Chia Sok Kheng Kathleen v The Management Corporation Strata Title Plan No 669 [2004] SGHC 148

Case Number : Suit 206/2003

Decision Date : 15 July 2004

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : John Chung and Tan Yeow Hiang (Kelvin Chia Partnership) for plaintiff; Tan Chee Meng, Doris Chia and Melanie Ho (Harry Elias Partnership) for defendant

Parties : Chia Sok Kheng Kathleen — The Management Corporation Strata Title Plan No 669

Land – Strata titles – Management corporation – Whether approval of management corporation required for subsidiary proprietor's proposals – Whether management corporation failed to discharge duties under by-laws – Sections 41(4), 41(7)(a), First Schedule Land Titles (Strata) Act (Cap 158, 1988 Rev Ed)

Limitation of Actions – Particular causes of action – Contract – Whether management corporation's alleged failure to discharge duties under by-laws were breaches of contract under Land Titles (Strata) Act – Whether plaintiff's claims time barred – Section 6(1) Limitation Act (Cap 163, 1996 Rev Ed)

15 July 2004 *Judgment reserved.*

Kan Ting Chiu J:

1 The plaintiff is the subsidiary proprietor of five units on the third floor (collectively "the Unit") of City Plaza Shopping Centre ("City Plaza" or "the building").

2 The defendant is the management corporation of City Plaza incorporated under the Land Titles (Strata) Act (Cap 158, 1988 Rev Ed) ("LT(S)A") .

3 The plaintiff is suing the defendant over three occasions she alleged that the defendant caused her to lose tenants for the Unit.

The first aborted tenancy

4 The first prospective tenant intended to operate a food court in the Unit for three years. However the prospective tenant wanted to have a segment of a non-structural wall of the Unit which ran alongside a common passageway demolished and replaced with a roller shutter to improve the Unit's accessibility and visibility. I shall refer to this wall as a common boundary wall.

5 The plaintiff made the necessary applications to the government and statutory authorities for approval to carry out the proposed works. The Building Control Division and Ministry of Environment confirmed that their approvals were not necessary. The Fire Safety Bureau did not have any objection, but it required the plaintiff to submit a letter of approval from the defendant for the works to be carried out.

6 The plaintiff applied to the defendant for the approval on 15 February 1997. She also attended at a council meeting of the defendant on 27 February to present her case in person, but her

application was turned down on 28 February. It was not an outright rejection; the defendant informed her that she could alter the wall to a low wall and a glass panel, or to open a double-leaf glass door instead.

7 The plaintiff requested an explanation for the decision, and was informed on 4 March that the wall in question was a boundary wall which she could not demolish without the defendant's authorisation. When she pressed further, the defendant replied that it was not obliged to give reasons for the rejection.

8 The prospective tenant did not accept either of the defendant's suggestions, and did not take up the tenancy.

The second aborted tenancy

9 While the application to demolish the wall was ongoing, there was another party interested in the Unit. The plaintiff claimed that Pizza Hut was prepared to enter into a tenancy for three years, subject to the electricity supply being upgraded from 150 amperes to 250 amperes.

10 Under the defendant's by-laws, the defendant's approval was required before the electrical supply could be upgraded. The plaintiff wrote to the defendant on 26 February for approval, and attended at the council meeting of 27 February to present her case.

11 By the same letter of 28 February which turned down the application to demolish the wall, the defendant rejected the plaintiff's application to upgrade the electrical supply on the ground that the building's main electrical switchboard had reached its rated capacity.

12 The plaintiff alleged that because the electrical supply upgrade was not approved, Pizza Hut did not take up the tenancy.

The third aborted tenancy

13 On 28 July 1999, the plaintiff applied to the defendant for its approval to convert the Unit to a family amusement centre and billiard saloon as a party known as Mechmaster Billiard Centre was interested in operating a billiard saloon at the Unit.

14 The defendant rejected the application on 24 September and explained on 4 October that the application was turned down because the proposed business might affect the safety and quiet enjoyment of the residents and occupiers of the building.

15 The plaintiff took another tack. On 19 November, she applied to the Licensing Division of the Singapore Police Force for a licence to operate a billiard saloon in the Unit. The Licensing Division replied on 24 December that it had no objection subject to*, inter alia*, the plaintiff obtaining a letter from the defendant. The wording of the reply caused some confusion as to whether the Division wanted the defendant to confirm the floor area of the Unit, or confirm their consent to the application, but it was eventually clarified that the latter was required.

16 On 4 January 2000, the plaintiff applied to the Development Control Division ("DCD") for permission to use the Unit as a billiard saloon and amusement centre. On 13 January, the DCD granted its provisional permission, subject to the plaintiff getting clearance from the Public Entertainment Licensing Unit of the Licensing Division, Singapore Police Force.

17 This brought matters back to where they were in December 1999, when the Police Licensing Division asked for a letter of consent from the defendant. The plaintiff went back to the defendant. The defendant was initially under the impression that its consent was not required. After it was clarified that its consent was required and after a further attendance by the plaintiff at a council meeting, the defendant informed the plaintiff on 1 July that it would grant its consent on the following conditions:

(a) the plaintiff provided a security deposit of $30,000 to the defendant;

(b) the plaintiff provided at least one full-time security guard during the operating hours of the billiard saloon;

(c) the operation hours of the billiard saloon were to adhere to the operation hours of the complex;

(d) there was adequate insurance coverage against all losses and claims to the complex and the defendant; and

(e) that the defendant was indemnified against all liabilities and charges by the authorities.

18 When these conditions were made known to Mechmaster Billiard Centre, it did not proceed with the tenancy.

This action

19 The plaintiff filed her writ against the defendant on 4 April 2003.

20 In respect of the first aborted tenancy, the plaintiff's case was that:

(a) there was no requirement to obtain the defendant's approval to demolish the wall and install the roller shutter;

(b) the defendant had no basis to withhold its approval; and

(c) the defendant's decision to withhold approval was in contravention of s 41(7)(a) of the LT(S)A.

21 In respect of the second aborted tenancy, the plaintiff's case was that:

(a) the plaintiff's main switchboards had not reached their rated capacities and had excess capacity to supply another 100 amperes to the Unit; and

(b) the defendant had unreasonably withheld their consent in breach of its "duty of care/contract".

22 The plaintiff's case in respect of the third aborted tenancy was that:

(a) the defendant's withholding of its consent was in breach of its "duty of care/contract"; and

(b) the defendant did not have the power to impose the conditions for granting its consent, and had contravened s 41(7)(a) of the LT(S)A when it imposed the conditions.

23 The plaintiff claimed for the lost rental from the three aborted tenancies and damages for the mental distress, pain and anguish that she suffered from the defendant's refusals of her applications.

The function of a management corporation

24 Management corporations are bodies constituted by the LT(S)A. Under s 48, a management corporation has the control of the common property of a subdivided building such as City Plaza. By s 48(1)(a), a management corporation is to "control, manage and administer the common property for the benefit of all the subsidiary proprietors."

25 Under s 41(1), the control of the common property is regulated by by-laws. Some by-laws are prescribed by the Act, but a management corporation can adopt further by-laws in addition to the prescribed ones.

26 Section 41(4) provides that "the by-laws for the time being in force bind the management corporation and the subsidiary proprietors … as if the by-laws had been contained in properly executed agreements" between, *inter alia,* the management corporation and each subsidiary proprietor to observe and comply with all the by-laws.

Facts and findings

27 There can be no doubt that no part of the common property can be altered by a subsidiary proprietor without the approval of the management corporation. If the common boundary wall the plaintiff intended to demolish and replace with a roller shutter was common property, she could not do that without the defendant's approval.

28 On the other hand, if that wall was not common property, and was exclusive property of the plaintiff, then the plaintiff did not need the approval of the defendant unless there were specific by-laws that required the management corporation's approval to be obtained (there was no such requirement in the defendant's by-laws). Of course any work would have to be carried out in compliance with by-laws that related to the hours that such work might be carried out, the use of common property, the removal of debris, *etc*.

29 Was the common boundary wall common property? The defendant called two witnesses to support its position that the wall was common property. Khoo Chong Teik, a land surveyor, was engaged to do a boundary survey of the wall. For this task, he obtained a copy of the Unit's strata boundary plans from the Singapore Land Authority Survey Department ("the SLA survey plan"), and he also took field survey measurements and drew his own survey plan. He found that the column at one end of the wall shown in the SLA survey plan was the same column found in his survey, and that the strata boundary of the Unit ran along the centre of the wall in question, assuming that the boundary line ran through the middle of the wall.

30 The other witness, Chin Cheong, a building surveyor, elaborated on the basis of the assumption the land surveyor made. He referred to s 10(8) of the LT(S)A which states that:

> [u]nless otherwise stipulated in the strata title plan, the common boundary on any lot with another lot or with the common property shall be the centre on the floor, wall or ceiling as the case may be.

He concluded that "[t]he brick wall which separates the subject property and the common corridor is

a party wall. The external half of the wall is common property."

31 Section 3 of the Act provides that "common property" includes walls "unless otherwise described specifically as comprised in any lot on a strata title plan and shown to be capable of being comprised in such lot".

32 Read literally, the whole wall is common property. However, a literal construction may not be appropriate when applied to a common boundary wall as ss 48(1)(a) and (b) provide that a management corporation is to control, manage and administer the common property for the benefit of all the subsidiary proprietors, and properly maintain the common property and keep it in a state of good and serviceable repair. It cannot have been intended that management corporations be responsible for the control and management of the sides of common boundary walls inside subsidiary units to the exclusion of the subsidiary proprietors.

33 Whether a common boundary wall is wholly or partly common property, the plaintiff's proposal to demolish part of the wall and install a roller shutter affected common property and the approval of the management corporation was required under by-law 11 of the First Schedule of the LT(S)A which provides that:

> [a] subsidiary proprietor or occupier of a lot shall not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property without the approval in writing of the management corporation ….

34 When a management corporation receives an application affecting the common property, it should exercise its discretion for the benefit of all the subsidiary proprietors. That means that the interests of the applicant subsidiary proprietor as well as the interests of the other subsidiary proprietors are to be taken into account. The discretion should be exercised responsibly. Applications should be dealt with consistently without favouritism or bias, but flexibility should be retained to take into account changing circumstances. Policies adopted should not be regarded as edicts set in stone.

35 Did the defendant act properly in rejecting the plaintiff's application? The defendant when pressed, informed the plaintiff that it was not obliged to give reasons for rejecting her application. However, in the course of this action, the defendant revealed that two of the reasons were:

> (a) a precedent would be created whereby other subsidiary proprietors of corner units would also want their walls torn down; and
>
> (b) the defendant would face unending difficulties in controlling, managing and administering this narrow common passageway as cargo and rubbish carts needed to use the cargo lift.

36 The defendant did not reject the application out of hand. It allowed the plaintiff to present her case in person, and the minutes of the meeting recorded that after she had done so and left, the meeting deliberated at length before coming to its decision to reject the application and to offer her the two alternatives.

37 I do not think that the plaintiff can complain that the defendant had not acted responsibly in deciding on her application. There was no suggestion that the decision was tainted by prejudice, malice or indifference.

38 Having said that, the defendant would have done better if it had informed the plaintiff of the reasons for its decisions. I appreciate that the defendant might have wanted to encourage council

members to speak freely in confidence, but subsidiary proprietors should be informed of the reasons for decisions (as distinguished from the deliberations leading to them), so that subsidiary proprietors can decide whether to raise further grounds in support of applications or to modify the applications. In this instance, for example, if the plaintiff had been told the reasons, she might have pointed out that, for reason (a), it was not undesirable to create a precedent as there are good precedents and bad precedents and only the latter should be discouraged. The plaintiff could have addressed reason (b) by undertaking that the proposed opening was to be used solely for human access, and that goods and refuse would continue to be moved along the existing approved routes.

39 Nonetheless, looking at the totality of the evidence, I find that the defendant acted honestly and responsibly in dealing with the application.

40 To whom was the duty owed? Section 41(4) of the Act stipulates that the by-laws shall bind the management corporation and the subsidiary proprietors as if the by-laws had been contained in properly executed agreements between the management corporation and each subsidiary proprietor to observe and comply with the by-laws.

41 By this provision, the management corporation and a subsidiary proprietor stand in the position of parties with contractual rights and obligations between them. If one party to the contract breaches its duties under the by-laws and causes loss to another, the innocent party is entitled to seek redress from the defaulter. The other features of a contractual relationship will follow, and I shall deal with the time bar issue later.

42 I do not understand the plaintiff's reliance on s 41(7)(a) as a ground of complaint against the defendant. This provision states that no by-law shall be capable of operating "to prohibit or restrict the devolution of a lot or a transfer, lease or mortgage or other dealings of a lot."

43 The prohibition relates to acts that involve a transfer of the title or rights of a subsidiary proprietor to another party. The words "or other dealings" must be read *ejusdem generis* to apply to transmissions of interests.

44 When the defendant rejected the application to demolish the wall and install a roller shutter, that was not directed at the transmission of any interest but to the proposed renovation works. The application was rejected whether the plaintiff intended to tenant out the Unit or use it herself.

45 The proposal to upgrade the electrical supply also related to common property as the supply came through the building's switchboards which were common property. Thus, the defendant's approval was required under the by-laws.

46 The plaintiff applied to the defendant for approval on 26 February 1997, and attended at the council meeting of 27 February. She received its reply on 28 February that the approval was withheld because the building's main electrical switchboard had reached its rated capacity, but the management corporation would be studying the possibility of upgrading the existing switchboard and would keep her informed of further developments. This was clearly a better way of dealing with a failed application, compared to not giving reasons for the rejection.

47 The plaintiff requested the defendant to refer the matter to its electrical consultant. The defendant wrote to its electrical consultant, Development Resources Pte Ltd ("DRPL") on 1 March for its opinion and received DRPL's opinion dated 11 March confirming that the upgrade could not be catered for from the existing main switchboards as the loadings from the main switchboards were close to their rated capacities. The defendant sent the consultant's opinion to the plaintiff on

12 March. The defendant also explained to the plaintiff that provisions had been made to tap a 400-ampere supply for the proposed conversion works to convert the fifth storey carpark to office space.

48 The plaintiff was still not satisfied with that explanation. She complained in her affidavit of evidence-in-chief:

> From what I know, the Defendants had thereafter allowed the following units in City Plaza to increase the electricity supply to their units, viz: (i) unit #01-48 sometime in October 1997 (ii) unit #01-60 and unit #01-61 sometime in June 1998, #02-99 to #02-101 sometime in September 2000 and (iii) #01-56 sometime in September 2001. I do not understand why the Defendants were able to allow those units to upgrade the electricity supply to their respective units but could not accede to my request.

She accused the defendant of acting arbitrarily when it rejected her application.

49 The defendant's response to those allegations was that the upgrade for unit #01-48 in 1998 had been 30 amperes, unlike the plaintiff's request for 100 amperes, and that the defendant had been prepared to upgrade the supply to units #01-60/61 to a three-phase electricity supply in 1998 if the applicant had borne part of the costs for upgrading the main electricity but the applicant did not proceed further. The circumstances of those cases were clearly distinguishable from the plaintiff's case.

50 With regard to the upgraded supplies to units #02-99/101 and #01-56, they were approved in July 2000 and September 2001 after a new electrical consultant, Lim Engineering Associates Pte Ltd ("LEA"), was appointed. In early 2000 the defendant sought LEA's advice on a spate of electrical trippings. The defendant instructed LEA to conduct a survey of the electrical system, and make recommendations whether upgrades to the switchboards were necessary. In April 2000 LEA reported that the existing transformer capacities were adequate to meet the building's requirements, that no upgrading of the transformer was necessary in the near future, and that there was spare capacity to meet normal tenant electrical demands. Applications for the upgrading were then approved on the strength of the report. Similarly, it cannot be said that the defendant acted wrongly or irresponsibly when it relied on the advice of DRPL, the electrical consultant at the relevant time, in rejecting the plaintiff's application in 1997.

51 The plaintiff's application for a licence to operate a billiard saloon and family amusement centre in the Unit raised different issues. The change of use did not relate to the common property of the building and did not come within the by-laws, so s 41(4) does not apply. There is nothing in the LT(S)A or the by-laws which requires a subsidiary proprietor to obtain the management corporation's approval or consent for a change of use.

52 However, although a change of use does not affect the common property, it is a matter of common concern to all the subsidiary proprietors and the management corporation, as the activities in the building may affect its security, character and standing. It is reasonable for the Licensing Division to involve management corporations when applications for change of use are received by the Division.

53 When a management corporation decides whether to grant or withhold its consent, it is not being a busybody. Although it is not within its duties under s 48 to grant or withhold its consent, when its input is sought it should respond.

54 However there is no statutory or contractual duty for a management corporation to respond to such an application. Therefore, a management corporation cannot be in breach of duty of care or

breach of contract if it declines to consent to a change of use.

55 If a subsidiary proprietor feels that the management corporation has not acted properly in withholding its consent, in that it was actuated by extraneous considerations or that it did not give sufficient attention to the application, the subsidiary proprietor can persuade the Licensing Division to dispense with the consent of the management corporation. Failing that, if the subsidiary proprietor has the support of other subsidiary proprietors, the council members can be replaced by not returning them to office when their terms run out, and more sympathetic members can be elected in their place.

56 In this case, the defendant decided at a council meeting on 27 August not to consent to the change of use because there was an existing amusement centre in the building and it was felt that another amusement centre was not desirable.

57 When the plaintiff persisted with her request, the defendant considered the matter further in its council meeting of 23 September, and confirmed its decision to withhold its consent because it felt that a billiard saloon would attract unruly people. It explained to the Licensing Division that the building had been hit by a wave of vandalism and theft, and the existing force of two security guards could not cope with a new amusement centre and billiard centre operating there.

58 Nevertheless, when the plaintiff threatened to institute legal proceedings against it, the defendant considered the matter further in two council meetings on 17 May and 29 May 2000 before it decided to give its consent with the conditions.

59 There is no merit in the complaint against the defendant in these circumstances. Although it owed the plaintiff no duty, it had given serious and careful consideration to her request and had been prepared to give its consent if the security concerns had been addressed.

60 In the circumstances, I find that the plaintiff has failed to prove her case in respect of all three aborted tenancies.

61 There is also the time bar issue. The application to demolish the wall and install a roller shutter relates to by-law 11 referred to in [33]. The application to upgrade the electrical supply was made under by-law 5 of the defendant read with r 6 of Annexure A thereto under which proposals for the alteration of electrical supply had to be approved by the defendant.

62 Both proposals related to the defendant's by-laws, which by s 41(4) of the LT(S)A bound the plaintiff and the defendant as if they were contained in agreements between them.

63 If the defendant failed to discharge its duties under the by-laws, the failures were, by s 41(4), breaches of contract. Section 6(1) of the Limitation Act (Cap 163, 1996 Rev Ed) stipulates that actions founded on contracts must be instituted within six years from the date of the accrual of the cause of action.

64 The application to demolish the wall and install the roller shutter was rejected on 28 February 1997. If, as the plaintiff asserted, the defendant was wrong in rejecting the application, the cause of action accrued on that day. Likewise, the plaintiff's application for the upgrade of electrical supply was, as pleaded in para 4 of the amended statement of claim, rejected by the same letter of 28 February 1997. By the plaintiff's own case, the first and second claims were time-barred when the action was filed on 4 March 2003.

Conclusion

65 I therefore dismiss the plaintiff's claims for all the reasons I have given. I should add that even if I had found for the plaintiff, I would not have allowed the claim for damages for mental distress, pain and anguish, as the plaintiff had not explained or justified this exceptional claim.

66 The defendant made a counterclaim against the plaintiff for demolishing the wall and installing the roller shutter according to her plan without its approval. The plaintiff did not dispute that she had caused the renovation to be done. Her defence was that she was entitled to do that. In view of the findings I have made, the defence must fail. I allow the counterclaim and order the plaintiff to reinstate the wall to its original state within one month, unless other arrangements are made between the parties.

Claim dismissed. Counterclaim allowed.