

Woon Brothers Investments Pte Ltd v Management Corporation Strata Title Plan No 461 and others
[2010] SGHC 349

Case Number : Originating Summons No 499 of 2010 (Registrar's Appeal No 300 of 2010)
Decision Date : 30 November 2010
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Nicholas Lazarus (Justicius Law Corporation) for the plaintiff; Boo Moh Cheh (Kurup & Boo) for the first defendant; Philip Fong Yeng Fatt and Justin Chia Tze Yung (Harry Elias Partnership LLP) for the second to fifth defendants.
Parties : Woon Brothers Investments Pte Ltd — Management Corporation Strata Title Plan No 461 and others

Civil procedure

30 November 2010

Lai Siu Chiu J:

1 Woon Brothers Investment Pte Ltd ("the plaintiff") filed Originating Summons No 499 of 2010 ("the OS") against the management corporation ("the first defendant") of International Plaza ("the Building") as well as against Cheong Keng Hooi ("the second defendant"), Cheong Hooi Hong ("the third defendant") Cheong Sim Lam ("the fourth defendant") and International Associated Company Pte Ltd ("the fifth defendant").

2 The second to fourth defendants (who are siblings) are council members of the first defendant while the fifth defendant was the developer of the Building. The second defendant is also the chairman of the first defendant. The second and third defendants are also shareholders of the fifth defendant as well as shareholders and directors of two other companies, *viz*, Seiko Architectural Wall Systems Pte Ltd ("Seiko") and Tian Teck Realty Pte Ltd ("Tian Teck"). The second defendant is also a shareholder and director of another company called Ka\$h International Pte Ltd ("Ka\$h"). All three companies feature in the OS.

3 The plaintiff is the subsidiary proprietor of unit #46-15 ("the unit") in the Building. It sued the defendants in the OS, in particular, the second to fourth defendants, *inter alia*, for fraud, misappropriation of funds belonging to subsidiary proprietors, failure to act honestly and with reasonable diligence, taking advantage of their positions as council members to gain advantage *etc*.

4 By Summons No 2788 of 2010 ("the application"), the second to fifth defendants applied under O 28 r 8 and O 5 rr 2 and 4 of the Rules of Court (Cap 322, R 5 2006 Rev Ed) ("the Rules") to convert the OS into a writ of summons. The application was supported by an affidavit filed by the third defendant on 18 June 2010 and was opposed by the plaintiff.

5 The application was heard and dismissed by an assistant registrar ("the Assistant Registrar") on 29 July 2010 on the ground that the third defendant's affidavit did not convince the Assistant Registrar that there were substantial disputes of facts that warranted the conversion.

6 The second to fifth defendants appealed to a judge in chambers against the Assistant Registrar's decision by way of Registrar's Appeal No 300 of 2010 ("the Appeal"). This court heard and allowed the Appeal on 23 August 2010. I reversed the decision of the Assistant Registrar below, converted the OS to a writ of summons and gave directions and timelines to the parties for the filing of their pleadings. The plaintiff is dissatisfied with and has filed a Notice of Appeal (in Civil Appeal No 153 of 2010) against my decision. I shall now set out my reasons.

The facts

7 In support of the OS, the plaintiff's manager Woon Wee Teng ('Woon') filed a lengthy (2,581-page) affidavit although the actual text was 15 pages with the remaining 2,566 pages being exhibits referred to by Woon. The OS itself numbered 58 pages as it contained 20 summaries listing the plaintiff's complaints against the defendants. The OS concluded with general prayers in which the plaintiff claimed interest on the sums awarded by the court, costs and a liberty to apply provision.

8 In his affidavit, Woon (a retired lawyer) who occupies the unit deposed that he was motivated to take out the OS as he wanted the court to determine certain issues and make certain orders for the proper management and administration of the first defendant.

9 Woon explained the relationship between the defendants and the various companies mentioned earlier (at [2] above). He said that Seiko was awarded a contract of \$4,975,468 for facade upgrading works at the Building by the defendants as well as a subsequent contract of \$1.7m for repair works of hollow and spalling concrete and plaster of window ledges. Tian Teck was the managing agent of the Building from 1975 to November 2003 before Chesterton International Property Consultants Pte Ltd ("Chesterton") took over. Ka\$h was/is the landlord to the first defendant for the swimming pool and jacuzzi on the 36th floor of the Building. The first defendant makes payments to Ka\$h for the usage by subsidiary proprietors of the swimming pool and the jacuzzi.

10 Woon alleged that by reason of the second and third defendants' vested interests in the three companies mentioned in [2] above, they placed themselves in a position of conflict of interests and failed to comply with statutory requirements set out in the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("the BMSMA") as well as in the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed). Woon added that the second and third defendants have substantial proprietary interests in the Building either solely or jointly with their families as they own several units. He surmised that that was the reason why the two defendants held onto their position as council members when the Building was completed by the fifth defendant and its management handed over to the first defendant in 1975.

11 Woon made further serious allegations against the second and third defendants. He alleged that they managed the first defendant as if it was their own private company without regard to the interests of the other subsidiary proprietors or for the need for statutory compliance. They appointed their own people to be the managing agents and put their own people in the council of the first defendant. They bought the loyalty of staff by paying good salaries, bonuses, medical and other benefits including gratuities.

12 Woon revealed that the OS was brought on by the second and third defendants' requiring the first defendant to question the plaintiff on the tonality of the glass panels that were installed in the unit and to dismantle the same. Woon deposed that it was the previous owner of the unit who had installed the glass panels, not the plaintiff. Woon asserted that after the installation, the first defendant must have checked and approved the glass panels before returning the mandatory renovation deposit to the subsidiary proprietor or the contractor concerned. As such, the first to third

defendants could not now raise objections to the plaintiff over the installation.

13 Woon further accused the first three defendants of practising double standards as they had installed the same colour glass panels at the management office at unit #36-05. He contended that the first three defendants should not waste their time on such trivialities and should instead focus their attention on more important issues for the proper and better management of the Building. He cited as one example the fifth defendant's wrongful operation of the car park as a business at the expense of the rights and interests of other subsidiary proprietors.

14 Woon deposed that he devoted two years of his time after retirement to assisting the plaintiff in advancing the righteous cause of protecting the rights and interests of other subsidiary proprietors of the Building and in exposing the wrongdoings and questionable payments and expenditure of the first defendant in relation to the second and third defendants and their connected companies. He added that he commenced these legal proceedings with the sincere and noble intention of wanting the defendants to rectify their wrongs, to desist from continuing their wrongdoings, and to refrain from retaining or taking what belonged to other subsidiary proprietors.

15 Woon said the plaintiff had engaged in extensive correspondence with the defendants to obtain important and complete information and documents from the latter but the first defendant and relevant council members had either refused to provide or had only partially furnished the same or furnished incorrect or misleading documents/information. The plaintiff had repeatedly attempted but failed to persuade the defendants to acknowledge their mistakes, wrongdoings and violations and to rectify them.

16 In his affidavit filed in support of the application, the third defendant (who is the first defendant's chairman) deposed that an originating summons was inappropriate for the plaintiff's action as there were numerous contested issues and disputed facts in the present action which could not be resolved by way of affidavit evidence but required proof by way of oral testimony.

17 The third defendant pointed out that the OS listed out 20 summaries of the plaintiff's grievances, ranging from the alleged illegal car park business operated by the fifth defendant to special parking privileges being enjoyed by the fourth defendant to conflict of interests on the part of the defendants. He believed that the plaintiff chose to commence proceedings by originating summons to obtain a quick resolution of the issues in dispute based on affidavit evidence alone. While he acknowledged that an expedient resolution of the issues in dispute was for the benefit of all parties, the third defendant believed that a writ of summons would be more appropriate in this case due to the multiple issues and facts in dispute raised by the plaintiff which could not be resolved on the basis of affidavits alone.

The decision

18 Counsel for the plaintiff argued that s 124(1) of the BMSMA required that every application to the court be commenced by way of an originating summons, notwithstanding that he made no reference at all to any sections of the same either in the heading of the OS or in Woon's affidavit. (The BMSMA repealed the Buildings and Common Property (Maintenance & Management) Act (Cap 30, 2000 Rev Ed) and made consequential amendments to the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed). Section 124 of the BMSMA states:

Legal proceedings

(1) Every application to the court under this Act shall be by originating summons.

(2) Where this Act provides for any sum to be recovered by any person or authority from any other person or authority, the sum may be recovered by an action for a debt in any court of competent jurisdiction.

I was of the view that counsel's argument was misconceived and showed a lack of understanding of the purpose and scope of the BMSMA.

19 As stated earlier, the plaintiff had made no reference whatsoever to any section of the BMSMA either in the heading of the OS or in Woon's affidavit. Woon's lengthy and often rambling affidavit included completely irrelevant matters such as newspaper reports on spending by the National Heritage Board, the Accountant-General's criticism of civil servants' lax management of public funds, the Media Development Authority's evaluation of grant applications and BBC's transcripts of the UK prime ministerial debate held on 22 April 2010. Such irrelevant matters made it even more difficult to determine the actual nature (and extent) of the plaintiff's grievances.

20 To elaborate, the plaintiff had listed 20 summaries in the OS. To give a flavour of the varied nature of the plaintiff's complaints, I will highlight a number of them: Summary 1 referred to the carpark business and its management by the fifth defendant, Summary 4 alleged that there was forgery of the minutes of council meetings to cover wrongdoings whilst Summary 15 questioned whether the council members of the first defendant had acted honestly in respect of the erection and renewal of satellite dishes on the Building installed by the CNBC television network.

21 The scope of the BMSMA as stated in its long title is to provide for "proper maintenance and management of buildings". The typical proceedings envisaged as coming under the purview of the BMSMA would be disputes between the management corporation of a strata titled building (be it residential or commercial) and its subsidiary proprietors in relation to common property such as whether the upkeep and/or repair of an area in a building was common property. An originating summons would also be the appropriate mode of commencement if the applicant wanted the court to interpret any section of the BMSMA.

22 However, the prerequisites for bringing an originating summons under the BMSMA were not met by the plaintiff here. Woon's complaint that gave rise to the OS started with the first defendant's directive to him (with which he disagreed) to dismantle the glass panelling of the unit, which had nothing to do with common property. As no evidence was presented by either side, the court was not privy to whether the bye-laws implemented by the first defendant for the Building stipulated that glass panelling of individual units should be of uniform colour or tones. If such a bye-law existed, the plaintiff would not even have a basis to commence the OS in the first place.

23 Counsel for the defendants had submitted that the only sections in the BMSMA where matters are referred to the court under s 124 were those under ss 32(1), 36 and 76 to 83. Section 32(1) covers bye-laws for common property; s 36 refers to applications by subsidiary proprietors to court regarding common property whilst ss 76 to 83 come under Division 7 of the BMSMA. The purpose of Division 7 is to provide for the administration of subsidiary management corporations (s 80), the sharing of the expenses of a subsidiary management corporation amongst subsidiary proprietors (s 81), the application of the bye-laws to limited common property (s 82) and the enforceability of judgments by management corporations and subsidiary proprietors (s 83).

24 The application was made under O 28 r 8 of the Rules which states:

Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if

the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that pleadings shall be delivered or that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

The court has a discretion to convert an originating summons to a writ without waiting for proof that there are substantial disputes of facts. Order 28 r 8 only requires a court to be of the view that there are likely to be substantial disputes of facts.

25 Another provision that is relevant is O 5 r 2 of the Rules which states:

Proceedings in which a substantial dispute of fact is likely to arise shall be begun by writ.

It cannot be denied that many facts would be in dispute in this case arising from the plaintiff's allegations.

26 Counsel for the plaintiff appeared to have overlooked both O 5 and O 8 of the Rules as well as the provisions of the BMSMA (referred to at [\[23\]](#) above) in his argument that it was a regulatory requirement for the plaintiff's complaint to be commenced by originating summons and that the court had no discretion to convert the same to a writ of summons.

27 One of the reasons for the refusal of the Assistant Registrar to convert the OS to a writ was her view that even without conversion, the court had the power under O 28 to hear oral evidence and give directions for the filing of affidavits and the attendance of deponents for cross-examination. She criticised the affidavit filed by the third defendant as lacking in particulars of what was the actual dispute between the parties, a criticism that in my view should more rightly have been levelled against the plaintiff.

28 Allegations of fraud are very serious indeed and the allegations levelled by the plaintiff against the five defendants were replete with accusations of fraud, misuse and mismanagement of funds and other wrongdoings. The plaintiff also raised allegations against other management council members who were not joined as defendants to the OS. It would be impossible to determine the merits of such allegations, whether against the defendants or non-parties, based on affidavits alone, even if the deponents were subjected to cross-examination.

29 Instead of being faced with a lengthy originating summons and a rambling affidavit that was long on accusations and complaints but short on the nature of the plaintiff's claim, the OS should be converted to a writ so that the plaintiff would be obliged to plead and particularise its cause(s) of action to enable the defendants to meet the case. Further, persons like Simon Kwan who was not named as a defendant but against whom allegations of conflict of interest and the making of false declarations were made, could and should have an opportunity to apply to be joined as a defendant if the OS was converted to a writ. This recourse was not available to Simon Kwan if the action remained as an originating summons and would be grossly unfair to him.

30 For the reasons given above, I allowed the Appeal.