Pacific Rover Pte Ltd v Yickvi Realty Pte Ltd
[2009] SGHC 63

Case Number : OS 1338/2008

Decision Date : 18 March 2009

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Ling Tien Wah and Norman Ho (Rodyk & Davidson LLP) for the plaintiff; Tan Chau Yee and Bernice Tan (Harry Elias Partnership) for the defendant

Parties : Pacific Rover Pte Ltd — Yickvi Realty Pte Ltd

Land – Easements – Rights of way – Unilateral realignment of right of way by servient tenement – Whether injunctive relief available for dominant tenement

18 March 2009

Woo Bih Li J:

1 The plaintiff Pacific Rover Pte Ltd ("Pacific Rover") is the owner of Lot No. 832N of Town Subdivision 28 ("the Servient Land") in the Newton area. The defendant Yickvi Realty Pte Ltd ("Yickvi") is the owner of Lot No 99500X of Town Subdivision 28 ("the Dominant Land").

2 Yickvi has a right of way that cuts through the Servient Land such that most of that land lies on one side of the right of way and the balance of the land, in the form of an inverted C shape is on the other side of the right of way. The Servient Land has an old development known as Elmira Heights. The smaller portion thereof which has the inverted C shape ("the inverted C shape portion") contained the tennis court and the larger portion thereof contained the residential buildings.

3 Pacific Rover is redeveloping the Servient Land. Likewise, Yickvi is developing the Dominant Land. To maximise the plot ratio and use of the Servient Land, Pacific Rover's consultants had proposed that the existing right of way be realigned so that part of the right of way would run against the eastern part of the boundary wall of the Servient Land by following the flow of the inverted C shape portion, before joining the rest of the existing right of way.

4 Pacific Rover approached Yickvi to seek its approval to the proposed realignment of the right of way but negotiations were not successful. It appears that at one time, Yickvi was prepared to agree to the proposed surface realignment of the right of way if the subterranean services beneath the existing right of way were also realigned to follow the proposed surface realignment. However, it turned out that it was either not feasible or practical for the subterranean services to be so realigned for reasons I need not elaborate on.

5 As the parties could not agree on the proposed realignment of the right of way, Pacific Rover filed the present application to seek a declaration that the proposed realignment of the right of way can constitute no wrongful interference with the right of way or, alternatively, a declaration that Yickvi would have no right to injunctive relief against Pacific Rover in respect of the proposed realignment.

6 *Greenwich Healthcare National Health Service Trust v London and Quadrant Housing Trust and others* [1998] 1 WLR 1749 is the basis of the alternative relief sought. I set out below the headnote

which summarises the facts:

> The plaintiff had acquired land which included a road connecting it with the public highway in order to build a hospital. Planning permission had been granted for the development subject to a condition that a new link road and new junction with the public highway be completed before the hospital could open. In order to comply with that condition, the plaintiff needed to realign the road, over which all but one of the defendants had rights of way. The land was also subject to a restrictive covenant limiting its use, to the benefit of which all the defendants were or might be entitled. The defendants had been given notice of the proposed development but none had objected to it. Furthermore, the realignment of the right of way would improve the safety and convenience of access to the public highway, such that no reasonable objection could be made to it. Because of concern that at some future date the defendants might object to the realignment of their right of way or to the changed use of the land, the plaintiff applied for declarations that it was entitled to realign the right of way and that the defendants were not entitled to an injunction to restrain the proposed realignment but that their rights, if any, were limited to an award of damages in respect of any interference with the right of way or a claim for compensation in respect of any breach of the restrictive covenant.

7 Lightman J granted a declaration that the defendants were not entitled to an injunction. He said at p 1754 to 1755:

> (b) *Substantial interference*
>
> The argument has been addressed to me that, even if the servient owner has no right to realign, none the less such a realignment will not constitute an actionable interference with the easement if the realigned route is equally convenient, and that this is a fortiori in cases where no grounds exist for any reasonable objection to the realignment. It is well established that, if and so long as the way follows the realigned route, the dominant owner's easement entitles him to use that route: consider *Selby v. Nettlefold* (1873) L.R. 9 Ch.App.111.
>
> I feel considerable sympathy for this submission. For insistence on an existing route may (as in the present case) frustrate a, or indeed any, beneficial development or use of the servient land, whilst protecting no corresponding advantage of, and conferring no corresponding advantage on, the dominant owner; and there is (unfortunately) no statutory equivalent in case of easements to the jurisdiction vested by statute in the Lands Tribunal in case of restrictive covenants to modify the covenant to enable servient land to be put to a proper use. There is something to be said for the approach that the test should be whether the dominant owner"has really lost anything" by the alteration: compare the language of Cockburn C.J. in *Hutton v. Hamboro* (1860) 2 F. & F. 218, 219 in the context of a case raising the question whether the dominant owner could narrow the entrance to a right of way. On the other hand, it may be said that the dominant owner loses the property right to the easement over the original way.
>
> I do not have to give a final decision on this difficult and far-reaching question in view of my answer to the third question, and in the circumstances, in the absence of the assistance of argument on both sides of the question, I do not think it right to do so.
>
> (c) *Injunction*
>
> The plaintiff contends that the defendants in the very special circumstances of this case, even if they do have a cause of action, can have no right for an injunction to restrain the

plaintiff from proceeding with the realignment: the defendants should be satisfied by, and be restricted to, an award of damages in respect of the easement and compensation in respect of the restrictive covenant. I am satisfied that this is so for a number of reasons, which include the following: (1) no reasonable objection can be made to the realignment - on any basis it is an improvement, most particularly in the matter of safety; (2) the defendants and all the occupants of premises on the potentially dominant land have long had full notice of this proposal, have been invited to object if they wished, and have refrained from doing so; (3) the realignment is necessary to achieve an object of substantial public and local importance and value.

8 In the case before me, the realignment would have meant that the new right of way would not be relatively straight but would have an inverted C shape route before joining the rest of the existing right of way. However, Yickvi was not suggesting that this would cause major inconvenience to the residents of its development. There was also no suggestion that the proposed realignment would pose a greater danger to safety.

9 In these circumstances, I did not think it right to deny Pacific Rover the full use of the Servient Land just because of Yickvi's existing right of way when an alternative, which did not substantially affect the enjoyment of the right of way, was available.

10 Yickvi's real concern was that it wanted the right of way to be along the same route as the route for the subterranean services. Its argument was that the existing right of way would facilitate access to maintain subterranean services. However, Pacific Rover was prepared to agree for itself and all its successors in title that Yickvi would be allowed reasonable access to maintain such subterranean services.

11 The other bone of contention, besides the maintenance works, was the length of time which Pacific Rover was prepared to allow Yickvi to lay cables and pipes and other installations underground along the existing right of way. Pacific Rover suggested six months from the date of my order since it was hoping to launch its development for sale in the not too distant future but Yickvi wanted a longer period without elaborating as to why and how long a longer period it wanted.

12 Yickvi also did not argue that its right of way also extended to subterranean services.

13 In the circumstances, I granted a declaration on 11 February 2009 that Yickvi had no right to injunctive relief over the proposed realignment and I allowed Yickvi up to 31 August 2009 (which was slightly longer than six months) to complete its subterranean works (insofar as they were being done underneath the existing right of way) and made other consequential orders. I did not make an order for costs of the application as neither side had asked for such costs.

14 Yickvi has since appealed against my entire decision.