

The Management Corporation Strata Title No 607 v Tan Kia Sai and Others
[2000] SGHC 156

Case Number : OS 1911/1999
Decision Date : 02 August 2000
Tribunal/Court : High Court
Coram : Lee Seiu Kin JC
Counsel Name(s) : Stephanie Hong May Leng (Tan Peng Chin & Partners) for the plaintiffs;
Defendants in person
Parties : The Management Corporation Strata Title No 607 — Tan Kia Sai; Tan Hua Eng;
Jinchi Yili Motors Pte Ltd; Koh Sok Huang; Tan Sang Lim; Gam Seng Lun; Soh
Bee Gay; Tay Ai Meng; Lee Hong Kiok; Tay Meng Hock; Kingrich Enterprise Pte
Ltd; Poh Lay Hwee

JUDGMENT:

Grounds of Decision

1 The plaintiffs are the Management Corporation of Strata Title No. 607, a strata title development known as Alexandra Centre and located along Alexandra Road. This development comprises 2 land lots, namely (a) Mukim 1 Lot 2059L ("Lot 2059L") and (b) Mukim 1 Lot 2094X ("the Land"). Both land lots are registered land under the Land Titles Act. The shops and apartment units in Alexandra Centre are built on Lot 2059L. No building is erected on the Land, which is an open area with most of it paved over and used for access and parking of vehicles. The Land constitutes part of the common property of Alexandra Centre.

2 Adjacent to Alexandra Centre is a row of 2-storey terrace houses. This is divided into 14 units in all, comprising 7 first-storey and 7 second-storey units. The first-storey units are shop units whereas the second-storey units are residential apartments. The defendants are the registered proprietors of these 14 units. Some of the defendants own more than one of the units and some units have more than one registered proprietor. In all there are 12 proprietors and all of them are joined as defendants in this action.

3 The deed of indenture in respect of each of the defendants' units contains a grant of an easement to the proprietor thereof in relation to the Land. I shall set out its terms later. The question is the scope of that easement. The defendants and the other occupants of their units have been using the Land for the following purposes:

- (i) access to their units from the public road by foot or by vehicle;
- (ii) parking of vehicles of the defendants, occupants and their customers, including overnight parking; and
- (iii) conducting part of their businesses, such as repairs to and installation of accessories on vehicles, seating for customers of a restaurant and storage of goods.

4 The plaintiffs take the position that the defendants' use of the Land is beyond the scope of the easement. In this summons they seek the determination of the court on the following questions:

- (i) Whether the defendants, by themselves and/or their servant, agent or otherwise or any of them, are entitled to occupy the Land for their usage to the exclusion of the plaintiffs.
- (ii) Whether the defendants, by themselves and/or their servant, agent or otherwise or any of them, are entitled to place/store/park or cause to be placed/stored/parked goods, vehicles and/or other chattel on the Land.

(iii) Whether the defendants, by themselves and/or their servant, agent or otherwise or any of them, are entitled to enter/cross over the Land otherwise than by foot i.e. by way of motor vehicle.

(iv) Whether the plaintiffs by themselves and/or their servant, agent or otherwise are entitled to quiet enjoyment for any purpose they deem fit of the Land without obstruction or interference from the defendants or their servant, agent or otherwise or any of them.

5 After the first day of hearing the parties decided to refer the matter to the Singapore Mediation Centre for mediation. However this turned out to be unsuccessful and they reverted to me with further submissions. After hearing them again on 22 May 2000, I made the following declarations and orders:

(i) The Defendants, by themselves and/or their servant, agent or otherwise or any of them, are not entitled to occupy, for their usage to the exclusion of the Plaintiff, the land known as Lot 2094X Mukim 1 Alexandra Road or part thereof ("Lot 2094X") belonging to the Plaintiff.

(ii) The Defendants, by themselves and/or their servant, agent or otherwise or any of them, are not entitled to place and or store goods and other chattel on Lot 2094X.

(iii) The Defendants, by themselves and/or their servant, agent or otherwise or any of them, are entitled to park vehicles on Lot 2094X subject to the following conditions:

(a) the vehicles are not to obstruct the free flow of vehicles along the service road;

(b) parking means the leaving of the vehicle on Lot 2094X in a reasonable manner for the purpose of enabling the driver to carry on his affairs at the Defendants' premises namely:

(1) residence;

(2) business (i.e. for employment there);

(3) as lawful visitors; and

(4) as customers,

and for this purpose, parking does not include leaving vehicles on Lot 2094X for the purpose of storage or conducting business in respect of the vehicles e.g. repairs etc.

(iv) The Defendants, by themselves and/or their servant, agent or otherwise or any of them, are entitled to enter/cross over Lot 2094X otherwise than by foot i.e. by way of motor vehicle.

(v) The Plaintiff by itself and/or its servant, agent or otherwise is entitled to quiet enjoyment for any purpose it deems fit of Lot 2094X without obstruction or interference from the Defendants or their servant, agent or otherwise or any of them subject to the Defendants' rights in the easement as abovestated.

(vi) The Defendants to pay to the Plaintiff the total sum of S\$ 2,400.00 as costs of this application, with each Defendant to contribute S\$ 200.00.

(vii) The Plaintiff to have liberty to apply for further orders for enforcement.

6 The Plaintiffs have appealed against my decision in respect of declaration (iii) above and I now give the grounds of my decision in respect of it. For completeness, I include brief reasons for the other declarations, i.e., (i), (ii), (iv) and (v).

Adverse possession

7 The defendants were not represented by counsel. But counsel for the plaintiffs, Miss Hong, in the best tradition of the Bar, presented her clients' case fairly and provided me with invaluable support in relation to the authorities that might favour the defendants.

8 The first consideration is whether the defendants might have acquired any title to the Land by adverse possession. There is some evidence that the defendants, or their predecessors-in-title, had been using the Land since 1961 for access, parking and for their business much in the same manner as they are using it today. Although such evidence was not given by way of formal affidavit, Miss Hong did not dispute it. The plaintiffs came into the picture after the vendors developed Alexandra Centre and the management corporation was constituted in 1982. Up to that time no action was taken by the vendors against the defendants or their predecessors-in-title in respect of their use of the Land. Even after 1982, the plaintiffs did not take any action until shortly before this summons was filed in December 1999. In the affidavit filed by Tan Kok Peng ("Tan") on behalf of the plaintiffs, Tan deposed that the Land was being used by the defendants to the exclusion of the plaintiffs. Hence the defendants had been using the Land continuously in this manner to the exclusion of the plaintiffs for almost 40 years.

9 There may have been other impediments to a claim in adverse possession, but an inquiry as to that is rendered unnecessary by virtue of the Land Titles Act. This is because the defendants had not taken out any application under section 172(8) of that Act. Any title they might have been able to claim had been removed by operation of section 50, which provides as follows:

50. Except as provided in section 172(8) and (9), no title to land adverse to or in derogation of the title of a proprietor of registered land shall be acquired by any length of possession by virtue of the Limitation Act or otherwise, nor shall the title of any proprietor of registered land be extinguished by the operation of that Act.

Section 172(8) obliges a person to make his claim in adverse possession by 1 September 1984. The defendants had not made any claim at all and section 50 of the Act would now exclude such a claim.

Prescription

10 The second consideration is whether any easement had been acquired by prescription on the basis of the doctrine of lost modern grant. This doctrine applies in Singapore in respect of unregistered land - see *Xpress Print v Monocrafts Pte Ltd & Anor* (Unreported) Civil Appeal No. 202/1999 (24 July 2000) at paragraph 36. In the present case there is some evidence that the defendants had been using the Land to park their vehicles since their units were completed in 1960 or 1961, i.e. almost 40 years before the plaintiffs took out this action. If the defendants had been doing this for a period of 20 years before the Land was brought under the provisions of the Land Titles Act, they could have acquired an easement over it. Such an easement would not be affected by the subsequent conversion to registered land because section 46 provides that such land is held subject to any subsisting easement.

11 However, from the Certificate of Title it can be seen that a qualified Certificate of Title was issued on 6 November 1978. Therefore the requisite 20 years would not have elapsed since the defendants' units were only completed around 1960. Once the Land has become registered land, no easement can be acquired by prescription by virtue of section 97 of the Land Titles Act. Accordingly, there could not have been an easement acquired by prescription.

Indenture

12 The remaining question is the scope of the easement granted in the indenture. The plaintiffs exhibited the deeds of indenture in respect of all the defendants' units. They are similar in nature and I reproduce below a typical indenture, which relates to one

of the first-storey units:

THIS INDENTURE is made the 24th day of October One thousand nine hundred and sixty two (1962) Between ASIA TRUST & DEVELOPMENT LIMITED, a Company incorporated in the State of Singapore and having its registered office at Netherlands Trading Society Building, Cecil Street, Singapore (hereinafter called the Vendors) of the one part and LOK BOK SIM of No. 3 Astrid Hill, Singapore, Company Director (hereinafter called the Purchaser) of the other part.

WHEREAS the Vendors are seised for an estate in fee simple free from incumbrances of the lands and premises described in the First Schedule hereto and have agreed to convey an undivided moiety or equal half share thereof to the Purchaser in consideration of the Covenants hereinafter appearing and of the Purchaser having already taken a Lease for 9999 years of the ground floor of the Building erected thereon.

NOW THIS INDENTURE WITNESSETH as follows:

I. In pursuance of the said agreement and in consideration of the premises the Vendors hereby convey Unto the Purchaser ALL THAT undivided moiety or equal half share of and in the said lands and premises TO HOLD the same Unto the Purchaser in fee simple. Subject to the existing Leases for 9999 years of the ground and first floor premises in the said Building AND IT IS HEREBY DECLARED that the said Leases shall not merge in the Freehold estate hereby conveyed.

II. The Purchaser for himself his executors administrators and assigns with the intent and so that the covenants hereinafter contained shall run with and be binding upon the lands hereby conveyed into the hands of whomsoever the same may come for the benefit of the whole or any part or parts of the buildings of the Vendors erected on the lands marked on the Government Resurvey Map as Lots 390 to 397 inclusive of Mukim 1 (hereinafter referred to as the Estate) and so that the covenants shall so far as practicable be enforceable but not so as to render the Purchaser owners and occupiers for the time being of the Estate or any part thereof personally liable in damages for any breach of any of the Covenants which are restrictive of the user of the said Lots 390 to 397 inclusive after he or any of them shall have parted with all interest therein hereby covenants with the Vendors and their assigns to observe and perform the following restrictive and other covenants namely:

(i) To contribute from time to time a fair and rateable proportion of the cost of maintaining and keeping in repair the Service Road marked Private Lot 396 and coloured brown in the said plan annexed and also all culverts pipes cables or water drains now or hereafter on or under the Estate the proportion in case of difference to be ascertained at the option of the Vendor by an arbitrator or arbitrators appointed for that purpose in terms of the Arbitration Ordinance but only until the same are taken over and maintained by the Singapore City Council or other competent authority.

(ii) Not to use the building otherwise than as a shophouse and or as flats for private dwelling purposes.

(iii) Not to use as fuel any substance or material which may give rise to smoke fumes or obnoxious smells nor do or suffer on the said Estate or in or upon any building erected thereon anything which may be or become a nuisance or annoyance to the Vendors or the person or persons for the time being owning or occupying any of the land forming part of the Estate or adjacent to or in the neighbourhood thereof.

(iv) To keep the Building including the drains and sanitary and water apparatus thereof and all staircases and passages therein in good order repair and condition.

(v) Not to convey or grant a lease of the said lands and premises or any part thereof without obtaining from the Purchaser or Lessee thereof covenants in the same terms as those enumerated (i) to (v) hereof and to stand possessed of the benefit of such covenants as trustees for the Vendors.

PROVIDED ALWAYS AND RESERVING NEVERTHELESS to the Vendors the free right so far as they have the power so to do to alter or vary the existing scheme for laying out the Building or any of the restrictive or other covenants in any way the Vendors think fit and the Vendors shall not be bound to enforce or effectuate the said restrictive covenants against other purchasers of adjacent or adjoining lands belonging to the Vendors.

III The Vendors who retain possession of the Documents of title listed in the Second Schedule hereto hereby acknowledges the right of the Purchaser to production and delivery of copies thereof hereby undertake with the Purchaser to keep them safe, whole uncancelled and undefaced unless prevented from so doing by fire or other inevitable accident.

IV It is hereby declared that the walls separating the premises hereby conveyed from the premises known as Provisional Nos. 354D and 354E and Provisional Nos. 354H and 354I Alexandra Road, Singapore, are party walls and shall be maintained as such in good and tenantable repair and condition at the joint expense of the respective owners for the time being of the property separated thereby.

V In this Conveyance where the context so requires or admits words importing the singular number or the masculine gender only include the plural number or the feminine gender respectively and words importing persons include corporations and where the said words relate to the Vendors or the Purchasers and the expression "the Vendors" and "the Purchasers" include their respective successors in title personal representatives and assigns.

THE FIRST SCHEDULE ABOVE REFERRED TO

1 ALL that piece of land situate in the District of Telok Blangah in the Island of Singapore estimated according to a private survey to contain an area of 1800 square feet or thereabouts which said land is more particularly described and edged red and marked Private Lot 27 in the plan annexed hereto being the land marked on the Government Resurvey Map as Lot 392 of Mukim I and which said piece of land also forms part of the land comprised in Grant No. 8 TOGETHER with full and free right and liberty for the Purchaser his executors administrators and assigns the owners occupiers for the time being of the premises hereby conveyed and/or their agents tenants and all other persons for the time being authorised by them in common with the Vendors and all persons having the like rights and liberty at all times and for all the purposes whatsoever connected with the use and enjoyment of the said piece of land hereby conveyed to pass and repass with or without horses cattle and other animals carts carriages motor cars and other vehicles of every description along the Service Road and to enjoy the open space coloured brown in the said plan annexed.

AND TOGETHER with full right and liberty to make use in a proper manner the pipes and cables to or from the said land and premises.

RESERVING NEVERTHELESS to the Vendors and all others to whom the Vendors may grant or have already granted the same and similar rights of way and drainage and to make all necessary connections as aforesaid and the right to construct lay and use any drains pipes or cables over or under the land and premises which the Vendors may consider necessary for the purpose of serving other houses on the estate and to make all necessary connections thereto.

AND TOGETHER with the ground floor shophouse and first floor flat erected thereon and known as Provisional Nos 354F and 354G Alexandra Road, Singapore.

THE SECOND SCHEDULE ABOVE REFERRED TO

Reconveyance Industrial & Commercial Bank Limited of the one part and the Vendors of the other part.

13 It can be seen from this indenture that an undivided half share of the land in fee simple was conveyed to the purchaser of the unit who had also taken a lease on the first-storey of the building for 9,999 years. The other undivided half share of the land was conveyed to the purchaser who had taken a similar lease on the second-storey of that building. The First Schedule to the indenture describes the land in question and the interest conveyed. This comprises the land upon which the building is built and includes the rights described in the words underlined above.

14 Miss Hong agreed that those words relate to the grant of an easement, the dominant tenement being the land the subject of the indenture, i.e. the land on which the particular unit is built. The servient tenement is described in the indenture as "*the Service Road*" and the "*open space*" coloured brown in the plan annexed to the indenture. It is not clear from the copies of the indenture exhibited exactly what were coloured brown. But the plaintiffs were prepared to concede that this refers to the Land. The plaintiffs agree that the sole question for determination is the scope of this easement.

15 Before making this determination, it is necessary to set out the following facts by way of background. The conveyances of the defendants' units were made in 1961 and 1962. The government had since acquired a part of the original land, apparently for widening of Alexandra Road. Indeed, it was because this or a later widening exercise caused the loss of parking space along Alexandra Road previously enjoyed by the plaintiffs' subsidiary proprietors that prompted them to take out this action. Therefore for almost 40 years, from 1960 to 1999, the defendants had enjoyed continuous, uninterrupted use of the Land.

16 From the survey plan exhibited by the plaintiffs, it can be seen that the front of the defendants' buildings were constructed right up to the boundary line of the Land. This means that the defendants' units are landlocked and the only means of access to the public thoroughfare, Alexandra Road, was through the Land. The plan annexed to the indenture shows a private service road built on the Land. In front of the defendants' units this service road makes a full loop around an unpaved oval area. There appears to be no provision for parking of vehicles apart from parallel parking along the service road. In the course of the submissions, one of the defendants said that at that time their cars were parked along the service road. However this evidence was not made on affidavit although Miss Hong did not object to nor dispute it. Nevertheless, it is an inference that can be readily drawn from the circumstances and I so infer.

17 The defendants produced some evidence that in 1977 they had been asked by the vendors, who at the time were the proprietors of the Land, to contribute a sum of money towards the repair and upkeep of the service road. The defendants also claimed that they had, since the conveyance of their units, been paying for the maintenance and upkeep of the Land. Again this was not by way of affidavit, but this was not denied by the plaintiffs. In any event, there is covenant in clause II(i) of the indenture binding each defendant to contribute a fair sum for the maintenance of the service road which would be consistent with the defendants' assertions.

18 There is a further point in respect of clause II(i) of the indenture. For convenience, I set it out again. It covenants the proprietor:

To contribute from time to time a fair and rateable proportion of the cost of maintaining and keeping in repair the Service Road marked Private Lot 396 and coloured brown in the said plan annexed and also all culverts pipes cables or water drains now or hereafter on or under the Estate the proportion in case of difference to be ascertained at the option of the Vendor by an arbitrator or arbitrators appointed for that purpose in terms of the Arbitration Ordinance but only until the same are taken over and maintained by the Singapore City Council or other competent authority.

The service road and Private Lot 396 mentioned in this covenant relates to the Land. The words underlined suggest an intention on the part of the vendors to eventually surrender, among other things, the service road to the local authority for the latter to take over and maintain it. As it has turned out, this was not done and shortly before 1982, the vendors developed Alexandra Centre of which the Land forms a part.

19 In any event it appears that part of the original land was compulsorily acquired by the government for the widening of Alexandra Road. What remained after acquisition comprises the Land, which became reduced in area by about 45%. As a consequence of this the looped service road no longer exists. In its place, the unpaved oval area appears to have been paved over and is being used for both access to the defendants' units and the parking of their vehicles.

20 It is in this context that I have to decide the scope of the easement granted in the indenture. Miss Hong agreed that the determination in respect of one indenture would apply in respect of the 13 other indentures.

21 Firstly it is clear that the easement cannot operate to exclude the plaintiffs, the proprietor of the servient tenement, from the use of their land. Accordingly, I made declarations (i) and (v). Secondly, it is also clear that the expression "*to pass and repass with or without ... motor cars and other vehicles*" grants a right of way whether on foot or by vehicles. Hence declaration (iv) was made.

22 The remaining questions are whether the defendants are entitled (a) to store their goods on the Land, which is the subject of declaration (ii), and (b) to park their vehicles on the Land, the subject of declaration (iii). I first deal with the issue of parking.

23 Miss Hong does not dispute that the right to park vehicles can be the subject of an easement. Her point is that this is not stated in the indenture and was therefore not part of the rights granted therein. Although it is true that it is not specifically stated in the indenture that the grantee had the right to park vehicles on the Land, I was of the view that the words in the indenture "*to enjoy the open space*", in the context of the rest of the indenture as well as the circumstances at the time of the grant, are sufficient to include the right to park vehicles. My reasons are as follows. It is not clear whether the defendants' units were sold before construction was underway or only after completion. But even if there were no structures at the time of sale, the purchasers would have seen a model of the development or, at the very least, a drawing of the site. They would have noticed the provision of the service road, and the fact that apart from this access road there would be no other means of access to the units and no other place to park their vehicles. The first storey units were sold as shophouses and the second storey units as apartments for dwelling as provided in clause II(ii) of the indenture. As is common today, it is likely that the question of vehicular parking would have been on the minds of the purchasers. In fact clause II(i) of the indenture obliges the proprietor to contribute towards maintenance of the service road and appears to state that this service road would eventually be handed to the local authority for maintenance. As it turned out, this was not only not done, but the Land was subsequently conveyed to the plaintiffs as part of the land comprised in Alexandra Centre. Although there is no evidence of the state of the adjoining Alexandra Road at the time, it would not be difficult to imagine that parking would be envisaged along the service road if it were wide enough. Such evidence as is available before me seems to indicate that it was and that vehicles were in fact parked on it. Finally, in developing Alexandra Centre with both Lot 2059L and the Land, the vendors had obtained the benefit of the Land even though it is stated in clause II(i) of the indenture that the local authority would take over and maintain it.

24 The question then is, in the factual matrix before me, whether the words in the indenture, i.e.:

to pass and repass with or without horses cattle and other animals carts carriages motor cars and

other vehicles of every description along the Service Road and to enjoy the open space coloured brown in the said plan annexed.

are sufficiently wide to include the right to park vehicles. I am of the view that they are, for it is inconceivable that in the circumstances, vehicular parking would not have been provided for. Furthermore, parking of vehicles is incidental to access by vehicles. If there were no right to park, it would mean that the defendants were only entitled to be conveyed to their units by vehicle, such as in a taxi. If they owned cars, they would have had to park them elsewhere and walk back. Although the expression "*pass and repass*" by itself would not include the right to park, I would hold that the words "*to enjoy the open space*" in the context of the indenture and the circumstances of the case, cover parking of vehicles consistent with the defendants' right of way over the Land. Accordingly the defendants are entitled to the rights in declaration (iii).

25 As for declaration (ii), in my view the easement granted does not cover the use by the defendants of the Land for the purpose of storing goods or other chattel. Such use is not incidental to the right of way over the Land. Therefore the plaintiffs are entitled to declaration (ii).

Lee Seiu Kin

Judicial Commissioner

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