

Siow Doreen and Others v Lo Pui Sang and Others (Horizon Partners Pte Ltd, first intervener,
and Reghenzani Claude Augustus, second intervener)
[2007] SGHC 167

Case Number : OS 1269/2007, SUM 4254/2007, 4336/2007
Decision Date : 01 October 2007
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : K Shanmugam SC, Ang Cheng Hock and Yew Zhong Ming (Allen & Gledhill LLP) for the first Intervener; Andre Yeap SC, Dawn Tan and Dominic Chan (Rajah & Tann) for the second Intervener; C R Rajah SC, Burton Chen and Lalitah Rajah (Tan Rajah & Cheah) for the applicants; The first and third respondents in person; K S Rajah SC and Philip Fong (Harry Elias Partnership) for the second, fourth, eighth and ninth respondents; Kannan Ramesh, Karam Parmar and Michael Chia (Tan Kok Quan Partnership) for the fifth, sixth and seventh respondents; Dr Phang Sin Kat (Phang & Co) for the tenth respondent
Parties : Siow Doreen; Halimah Tan Bee Lay; Henry Lim Meng Loke — Lo Pui Sang; Kuah Kim Choo; Ng Eng Ghee; Mohammed Yusuf (withdrawn); Hendra Gunawan/Sulistiowati Kusumo; Rudy Darmawan/Widia Seteono; Maryani Sadeli; Then Khek Koon/Jasmine Tan Kim Lian; Ong Sioe Hong; Quek Keng Seng; Canterford Limited

Civil Procedure – Parties – Joinder – Appeal against Strata Title Board's rejection of consenting subsidiary proprietors' application for en bloc sale of condominium – Leave to intervene sought by purchaser and 13 of consenting subsidiary proprietors – Whether leave to intervene should be granted

1 October 2007

Judgment reserved.

Choo Han Teck J:

1 The proceedings before me concern the appeal by the Consenting Subsidiary Proprietors (“CSPs”) against the rejection by the Strata Titles Board (“the Board”) of their application for the Board’s approval for the *en bloc* sale of the condominium known as Horizon Towers. The appeal is on a single and narrow point of law, namely, whether the Board was right to reject the application on the grounds it gave. I note that the subsidiary proprietors who did not consent to the *en bloc* sale (“the minority subsidiary proprietors”) do not agree that the appeal concerned any point of law at all, but that is a question to be determined at the appeal itself. In the meantime, the purchaser, Horizon Partners Pte Ltd (“HPPL”), represented by Mr K Shanmugam SC, and a group of 13 members of the CSPs (“the 13 members”) represented by Mr Andre Yeap SC, applied for leave to intervene. Their applications were met with the strong objection of the CSPs, represented by Mr Chelva Rajah SC, as well as the respondents who were the minority subsidiary proprietors appearing in three groups, each group represented by Mr K S Rajah SC, Mr Kannan Ramesh, and Dr Phang Sin Kat respectively in the appeal.

2 Mr Shanmugam and Mr Yeap submitted that their clients have an interest in the outcome of this appeal and that they should therefore be heard. Mr Shanmugam claimed that his client, as a purchaser of the property, was the only one who had a real interest in seeing that the contract is performed and that the outcome of the appeal might have a “severe” impact on HPPL’s contractual action against the CSPs. Mr Shanmugam argued that HPPL should thus be allowed to intervene

because it was the only party that could present arguments with respect to the purchaser's perspective. Mr Yeap and Mr Chelva Rajah also claimed that their clients have no lesser desire, although counsel were unable to say if any of their clients had regretted entering into the contract, but that is really another matter. Mr Yeap said that three of his clients were directly concerned with the issue on appeal because the three pages containing the signatures of these three CSPs were left out of the application to the Board, and that has led to the assertion that an offence had been committed by the three. Mr Shanmugam and Mr Yeap argued that this court should allow their applications by virtue of Or 15 r 6(2) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed). The rule they relied on provides as follows:

(2) Subject to the provisions of this Rule, at any stage of the proceedings in any cause or matter, the Court may, on such terms as it thinks just and either on its own motion or on application —

...

(b) order any of the following persons to be added as a party, namely:

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in the cause or matter may be effectually and completely determined and adjudicated upon; or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

3 The arguments of the opposing counsel may be summarized as follows. They argued that HPPL was not a party who had any interest in the matter which was strictly between the CSPs and the minority subsidiary proprietors. Mr K S Rajah argued that all that HPPL had was a commercial interest in the outcome of this appeal, which was the same interest it had in the outcome of the proceedings before the Board, and its application to be joined as a party there was rejected by the Board. Mr K S Rajah feared that allowing HPPL's application now would be granting HPPL a right that had already been denied by the Board. Mr Ramesh argued that HPPL had not set out what question of law, the determination of which, it was entitled to be heard. Dr Phang was apprehensive about being caught in what he described as a cross-fire, presumably between HPPL and the CSPs (including the 13 members) since his clients were already engaged in the fight directly with the CSPs in the proceedings before the Board. Mr Chelva Rajah seemed bemused that HPPL wanted to intervene in an appeal, the outcome of which was a common objective of HPPL as well as the CSPs. Similarly, he thought that the 13 members and the CSPs were advancing the same cause. Generally, in such circumstances, one normally welcomes any ally one can find and not spurn his helping hand, unless, of course, that hand might prove more a hindrance than a help. It seems to me, therefore, that there may be other motives and objectives not specifically articulated before me, but I spend no time speculating on what they might be. The desire to see that the contract of sale be performed is not a hidden objective, of course, so what else there is, I do not yet know.

4 There is also the issue of incurring greater costs if HPPL and the 13 members were to be joined. I think, however, that the issue of costs can be dealt with separately, although under O 15 r 6(2) of the Rules of Court, I could allow the applications on the condition that the applicants bear their own costs in any event without prejudice to the right of the other parties to claim costs against them

depending on the outcome of the appeal. But I shall revert to this shortly.

5 I began my consideration of the applications to intervene by noting the nature of this appeal. All arguments for and against the applications must, in my view, be considered in that context. It will first be noted that the proceedings before the Board is not the same proceedings here. The Board was entitled to entertain and reject applications by HPPL to intervene in the proceedings before it, but that, as I said, was a different set of proceedings. The Board's role in the proceedings before it was to consider the merits or lack of merits in approving the *en bloc* sale of Horizon Towers. The proceedings before me concerned one thing only, namely, whether, in law, the Board was wrong in rejecting the CSPs' application on the grounds they gave. What, then, is the substantive difference so far as HPPL was concerned? Prior to the Board's rejection of the CSPs' application, HPPL's position under the contract was clear and it could not have been unfairly prejudiced had the Board disapproved the sale because the contract provided a clear view that the approval of the Board was required and, in those circumstances, it might have no recourse if the Board disapproved the sale. But whether HPPL would have a cause of action should the Board disapprove of the sale is not an issue before me. Nonetheless, HPPL's position might have changed after the Board's rejection when it filed a claim against the CSPs for breach of contract. That alleged breach, in my view, has a connection with the application for approval by the Board, which was the application that the Board had dismissed. By connection and in this regard, I mean that the outcome of this appeal might or might not have an impact on that action. That cannot be clarified until I hear HPPL. While the merits of the breach of contract action are not the subject before me, that action cannot be described as having no connection with the appeal. It may eventually be proved to have no connection, but the answer cannot confidently be stated at this stage. It means, therefore, that prudence requires that HPPL be heard. As for the 13 members, I accept that they have interests that coincide with those of the CSPs represented by Mr Chelva Rajah. Mr Yeap himself said that his clients are also committed to see that the contract is performed. Is the fact that his clients were the smaller group that initiated the application before the Board a sufficient reason to allow them separate representation? Mr Chelva Rajah, speaking for the majority CSPs thought not. If this was a hearing to adduce factual evidence I would have no hesitation in disagreeing with Mr Chelva Rajah, but since the proceedings concern only an issue of law, and I therefore think that Mr Yeap's argument is somewhat, but not entirely, weakened.

6 In considering whether it is just or convenient to allow the applicants to intervene, the most relevant factor is that the appeal concerned a very narrow point (or two) of law. It may be straightforward or may be complicated and complex – I have yet to hear what arguments there are – in either case, it would not be unjust or inconvenient to hear two more voices, voices which I hope I can mute should they appear to me to be merely a refrain of Mr Chelva Rajah's opus. Secondly, the applicants would in any event be entitled to instruct counsel to hold a watching brief for them in the appeal, and in those circumstances, counsel have no right of audience save with leave of the court. Given these circumstances and the nature of the appeal, I would be inclined to permit counsel to address me should they ask to do so. I am thus of the view that it is just and convenient to allow the applications of HPPL and the 13 members.

7 So I return thus to the question of costs. I had considered whether to grant leave subject to the condition that the applicants' costs be borne by the applicants in any event, but without prejudice to the rights of the other parties to claim costs against them. For the sake of proceeding more expeditiously, I have decided not to make that a condition of leave at this point, and will ask counsel to address me at the end of the appeal.

8 The applications are accordingly allowed with costs reserved.