Siow Doreen and Others v Lo Pui Sang and others (Horizon Partners Pte Ltd, first intervener, and Reghenzani Claude Augustus and others, second interveners) [2007] SGHC 174

Case Number : OS 1269/2007

Decision Date : 11 October 2007

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : K Shanmugam SC, Ang Cheng Hock and Yew Zhong Ming (Allen & Gledhill LLP) for the first Intervener; Andre Yeap SC, Dawn Tan and Dominic Chan (Rajah & Tann) for the second interveners; C R Rajah SC, Burton Chen and Lalitah Rajah (Tan Rajah & Cheah) for the applicants; The first and third respondents in person; K S Rajah SC and Philip Fong (Harry Elias Partnership) for the second, fourth, eighth and ninth respondents; Kannan Ramesh, Karam Parmar and Michael Chia (Tan Kok Quan Partnership) for the fifth, sixth and seventh respondents; Michael Hwang SC and Dr Phang Sin Kat (Phang & Co) for the tenth respondent

Parties : Siow Doreen; Halimah Tan Bee Lay; Henry Lim Meng Loke — Lo Pui Sang and others (Horizon Partners Pte Ltd, first intervener, and Reghenzani Claude Augustus and others, second interveners)

Land – Strata titles – Collective sales – Whether missing pages in collective sale agreement invalidating application – Section 84A Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

Land – Strata titles – Strata titles board – Appeal to High Court on decision of Board – Whether Board in error of law – Whether Board having power to allow amendment to application – Regulations 12, 13 Building Maintenance and Strata Management (Strata Titles Boards) Regulations 2005 (S 195/2005)

Land – Strata titles – Strata titles board – Appeal to High Court on decision of Board – Whether Board in error of law – Whether law permitting Board to dismiss application on ground of defective application without hearing merits – Whether defective application extinguishing existence of Board – Section 84A Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

11 October 2007 Judgment reserved.

Choo Han Teck J:

1 The Consenting Subsidiary Proprietors ("CSP") of the condominium known as Horizon Towers applied to the Strata Titles Board ("the Board") under s 84A of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("LTSA") for various orders including an order approving the sale of Horizon Towers *en bloc* to Horizon Partners Pte Ltd ("HPPL"). The CSP are the applicants (appellants) in this appeal and they are represented by Mr Chelva Rajah SC. HPPL, represented by Mr K Shanmugam SC, and a separate group of 13 CSP, represented by Mr Andre Yeap SC were granted leave to intervene. The application was opposed by the minority subsidiary proprietors who are the respondents in this appeal and are represented by Mr KS Rajah SC, Mr Michael Hwang SC, and Mr Ramesh Kannan, in three separate groups. Two of the respondents, Lo Pui Sang and Kuah Kim Choo are unrepresented. The proceedings before the Board commenced on 27 July 2007 and ended abruptly on 3 August 2007 when the Board dismissed the application "on the face of the application filed, but not on its merits" (paragraph 4 of the Board's grounds of decision ("GD")). The reason for the dismissal of the application was that three pages ("the three missing pages") comprising the execution pages of three of the CSP were not attached to the Collective Sale Agreement ("CSA") filed as part of the requisite

"Form 1" for the purposes of the application before the Board. The Board subsequently gave its grounds in writing and I now set out the relevant passages for convenience -

> 10. By paragraph 4(a), the Applicants must include in their application documents known as Form 1, "*the documents specified in paragraph 1(e)*;". The document specified in paragraph 1(e)(i) is "*the collective sale agreement referred to in sub-paragraph (a)*;". As admitted by the Applicants on 3 August 2007, the collective sale agreement filed did not contain documents that ought to have been included.
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> Particulars of defects in the collective sale agreement
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> 1. by the admission in the Applicant's counsel's submission at paragraph 1, the execution page of the subsidiary proprietor of Block 29 #07-01, Tan Chor Hoon, was not included in Form 1;
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> 2. by the admission in the Applicant's counsel's submission at paragraph 2, the execution page of the subsidiary proprietor of Block 15 #09-05, Lee Pang Hoe Michael, was not included in Form 1;
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> 3. by the admission in the Applicant's counsel's submission at paragraph 22, the execution page of the subsidiary proprietor of Block 29 #11-05, Daniel Gunawan, was not included in Form 1;
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> Accordingly, this document would be invalid so far as the Application is concerned, having not fully complied with the statutory requirements.
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> 11. The other document that caused the Board much concern is the "…*statutory declaration made by the representatives appointed under section 84A(2) or their solicitors* …" In the statutory declaration, the Applicants must declare pursuant to paragraph 4(b)(iv) "*that sub-paragraphs (c), (d), (e) and (f) of paragraph 1 have been complied with*". In this application, the original Applicants made the statutory declaration jointly. The relevant part of the statutory declaration is extracted and set out below.

The joint statutory declaration of the CSP stated that the declarants "solemnly and sincerely declare, to the best of [his or her] information and belief, that all the particulars, statements and declarations made by [him or her] and contained in this application and marked 'Form A' are true and correct in every respect." In the course of the cross-examination of a witness, counsel for the respondents raised the issue of the three missing pages and the proceedings were then interrupted by a conference in chambers after which the Board dismissed the CSP's application under s 84A of the LTSA. In its grounds of decision the Board stated that the application was defective by reason of the three missing pages, and that the Board had no power to allow an amendment to correct the defect.

2 The CSP appealed under s 98 of the Building Maintenance and Strata Management Act 2004 (Act 47 of 2004)("BMSMA") against the Board's dismissal of their application. Section 98 provides as follows –

(1) No appeal shall lie to the High Court against an order made by a Board under this Part or the Land Titles (Strata) Act (Cap. 158) except on a point of law.

(2) Where an appeal is made to the High Court, the Court may confirm, vary or set aside the order or remit the order to the Board for reconsideration together with such directions as the Court thinks fit.

(3) The filing of a notice of appeal shall not operate as a stay of execution of an order or suspend the effect of an order unless the Board or the High Court, as the case may be, otherwise orders and any stay or suspension of an order may be subject to such conditions as the Board or High Court thinks fit.

Counsel for the respondents submitted that there was no question of law to be argued and, in any event, the appellants were bound to state in the originating summons the question to be considered. They submitted that the appellants failed to satisfy either requirement. Mr KS Rajah SC referred to *Northern Elevator Manufacturing Sdn Bhd v United Engineers (S) Pte Ltd* (No 2) [2004] 2 SLR 494 ("*Northern Elevator*") in support of his argument that if there was an error by the Board, it was, in the words of the court in *Northern Elevator*, "an error of law" which was not subject to appeal, and not "a point of law" that could be taken on appeal. The relevant passages in *Northern Elevator* are found in paragraphs 19, 20 and 21:

> 19 To our mind, a "question of law" must necessarily be a finding of law which the parties dispute, that requires the guidance of the court to resolve. When an arbitrator does not apply a principle of law correctly, that failure is a mere "error of law" (but more explicitly, an erroneous application of law) which does not entitle an aggrieved party to appeal.
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> 20 It would be necessary to examine [the respondent]'s main contentions against the Arbitrator's second award in order to determine whether a question of law had arisen in this case. Its first point was that the Arbitrator had wrongly based his assessment of damages on [the appellant]'s quotations, which were at cost, and did not have a profit element. Secondly, it argued that the Arbitrator had wrongly assessed the price of guide rail brackets on the basis of 18kg guide rails and not 33kg guide rails as required in the rectification. [The respondent] contended that these errors demonstrated that the Arbitrator had disregarded the compensatory principle in his assessment of damages and that there were no grounds on which he could base his assessment.
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> 21 [The respondent]'s case was, therefore, founded on the premise that the Arbitrator had committed an *error of law* in failing to apply the compensatory principle. That was a wrong premise. The onus of crafting the question of law that required the court's determination lay with [the respondent]. Neither party, however, disputed that the compensatory principle is a principle of law that applies in the assessment of damages for breach of contract. The Arbitrator himself readily acknowledged the compensatory principle when he stated at [157] of his first award:
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> > I agree on the application of the principle in the Court of Appeal case of *Kassim Syed Ali* that "Damages are compensatory, and one cannot seek compensation in *vacuo*. Compensation must be measured against the loss suffered".

The error complained of in *Northern Elevator* was that the arbitrator's award of damages fell short because he did not apply the compensatory principle, which was a principle of law that the arbitrator knew not only to be a principle of law, but one that ought to be applied. Hence, the appellant's belief in that case that the arbitrator did not apply the compensatory principle in his calculation of damages raised no question of law. The error was thus characterised as "an error of law". Further, it should also be noted that the distinction between an "error of law" and "a question of law" was relevant in *Northern Elevator* because s 28 of the Arbitration Act (Cap 10, 1985 Rev Ed) allows an appeal in the latter case but not in the former. Section 98 of the BMSMA makes no reference to "an error of law" and the fine but subtle difference is that in an appeal under s 98, the court can concentrate solely on deciding whether there is a question of law to be determined. If there is then it should proceed to hear it.

3 It was also argued by counsel for the respondents that the originating summons must set out the points of law in question. In this case, the appellants filed their appeal on 30 August 2007 by this originating summons stating that the "ground of this Appeal is that the Board was wrong in law to have dismissed the STB [Strata Titles Board] Application based on its reasons as set out in its written Grounds of Decision dated 22 August 2007, particulars of which are set out in the Affidavit filed herein". An affidavit of the first named appellant was filed together with the originating summons. Although the affidavit did not set out the question or questions of law in a way that would have pre-empted the objection that the questions of law were not set out, I am of the view that the questions of law that this court had to determine were reasonably clear and they were, first, whether the law permitted the Board to dismiss the application on the ground that there was a defect in the application without hearing the application on its merits; secondly, if there were a defect, whether the Board had the power to allow an amendment of the defect; and thirdly, whether the Board was right in law to hold that it was constituted by the application and its existence is extinguished when an application is invalid. The force and eloquence of the submissions of the respondents' counsel left me in no doubt that everyone knew what the questions of law were.

4 Of the three missing pages that were central to this appeal, the first concerned the missing signature page of one Mr Tan Chor Hoon, a CSP who was not an owner at the time the application was filed. He became an owner after that but he had, as required by law, consented to the proposed *en bloc* sale. What was omitted from the application was his signature page of his consent to the sale. The previous owners who sold the unit to Mr Tan, however, had signed the execution page and their signatures were the ones in the CSA. Mr Tan's signature was subsequently tendered to the Board at the hearing of the application and was duly marked as "TRC-10". The second missing page contained the signature of Mr Michael Lee Pang Hoe, a CSP who had signed the CSA but in the copy that was submitted to the Board, that page was left out. Similarly, the third missing page contained the signature of Mr Daniel Gunawan, a CSP who had signed the CSA but that page was not missing from the copy of the CSA submitted for the application to the Board. A copy of Mr Daniel Gunawan's signature was there as were copies of all the CSP except that of Mr Tan and Mr Michael Lee. Counsel for the respondents complained that the copy was made from the execution page telefaxed from Indonesia whereas the copies of all the other CSP were made from the original pages in Singapore. The undisputed fact was that the CSA including all the execution pages attached to the application was itself a photocopy.

5 The Board's grounds for dismissing the application were two-fold. First, it took the view that the appellants' application was not a complete application on account of the three missing pages and was, therefore, invalid. Secondly, the Board was of the view that the relevant statutory declaration was consequently false in declaring the application to be complete when it was not. The Board went further and stated that since its existence was "created by the Application filed by the Applicants, any incurable defect in the application would mean that the very existence of the Board is put into question. Accordingly, the whole proceeding must come to an end" (GD paragraph 21). In summary, the Board found that there was a defect in the application by reason of the three missing pages and that this defect was incurable because the Board had no power to allow an amendment so as to provide a cure. On those grounds, the Board considered itself non-existent and dismissed the application.

6 Counsel for the respondents presented arguments in support of the Board's decision and its grounds. They were all joined in the collective view that the three missing pages resulted in an incurable defect rendering the application invalid, and that consequently, the Board was right to have dismissed it. Mr KS Rajah SC submitted that the falsity of the appellant's joint statutory declaration was a serious matter, that it was not a mere technicality, and that there was no legal provision allowing a false declaration to be amended. Mr Michael Hwang SC submitted that the three missing

pages was a finding of fact by the Board that should not be disturbed on appeal. He further submitted that at the time of the hearing of the application, Mr Tan Chor Hoon was already a subsidiary proprietor and, therefore, his signature was required to be on the execution page in the CSA. Mr Ramesh Kannan supported the Board's view that the failure to file a valid application meant that the Board had no jurisdiction to hear the application. Counsel argued that there were no express provisions in the Act that conferred any power on the Board to allow an amendment of an application under s 84A(3) of the LTSA. Counsel argued that regulation 12(1)(a) of the Building Maintenance and Strata Management (Strata Titles Board) Regulations 2005 ("BMSMR") which was relied upon by Mr Chelva Rajah SC as granting the Board a power to amend, cannot confer greater powers than the parent Act. That regulation provides –

> An interlocutory application may be made to the registrar for –
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> (a) an order to amend any application or other document furnished to a Board under these Regulations;
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> (b) an order to extend the time required for the doing of any act under these Regulations; or
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> (c) any other order of an interlocutory nature.

Counsel for the respondents further argued that despite the existence of regulation 12 of the BMSMR, the recent amendments to the LTSA which included for the first time a power to the Board to rectify any non-compliance only made the absence of such power previously more conspicuous.

7 I now turn to the determination of the questions of whether the application without the execution pages was an invalid application, and if so, was the Board empowered to allow an amendment of the application, and finally, whether the Board was right in holding that since its existence depended on a valid application, it had no jurisdiction to hear the application in question. The nature of law is purposive. Law is always purposive for if man and society were perfect there would be no need for law. We often encounter complications when one principle of law appears irreconcilably incongruous with another. We are also often compelled to seek the middle course between extremes such as immutability and ephemerality; sometimes as an exercise in precision and sometimes out of nervous uncertainty. Nonetheless, the courts are also often urged to reject the compromise in order to be absolutely right rather than to be half wrong. Law is also largely interpretative, and so "absolute" is a very difficult word to employ. Almost everyone has his idea of what the law is or should be, and how it is to be applied. It is not unusual to find that the more uncertain and difficult the hermeneutic exercise becomes, the more one resorts to vague terms such as "justice". That is why it is not unusual, therefore, to find opposing arguments each claiming to be an argument from justice. Anyone who has studied the chariot race in the *Iliad* will understand the inherent contradictions in that word. The conflict between fairness, entitlement, and desert all too often stands in the way of a just or ideal solution to disputes.

8 That said, fairness requires that the law is applied consistently to everyone in similar circumstances. It gazes upon the horse as it does the horseman. It may be the appellants today who slipped, and tomorrow, the respondents. If the majority succeeds it is because it is right, not because it is the majority. Likewise, if the minority succeeds it is because it is right and not because it receives favours granted only to the underdog. Therefore, in determining the correct interpretation of a law or principle of law, it will be helpful to consider whether an opponent would have objected as strenuously as he did had he been the one in need of the very interpretation he challenges. The claim in this case that the appellants' application under s 84A was invalid because of an incurable defect compels me to ask what exactly that defect was. Throughout this appeal, the source of defect was

the three missing pages. But that was a misnomer because there was only one page that was missing in the true sense of not being in the bundle submitted as part of the application, and that was the execution page of Mr Michael Lee. The other two pages were the execution pages of Mr Tan Chor Hoon and Mr Daniel Gunawan. In the former, there was a question mark as to whether his signature was required at all. In the latter, it was not too clear from the record whether the dispute concerned the fact that the signature of Mr Daniel Gunawan was improperly witnessed or whether the objection was that it was made from a telefaxed copy and not from the original. In the case of all three pages, however, the Board had received the executed pages of Mr Tan Chor Hoon and Mr Daniel Gunawan by 30 July 2007, and that of Mr Michael Lee on 3 August 2007. Was this a situation that one should characterise as an incurable defect in the application? The second aspect of this alleged defect was the respondents' and the Board's reliance on the inaccuracy of the statutory declaration in stating that the documents in the application, including the CSA, were complete and correct. Extreme arguments were advanced before me in this regard. In one, the error in the statutory declaration was so serious that it was described as criminal. In the other I was urged to find the error to be merely a "technical" or "clerical" error; but I am loath to use labels.

9 I prefer to proceed by asking what purpose does an application under s 84A of the LTSA serve, and it seems reasonably clear that such an application is part of the statutory procedure to ensure that all the legal requirements necessary for an *en bloc* sale are fulfilled. It is an opportunity for the minority to object to the sale and state its own case before the Board. In such circumstances, it is naturally important for the majority to comply with the law in substance and in procedure when it lodges its application. If the application was incomplete or contained errors or omissions of facts, the effect of those errors would be precisely the matter that the Board has to hear and determine. If an error or omission had caused prejudice to the minority, the Board may, in the exercise of its discretion dismiss the application. If it does not, the Board is, in my opinion, empowered to allow an amendment or correction so that the record is clear. If one takes the view that the Board has no power to allow an amendment even for a typographical error, then an entire *en bloc* sale could be stalled by a comma in the wrong place. The law should not have such drastic consequences when there was otherwise no prejudice. Moreover, one cannot demand absolute precision and at the same time deny the opportunity of amendment. One cannot demand that an application must contain the signature of every owner who had purchased his unit after the application had been lodged and at the same time deny that the application can be amended. The scheme for an *en bloc* sale under the LTSA is not a complicated one in so far as the critical information to be given to the Board in the CSP application is concerned. From the information required, it is envisaged that some of the information may be out-of-date by the time the application is heard. Hence, regulation 12 of the BMSMR permits amendments before the hearing, and after that, regulation 13 permits that any application can be made only if the Board grants leave to do so. So now with further amendments to the LTSA, Parliament is telling the Board very categorically, that the Board has the power to allow amendments. The courts have also been saying the same thing in cases such as *Koh Gek Hwa v Yang Hwai Ming and Another* [2003] 4 SLR 316 ("*Koh Gek Hwa*")(the Dragon Court case).

10 However, if the respondents' objection was that the error was not a typographical one in the sense that it had a material effect on the minority's rights, then that was precisely the issue for the Board to determine, and to make such ruling as it deemed appropriate. In the present case, the error or omission of the three missing pages seemed to have been received into evidence by the Board and the application was all but formally amended as such. It was the kind of error or omission that could be corrected in a moment, without inconvenience, and without prejudice for even without the three missing pages, the requisite 80% requirement had been satisfied. There had been no argument from any counsel as to what harm had in fact been caused. It was said that the application would be relied upon by the minority owners to decide whether to oppose it, but it did not seem to me that the three missing pages in question had any material effect on the decision of the minority in this case. A similar

approach was adopted by Woo Bih Li J in *Koh Gek Hwa* page 330, in which the court did not think that the Board ought to have rejected the statutory declaration in that case and dismissed the entire application "with the view to compelling the applicant to file a fresh application." Counsel for the respondents took the view that swearing a false statutory declaration is a criminal offence. I hesitate to go so far since this was not a criminal trial on that issue, and, as I had said, it is the duty of the Board to consider whether there was any error that was sufficiently material or substantive to affect its decision whether to grant or refuse the application.

11 I now turn to the Board's reasoning that a defective application "means that the very existence of the Board is put into question" (GD paragraph 21). The Board having acknowledged that it was duly constituted cannot proclaim itself "non-existent" and dismiss the application without deciding on its merits. It is possible that the Board might have found that it had no jurisdiction to make certain orders and, if so, it was entitled to rule accordingly, but before it does, it must first hear the evidence and the parties. Once duly constituted, the Board has a duty to hear the application, and rule on its merits. If it finds that there was an error of substance or of procedure then it must so find and state whether by reason of that error the application should or should not be granted. On this count, the Board was wrong in law to have proclaimed itself non-existent. There is no need to resurrect it. It continues to exist, at least until its functions have been discharged.

12 After listening to counsel for the interveners, I can appreciate the concerns that worry their clients. In the one case, a wealthy business corporation having entered into what it believed to be a legitimate contract now thinks that it has been given cause to fear that the contract might be frustrated by unfair means. In the other, a sub-group seemed equally concerned that the parties carry out the bargain struck. The interveners exerted themselves in this appeal to state aloud their intentions and position in regard to their stand in respect of the contract. However, I do not think that the specific orders that I had been invited to make are appropriate ones to be made in this appeal. They might be necessary to maintain an even fight, but that fight was not before me and I shall not usurp the role of the proper forum for that. I am only asked to determine certain questions of law. I have done that. Accordingly, I allow the appeal and remit this case back to the Board for it to continue where it left off. All evidence adduced thus far is to stand as part of the record. I shall adjourn the issue of costs to be heard on a later date.