

Management Corporation Strata Title Plan No 2285 and Others v Sum Lye Heng (alias Lim Jessie)
[2004] SGCA 13

Case Number : CA 101/2003
Decision Date : 30 March 2004
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ
Counsel Name(s) : Peter Cuthbert Low (Peter Low, Tang and Belinda Ang) for appellants; Lim Chor Pee (Chor Pee and Partners) for respondent
Parties : Management Corporation Strata Title Plan No 2285; Loke Mei Peng Amanda; Tan Kim Siang Raymond; Chan Tian Soo; Lim Teck Chay; Wong Oong Kwong; Chua Choon Huat; Chua Boon Chye — Sum Lye Heng (alias Lim Jessie)

Civil Procedure – Stay of proceedings – Abuse of process – Jurisdiction of High Court to stay private summons issued in Subordinate Courts where no basis for complaint disclosed – Sections 66(1), 67(2) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

30 March 2004

Tan Lee Meng J (delivering the judgment of the court):

1 This appeal is in relation to an application filed by the respondent, Sum Lye Heng, also known as Jessie Lim ("Jessie"), to restrain the first appellant, Management Corporation Strata Title Plan No 2285 ("the MC"), from proceeding with any further action in Private Summons No 138 of 2003, which was issued against her pursuant to a complaint filed by the fourth appellant, Chan Tian Soo ("CTS"), on behalf of the MC. Jessie contended that the said complaint and the private summons were an abuse of the process of the court. Woo Bih Li J ordered the MC to be so restrained and further ordered a permanent stay of Private Summons No 138 of 2003. We dismissed the appeal against the judge's decision (reported at [2003] 4 SLR 553) and now give our reasons for having done so.

Background

2 Jessie and the second to eighth appellants are subsidiary proprietors of housing units in Harbourside Condominium ("the condominium"). She and the second to eighth appellants served at one time or another as members of the council of the condominium. Jessie is also a former chairperson of the council.

3 For a clearer picture of the present dispute, events dating to the first annual general meeting ("AGM") of the MC on 19 May 2001 ought to be referred to. At that meeting, Jessie and the fourth to seventh appellants were elected as council members. After the first chairman of the council resigned, Jessie became the chairperson of the council on 13 November 2001.

4 The condominium was then managed by Premas International Limited ("Premas"). Apparently, there was some dissatisfaction with Premas' services. Jessie, a full-time director and shareholder of SCMS Property Management Pte Ltd ("SCMS"), a property management company, was interested in managing the condominium. She said that she informed the other council members of her role in SCMS before she was appointed the chairperson of the council and that some of the council members encouraged her to arrange for SCMS to submit a tender bid for the management of the condominium.

5 In April 2002, Premas were instructed to prepare tender documents for the award of a new management contract for the condominium. A number of management companies, including SCMS, collected the tender documents. On 7 May 2002, Janet Au, a property agent from Premas, sent a note to all the council members. In it, she stated:

Re : Tender of Management Agent Services

We append the list of companies that [have] collected the tender documents for your necessary information. ...

We would like to highlight Section 66(1) of the Land Titles (Strata) Act. ...

Copy of section 66 of the LTSA is enclosed for your easy reference.

Members are expected to disclose your interest (if any) for the above.

6 On 13 May 2002, Jessie sent an e-mail to Janet Lim ("Janet"), the secretary of the MC, and her niece and the fifth to seventh appellants, stating that she would take steps to declare her interest in SCMS and that she would not be involved in the evaluation of the tenders submitted for the management of the condominium. She also offered to resign as chairperson and council member at the next council meeting and added that she would not be a candidate for council elections at the second AGM, regardless of whether SCMS succeeded in their bid to manage the condominium.

7 On 15 May 2002, there was a meeting of council members, at which Jessie declared her interest in SCMS. However, Premas advised that this was not a valid council meeting because notice of the meeting and the agenda had not been circulated beforehand. Consequently, another council meeting was called to allow Jessie to formally declare her interest in SCMS. At the material time, the MC was making a claim against Liang Court, the developers of the condominium, and some council members felt that as Jessie was handling the claim quite well, she should declare her interest in SCMS and not step down.

8 For reasons best known to themselves, the relationship between Jessie and some of the other council members deteriorated thereafter. One bone of contention was whether or not Jessie had acted appropriately when she wrote in her capacity as chairman of the council to inform the Commissioner of Buildings on 31 May 2002 of her interest in SCMS. Some council members felt that as it had been already agreed at a council meeting that Premas should write to the Commissioner of Buildings about Jessie's declaration of interest, she should not have written the letter herself. The hitherto friendly relations between Jessie and some of the other council members took a turn for the worse at a subsequent council meeting on 12 June 2002. Jessie claimed that CTS shouted at her and at Janet and refused to allow them to speak. She and Janet walked out and resigned as chairperson and secretary of the council respectively on 17 June 2002.

9 At the second AGM of the MC on 27 July 2002, the incoming council was authorised to appoint a new managing agent. SCMS were not awarded the management contract by the incoming council.

10 On 18 October 2002, the fourth to seventh appellants instituted legal proceedings against Janet in the High Court for defamation. In the meantime, Jessie was rather unhappy that newspaper reports concerning problems at the People's Park Centre, which was then managed by SCMS, were circulated to subsidiary proprietors at the condominium. She alleged that the third to fifth appellants circulated these newspaper reports to discredit her.

11 Some three months later, on 13 January 2003, the fourth appellant, CTS, in his capacity as secretary of the council, filed a complaint against Jessie in the subordinate courts. This resulted in the issuance of a private summons against her in January 2003. In his complaint under s 133(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), CTS contended that Jessie's conduct in relation to the tender for the provision of management services to the condominium smacked of corruption and/or malpractice and/or abuse of her position as chairperson of the council. He claimed that there were sufficient grounds for proceeding against her for contravening ss 66(1) and 67(2) of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), which will be referred to in greater detail later on (at [15]).

12 Jessie had no doubt that the allegations in the complaint were frivolous, vexatious and malicious and she objected to the council's use of management corporation funds for the purpose of smearing her character. Consequently, she filed Originating Summons No 230 of 2003, in which she sought an order to restrain CTS from proceeding with the complaint as well as an order to the effect that he was not to use the MC's funds to pay for his solicitors' fees. Jessie did not obtain the orders sought because Woo J took the view that the complaint in question had not been made by CTS personally but by him on behalf of the MC.

13 Jessie's solicitors then wrote to the MC's solicitors on 17 April 2003 to find out whether or not the MC intended to proceed with the private summons. On 5 May 2003, the MC's solicitors replied that all the seven council members had unanimously agreed to proceed with the private summons. As a result, Jessie filed Originating Summons No 757 of 2003 to obtain an order to restrain the MC from prosecuting or proceeding with the complaint. She also brought the remaining appellants into the picture because she wanted them to be personally liable for the costs of her originating summons as well as the costs of the private summons. On this occasion, Woo J granted the order to so restrain the MC and an order to stay the private summons permanently. The appellants appealed against his decision.

The appeal

14 During the appeal, it was conceded, and rightly so, that the High Court has the jurisdiction to order a stay of further proceedings in the private summons. In *Regina v Sang* [1980] AC 402 at 455, Lord Scarman reiterated that every court is duty bound to protect itself against an abuse of its process. Indeed, if a failure to do so results in oppression and injustice, public confidence in the judicial process will be undermined. In *Williams v Spautz* (1992) 174 CLR 509, a decision of the High Court of Australia, Mason CJ, Dawson, Toohey and McHugh JJ said at 518:

It is well established that Australian superior courts have inherent jurisdiction to stay proceedings which are an abuse of process. The existence of that jurisdiction has long been recognized by the House of Lords. The jurisdiction extends to both civil and criminal proceedings. As Lord Morris of Borth-y-Gest observed in *Connelly v Director of Public Prosecutions*:

[A] court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. ... A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process.

15 While the High Court may stay proceedings which are an abuse of its process, such an order should only be made if there is very clear evidence of such abuse. In the present case, the essence

of the complaint lodged by the fourth appellant, CTS, on behalf of the MC, was that there were sufficient grounds for proceeding against Jessie for contravening ss 66(1) and 67(2) of the Land Titles (Strata) Act. Section 66(1) of the Act provides as follows:

Subject to this section, every member of a council who is in any way, directly or indirectly, interested in a contract or proposed contract with the management corporation shall as soon as practicable after the relevant facts have come to his knowledge declare the nature of his interest at a meeting of the council.

Section 67(2) states:

A member of a council ... shall not use his position as a member of the council ... to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the management corporation.

16 It is quite obvious that CTS had no cause whatsoever to lodge the complaint which led to the private summons against Jessie. Woo J rightly pointed out that it was not open to the MC to make the complaint that Jessie had breached ss 66(1) and 67(2) of the Land Titles (Strata) Act because all parties concerned had acted on the basis that Jessie had complied with the requirements of the Land Titles (Strata) Act and SCMS had even been encouraged to tender for the management contract in question. He summed up the position in his judgment as follows:

71 The allegations about [Jessie's] tactics were all matters within [CTS's] knowledge and of other Council members then. ... The issue was whether the Council could subsequently complain about them especially when SCMS had been encouraged to continue with its tender and, moreover, all the parties had acted on the basis that [Jessie] had complied with the Act. In my view, it was not open to the Council to make the Complaint belatedly. In that sense, the Council had no basis or foundation for making the Complaint.

72 It seemed to me that the real reason why the Complaint was made was not because the Council had discovered something within the condominium's affairs which [Jessie] had hidden from them. The real reason was that [Jessie's] relationship with the Existing Council Members had become acrimonious ...

17 The history of Jessie's dealings with the council members provides ample evidence that she declared her interest in SCMS on innumerable occasions. Apart from declaring her interest in SCMS at a meeting of the council, which was duly recorded in the minutes of the meeting, she did so in various e-mails to her fellow council members. There is unchallenged evidence that the other council members were fully aware of her interest at the material time. To begin with, in a letter dated 30 May 2002 to Premas, which was copied to all council members, CTS stated as follows:

HARBOURLIGHT COUNCIL MEETING HELD ON 29 MAY 2002

I refer to the above meeting.

This is to thank you for your attendance at the above meeting during which you have enlightened us on the various points raised relating to the issue of the chairperson's tender for [managing agent] services ...

For good order sake, I shall be grateful if you would please ensure that the following are recorded in accordance with your advice:

I) *That the chairperson's declaration under section 66(1) LSTA made at the above meeting was and will continue to be valid.*

II) That consequent to the declaration of the chairperson ... Council members are now qualified to short list the tenders for [managing agent] services which include the tender from the chairperson's company.

Following the above declarations ... you have kindly agreed to reply, on our behalf, to the BCA, *with emphasis that the members of the Council including the chairperson have complied to the letter of the law outlined under section 66(1) LSTA.* And the chairperson will not participate in the short listing of the tenders.

[emphasis added]

18 Equally telling is an e-mail from CTS, which was quoted by the sixth appellant, Wong Oong Kwong, in the latter's e-mail to Jessie and other council members, which was as follows:

Below is Mr Chan Tian Soo's e-mail (highlighted in blue)

Dear Jessie Lim, Chairperson (MCST 2285):

I refer to your faxed letter dated 20 May 2002 inviting us for comments. ...

It is ... regrettable that statutory requirement makes it impossible for you to carry on as chairperson should your company be selected as [managing agent] for Harbourside Condo. In any event, I sincerely hope that your company is successful in the tender exercise.

... On the question of finger pointing, I am always reminded by Prime Minister Goh Chok Tong's remarks. He said, "Always stand by the Law and you will never go wrong". Indeed, we Council members spared no effort to comply with the LSTA. I believe we have achieved it to the Letter of the Law and hence we should not fear any finger pointing.

19 Finally, it ought to be noted that apart from informing her fellow council members, Jessie also took it upon herself to inform the Commissioner of Buildings on 31 May 2002 that she was a director and shareholder of SCMS, which was tendering for the contract to provide management services for the condominium, and that she had declared her interest at a meeting of the council on 29 May 2002.

20 As the appellants had no basis for complaining that Jessie had not declared her interest at the material time, they should not be allowed to proceed with the private summons, which lacked a proper foundation and had been filed for an improper purpose. Such an abuse of process cannot be countenanced. In *Director of Public Prosecutions v Humphrys* [1977] AC 1 at 46, Lord Salmon issued a timely reminder that "[f]or a man to be harassed and put to the expense of perhaps a long trial and then given an absolute discharge is hardly ... an effective substitute for the exercise by the court" of its inherent power to prevent abuse of its process. We thus dismissed the appellants' appeal with costs.

Appeal dismissed.