Yickvi Realty Pte Ltd v Pacific Rover Pte Ltd
[2009] SGCA 44

Case Number : CA 20/2009

Decision Date : 18 September 2009

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Gan Hiang Chye, Dawn Tan Ly-Ru and Tang Hui Jing (Rajah & Tann LLP) for the appellant; Ling Tien Wah, Norman Ho and Joseph Lee (Rodyk & Davidson LLP) for the respondent

Parties : Yickvi Realty Pte Ltd — Pacific Rover Pte Ltd

Land – Easements – Rights of way – Development of land by dominant and servient tenement – Attempted unilateral realignment by servient tenement of road over which dominant tenement had right of way – Whether servient tenement entitled to realign road – Whether injunctive relief available for dominant tenement to restrain realignment of road

18 September 2009

Chan Sek Keong CJ (delivering the grounds of decision of the court):

Introduction

1 This was an appeal against the decision of the High Court in Originating Summons No 1338 of 2008 ("OS 1338/2008") declaring that the appellant, Yickvi Realty Pte Ltd ("Yickvi"), was *not* entitled to an injunction to restrain the respondent, Pacific Rover Pte Ltd ("Pacific Rover"), from realigning a road ("the original road") over which Yickvi has a right of way ("the right of way") (see *Pacific Rover Pte Ltd v Yickvi Realty Pte Ltd* [2009] 2 SLR 1148 ("the GD"). The original road and the proposed realigned road ("the realigned road") are shown in the site plan annexed to these grounds of decision.

2 At the conclusion of the hearing before us, we dismissed the appeal but varied the High Court's order to require Pacific Rover to give an undertaking to Yickvi allowing the latter immediate access, whenever reasonably required, to maintain and repair the electric cables, pipes and other subterranean service installations running under the original road. We also ordered each party to bear its own costs. We now give our reasons for doing so.

Background facts

3 Yickvi is the owner of Lot No 99500X of Town Subdivision 28 ("the Dominant Land"). Pacific Rover is the owner of Lot No 832N of Town Subdivision 28 ("the Servient Land"). The original road provides access to both the Dominant Land and the Servient Land from Newton Road. Yickvi became the owner of the Dominant Land sometime in 1997. Pacific Rover became the owner of the Servient Land in 2007. Pacific Rover and Yickvi are both real estate developers and written permission from the relevant authorities has been granted to:

(a) Yickvi to erect a block of 11-storey residential apartments, comprising ten units, on the Dominant Land; and

(b) Pacific Rover to erect two blocks of 30-storey residential buildings, comprising 152 units, with a basement carpark, swimming pool and communal facilities, on the Servient Land.

The right of way

4 The right of way was initially granted by the previous owner of the Servient Land to the previous owner of the Dominant Land by an indenture dated 11 May 1903 ("the 1903 Indenture") with the right to "pass and repass with or without horses bullock carts carriages and motor-cars of all descriptions". At that time in 1903, the Dominant Land and the Servient Land had only *one* house erected on each. The right of way was similarly described in a later indenture dated 24 April 1941 ("the 1941 Indenture"). By an Order of Court dated 21 February 1983 made in Originating Summons No 512 of 1981 ("the 1983 Order"), the High Court declared that the plaintiff therein (one Heng Kwee Cher, who was *then* the owner of the Dominant Land) was entitled to the enjoyment of the right of way. When Yickvi purchased the Dominant Land in 1997 (see [3] above), it became entitled to the enjoyment of the right of way.

5 The original road divides the Servient Land into two parts. The greater part of the Servient Land lies to the west of the original road and, when purchased by Pacific Rover in 2007 (see [3] above), contained the residential buildings of an old 126-unit development known as Elmira Heights. The smaller part of the Servient Land, lying to the east of the original road, which is in the shape of an inverted "C" ("the inverted C-shaped portion"), was occupied by the two tennis courts of Elmira Heights.

Redevelopment of the Dominant Land and the Servient Land

6 To maximise the plot ratio and the use of the Servient Land, Pacific Rover, on the advice of its consultants, proposed to realign the original road so that it would follow the shape of the inverted C-shaped portion of the Servient Land as shown in the site plan annexed to these grounds of decision (see also [5] above). This would allow Pacific Rover to develop the Servient Land as one undivided piece of land. This would also mean that the route of the right of way would have to be realigned to follow the realigned road leading to Newton Road.

7 In or about December 2007, Pacific Rover sought Yickvi's consent to realign the original road. It would appear that Yickvi was prepared at one time to consent to Pacific Rover's proposal provided that its subterranean service installations beneath the original road were relocated beneath the realigned road and that the costs of doing so were borne by Pacific Rover. Negotiations broke down because the parties could not agree on this issue. Pacific Rover's proposal was that Yickvi should continue to site the subterranean services under the original road since Yickvi had already started work on them and relocating these services would cost Pacific Rover considerable expenditure which was unnecessary. Yickvi, on the other hand, objected to the realignment on the ground that it would cause inconvenience to the prospective occupiers of the residential apartments it was developing on the Dominant Land.

8 As a result of this disagreement, Pacific Rover commenced OS 1338/2008 and sought the following alternative orders in the High Court:

> 1. A declaration that [Pacific Rover's] proposed realignment of the [original road] … can constitute no wrongful interference with the said right of way as the proposed realignment is minor and [Yickvi] would continue to enjoy the right of way and no reasonable objection could be taken to the proposed realignment.
>
> 2. Alternatively, a declaration that [Yickvi] would have no right to injunctive relief against [Pacific Rover] over the proposed realignment of the [original road].

The Order of the High Court and its Grounds of Decision

9 On 11 February 2009, the High Court, relying on the decision in *Greenwich Healthcare National Health Service Trust v London and Quadrant Housing Trust* [1998] 1 WLR 1749 ("*Greenwich*"), made the following declaration and orders ("the High Court's Order"):

> (1) *[Yickvi has] no right to injunctive relief against [Pacific Rover] over the proposed realignment of the [original road] … running from [the Dominant Land] across [the Servient Land] and leading to Newton Road*, and which right of way is more particularly described in [the 1941 Indenture] read with [the 1903 Indenture] provided that the design standards of the [realigned road] must be sufficient to allow access to emergency vehicles and service vehicles such as fire engines and rubbish trucks;
>
> (2) [Pacific Rover is] to allow [Yickvi] up to 31 August 2009 to lay at [Yickvi's] sole cost and expense Singapore Cable Vision cables and all pipes, cables and other installations ancillary to and necessary for the use and enjoyment of [the Dominant Land] under the [original road];
>
> (3) [Pacific Rover] and all [its] assigns of the development at [the Servient Land] and future successors in title are to allow [Yickvi] to maintain at [Yickvi's] sole cost and expense the pipes, cables and other installations running under the [original road] at all times, provided [Yickvi] give to [Pacific Rover] or [its] assigns of the said development and future successors in title prior written notice of [its] intention to carry out such maintenance;
>
> (4) [Pacific Rover] shall ensure that there is an access road at all times leading from Newton Road to [the Dominant Land] and the [original road] will be closed only after the completion of the [realigned road] on [the Servient Land][;]
>
> (5) [Pacific Rover] shall build a footpath along the right side of the [realigned road], leading directly into [the Dominant Land] from Newton Road[;]
>
> (6) [Pacific Rover] and all [its] assigns of the said development and future successors in title shall ensure that there shall not be any landscaping or structures above the [original road] that interfere with the maintenance of the pipes, cables and other installations running under the [original road][;]
>
> (7) The [1983 Order] on the Certificate of Title of Lot No. 832N of Town Subdivision 28 is to be removed within 2 weeks from the date of this Order by [Yickvi];
>
> (8) [Pacific Rover] shall prepare and sign all necessary applications and other documents for the lodgement of this Order of Court against the Certificate of Title of Lot No. 832N of Town Subdivision 28 within 2 weeks from the date the [1983 Order] is removed from the said Certificate of Title; and
>
> (9) *The costs of the realignment of the [original road] shall be borne solely by [Pacific Rover]*.
>
> [emphasis added]

Yickvi appealed against the High Court's Order on the ground that the judge was wrong to rely on *Greenwich* which, it contended, was a *sui generis* case.

10 In *Greenwich*, the plaintiff, Greenwich Healthcare National Health Service Trust, had acquired

land which included a road connecting it with the public highway in order to build a hospital. Planning permission had been granted for the development subject to a condition that a new link road and a new junction with the public highway be completed before the hospital could open. In order to comply with that condition, the plaintiff needed to realign the road over which all but one of the defendants had rights of way. The land was also subject to a restrictive covenant limiting its use, to the benefit of which all the defendants were or might be entitled. The plaintiff could not proceed with the development unless and until it was established that the defendants could not, once the plaintiff had commenced the development and entered into commitments relating thereto, seek to challenge the plaintiff's right to proceed. The defendants, though fully informed of the plaintiff's proposals and invited to object and participate in the proceedings, did neither of these things, but neither did they give their unequivocal and irrevocable consent to the development proceeding. The realignment of the road would improve the safety and convenience of access to the public highway, such that no reasonable objection could be made to it. Because of the plaintiff's concern that at some future date the defendants might object to the realignment of the road or to the changed use of the land, the plaintiff applied for declarations that it was entitled to realign the road and that the defendants were not entitled to an injunction to restrain the proposed realignment but that their rights, if any, were limited to an award of damages in respect of any interference with the right of way or a claim for compensation in respect of any breach of the restrictive covenant.

11 Lightman J held that even though the servient owner had no right to unilaterally alter the route of an easement, the dominant owners were not entitled to injunctive relief, and that their remedy, if any, was limited to an award of damages. He said at 1755:

> … I am satisfied that this is so for a number of reasons, which include the following: (1) no reasonable objection can be made to the realignment—on any basis it is an improvement, most particularly in the matter of safety; (2) the defendants and all the occupants of premises [*ie*, the dominant owners] on the potentially dominant land have long had full notice of this proposal, have been invited to object if they wished, and have refrained from doing so; (3) the realignment is necessary to achieve an object of substantial public and local importance and value.

12 In the present case, the judge held as follows (see [8]– [12] of the GD):

> (a) Although the realigned road would *not* be relatively straight when compared with the original road, Yickvi had not complained that it would cause a *major* inconvenience to the residents of its development or pose a greater danger to safety.
>
> (b) Yickvi's "real concern" that the route of its right of way together with the location of its subterranean service installations should remain unaltered for convenience of maintenance and repair, was met by Pacific Rover's agreement, for itself and all its successors in title, that Yickvi would be allowed reasonable access to maintain such subterranean services.
>
> (c) Although Yickvi wanted a period longer than Pacific Rover's suggested six months to lay cables, pipes and other installations under the original road, it did not elaborate as to why and on how much more time it needed.
>
> (d) Yickvi did not argue that its enjoyment of the right of way over the original road extended to the right to lay the subterranean service installations under the original road.

13 In these circumstances, the High Court held that Yickvi was *not* entitled to injunctive relief to prevent Pacific Rover from realigning the original road as it was (see [9] of the GD):

> … not … right to deny Pacific Rover the full use of the Servient Land just because of Yickvi's … right of way when an alternative [route], which did not substantially affect the enjoyment of the right of way, was available.

The issues on appeal and our decision

14 At the hearing before us, counsel for Yickvi contended that Pacific Rover had no unilateral right to alter the route of Yickvi's right of way, and that Pacific Rover's proposal to do so would amount to an actionable interference with the right of way for which Yickvi was entitled to an injunction. He sought to distinguish the decision in *Greenwich* ([9] *supra*) on the ground that it was decided primarily on the basis that there was a public interest in *Greenwich* in not preventing the realignment in order to facilitate the building of a hospital. It was argued that there was no public interest element in the present case as the dispute concerned the private rights of two private commercial owners in two private properties. The realignment was only for the sole convenience of Pacific Rover even though Yickvi might not be unduly inconvenienced in the alteration of the route of the right of way.

15 We disagreed with counsel's submission that there was no element of public interest in the present case. In our view, there were *two* elements of public interest in the present case. First, because of the scarcity of land in Singapore, land should be allowed to be developed to its optimal potential as permitted by planning law and the claimant suffers no injury or inconvenience as a result. In the present case, the competent authority had already given Pacific Rover permission to realign the original road and, in our view, it was not reasonable on the part of Yickvi to deny Pacific Rover the opportunity to do so when it would not suffer inconvenience from the realignment of the original road. Yickvi would continue to enjoy a right of way over the realigned road. In fact, Yickvi would stand to *benefit* from the realignment as it would be getting a right of way over a *new* road leading to Newton Road. Otherwise, Yickvi would have to incur more expenditure in having to redevelop the original road to cater to the needs of the occupiers of its new development that might arise from the substantially increased usage as a result of the new development on its plot.

16 The second public interest element discernible from the facts of this case was the avoidance of more litigation over Yickvi's right to enjoy the right of way that might arise should the injunction be granted. The circumstances in which the right of way was granted to Yickvi's predecessors in title have changed dramatically since 1903 when it was first granted (see [4] above) and this might affect the degree to which it could be enjoyed by the purchasers or occupiers of the apartments under construction by Yickvi. The right of way was granted *only* for the enjoyment of the occupiers of *one* residential house on the Servient Land. But, with the completion of Yickvi's development, at least ten households (as compared with the original single household) would now be entitled to enjoy the right of way. This could constitute excessive use of the right of way not contemplated by the grant (see this court's decision in *Lee Tat Development Pte Ltd v MCST Plan No 301* [2009] 1 SLR 875) and might lead Pacific Rover, by way of retaliation, to commence proceedings to restrain Yickvi and its purchasers and/or occupiers from such excessive use.

17 Another consideration was that Pacific Rover might be legally entitled to stop Yickvi from locating its subterranean service installations under the original road, unless Yickvi was given the right to do so by the relevant planning laws. At common law, a right of way over a road does not entitle the dominant tenant to use the road other than as a means of overland access. There was therefore a possibility that Pacific Rover might be able to retaliate against Yickvi's obstructive actions, by seeking injunctive relief to restrain Yickvi. Whatever the legal position might be in this respect, it was clear to us that neither party could gain from the *status quo*. There was a real possibility that granting the injunction would lead to more litigation, resulting in a delay to the completion of Yickvi's

own development. Under the new arrangement where Pacific Rover is permitted to realign the original road, *both* parties would benefit from the expeditious and optimal development of their respective properties.

18 We should add by way of a postscript that *Greenwich* ([9] *supra*) is not a *sui generis* case and the principle in that case is not confined to one where the public interest requires that an injunction be refused. In *Crane Road Properties LLP v Hundalani* [2006] EWHC 2066 (Ch), Charles Aldous QC said at [103]– [105]:

> 103. [Counsel for the defendants] submitted that although there will be no actionable interference if the existing way can be substantially and practically exercised as conveniently now as before (see e.g. the passages at paras 58-59 of the judgment of Patten J in Perlman v. Rayden; transcript 7 October 2004), the servient owner has no right to alter the route unless such right was an express or implied term of the grant (Greenwich Healthcare National Service Trust v. London and Quadrant Housing Trust [1998] 1 WLR 1749 at p. 1754). He submits that if the servient owner has no right to alter the route, by the same reasoning he cannot avoid what would otherwise be an infringement by providing an alternative route, however convenient that may be, although this may afford a reason for not granting an injunction.
>
> 104. Correct as these submissions seem, they are somewhat unrealistic when all that has happened is a relatively minor realignment of a road in the course of its improvement, but with no overall restriction in its use. … [The plaintiff] accept, as they must, that the Hundalanis are entitled to full and unrestricted access over the new made up road. Their use of Crane Road for both current and likely future purposes has not been interfered with in any way. It can be substantially and practically exercised now as conveniently as before. Lorries are not in practice required to deviate when entering or leaving the Hundalani roadway other than possibly in the most minor respect. [The plaintiff] stated that if the Court found that there had been an actionable … interference entitling the Hundalanis to an injunction or damages in lieu they would immediately remove the offending part of the footway. Even if Mr Hundalani had not consented to the footpath I would not have granted any injunction nor awarded any damages in lieu.
>
> 105. In any event if the minor realignment might have constituted an infringement Mr Hundalani's consent to the footpath before it was constructed makes wholly unconscionable for the Hundalanis now to be seeking any injunction or damage in lieu. Their consent to the footpath also estops them from now seeking to claim any damages at common law. In any event, in my judgment they have suffered no loss from any obstruction of this right of way. …

Conclusion

19 For the above reasons, we affirmed the decision of the judge in the court below but varied the High Court's Order to require Pacific Rover to give an undertaking to Yickvi allowing the latter immediate access, whenever reasonably required, to maintain and repair the subterranean service installations running under the original road. We also ordered each party to bear its own costs.

ANNEX

[LawNet Admin Note: Image 1 is viewable only by LawNet subscribers via the PDF in the Case View Tools.]

Copyright © Government of Singapore.

Yickvi Realty Pte Ltd v Pacific Rover Pte Ltd
[2009] SGCA 44

Image 1

