

Teo Kim Hui and Another v Kwok Wai Hon
[2008] SGHC 232

Case Number : OS 1121/2008
Decision Date : 11 December 2008
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Chia Ti Lik (Chia Ngee Thuang & Co) for the plaintiffs; Leo Cheng Suan (Infinitus Law Corporation) for the defendant
Parties : Teo Kim Hui; Lim Ah Mui alias Lim Teck Seng — Kwok Wai Hon
Civil Procedure – Appeals – Leave

11 December 2008

Lai Siu Chiu J:

1 This was a case in which I refused to grant leave to a couple Teo Kim Hui and Lim Ah Mui ("the plaintiffs"), to appeal to the Court of Appeal against my dismissal of their Registrar's Appeal from the subordinate courts. The plaintiffs have now filed a notice of appeal (in Civil Appeal No. 145 of 2008) against my decision.

2 The plaintiffs are the owners of No. 355 Balestiar Road #04-357, Goodwill Mansion, Singapore. One Kwok Wai Hon ("the defendant") is the owner of #03-357 which is located immediately below the plaintiffs' unit. The defendant complained of water seepage from the plaintiffs' unit into his unit in early October 2007.

3 The plaintiffs attempted to resolve the complaint amicably by getting contractors to ascertain the source of the leakage. They did not agree with the report of the chartered surveyor engaged by the defendant which stated that the leakage was due to defective waterproofing membrane under the floor finishes in the plaintiffs' unit. The plaintiffs requested the leakage detection division of the Public Utilities Board ("PUB unit") to do remedial work. Their request for the PUB unit to inspect the defendant's unit was denied. The plaintiffs apparently took steps to arrest and stop the leakage. However the leak persisted.

4 When the plaintiffs failed to make good the leakage by late December 2007 and failed to paint the ceiling of #03-357 as the defendant demanded, the latter commenced proceedings in MC Suit 1578 of 2008 ("the proceedings") on 18 February 2008, claiming for loss and inconvenience including loss of rental.

5 The plaintiffs were advised that the law requires such disputes between strata title unit owners to be brought before the Strata Titles Board ("the Board"). Accordingly, they applied vide summons no. 2812 of 2008 ("the application") to strike out the proceedings under Order 18 r 19(1) of the Rules of Court (Cap 322, R5, 2006 Rev Ed) ("the Rules") on the ground that the subordinate/magistrates courts have no jurisdiction to entertain the claim which can only be dealt with by the Board pursuant to certain provisions in the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("the Act"). By then the plaintiffs had filed their defence denying liability, putting the blame for the leak into the defendant's flat on the management corporation of Goodwill Mansion.

6 The deputy registrar of the subordinate courts dismissed the application and the plaintiffs' appeal against his decision to a district judge in chambers (by way of Registrar's Appeal No. 78 of 2008) was also dismissed. Suffice it to say that the district judge accepted the submission of counsel for the defendant (who was the plaintiff below) as I did, that the Board is merely an alternative tribunal available to subsidiary proprietors who choose not to litigate their disputes; it does not oust the jurisdiction of the subordinate courts. There is no express provision in the Subordinate Courts Act (Cap 321 2007 Rev Ed) ("the SCA") and/or the Act that excluded disputes between subsidiary proprietors from being brought before the courts.

7 For purposes of this appeal, I adopt the reasoning of the district judge in dismissing Registrar's Appeal No. 78 of 2008 and shall not repeat his grounds here (see his grounds of decision at [2008] SGMC 4).

8 The plaintiffs then appealed against the district judge's decision to a judge in chambers in the High Court by way of RA No. 51 of 2008 ("the RA"). I heard and similarly dismissed the RA on 30 July 2008.

9 Under s 34(1)(c) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("the SCJA"), the plaintiffs should have written to my court with a request for further arguments within seven days of my dismissal of the RA viz by 6 August 2008, prior to filing a notice of appeal. The plaintiffs failed to do so. Instead, the plaintiffs attempted to file a notice of appeal to the Court of Appeal on 8 August 2008, which notice was rejected for technical reasons.

10 On 11 August 2008, the plaintiffs made a second attempt to file their notice of appeal to the Court of Appeal. It was again rejected, this time for the reason that leave was required to appeal to the Court of Appeal.

11 Consequently, the plaintiffs filed Originating Summons No. 1121 of 2008 ("the OS") seeking leave of court under Order 56 r 3 of the Rules, to appeal to the Court of Appeal (as the subject matter was below the threshold of \$250,000 stipulated under s 34(2)(a) of the SCJA) as well as for leave to apply out time to appeal to the Court of Appeal. The OS came up for hearing before me and was strenuously opposed by the defendant. I accepted the arguments of counsel for the defendant that, contrary to the plaintiffs' contention, there was no important question of law involved in the proceedings that warranted the matter going to the Court of Appeal for determination. Accordingly, I dismissed the OS with costs to the defendant.

The plaintiffs' arguments

12 Counsel for the plaintiffs first relied on s 52 of SCA for the civil jurisdiction of the magistrate's court:

Civil jurisdiction of Magistrates' Courts

52. —(1) Subject to Rules of Court, a Magistrate's Court shall have the jurisdiction and powers conferred on a District Court by sections 20 (except 20 (1) (b)), 21, 29, 31 (1), 32 and 43 in any proceedings where the amount claimed or the value of the subject-matter in dispute does not exceed the Magistrate's Court limit.

(2) In exercising its jurisdiction under subsection (1), a Magistrate's Court shall be subject to the same limitations and provisions as are applicable to a District Court under this Act.

(3) The President may, after consulting the Chief Justice, by order vary the Magistrate's Court limit.

13 He then referred to s 21(1) of the SCA for the civil jurisdiction of the district court:

Jurisdiction in actions for recovery of money under any written law

21 — (1) A District Court shall have jurisdiction to hear and try any action for the recovery of a sum which is recoverable under any written law, if —

(a) it is not expressly provided by that or any other written law that such sums shall be recoverable only in some other court; and

(b) the amount claimed in the action does not exceed the District Court limit.

14 Next, counsel placed reliance on ss 89(2), 101 and 116 of the Act. The sections read as follows:

Strata Titles Boards

89 — (1) There shall be one or more Strata Titles Boards to be presided over by a president or deputy president.

(2) Unless otherwise provided by this Act or the Land Titles (Strata) Act (Cap. 158), a Board shall determine by mediation-arbitration every dispute of which it has cognizance and every matter with respect to which it has jurisdiction under this Act or that Act.

General power to make orders to settle disputes or rectify complaints etc

101 — (1) Subject to subsections (4), (6) and (7), a Board may, pursuant to an application by a management corporation or subsidiary management corporation, a subsidiary proprietor, mortgagee in possession, lessee or occupier of a lot in a subdivided building, make an order for the settlement of a dispute, or the rectification of a complaint, with respect to —

(a) any defect in a lot, a subdivided building or its common property or limited common property;

(b) the liability of a subsidiary proprietor to bear the costs of or any part thereof for any work carried out by a management corporation or subsidiary management corporation, as the case may be, in the exercise of its powers or performance of its duties or functions conferred or imposed by this Act or the by-laws relating to the subdivided building or limited common property, as the case may be; or

(c) the exercise or performance of, or the failure to exercise or perform, a power, duty or function conferred or imposed by this Act or the by-laws relating to the subdivided building or limited common property, as the case may be.

Board's power to dismiss certain applications

116 — A Board may dismiss an application under this Part if —

(a) the Board believes that the application is frivolous, vexatious, misconceived or lacking in

substance;

(b) the Board believes that a decision in favour of the applicant is not within the jurisdiction of the Board;

(c) the Board believes that the applicant has unreasonably delayed the provision of information required by the Board;

(d) in the case of an application made by any subsidiary proprietor of a lot, the applicant has not paid all contributions levied and payable in relation to the lot under this Act; or

(e) the Board believes that the case is suitable for mediation but the mediation is pending at the time of application.

15 It was counsel's contention therefore that interpreting s 52(2) in the light of s 21(1)(a) of the SCA, a magistrate's court has no jurisdiction to hear a dispute between strata title owners which, in the light of s 89(2) of the Act "shall" be determined by the Board and under s 101(1)(a) thereof, the Board may make orders for the settlement of the dispute or under s 116 thereof, may dismiss an application made to it in varying circumstances outlined under sub-paras (a) to (e).

16 Counsel added that the district judge who dismissed the plaintiffs' appeal in RA 78 of 2008 [6] erred in drawing an analogy with s 6(2) of the International Arbitration Act (Cap 143A 2002 Rev Ed) ("the IAA") which reads as follows:

Enforcement of international arbitration agreement

6 — (2) The court to which an application has been made in accordance with subsection (1) shall make an order, upon such terms or conditions as it may think fit, staying the proceedings so far as the proceedings relate to the matter, unless it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed.

17 Counsel pointed out that there were vast differences between the situations under the Act and those under the IAA. If there was an arbitration agreement between parties, one party can apply to court to prevent the other party from going to the courts to litigate any dispute between them, as arbitration agreements confer enforceable rights between the parties.

18 It should be noted however that if a suit is commenced in contravention of an arbitration agreement, unless the defendant applies to court to enforce the arbitration clause, the jurisdiction of the courts remains as a stay of proceedings is not automatic. Even when a party to an arbitration agreement applies for a stay of proceedings, the court still retains a discretion whether or not to grant a stay. Therefore, even the express provision in s 6(2) of the IAA does not automatically oust the jurisdiction of the courts.

19 The plaintiffs' counsel argued that the situation is different for disputes between subsidiary proprietors of strata title units who would be unlikely to have made agreements to arbitrate. The arbitral tribunal for them is the Board which is essentially a court specifically constituted to determine disputes relating to building management and strata management conclusively. (The only two areas where the Board has no jurisdiction are: (a) determination of title to land and (b) offences committed under the Act which jurisdiction remains with the subordinate courts).

20 Hence, under s 98 of the Act, no appeals lie to the High Court against an order made by the

Board except on a point of law.

21 There was therefore an important question of law to be decided as to whether the proceedings should be tried before the Board. Counsel relied on the following principles extracted from *Lee Kuan Yew v Tan Liang Hong* [1997] 3 SLR 489 when leave to appeal is sought:-

- (a) there must prima facie be an error of law;
- (b) there must be a question of general principle decided for the first time;
- (c) there must be a question of importance upon which further argument and a decision of a higher tribunal would be to public advantage.

The defendant's arguments

22 Counsel for the defendant objected to the OS relying on the same principles in the authority cited by the plaintiffs in [21] and which were reiterated in *Candid Water Cooler Pte Ltd v United Overseas Bank Ltd* [2006] 3 SLR 216 at [33]. He pointed out that:-

- (a) there was no prima facie case of error. The exclusion of the Court must be specifically stated in statute, for the Board to have exclusive jurisdiction to hear such case;
- (b) there was no general principle decided for the first time about the exclusion or ouster of the courts' jurisdiction; and
- (c) there was no question of general importance or public advantage.

Decision

23 I accepted the defendant's arguments. I noted further that the defendant's claim (which included a reduction/loss of rent of \$600 per month) may not exceed \$10,000. Such a small claim did not merit further expenditure of time and costs on the part of the parties nor should the Court of Appeal be troubled over a minor dispute where no serious issues of law were involved (*Goh Kim Heong and others v AT & J Co Pte Ltd* [2001] 4 SLR 262). Accordingly, I dismissed the OS with costs to the defendant.

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