rescind the decree nisi.

Notwithstanding these provisions, a court has powers to act if, on material before it and without intervention by the Attorney General or any other person, it is patently clear that a decree nisi was granted contrary to the material facts. A court cannot remain idle when abuse of process by deception of the court takes place in its face resulting in removal of the very foundation on which it previously acted and gave relief. In this case, it is not merely an instance of the material facts not being before me at the hearing of the petition. Facts which constitute the basis and which are the very foundation of the relief provided by statute were asserted 100% contrary to the truth. Failure of the court to act on knowledge of the truth will make it the laughing stock amongst litigants and society generally.

Notwithstanding what I have just said, I invited counsel to make submissions on jurisdiction. I have no doubt that I have such jurisdiction. Order 92 r 4 of the Rules of the Supreme Court ('RSC') reads:

For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

This rule does not define or give the jurisdiction. It merely states that the RSC shall not limit or affect the inherent powers which are common law powers. These powers have been examined by Master Jacob (later Sir Jack Jacob, Senior Master of the Supreme Court and Queen's Remembrancer) in an instructive lecture, since published in (1970) 23 **Current Legal Problems** at p 23. He cites all relevant authorities.

Master Jacob describes the inherent jurisdiction 'as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them'.

He classifies cases in which this inherent power may be used by the summary powers of the court as falling into these four categories:

- (a) *proceedings which involve a deception on the court, or are fictitious or constitute a mere sham;*
- (b) *proceedings where the process of the court is not being fairly or honestly used but is employed for some ulterior or improper purpose or in any improper way;*
- (c) *proceedings which are manifestly groundless or without foundation or which serve no useful purpose;*
- (d) *multiple or successive proceedings which cause or are likely to cause improper vexation or oppression.*

The facts in this case, undisputed at present, fall fully and clearly into each of the first three categories and I cannot think of a stronger case for the court to exercise its inherent jurisdiction.

43 However, *Hong Joo See* was not a case of a court staying the prosecution of criminal proceedings as was sought by Ms Lim. The next case which I will now come to was such a case.

44 In *Williams and others v Spautz* [1991-1992] 174 CLR 509, Dr Spautz was a senior lecturer in the Department of Commerce at the University of Newcastle. He was subsequently dismissed by the university. He commenced an action seeking a declaration that his dismissal was invalid. However, he also commenced over thirty proceedings, the majority of which were criminal prosecutions, against persons who occupied positions of authority at the university or who played a role in the events leading to his dismissal. The criminal prosecutions pertained to, *inter alia*, criminal defamation.

45 Three persons sought, *inter alia*, declarations that the prosecutions were an abuse of the process of the court. The High Court of Australia was of the view that Australian superior courts have inherent jurisdiction to stay proceedings which are an abuse of process and the jurisdiction extended to both civil and criminal proceedings. Thus the judgment of four of the seven judges of the High Court of Australia stated, at p 518 to 520:

The jurisdiction to grant a permanent stay for abuse of process

It is well established that Australian superior courts have inherent jurisdiction to stay proceedings which are an abuse of process (22). The existence of that jurisdiction has long been recognized by the House of Lords (23). The jurisdiction extends to both civil and criminal proceedings. As Lord Morris of Borth-y-Gest observed in *Connelly v. Director of Public Prosecutions* (24):

"[A] court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. ... A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuse of its process and to defeat any attempted thwarting of its process."

The jurisdiction to grant a stay of a criminal prosecution has a dual purpose, namely, "to prevent an abuse of process or the prosecution of a criminal proceeding ... which will result in a trial which is unfair" (25)

....

If, however, a stay is sought to stop a prosecution which has been instituted and maintained for an improper purpose, it by no means follows that it is necessary, before granting a stay, for the court to satisfy itself in such a case that an unfair trial will ensue unless the prosecution is stopped. There are some policy considerations which support the view that the court should so satisfy itself. It is of fundamental importance that, unless the interests of justice demand it, courts should exercise, rather than refrain from exercising, their jurisdiction, especially their jurisdiction to try persons charged with criminal offences, and that persons charged with such offences should not obtain an immunity from prosecution. It is equally important that freedom of access to the courts should be preserved and that litigation of the principal proceeding, whether it be criminal or civil, should not become a vehicle for abuse of process issues on an application for a stay, unless once again the interests of justice demand it. In the United States, great weight has been given to these factors (27).

These factors have considerable force. There is a risk that the exercise of the jurisdiction to grant a stay may encourage some defendants to seek a stay on flimsy grounds for tactical reasons. But that risk and the other policy considerations already mentioned are not so substantial as to outweigh countervailing policy considerations and deter the courts from exercising the jurisdiction in appropriate circumstances.

As Lord Scarman said in *Reg. v. Sang* (28), every court is "in duty bound to protect itself" against an abuse of its process. In this respect there are two fundamental policy considerations which must be taken into account in dealing with abuse of process in the context of criminal proceedings. Richardson J. referred to them in *Moevao v. Department of Labour* (29) in a passage which Mason C.J. quoted in *Jago* (30). The first is that the public interest in the administration of justice requires that the court protect its ability to function as a court of law by ensuring that its processes are used fairly by State and citizens alike. The second is that, unless the court protects its ability so to function in that way, its failure will lead to an erosion of public confidence by reason of concern that the court's processes may lend themselves to oppression and injustice. As Richardson J. observed (31), the court grants a permanent stay:

"in order to prevent the criminal processes from being used for purposes alien to the administration of criminal justice under law. It may intervene in this way if it concludes ... that the Court processes are being employed for ulterior purposes or in such a way ... as to cause improper vexation and oppression."

Other objections to the exercising of the jurisdiction arising from the availability of other remedies in the form of contempt, malicious prosecution and the tort of collateral abuse of process have not prevailed. Neither the action for malicious prosecution nor the action for collateral abuse offers the prospect of early termination of the subject proceedings. An action for malicious prosecution cannot be brought until those proceedings have terminated. Although an action for collateral abuse can be brought while the principal proceedings are pending, the action is at best an indirect means of putting a stop to an abuse of the court's process which the court should not permit to continue. Contempt stands in a rather different position because an injunction may be granted to restrain the continuation of a contempt (32). But the possibility that a similar result might be achieved by an application of the law of contempt is not a reason for denying the existence of the inherent jurisdiction of a court to protect its own process from abuse, more particularly when conduct of the class under consideration has traditionally been dealt with under the rubric of abuse of process rather than as an instance of contempt. In the words of Lord Salmon in *Reg. v. Humphrys* (33):

"For a man to be harassed and put to the expense of perhaps a long trial and then given an absolute discharge is hardly from any point of view an effective substitute for the exercise by the court [of its inherent power to prevent abuse of its process]."

On the score of costs alone, the exercise of the power will protect the accused person from expenditure on a trial on indictment which he or she cannot recoup.

46 In that case, the difference of views among the bench was only in respect of the question whether the allegation of abuse of process had been made out.

47 Mr Low did not dispute that the Singapore High Court is a superior court and that it has the inherent jurisdiction to grant the primary relief sought by Ms Lim and a permanent stay in the light of *Williams v Spautz*. In the circumstances, I accepted that I had the inherent jurisdiction to grant the primary relief and a permanent stay. However, it was still for Ms Krishna to persuade me that I should do so.

Whether a stay should be granted

48 In *Williams v Spautz*, five out of seven of the members of the High Court bench were of the view that if the prosecution were commenced for an improper purpose, this would be an abuse of process justifying a stay order.

49 Four of the judges, Mason CJ, Dawson, Toohey and McHugh JJ, said that it was sufficient if the improper purpose was the predominant purpose and need not be the sole purpose. At p 522, they also said:

In our view, the power must extend to the prevention of an abuse of process resulting in oppression, even if the moving party has a *prima facie* case or must be assumed to have a *prima facie* case. Take, for example, a situation in which the moving party commences criminal proceedings. He or she can establish a *prima facie* case against the defendant but has no intention of prosecuting the proceedings to a conclusion because he or she wishes to use them only as a means of extorting a pecuniary benefit from the defendant. It would be extraordinary if the court lacked power to prevent the abuse of process in these circumstances.

50 They concluded that Dr Spautz had initiated the prosecutions as a threat in order to secure his reinstatement and not so much as to vindicate his reputation. Accordingly, a permanent stay was

granted even though it was not suggested that Dr Spautz would necessarily fail in the prosecutions.

51 In the view of a fifth judge, Brennan J, there is no abuse of process where a plaintiff intends to obtain relief within the scope of the remedy available, whatever his motives may be (see p 535 of the report). Brennan J then referred to the decision of the court at first instance where Smart J found that Dr Spautz's purposes in initiating the various criminal proceedings were mostly improper and not such as to vindicate his reputation. Those improper purposes included exerting pressure on the university to reinstate him. In Brennan J's view, the vindication of Dr Spautz's reputation did not warrant the grant of leave for the issue of a criminal information charging criminal defamation. The defamation of a private person would not amount to a crime against the state. Accordingly, he too was of the view that there should be a permanent stay.

52 The dissenting judges Deane and Gaudron JJ, however, were of the view that it was not sufficient to establish that the predominant purpose for instituting a proceeding was something else other than the relief sought. Thus Deane J said, at p 543:

The subjective purposes which might lead a plaintiff, claimant or informant legitimately to institute civil or criminal proceedings are manifold. Indeed, they are almost unlimited. It has never been the policy of the common law that a plaintiff's predominant subjective purpose in instituting civil proceedings must be that of obtaining the orders sought in them or that committal proceedings can be instituted by a private informant only for a predominant purpose of obtaining the punishment of the defendant and/or the protection of the community. Most civil proceedings are instituted in the hope that the defendant will settle before the action ever comes to trial or formal orders are made. Frequently, they are instituted for the predominant subjective purpose of obtaining an object which it would be beyond the power of the particular court to award in the particular proceedings. For example, the predominant subjective purpose of a plaintiffs in a common law action for damages for wrongful dismissal may well be to obtain a settlement involving reinstatement in his or her former position under a contract for personal services of a type which a court would not enforce by specific performance or injunction.

53 At p 547, Deane J said:

If the proceedings obviously lack any proper foundation in the sense that there is no evidence capable of sustaining a committal, they will obviously be vexatious and oppressive. In such a case, the proceedings themselves are an abuse of the process of the Local Court and will inevitably result in the discharge of the defendant. Notwithstanding the fact that it is ordinarily inappropriate for a supervisory court to stay proceedings in an inferior court on the ground that they will ultimately fail, I am inclined to think that, if it is clear that the proceedings are brought to serve some collateral purpose of the informant and that the charges against the defendant lack any foundation, the Supreme Court would be justified in intervening to halt the proceedings in limine in order to prevent the defendant from being subjected to unfair vexation and oppression. ...

At p 550, Deane J reiterated:

The proceedings themselves, if otherwise regularly conducted, will constitute an abuse of process only if the circumstances (including X's collateral purposes and actions) are either such that the proceedings are vexatious and oppressive for the reason that they lack any proper foundation or such that any subsequent trial will be necessarily and unavoidably unfair (32). Such circumstances plainly have not been shown to exist in the present case where there is no suggestion that, if committal orders were made, any trial would be unfair and where it is not

argued that Dr. Spautz's charges lack foundation.

54 Although Deane J's judgment at p 547 may at first blush suggest a dual requirement of both improper purpose and lack of foundation before a case of abuse of process is made out, it seemed to me that he was not suggesting a dual requirement. If a case lacked foundation, it would be an abuse of process to pursue it. The collateral purpose or motive of the party pursuing the action might be taken into account in determining the absence of foundation but was not a discrete requirement.

55 The other dissenting judge Gaudron J said, at p 555:

The purpose suggested by Kirby P. in *Hanrahan v. Ainsworth* is one which, *prima facie*, is wrongful in itself. Obviously and as recognized by Lord Denning M.R. in *Goldsmith v. Sperrings Ltd.* (56), a purpose which is wrongful in itself is an improper purpose justifying a stay. But leaving that aside and without going to other cases in the area in which there has been held to be an abuse (57), on my reading of the relevant cases there is no basis for characterizing a purpose as improper unless it involves a demand made without right or claim of right, or unless it entails some consequence which is unrelated to or is not proportionate with the right, interest or wrong asserted in the proceedings or by the process which is said to have been abused.

56 Ms Krishna submitted that categories (b) to (d) as set out by Master Jacob and reiterated by Comaraswamy J applied to the facts before me. She also submitted that in view of the background, the Complaint was not really because Ms Lim had failed to comply with s 66(1) but because of the animosity which had arisen after the event. She submitted that the predominant purpose of the Complaint was to exert pressure on Ms Lim and Janet, the latter being the subject of a defamation action by the Existing Council Members.

57 Mr Low submitted that in Dr Spautz's case, he had initiated several prosecutions unlike the MC before me. He also submitted that not all the present Council members comprised the previous ones. There were the New Council Members who had also agreed with the Existing Council Members that the Complaint should be made. The Council, as newly constituted, had re-considered the matter after the letter dated 5 June 2002 had been sent by Premas to the Commissioner of Buildings and taken the view that Ms Lim had breached the Act.

58 However, the affidavit of one of the New Council Members Tan Kim Siang Raymond (the third defendant) was vague on the reason for the Complaint against Ms Lim. The essence of the reason from para 21 of his first affidavit was that "Of late, there has been much public discussion and outcry against 'irregular' activities of key office-holders in management corporations and managing agents like SCMS". There was no suggestion that Mr Tan and the other two New Council Members were fully aware of the details of the e-mail and letters which I have set out above and which I will revert to again below.

59 Mr Low also referred in argument to Chan Tian Soo's affidavit in the first OS (where he was the sole defendant). In that affidavit, Mr Chan alleged that at an informal meeting of Council members held on 9 November 2001 ie before tenders for a new managing agent had been called, Ms Lim had suggested that:

- (a) she would tender for the job of managing agent
- (b) Premas would be barred from tendering
- (c) only one managing agent would be put up before the next AGM for selection and

appointment.

60 Mr Chan also alleged that this suggestion aroused considerable alarm about conflict of interest but Ms Lim took the view that there would be no conflict. Mr Chan also asserted that one Council member Chan Chee Weng had pleaded with Ms Lim to refrain from tendering and Chua Choon Huat and he (Mr Chan) had objected to the suggestion to bar Premas from tendering. Accordingly, Mr Chan asserted that Ms Lim, working together with Janet, had manoeuvred to grab the job of managing agent for SCMS.

61 In the Complaint made by Mr Chan on behalf of the MC, para 25 also asserted that Ms Lim had, *inter alia*:

- (a) overseen the preparation of tenders
- (b) overseen the placement of a tender notice in the Straits Times.

It was also alleged that but for a dispute with four Council members, she would have involved herself in opening the tender box as well as shortlisting the tenderers.

62 Paragraphs 29 to 35 of the Complaint went on to suggest that even the declaration by Ms Lim of her interest in SCMS at the 29 May 2002 Council meeting was invalid as the Notice of this meeting (the 6th Council Meeting) was "seriously flawed" because it failed to disclose to all the subsidiary proprietors, by way of a notice on the notice board of the MC at least 24 hours before the meeting, that:

- (a) Ms Lim was a director and shareholder of SCMS,
- (b) SCMS was one of the tenderers for the position of managing agent,
- (c) Ms Lim intended to declare her interest in SCMS at the 6th Council Meeting.

The requirement for a notice to be displayed on the said notice board with the agenda is found in para 4 of the Second Schedule of the Act. The Complaint also alleged that the notice for the 6th Council Meeting was issued by Janet Lim as Secretary of the Council.

63 I was not persuaded by the allegations in Mr Chan's said affidavit or the Complaint.

64 First, s 66(1) of the Act requires every member of a council who is in any way interested in a contract or proposed contract with the MC to declare the nature of his interest at a council meeting as soon as practicable. There is no specific requirement that the agenda of the Council meeting must include the intention to make this declaration. It is therefore arguable that it is not a necessary requirement for this intended declaration to be on the agenda. Indeed there may be times when the question of declaring one's interest arises in the midst of the meeting, although I accept that in the case before me, the intention to declare was known before the 29 May 2002 meeting. However, even assuming, for the sake of argument, that the intention to declare should have been stated in the agenda, it was pertinent to recall the facts.

65 Ms Lim had sought to declare her interest in SCMS at a meeting of 15 May 2002. Perhaps this was simply a meeting to open the tender box and hence not a formal Council meeting. In any event, Premas, who was still the managing agent, took the view that the 15 May 2002 meeting was not a properly convened Council meeting and hence a Council meeting had to be called urgently so

that Ms Lim could make her declaration and avoid running afoul of the Act. That meeting was held on 29 May 2002 and Ms Lim made her declaration there. Whether the notice of that meeting was issued by Janet or not, the fact of the matter was that no one took issue with the notice or the validity of the declaration made at the 29 May 2002 meeting. I reiterate that at that time, Premas was still the managing agent of the MC. All the Council members and Premas accepted and acted on the basis that Ms Lim had complied with the Act. I also reiterate that in Mr Chan's own letter to one Mr Quek of Premas dated 30 May 2002, he said:

Following the above declarations listed in (I) and (II) above, you have kindly agreed to reply, on our behalf, to the BCA, with emphasis that the members of the Council including the chairperson have complied to the letter of the law outlined under section 66(1) LSTA ...

66 It may be that Mr Chan and the other Existing Council Members were subsequently taking the position that they had not been aware of the requirements of para 4 of the Second Schedule but it is a different matter to insinuate that Ms Lim and/or Janet had deliberately omitted to mention the intended declaration from the agenda. Since Ms Lim was prepared to make her declaration to the entire Council, it could not be seriously suggested that she was hoping to dupe the subsidiary proprietors, unless all the other Council members were her cronies which they were not.

67 Moreover, had Premas or any of the other Council members raised the point that the notice for the 29 May 2002 meeting was defective at the material time, I had no doubt in my mind that Ms Lim would have required yet another meeting to be held with the agenda worded in such a way as to avoid the doubt.

68 In short, the question was not so much whether the notice was invalid but whether the Council could subsequently assert that it was invalid. In my view, they could not. They were estopped from doing so as they led Ms Lim to believe and all of them had acted on the basis that she had made her declaration at a Council meeting validly held.

69 As for Mr Chan's allegation as to how Ms Lim had been manoeuvring to have SCMS take over from Premas since 9 November 2001, I found this allegation astonishing. This would mean that some of the then Council members who were present at the meeting of 9 November 2001, including Mr Chan, had been aware of Ms Lim's tactics since then. Yet Ms Lim was appointed the Chairperson of the Council on 13 November 2001. Also, when she offered on 13 May 2002 to step down as Chairperson at the next Council Meeting, her offer was declined. She was asked to stay on as Chairperson until the next AGM. Moreover, instead of suggesting that SCMS be disqualified from tendering, Mr Chan's own e-mail, which was quoted by Wong Oong Kwong, stated and I reiterate:

It is therefore regrettable that statutory requirement makes it impossible for you to carry on as chairperson should your company be selected as MA In any event, I sincerely hope that your company is successful in the tender exercise.

70 I did not accept Mr Low's argument that Mr Chan was merely expressing a platitude. I also reiterate that other Council members expressed their agreement with Mr Chan's e-mail.

71 The allegations about Ms Lim's tactics were all matters within Mr Chan's knowledge and of other Council members then. If they were true, Ms Lim might well be wrong in her conduct, but, that was not the issue. The issue was whether the Council could subsequently complain about them especially when SCMS had been encouraged to continue with its tender and, moreover, all the parties had acted on the basis that Ms Lim had complied with the Act. In my view, it was not open to the Council to make the Complaint belatedly. In that sense, the Council had no basis or foundation for

making the Complaint.

72 It seemed to me that the real reason why the Complaint was made was not because the Council had discovered something within the condominium's affairs which Ms Lim had hidden from them. The real reason was that Ms Lim's relationship with the Existing Council Members had become acrimonious in view of the subsequent Council meeting on 12 June 2002 and developments as I have elaborated above. Then, when news broke out from press reports as to how SCMS was apparently involved in some kind of controversy regarding People's Park Centre, an attempt was made to find fault with Ms Lim.

73 In my view, the conduct of SCMS, or Ms Lim for that matter, in respect of People's Park Centre was irrelevant to Harbourlights Condominium. It could not be used to justify a resurrection of matters which had been accepted by the then Council of Harbourlights Condominium. Likewise, the allegation about para 4 of the Second Schedule of the Act did not change the substantive allegations based on matters already known by early May 2002.

74 Mr Low submitted that as the new Council had three new members, the new Council had re-considered the matter and decided to take action against Ms Lim. In my view, the new Council were not entitled to do so, otherwise no one could act with certainty on a decision of the previous Council. The new Council were bound by the decisions and actions of the previous Council, except in those instances where it was not too late to reverse its decision. If the new Council were of the view that Ms Lim should not have been allowed to pursue her tactics, then they should have been looking to the then members of the previous Council, which included the Existing Council Members, to explain how it was that this was allowed when she should instead have been taken to task at the material time. As for the Existing Council Members, they should have reflected very carefully on their own conduct before finding fault with Ms Lim on this point. If the allegations of Mr Chan about Ms Lim's tactics were true, the Existing Council Members would be just as much to blame as her, for the reasons I have stated.

75 I also noted that in the new Council's desire to make and pursue the Complaint against Ms Lim, they apparently omitted to seek a withdrawal of Premas' letter to the Commissioner dated 5 June 2002 or to ask the Existing Council Members to withdraw their letter dated 7 June 2002 to the Commissioner, both of which had effectively represented that there was no breach of the Act. So there were existing representations of no breach on the one hand and a complaint about breaches on the other hand. Should the new Council now consider seeking the withdrawal of those letters, an explanation should be given to the Commissioner as to how such a state of affairs could arise notwithstanding full knowledge by the previous Council of the matters alleged by early May 2002, if not earlier. In any event, even if the letters had been withdrawn, this would not, in my view, alter the point that in the circumstances it was not open to the new Council to complain of Ms Lim's conduct in respect of SCMS and the tender exercise.

76 I would add that my observations are not intended to encourage another round of disputes or litigation, this time between the New and the Existing Council Members, but because I am of the view that the New Council Members were misguided, if not malicious, in their decision for the new Council to proceed with the making of the Complaint.

77 On this point, Mr Low had stressed that the New Council Members could not be accused of malice since they were not Council members at the time things blew up at the Council meeting of 12 June 2002. However, it was not necessary for me to conclude whether the New Council Members were acting maliciously or for a predominantly improper purpose since in my view, the Council was precluded from making the Complaint, on which the prosecution of the Private Summons rested.

78 As for the Existing Council Members, it seemed to me that there might have been malice on their part but, again, it was not necessary for me to make a finding on this or a finding of a predominantly improper purpose since I had concluded that the Council was precluded from making the Complaint.

79 In the circumstances, I granted the primary relief sought by Ms Lim and a permanent stay.

80 I should add that although it is my view that an action or proceeding will be an abuse of process if there is no basis or foundation for it, I have some hesitation in accepting the views of the majority bench in *Williams v Spautz* that a predominantly improper purpose will suffice to constitute an abuse of process. As Deane J said, an action may be initiated for a multitude of reasons. Generally speaking, a reason which is different from the relief sought in the action does not, *per se*, constitute an abuse of process. Even malice or vindictiveness *per se* will generally not amount to an abuse of process if there is a valid basis for the action.

81 As for category (b) under Master Jacob's classification, I note from *Current Legal Problems* 1970, at p 42, that Master Jacob had said his classification was tentative. Moreover, no elaboration was given for category (b). Accordingly, I propose not to say anything more on it.

82 As for the case of *Heng Joo See*, it was really one where the petition was presented without foundation to deceive the court and for some ulterior purpose as well. It was not decided on the ground of ulterior purpose alone.

Plaintiff's application allowed.

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