Management Corporation Strata Title Plan No 2297 v Seasons Park Ltd [2004] SGHC 142

Case Number : Suit 827/2003

Decision Date : 01 July 2004

Tribunal/Court : High Court

Coram : MPH Rubin J

Counsel Name(s) : Leo Cheng Suan (Infinitus Law Corporation) for plaintiff; Christopher Chuah and Lee Hwai Bin (Wong Partnership) for defendant

Parties : Management Corporation Strata Title Plan No 2297 — Seasons Park Ltd

1 July 2004

MPH Rubin J:

1 This registrar's appeal concerns discovery of documents in an action commenced by the management corporation of a condominium against a developer. The background facts which surround the dispute between the parties are as follows.

2 The plaintiff, a management corporation constituted under the provisions of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), represents 390 homeowners of a condominium known as Seasons Park. The defendant is the developer of Seasons Park and was responsible for its proper construction. The development of the project began in or around 1996 and the certificate of statutory completion was issued in or around 28 February 1998. In so far as is material under cl 9(1) of the sale and purchase agreement between the defendant and the purchasers of the units at Seasons Park, it was agreed by the defendant, as the developer/vendor, as follows:

> The Vendor shall as soon as possible build the unit together with all the common property of the Building and the Housing Project in a good and workmanlike manner according to the Specifications and the plans approved by the Building Authority and other authorities.

3 The plaintiff was duly constituted on or around 27 May 1999. The plaintiff's first annual general meeting was convened on 24 June 2001 when the plaintiff took over from the defendant the control, management and administration of the common property of Seasons Park, for the benefit of all the subsidiary proprietors.

4 Since or around the year 2000, several subsidiary proprietors had been complaining to the defendant of water ingress in the rooftops of the residential units and defects in elevators, windows, the car park, lift lobbies, the clubhouse, swimming pools, floors, walls, tennis courts and other areas of the common property. The defendant reportedly attempted to effect repairs to the property but the complaints persisted.

5 The plaintiff then commissioned a firm of building surveyors to study and review the problems at the development. The report submitted by the said surveyors concluded that the common property at the development had several defects and that the defendant's various attempts at rectifying the defects in the rooftops and the elevators had been unsuccessful. A further report by the surveyors also said that there was rainwater ingress in a substantial number of the residential units.

6 Consequently, the plaintiff commenced this action against the defendant for breach of duty as well as for breach of the sale and purchase agreement and breach of an implied contract.[1] The main complaint of the plaintiff, as set out in the statement of claim, is as follows:[2]

38. From the very beginning, the Plaintiffs have not enjoyed the benefit of having and/or enjoying properly plastered and painted elevations and leak-free buildings. The stained elevations are an eyesore and diminished the value of the Development. The Defendants are not keen to find a permanent solution to all the problems, and are only prepared to do cheap short-terms patch repairs.

39. The Defendants are and were in breach of their duty owed to the Plaintiffs to construct and deliver the Development in a good workmanlike manner, which breach caused damage and will cause loss to the Plaintiffs.

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(a) Failure to comply with standards set by local authorities and/or British Standards.

(b) Failure to provide or adequately provide a waterproof membrane under/above the exposed flat roofs and carpark.

(c) Failure to ensure that the elevations of the Development are adequately waterproofed or free from water ingress and other defects.

(d) Failure generally to properly construct the Development in a good and workmanlike manner.

(e) Failure to design waterproof roofs and elevations.

(f) Failure to implement anti-termite treatment adequately, or at all.

(g) Failure to inspect and/or supervise the contractors and/or sub-contractors and/or architects' works properly or at all thereby allowing the Defendants their servants or agents to:

(i) breach their duty to construct the Development without defects,

(ii) carry out their works and/or methods or sequence of works and/or repairs without proper skill and care.

(h) Failure to supervise the contractor, sub-contractor or Clerk of Works or architects properly or at all.

(i) Failure to issue the necessary instructions or directions to the contractor or sub-contractor or architects on the matters in relation to or affecting the Development.

(j) Failure to pay adequate periodic and/or adequate visits to the Development site during the construction and rectification works.

(k) Failure to exercise reasonable skill and care in relation to the design and supervision of the construction of the Development so as to avoid:

(i) physical damage to any property or injury to persons; and

(ii) loss due to diminution in value arising from defects in the design and/or construction of the Development.

(l) Failure to superintend the construction of the said works properly or at all or to ascertain and remedy the absence of effective means to carry out such draining.

(m) Failure to provide any proper precaution against infiltration of water at the elevations, roofs, carpark, wall and windows.

(n) Failure to ensure that the pebbles-dash are bonded correctly, and do not delaminate.

(o) Failure to provide proper doors at roof access, or to provide a shelter or projection to protect the doors.

(p) Failure to exercise reasonable skill and care so as to avoid causing to the Plaintiffs the costs and expenses which would be incurred by the Plaintiffs in making good defects in the design of and/or construction of and/or rectification works to the Development in order to avoid physical damage to any property or injury to persons and/or to rectify the diminution in value of the Development and the individual units within the Development.

(q) Failure to adhere to British Standard Code of Practice 5628 Part 3 formerly CP 121 Part 1 (code of Practice for Brick or Block Walling).

(r) Failure to adhere to British Standard PS 5262 on External Rendering.

(s) Failure to adhere to Singapore Construction Industry Development Board (CIPB)'s CONQUAS assessment scheme on external walls; having visible cracks and inadequate and/or unevenly painted surfaces.

(t) Failure to maintain or adequately maintain the common property up to before the handing over to the Plaintiffs.

7 The defendant, no doubt, denies the plaintiff's claim. Apart from some general and specific denials, the defendant averred in the defence as follows:[3]

18. Save that the Plaintiffs have a duty to maintain the common property and its fixtures and fittings pursuant to Section 48 of the LTSA, paragraph 29 of the Statement of Claim is denied. The Defendants aver that they did not undertake the design and construction of the Development. The design of the Development and supervision of construction works were undertaken by professional independent consultants engaged by the Defendants while an independent Main Contractor engaged by the Defendants undertook the construction and building works of the Development.

19. Further, the Defendants aver that, even if paragraph 29 of the Statement of Claim is true (which is denied), the Defendants aver that they had delegated the construction of the Development to Poh Lian Construction Pte Ltd ("the Main Contractor") who are an independent contractor. In the circumstances, the Defendants are not vicariously liable for the defaults of the Main Contractor (if any) and/or have discharged their duty of care by delegation to a reasonably competent independent contractor.

20. Further and/or alternatively, the Defendants aver that even if paragraph 29 of the

Statement of Claim is true (which is denied), Architects 61 ("the Architects") were the firm of architects appointed by the Defendants for the Development and that the Architects accepted such employment as architects to design and/or supervise the construction works on the Development. In the circumstances, the Defendants are not vicariously liable for the defaults of the Architects (if any) and/or have discharged their duty of care by delegation of the design and/or supervision for the construction of the Development to a reasonably competent independent consultant.

…

24. The Defendants deny paragraph 39 of the Statement of Claim and reiterate paragraph 15 herein.

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(1) The Defendants did not design the Development nor did the Defendants supervise the construction works for the Development. The Defendants engaged professional consultants to undertake the design of the Development and the supervision of the construction of the Development in accordance with the sales specifications and the approved building plans and in compliance with statutory requirements.

(2) The Defendants did not carry out the construction works for the Development. The Defendants engaged a reputable Main Contractor to carry out the construction of the Development.

(3) The Architects are responsible for the design of the Development and supervision of the construction works for the Development.

(4) The Main Contractor is responsible for the construction of the Development and the workmanship in respect of such construction.

25. Further or in the alternative, the Defendants aver that they had relied on the Architects to provide a proper design for the Development and to provide proper supervision of the construction works and had relied on the Main Contractor to provide good workmanship in carrying out the building and construction works. If there is any duty owed to the Plaintiff in respect of design and construction, such duty had been delegated to an independent consultant and independent contractor respectively, and the Defendants are not liable for any damage and/or loss caused or occasioned by a breach of duty on the part of the independent consultant and independent contractor respectively.

8 There ensued the discovery process and in the event, there was an order by the assistant registrar on 15 March 2004 granting discovery of some ten items including architectural, structural, and mechanical and electrical (M&E) drawings ("contract drawings") and original specifications of the contracts relating to the construction of the development ("contract specification").

9 The defendant appealed against the said order in relation to most of the discovery items. I heard the appeal on 21 April 2004. While the appeal was in train, the court was informed that the parties had come to an amicable arrangement in respect of a number of items forming the subject matter of the notice of appeal. Only the contract drawings and contract specifications were left for determination. After hearing arguments, I dismissed the defendant's appeal on the grounds that the

said documents appeared relevant to the proper determination of the issues at hand. On 28 April 2004, the defendant wrote to the court requesting further arguments to be presented and these arguments were heard by me on 28 June 2004.

10 The main thrust of the defendant's arguments appear in the defendant's solicitors' letter dated 28 April 2004. The relevant parts read as follows:

> 4. The Respondents have founded their action in Suit No. 827 of 2003/B in contract and in tort.
>
> 5. In contract, the Respondents have relied on Clause 9(1) of the Sale & Purchase Agreement and/or implied contract of the Sale & Purchase Agreement. Alternatively, the Respondents have alleged that there was an implied contract between the Appellants and themselves arising out of the acknowledgement by the Appellants of the obligation to undertake appropriate repairs to the Development and that the Appellants effected such repairs on diverse dates in or around 2000 or thereabouts in consideration of forbearance to sue.
>
> 6. The Appellants submit that in the local case of *RSP Architects Planners & Engineers v Ocean Front Pte Ltd and another appeal* [1996] 1 SLR 113 where there was an argument raised by the MCST on whether they could find an action in contract, the MCST relied similarly on the Sale & Purchase Agreement and no other main contract or other documents. The Appellants submit that the Respondents are similarly pursuing the claim in contract based on the Sale & Purchase Agreement and should likewise be confined to the same. What is glaringly obvious from the case of *RSP Architects* is the omission of reference to the main contract drawings and specifications in the trial.
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> 7. Further, the Respondents have alleged that the Appellants have been negligent in the construction of the Development in tort. The Respondents are relying on the breaches of normal industry standards and/or the Singapore Construction Industry Development Board's Quality Assessment System ("CONQUAS") and/or British Standards.
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> 8. The Appellants contend that based on the Respondents' own pleaded case above, the contract documents and drawings are irrelevant in advancing the Respondents' case. Further, the Appellants submit that it is clear from and accepted in the *Ocean Front* case and the case of *RSP Architects Planners & Engineers (Raglan Squire & Partners FE) v Management Corporation Strata Title Plan No 1075 and Another* [1999] 2 SLR 449 ("*Eastern Lagoon II*") that in determining whether there is negligence on the part of developer in respect of alleged building defects, the benchmark for deciding liability would be the acceptable practices in the industry and whether the relevant codes of practice or standards have been observed. In this regard, the Appellants refer to paragraph 49 of the Court of Appeal's decision in *Eastern Lagoon II* where it was stated that: "*It was common ground before the learned judge that the building industry follows the British Codes of Practice …*". The Court of Appeal and the Judge below had gone on to consider the non-compliance with the codes in determining negligence.
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> 9. Further, the standards and specifications relied on by the Respondents in pursuing the case against the Appellants are clearly set out in the Sale & Purchase Agreement, which the Respondents are relying on in their pleadings. The Appellants contend and submit that the First Schedule of the Sale & Purchase Agreement contains the specifications of the buildings in the Development, and also sets out the required building standards. Further, clause 14 of the Sale & Purchase Agreement contemplates changes from specifications and plans, if any.

11 The principles as regards discovery were redefined by the Court of Appeal in *Tan Chin Seng v Raffles Town Club Pte Ltd* [2002] 3 SLR 345 where Chao Hick Tin JA, in delivering the opinion of the court, said at [15] to [19]:

> The criteria adopted by the new rules are more specific. They are set out in O 24 r 1(2):
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> > The documents which a party to a cause or matter may be ordered to discover under paragraph (1) are as follows:
> >
> > (a) the documents on which the party relies or will rely; and
> >
> > (b) the documents which could —
> >
> > (i) adversely affect his own case;
> >
> > (ii) adversely affect another party's case; or
> >
> > (iii) support another party's case.
>
> There is, in addition, an overriding principle prescribed in r 7, which is, that the discovery must be "necessary either for disposing fairly of the cause or matter or for saving costs".
>
> Documents which are now discoverable, other than those on which a party relies or will rely (r 1(2)(a)), will be those which could (1) adversely affect the party's own case; (2) adversely affect another party's case; or (3) support another party's case. It should be noted that the word there is "could" not "would". So a document which has the "potential of affecting" the party from whom the document is requested, is obliged to discover the same.
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> Thus caution must be exercised when considering decisions which were made under the previous rules because, in the words of Jeffrey Pinsler on *Singapore Court Practice* O 24, "a document is no longer discoverable merely because there is some connection (irrespective of the nature of the link) between it and the issue in the case". Documents which were required to be discovered under the concept of "train of inquiry" are no longer discoverable under the present O 24 r 1. However, this is not to say that the concept of "train of inquiry" has been removed from the Rules. It has reappeared in r 5 which relates to discovery of specific documents.
>
> However, it must not thereby be taken that cases decided under the previous rules are no longer pertinent. As was the position under the previous rules, one of the essential preconditions to be satisfied before discovery will be ordered is that of "relevance". Whether a document would affect that party's claim, or adversely affect another party's case, or support another party's case, must depend on the issues pleaded in the action. The cases that shed light on "relevancy" are just as useful today.
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> Some of the principles on "relevancy" established by the cases are the following. In [*Thorpe v Chief Constable of Greater Manchester Police* [1989] 2 All ER 827] it was decided that a document was not discoverable if it was to be used only for the purpose of cross-examination to establish credibility of witnesses. A discovered document can also be blanked out in part if the blanked out portion is irrelevant to the issues of the action: *GE Capital Corporate Finance Group v Bankers Trust Co* [1995] 2 All ER 993; [1995] 1 WLR 172. The discovery process should not be allowed to "fish" a cause of action: see *Wright Norman v Oversea-Chinese Banking Corp* [1992] 2 SLR 710. Where an allegation is not pleaded, seeking discovery of a document to back

up such an allegation constitutes fishing: *Marks & Spencer plc v Granada TV* (unreported, 8 April 1997).

12 Returning to the issues before the court, the defendant's contention was that the plaintiff has failed to satisfy the test of relevancy as regards the contract drawings and contract specifications. In a nutshell, what the defendant seemed to be contending was that (a) in relation to the plaintiff's claim based on contract, it should confine itself only to the terms of the sale and purchase agreement and (b) in relation to the claim founded on tort, it should restrict itself to breaches of normal industry standards and/or the Singapore Construction Industry Development Board's Quality Assessment System (CONQUAS) and/or British Standards.[4]

13 The plaintiff's claim based on breach of duty bespeaks many alleged lapses.[5] The said lapses include, amongst other things, (a) failure to issue the necessary instructions or directions to the contractor or sub-contractor or architects on the matters in relation to or affecting the development[6]; (b) failure to exercise reasonable skill and care in relation to the design and supervision of the construction of the development so as to avoid loss and damage[7] and (c) failure to superintend the construction of the said works properly or at all.[8]

14 Relevant evidence simply means such evidence as bears directly upon the point or fact in issue. Relevancy is that which conduces to the proof of a pertinent hypothesis. A fact or document is said to be relevant when it is so connected directly or indirectly with a fact in issue in an action that evidence given respecting it, may reasonably be expected to assist in proving or disproving the fact in issue (see *Black's Law Dictionary* (6th Ed, 1990) pp 1290–1291 and Earl Jowitt, *The Dictionary of English Law* (Sweet & Maxwell Ltd, 1959)).

15 Order 24 r 1(2) employs the auxiliary verb "could" before the words "adversely affect another party's case". In *Webster's New World Dictionary of the English Language* (2nd College Ed, 1980), the word "could" is defined as:

> … generally equivalent to *can* in meaning and use, expressing especially a shadow of doubt or a smaller degree of ability or possibility … and suggesting politely less certainty than *can*. [emphasis added]

In my opinion, the use of the word "could" connotes that the court, in arriving at a decision whether a particular document is relevant or not, need not at this stage of the trial process enter upon an in-depth analysis as to the exact degree of relevance apropos the documents. What is required of the court at this stage of the trial is only to form an informed view as to whether the documents in question may reasonably be expected to assist in proving or disproving the fact in issue.

16 In returning to the appeal before me, the defendant's contention that contract drawings and contract specifications do not relate to or bear directly upon the issue of the alleged breach of duty as well as implied obligations, is an over-simplification of the facts in issue. The defendant's counsel contended before the assistant registrar[9] that the documents under reference had no relevance to the plaintiff's pleaded case and if at all, these concerned an issue between the architects' main contractor and the defendant. This position also features in the defence filed by the defendant.[10] If what the defendant contends was accurate, then those documents, perforce, become relevant for the very purpose of the defendant's averments. Having pleaded that its architects designed the development and its contractors carried out the specifications, it does not now lie in the mouth of the defendant to claim that contract drawings and contract specifications are irrelevant to the issues to be determined at the trial. I must at this juncture, hasten to add a rider that my determination as to the relevancy of the documents in question does not touch upon the issue as to admissibility of the

said documents at the trial.

17 In my view, the contract drawings as well as the contract specifications appear *prima facie* relevant to the determination of the issues at hand. As I said earlier, the court at this stage is not required to undertake a full scale inquiry into the area of relevancy. So long as the applying party satisfies the court that the documents requested may reasonably affect another party's case adversely, it should not be prevented from discovering those documents.

18 As I was satisfied that the documents requested are relevant within the ambit of O 24 r 1(2), I dismissed the defendant's appeal with costs and reaffirmed the decision of the assistant registrar.

Order accordingly.

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[1]See Statement of Claim, paras 25 to 28.

[2]See Statement of Claim, paras 38 and 39.

[3]See the Defence, paras 18, 19, 20, 24 and 25.

[4]See defendant's solicitors' letter dated 28 April 2004, paras 6 and 7.

[5]See Statement of Claim, para 39

[6]See Statement of Claim, para 39(i)

[7]See Statement of Claim, para 39(k)

[8]See Statement of Claim, para 39(e)

[9]See NE before the AR at p 3, lines 13 to 14.

[10]See the Defence, paras 24(1) and (2).