Leong Soh Har Michael and Others v Kek Beng and Others
[2009] SGHC 15

Case Number : OS 1260/2008, SUM 4858/2008

Decision Date : 13 January 2009

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Ling Tien Wah and Koh Jia Ying (Rodyk & Davidson LLP) for the plaintiffs; Liew Tuck Yin David (DSH Law Corporation) for the defendants

Parties : Leong Soh Har Michael; Urbina Alison Elizabeth; Tee Kam Chi — Kek Beng; Lam Marn Ling; Tan Khoon Eng; Tjeng Hie Min; Rina Pangastuti Adidharma; Tsui Winston; Chan Wai Ling; Kwok Fong Kit; Chia Sow Kin; Lee Jee Bah; Lee Kam Yoke; Wong Ming Wah; Yeo Mui Choo; Koh Mui In; Koh Hong Tuan; Koh Thong Gan; Koh Thong Mui

Land – Strata titles – Collective sales – Fees incurred vis-a-vis collective sale scheme – Whether every individual subsidiary proprietor including minority liable for aforesaid fees – Whether quantum of such fees had to be specified at time of agreement

13 January 2009 Judgment reserved

Choo Han Teck J:

1 This was an application by the representatives of the subsidiary proprietors of a condominium known as Oakswood Heights (Strata Plan No. 1691) for an order declaring "that pursuant to Clause 30(b) and the Second Schedule of the Sale and Purchase Agreement dated 6 June 2007 entered into between UOL Development Pte Ltd and all the subsidiary proprietors of the housing development known as Oakswood Heights, all the Solicitors' Costs and Property Consultants' Costs are to be borne by all the subsidiary proprietors (including the defendants) in accordance with their apportionment of the sale proceeds" and that the defendants' share of such costs "be deducted from their respective share of the sale proceeds". The defendants denied liability to pay as claimed and applied separately under a summons-in-chambers for an order dismissing the plaintiffs' Originating Summons.

2 There was nothing in dispute as far as the material facts were concerned. The condominium was ordered to be sold collectively by an order of the Strata Titles Board made on 28 May 2008. The sale and purchase had been completed and so far as the purchaser was concerned, no issue remained. The solicitors' fees as well as the property consultants' fees, however, had not been paid. The "Property Consultants' Costs" were defined in the Collective Sales Agreement as the "total amount of fees, charges, disbursements and other payments payable to the Property Consultants as determined in accordance with Schedule 4 of the Collective Sales Agreement". "Solicitors' Costs" were defined as "the total amount of fees, charges and any duties, taxes and GST thereon in accordance with Schedule 3". The Collective Sales Agreement was incorporated into the Sale and Purchase Agreement and bound all subsidiary proprietors to that agreement (the Sale and Purchase Agreement) under which the obligation to pay the solicitors and property consultants' costs arose.

3 The defendants, as minority owners in the collective sale of the condominium, argued through counsel that the order did not specify that the minority was bound to pay such costs; secondly, that the quantum was not determined and thus no costs was payable; and thirdly, this application was really an appeal against the Strata Title Board's order with a view of getting that order amended to

include an order for costs that had not been made in the original order. Clause 30 of the Sale and Purchase Agreement which binds the vendor, including every individual subsidiary proprietor including the minority, provided as follows:

(a) The owners hereby confirm (and ratify if relevant) that the Solicitors have been appointed as the Owners' Agents for the collection of the Purchase Price and other monies due under this Contract and the Owners hereby acknowledge that payment as directed by the Solicitors shall constitute full discharge of the payment obligations of the Purchaser to the Owners.

(b) The Purchase price shall be distributed according to the terms of the collective sale agreement made between the Owners according to the Method specified thereunder and under the Second Schedule hereto.

The Second Schedule provided that the net sales proceeds in respect of each unit shall be calculated on the basis of each unit's "gross sales proceeds less the sum of each unit's Solicitors' Costs and [e]ach unit's Property Consultants' Costs." The actual sum payable was not specified. That was the basis of the defendants' objection to the plaintiffs' claim.

4 In the nature of such contracts, the actual amount of the costs in question would not normally be determined at the time the agreement was made because much work remained to be done. All that was required under the contract was to make provision for the principle and mode of payment of such items so that the only consequential litigation that could have arisen would be the issue of the reasonableness of the quantum eventually determined. Hence, the defendants could challenge the amount payable but not the obligation of payment; that, in my view, was amply and clearly provided in the agreements in question.

5 The plaintiffs' application under this Originating Summons is allowed and the defendants' application under the summons is dismissed with costs.