

Mohamed Amin bin Mohamed Taib and Others v Lim Choon Thye and Others
[2009] SGHC 216

Case Number : OS 17/2008, SUM 3938/2009
Decision Date : 25 September 2009
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Gary Low and Benedict Teo (Drew & Napier LLC) for the plaintiffs; Vijay Kumar Rai (Arbiters' Inc Law Corporation) for the 7th and 8th defendants
Parties : Mohamed Amin bin Mohamed Taib; Foo Chuan Kwee; Chin Thean Seong — Lim Choon Thye; Lau Puay Huang alias Lau Phuay Huang; Executor/Administrator of the Estate of Tan Kong Hock, Deceased; Lim Kim Yau; Lim Wee Thiam; Khin Maung Tin; Kailash Nath Rai; Vijay Kumar Rai; Seah Chin Kong; Ee Ah Choo

Civil Procedure

25 September 2009

Woo Bih Li J:

Background

1 In order to understand the background to Summons 3938 of 2009 (“the Present Summons”) filed in Originating Summons No 17 of 2008 (“OS 17/2008”), it is necessary to set out the background to OS 17/2008 first. That background is set out in paras 1 to 9 of the Grounds of Decision (“GD”) of Judith Prakash J dated 3 March 2009 for the main action (reported at [2009] 3 SLR 193) which I set out below for easy reference.

Background

1 The plaintiffs brought this application as the authorised representatives of the consenting subsidiary proprietors who held at least 80% of the share values in the condominium development known as Regent Court (Strata Title Plan No 866) comprised in Land Lot Mukim 17-5574T, Singapore (“Regent Court”).

2 Regent Court is a residential development consisting of 49 apartments. As at June 2005, it was more than 20 years old. On 30 June 2005, at an extraordinary general meeting of the subsidiary proprietors of Regent Court, a resolution was passed approving the collective sale of the development at a reserve price of \$31m. A Sale Committee was also elected at the meeting. At a subsequent general meeting held on 16 February 2006, the reserve price was increased to \$34m. By 25 August 2006, a collective sale agreement had been signed by the subsidiary proprietors of 42 out of the 49 units in Regent Court and this represented 82.53% of the total share value in the development.

3 The collective sale first proceeded by way of a public tender. However, no bids were received within the period of the tender. Subsequently, on 24 January 2007, a company called Landquest Pte Ltd (“LPL”) offered to purchase Regent Court at the price of \$34m. This offer was accepted by the Sale Committee and a sale and purchase agreement was entered into on 3 April 2007 with a company named Regent Development Pte Ltd (“the Purchaser”) as the nominee of LPL.

4 By a written resolution of the Sale Committee dated 10 July 2007, the plaintiffs were appointed representatives for the purpose of applying to the Strata Titles Board ("the Board") under s 84A of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("the Act") for its approval of the collective sale. This application (the "STB Application") was filed on 20 July 2007.

5 The defendants, who are also subsidiary proprietors of units in Regent Court, have not consented to the collective sale. They filed various objections to the application. For the purposes of these proceedings before me, the only relevant objection was that filed by the ninth and tenth defendants. Although the ninth and tenth defendants put forward four grounds of objection, in these proceedings, I was only concerned with the first objection. This was that the collective sale would cause the ninth and tenth defendants to incur a financial loss as the proceeds of sale of their lot, after any deduction allowed by the Board, would be less than the price paid for the lot. They quantified their loss as being \$93,935.75.

6 In the light of the estimated financial loss, the Sale Committee approached the Purchaser for an undertaking to make good the alleged financial loss. On 31 December 2007, the Purchaser furnished an undertaking to pay the ninth and tenth defendants the sum of \$93,935.75 being the difference between the proceeds of sale under the collective sale of Regent Court and the price that the ninth and tenth defendants paid for their unit together with the stamp fees and legal costs claimed by them. By a written document ("the Undertaking"), the Purchaser further undertook to pay such additional sums as may be allowed by the Board as deductions under s 84A(8)(a) of the Act. Additionally, on 10 December 2007, the Sale Committee entered into a supplemental agreement with the Purchaser whereunder the Purchaser agreed to pay the ninth and tenth defendants, on completion of the collective sale, the sum of \$93,935.75 and such additional deductions as the Board may allow.

7 The hearing of the STB Application commenced on 3 December 2007. On 11 December 2007, the Board heard arguments on the ninth and tenth defendants' objection on the ground of financial loss. Thereafter, the Board found that this objection had been made out and gave an oral decision dismissing the STB Application. Written grounds for the Board's decision were delivered on 24 December 2007.

8 On 7 January 2008, the plaintiffs filed this appeal and asked the Court for, inter alia, the following reliefs:

(a) a Declaration that the whole of the order of the Board made on 11 December 2007 dismissing the STB Application be set aside; and

(b) an Order that the STB Application be remitted back to the Board for a continuation of the Board's proceedings, with all evidence adduced thus far standing as part of the record.

The ground of the appeal was that the Board was wrong in law to have dismissed the STB Application based on its reasons as set out in its grounds of decision dated 24 December 2007 (the "Grounds").

9 I heard the appeal on 30 October 2008. I ordered that the whole of the order of the Board made on 11 December 2007 should be set aside and remitted the STB Application back to the Board for a continuation of the Board's proceedings. I also ordered that the

Board was to decide who should bear the costs of the hearing before it on 11 December 2007 after it had completed its proceedings.

2 I should mention that before OS 17/2008 was first heard on 9 October 2008, the seventh and eighth defendants Kailash Nath Rai and Vijay Kumar Rai (the "Remaining Minority") had filed Summons No 396 of 2008 ("Summons 396/2008") on 28 January 2008 to strike out OS 17/2008 on the ground, *inter alia*, that the plaintiffs did not have the authority to prosecute OS 17/2008 and that a number of signatories to the collective sale agreement were opposed to OS 17/2008. That summons was heard by Prakash J on 9 October 2008 with OS 17/2008. Prakash J dismissed Summons 396/2008 with costs. Apparently, OS 17/2008 was part-heard and was adjourned to a date to be fixed. On 30 October 2008, Prakash J made her decision on OS 17/2008 ("the 30 October 2008 Order"). She set aside the Board's order (of 11 December 2007). The costs of OS 17/2008 were to be determined on another date.

3 I mention Summons 396/2008 because the costs order made therein against the Remaining Minority was one of the reasons why the Present Summons was filed.

4 After the decision of Prakash J, the Strata Titles Board (the "Board") recommenced hearing on 18 March 2009. However, by then, the Board had received a letter dated 4 December 2008 from the Inland Revenue Authority of Singapore ("IRAS") stating that "...the agreement relating to the collective sale of Regent Court has not been stamped". I will refer to the principal sale agreement as "the SPA". Apparently there was also a supplemental agreement (see para 6 of Prakash J's GD). I will refer to that supplemental agreement as "the Supplemental Agreement". The information about non-stamping was then brought to the attention of the parties by the Board. An attempt thereafter by the parties to settle failed. On 23 March 2009, the Board directed the applicants to pursue a request which the applicants had made earlier, *ie*, that the purchasers be given a day to stamp the SPA. In the meantime, the parties could also use the time to make a last attempt at settlement. As it turned out, the SPA remained unstamped and there was no settlement. On 24 March 2009, the Board dismissed the application for its approval with each party to bear its own costs. The reason for the dismissal was that it would not be possible for the parties to discharge their respective burdens of proof as each side would have to refer to the SPA and it was not possible to admit the SPA as evidence because it was not stamped.

5 The plaintiffs then filed Bill of Costs No 137 of 2009 ("BC 137/2009") in respect of the costs granted to them in Summons 396/2008. The taxation for those costs was scheduled for 28 July 2009. However, on the day before, the Remaining Minority filed the Present Summons. The reliefs sought in the Present Summons were as follows:

1. A declaration that the Sale & Purchase Agreement dated 3rd April 2007 and the Supplemental Agreement dated 10th December 2007 were inadmissible in evidence for want of stamping in compliance with Section 52 of the Stamp Duties Act and ought not be acted upon and given effect to.
2. A declaration that the Order of Court dated 30th October 2008 in OS No. 17/2008/Q was not just in the circumstances of the case.
3. An Order pursuant to the Court's inherent powers and or in exercise of its powers under Order 92 Rule 4 of the Rules of Court that:-

(a) the Order of Court dated 30th October 2008 in OS No. 17/2008/Q be set aside insofar as:-

(i) it set aside the Order of the Strata Titles Board made on 11th December 2007;

(ii) it remitted the Strata Titles Board application back to the Strata Titles Board for a continuation of the Board's proceedings;

(iii) mandated the Strata Titles Board to act upon and give effect to the Sale & Purchase Agreement and the Supplemental Agreement and to admit the same in evidence;

(iv) mandated the STB to decide on who should bear the costs of the hearing before it after it had completed the proceedings.

(b) further and or in the alternative, an Order that the Plaintiffs' application by OS No. 17/2008/V be dismissed.

(c) the Order of Court dated 9th October 2008 in Summons Entered No. 396/2008/V dismissing the application of the 7th and 8th Defendants by Summons Entered No. 396/2008/V with costs to be paid by the 7th and 8th Defendants to the Plaintiffs, be set aside.

4. That the costs of the hearings below, before the Strata Title Board and of this action, including the application by Summons Entered No. 396/2008/V and of this application be borne and paid by the 1st, 2nd and 3rd Plaintiffs to the Defendants on an indemnity basis.

5. Such further and or other relief as the Court deems fit.

6 The taxation of BC 137/2009 was adjourned to 11 August 2009 pending the hearing of the Present Summons.

7 The Present Summons came up for hearing on 3 August 2009 together with the outstanding costs issue of OS 17/2008 before Prakash J. She declined to hear the Present Summons as she was of the view that another judge should hear it and adjourned it accordingly. She also made an order that the Present Summons was not to affect the taxation of BC 137/2009. She adjourned the hearing on the issue of costs in respect of OS 17/2008 pending the outcome of the Present Summons.

8 On 11 August 2008, BC 137/2009 was taxed. Later on the same day, I heard the Present Summons. The other defendants, that is, the first, second, fourth to sixth defendants, and the ninth and tenth defendants in OS 17/2008 took a neutral stand on the Present Summons. After hearing arguments, I adjourned the hearing to 18 August 2009 for the plaintiffs to file an affidavit as to whether they knew that the SPA had not been stamped.

9 On 13 August 2009, the plaintiffs' affidavit was filed and served. It stated that they were not aware of the lack of stamping of the SPA (and the Supplemental Agreement) prior to 22 December 2008. That was when their solicitors M/s Legal 21 LLC informed them about a letter from the Board stating that the agreements had not been stamped.

10 On 18 August 2009, I continued hearing arguments after which I dismissed the Present Summons with costs. The Remaining Minority have filed an appeal to the Court of Appeal against my decision. I set out below the reasons for my decision. I also attach a schedule of a chronology of events for easy reference.

The reasons

11 In the first place, prayer 1 of the Present Summons was unnecessary as the Board had already dismissed the application before it on the basis that the SPA, and presumably the Supplemental Agreement as well (collectively "the Relevant Agreements") were inadmissible in evidence as they were not stamped.

12 The real reasons for the Present Summons were the costs which the Remaining Minority were liable for under Summons 396/2008 and their potential liability for costs in respect of the 30 October 2008 Order in OS 17/2008.

13 I will deal with prayers 2 to 3(b) of the Present Summons together as they deal with the 30 October 2008 Order and OS 17/2008.

14 The thrust of the arguments of Mr Vijay Kumar Rai, who was counsel for the Remaining Minority, as well as being the eighth defendant himself, was that because the Relevant Agreements were not stamped, there was no basis in the first place for the application to be made to the Board. He also argued that for the same reason, *ie*, the want of stamping, the court had no jurisdiction to make the 30 October 2008 Order. He relied heavily on s 52(1) of the Stamp Duties Act (Cap 312, 2006 Rev Ed). However, the next provision is also relevant. Sections 52(1) and (2) state:

Instruments not duly stamped inadmissible in evidence

52. — (1) Subject to this section, no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless the instrument is duly stamped.

(2) Any instrument referred to in subsection (1) shall, subject to all just exceptions, be admitted in evidence on payment of the duty and the penalty, if any, chargeable in respect thereof under section 46.

15 I was of the view that Mr Rai had misapplied s 52(1). It does not render an unstamped document which ought to be stamped void *ab initio*. It merely stipulates that such a document is not admissible in evidence until the appropriate stamp duty is paid. This is reinforced in s 52(2) which provides for the admissibility of such a document on payment of the stamp duty and any penalty. That rule is a rule of evidence and does not affect the validity of such an unstamped document. As is obvious, the situation could have been rectified at any time upon payment of the appropriate stamp duty and penalty. Furthermore, even if a document were to be invalid in the sense that, for example, it was forged, that does not defeat the jurisdiction of the court to hear and decide on matters based on that document.

16 It was clear to me that the court had jurisdiction to make the 30 October 2008 Order.

17 I should also point out that it was because of the 30 October 2008 Order that the Board continued with the hearing of the application and dismissed it (again) for want of stamping. If the 30 October 2008 Order was to be set aside for want of jurisdiction, then the Board's initial decision of 11 December 2007 would remain. However, if the court did not have jurisdiction to hear OS 17/2008 because of the stamping issue, then it is likely that the Board would also not have jurisdiction to make the decision of 11 December 2007.

18 Mr Rai, also argued that the 30 October 2008 Order was a fraud upon the Remaining Minority (and the other defendants) because the plaintiffs did not disclose the fact that the Relevant Agreements were not stamped.

19 Assuming that the plaintiffs were aware of the non-stamping, it is an arguable point whether they were obliged to disclose the non-stamping if no one had asked them about it. In any event, they executed an affidavit to say that they were not aware about the non-stamping as elaborated above. They only knew about the non-stamping after the 30 October 2008 Order had been made. While Mr Rai did not accept their explanation, he himself had no basis for suggesting otherwise beyond his suspicion, frustration and desperation. He was in no position to assert as a fact that they were aware before 30 October 2008.

20 Mr Low, counsel for the plaintiffs in OS 17/2008, also pointed out that the obligation to pay the stamp duty was on the purchaser and not the vendors. It appeared to me that the purchaser had played the vendors out.

21 Mr Rai further alleged that the plaintiffs ought to have checked with the purchaser whether the Relevant Agreements had been stamped but Mr Low rightly pointed out that the Remaining Minority (and the other defendants) did not do so themselves. They did not demand to have sight of the original of the Relevant Agreements although they too were represented by solicitors and it was in their interest to do so in the context of the ongoing litigation.

22 I would also point out that neither the stamping of the Relevant Agreements nor the admissibility thereof was in issue before Prakash J whether in respect of OS 17/2008 or Summons 396/2008.

23 It was clear to me that there was no fraud on the part of the plaintiffs and, as I have said, the suggestion of the same was without basis.

24 There was also no injustice arising from the 30 October 2008 Order or from the order made in Summons 396/2008.

25 I come now to prayer 3(c) of the Present Summons. Under this prayer, the Remaining Minority were asking that the order of 9 October 2008 in respect of Summons 396/2008 be set aside. The Remaining Minority were using the new, but unrelated, information regarding the want of stamping to avoid their liability for costs for Summons 396/2008.

26 Mr Rai's arguments for this prayer 3(c) were no different from his arguments for prayers 2 to 3(b) and I reached the same conclusion for prayer 3(c) as for the other prayers.

27 As a general rule, a litigant is not entitled to set aside earlier costs orders made against him in interlocutory applications even though he succeeds in the main action. There was no reason to

depart from the general rule. As mentioned above, I dismissed the Present Summons with costs.

28 I would add that I was informed by Mr Low that there is apparently now a practice direction that an applicant for approval of a collective sale is to adduce evidence that the relevant sale and purchase agreement is stamped in support of the application.

Schedule of Chronology of Events

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| 20 July 2007 | Application filed to seek the Board's approval for the collective sale of Regent Court. |
| 11 December 2007 | The Board dismisses the application in view of the ninth and tenth defendants' objection on the ground of financial loss. |
| 07 January 2008 | OS 17/2008 is filed to contest the Board's decision. |
| 28 January 2008 | Summons 396/2008 is filed by the Remaining Minority to strike out OS 17/2008. |
| 09 October 2008 | Summons 396/2008 and OS 17/2008 are heard. Prakash J dismisses Summons 396/2008 and orders the Remaining Minority to pay costs to the plaintiffs. OS 17/2008 is part-heard and adjourned to a date to be fixed. |
| 30 October 2008 | Order of Prakash J in OS 17/2008. She sets aside the decision of the Board (of 11 December 2007) and remits the plaintiffs' application for approval of the collective sale to the Board for hearing. The issue of costs of OS 17/2008 is adjourned to a later date to be fixed. |
| 18 March 2009 | The Board recommences the hearing of the application pursuant to the 30 October 2008 Order but by then, they have received the 4 December 2008 letter from IRAS. |
| 24 March 2009 | The Board dismisses the application because the SPA (and the Supplemental Agreement) are not stamped. The Board orders each side to bear its own costs. |
| 08 July 2009 | The plaintiffs file BC 137/2009 in respect of the costs granted to them in Summons 396/2008. The hearing for taxation is fixed on 28 July 2009. |

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| 27 July 2009 | The Remaining Minority file the Present Summons. The taxation is adjourned to 11 August 2009 pending the hearing of the Present Summons. |
| 03 August 2009 | Counsel for each side appear before Prakash J on the issue of costs for OS 17/2008 and for hearing of the Present Summons. Prakash J declines to hear the latter which is adjourned. She also orders that the Present Summons is not to affect the taxation of BC 137/2009. The issue of costs for OS 17/2008 is adjourned pending the outcome of the Present Summons. |
| 11 August 2009 | BC 137/2009 is taxed. Later in the same day, the Present Summons 3938/2009 is heard by Woo J. It is adjourned to 18 August 2009 for the plaintiffs to file an affidavit as to whether they knew that the SPA was not stamped. |
| 13 August 2009 | The plaintiffs' affidavit is filed and served. |
| 18 August 2009 | Continued hearing of Present Summons. It is dismissed with costs. |

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