Chong Ken Ban (alias Chong Johnson) and Another v Management Corporation Strata Title Plan No 1395
[2004] SGHC 110

Case Number : OM 21/2003

Decision Date : 28 May 2004

Tribunal/Court : High Court

Coram : Lai Kew Chai J

Counsel Name(s) : Zaheer Merchant and Brian Tan (Madhavan Partnership) for appellants; Michael Chong Kuan Keong (Chong Chia and Lim LLC) for respondent

Parties : Chong Ken Ban (alias Chong Johnson); Masami Iwase — Management Corporation Strata Title Plan No 1395

Land – Strata titles – By-laws – Definition of "balcony" – First Schedule by-law 13 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

Land – Strata titles – Strata titles board – Whether Board had jurisdiction to hear application – Sections 103(1), 41(14) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

28 May 2004

Lai Kew Chai J:

Introduction

1 These proceedings concern the regulation of the external appearance of a unit in relation to other units within a condominium. In this motion, the appellants, owners of a strata apartment in a condominium, applied for an order from the High Court that the orders of the strata titles board ("the Board") in Strata Titles Board No 49 of 2002 be set aside. The appellants had erected glass panels covering a space, described as a "terrace" in the building plans of their apartment known as 2 Ardmore Park, #08-01, Habitat II, Singapore 259947 ("the apartment"), without the permission of the respondent, Management Corporation Strata Title Plan No 1395 ("the Management Corporation"). The Board ordered the appellants, at their own costs, to remove all unauthorised structures on what was regarded as the balcony of their unit and reinstate the balcony to its original condition. The appellants were further ordered to pay costs of $4,000 to the Management Corporation.

2 Two issues were raised. Both of them were raised, not by the parties, but by the Board in the course of the proceedings below. Firstly, does the Board have jurisdiction to entertain the application of the Management Corporation for the reliefs? Secondly, is the terrace a "balcony" within the meaning of by-law 13 in the First Schedule of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("the Act") which provides that a subsidiary proprietor of a unit within a condominium "shall not make any alterations or additions to any balcony of his lot without the written approval of the management corporation"?

3 At the conclusion of the hearing of the originating motion to set aside the orders of the Board, I dismissed it with costs. I now give my reasons.

The facts

4 The appellants were at all material times the proprietors of the apartment and the

Management Corporation was constituted by law on 12 August 1987 to manage the condominium.

5 The apartment comprises two levels. The area in question is on the lower level, where the living and dining areas are located. It is described as a "terrace" in the plans. It is enclosed on three sides and open only on one side, through which one could look out of the apartment to the swimming pool. The opening can be seen externally. It does not protrude.

6 In March 2002 the appellants engaged contractors who commenced renovation works at the apartment. The Management Corporation wrote to the appellants informing them that the erection of structures on the balcony were not approved by the Management Corporation and the appellants were asked to remove the supporting frames on the wall and to restore the balcony to its original condition. The appellants applied for approval but they were unsuccessful. They proceeded to build the full height glass panels.

7 The former solicitors of the appellants initially put at the forefront of their arguments the fact that other subsidiary proprietors had erected structures on their terrace and that the external façade of the condominium had changed and was not uniform in appearance. It was a fact, as the Management Corporation had pointed out to the appellants, that the Management Corporation did not approve any installation of structures on what they contended were the balconies. Those facts by themselves did not justify the appellants installing the glass panels.

8 The Management Corporation made an application to the Board under s 103 of the Act to order that the appellants remove at their own costs the unauthorised structures on the balcony of their apartment and to reinstate the balcony to its original condition. They relied on s 103(1) of the Act, the relevant parts of which read as follows:

> Subject to subsections (4), (6) and (7) [which are not relevant for present purposes], a Board may, pursuant to an application by a management corporation, … make an order for … the rectification of a complaint, with respect to —
>
> (a) …
>
> (b) …
>
> (c) the exercise or performance of, or the failure to exercise or perform, a … duty … imposed by … the by-laws relating to the subdivided building.

9 Section 103 of the Act, as amended by Act No 21 of 1999, evolved into its present purport by, first, the establishment of strata titles boards and later the expansion of the powers of those boards. The evolution may be described within a brief compass. As at 9 July 1987, based on the records at the Registry of Titles, there were more than 2,000 management corporations in Singapore in charge of 54,000 strata units: see *Singapore Parliamentary Debates*, vol 49, 1987, col 1412–1413. It became necessary to establish strata titles boards to adjudicate and resolve disputes between, amongst others, management corporations and subsidiary proprietors. Professor S Jayakumar, then Second Minister for Law, stated in Parliament that strata titles boards had to be established to adjudicate and resolve the disputes because, amongst other reasons, the Government "should not overload our courts with such disputes". After the establishment of strata titles boards, it further became necessary in 1998 to expand their jurisdiction and confer on them "powers relating to the exercise or failure to exercise a power, authority, duty or function imposed by the Act or by the by-laws". Associate Professor Ho Peng Kee, then Minister of State, Ministry of Law and Ministry of Home Affairs, at the Second Reading of the Bill which led to the promulgation of Act No 21 of 1999, and

which amended s 103 of the Act with effect from 11 October 1999, gave Parliament an example and also mentioned the state of the relevant applicable law at that point in time. He said:

> For example, it [the strata title board] will be empowered to hear and settle disputes arising from a breach or failure to perform any statutory duty or by-laws relating to a strata development. Currently, a subsidiary proprietor or Management Corporation must apply to court to enforce the performance or restrain the breach. [see *Singapore Parliamentary Debates*, vol 69, 1998, col 606]

The appeal

Jurisdiction

10 Counsel for the appellants submitted that the Board had erred in law in ruling that it had jurisdiction to hear the application under s 103(1)(c) of the Act. The application was for an order to enforce the performance of or restrain the breach of by-law 13, which is clearly and directly within the express ambit of s 41(14) of the Act. The subsection provides as follows:

> The management corporation or the subsidiary proprietor, mortgagee in possession, lessee or occupier of a lot shall be entitled to apply to the court —
>
> (a) for an order to enforce the performance of or restrain the breach of any by-law by; or
>
> (b) to recover damages for any loss or injury to person or property arising out of the breach of any by-law from,
>
> any person bound to comply therewith, the management corporation or the managing agent.

11 I disagreed and was of the view that the Board was correct in ruling that it had concurrent jurisdiction. The Board, quite properly, in my view, adopted a purposive interpretation. That was entirely consistent with the intention behind the 1999 amendments of s 103 of the Act. In the context of subsidiary proprietors' compliance of by-laws governing a condominium, it seemed to me that these matters were more appropriately dealt with by a specialised tribunal. Such tribunals over time would have gathered a uniform approach in resolving what in condominium living must be more or less similar problems, both in nature and in extent.

12 Counsel for the appellants in further support of his submission made the following additional points. He argued that conferring a jurisdiction to settle disputes between management corporations and subsidiary proprietors regarding the exercise or failure to exercise any power, authority, duty or function imposed by the Act was entirely "dissimilar from saying that the [strata titles board] had powers to restrain a breach of a by-law", which was precisely the situation dealt with by s 41(14). In my view, the only difference is that s 103 is couched in wider terms and, to the extent that it includes the particular situation such as s 41(14), it clearly is more extensive than the latter. On the question of jurisdiction in the light of the facts in this case, there was, in my view, no difference at all in the distinction that was sought to be drawn. The words in s 103 are apt to confer the jurisdiction on the Board to adjudicate upon a matter and make the necessary orders where a breach of the by-law is made out.

13 The other point made by counsel for the appellants in his oral submissions was that under

s 41(14)(a) of the Act, only a court could issue a mandatory injunction. The short answer is that the terms of the provisions did not support his argument. I could find no words in that paragraph which expressly conferred exclusive jurisdiction in the courts of our legal system. On the contrary, s 103(1) expressly empowers the strata titles board to "make an order for … the rectification of a complaint, with respect to … the failure to … perform, a … duty … imposed by … the by-laws relating to the subdivided building".

Is the space a "balcony"?

14 The Board ruled that a balcony could be a space in a strata unit with a single opening "along the plane of the external wall" which did not protrude beyond the external wall: see para 49 of its grounds of decision. The Board had before it the evidence of the expert of the Management Corporation, Mr Goh Peng Thong, an architect. He had drawn sketches of the designs of modern balconies. He drew a design of a balcony with three sides open. In the third sketch, found in vol 3 of the Record of Appeal at p 219, he drew a balcony which had one side open to the exterior and which did not project beyond the external wall. That sketch represented the "terrace" of the appellants' unit. This sketch was unchallenged by the appellants in cross-examination.

15 What influenced the Board was the effect of the space in question on the external appearance of the subdivided building. At the end of para 49 of its grounds of decisions it stated thus:

> More importantly, if the enclosing of such an opening in a balcony of a modern day design does affect the external appearance of the building, then it must have been intended by the provisions of by-law 13 that such modern day balcony must be caught by it.

16 In arguments before the Board, the appellants relied on the definition of a "balcony" under the Building Control Regulations (Cap 29, Rg 1, 2000 Rev Ed) which described it as projecting beyond the "outer face of an external wall". The opinion of their expert witness was also based on that definition. I agreed with the Board that the definition was for the purposes of building control department and was not exhaustive. The Urban Redevelopment Authority ("URA") had also expressed the view that the space in question was a "balcony". On the other hand, the appellants referred to a URA earlier circular dated 26 June 2001 which indicated that a balcony must be open on at least two sides. The latter view was made, however, to encourage the provision of balconies that were "conducive for sky-rise gardening". Therefore, that definition must be confined to its context.

17 Equally, the definition of what is a "balcony" of a unit within a subdivided building regulated by the Act must be contextualised and, against this background, the Board was perfectly entitled to give due regard to some semblance of order and good taste in the external appearances of subdivided buildings. It is true that an owner of a unit is entitled to furnish his property in any way he deems aesthetic, which is all very subjective, but it is also equally valid that communitarian living within a condominium entails consideration of order and good taste for the common good. The Board was well suited to make the judgment, giving due regard to the majority views of each management corporation. Its finding that the space was a balcony within the meaning of by-law 13 must therefore be accorded the respect it deserved.

Appeal dismissed with costs.