

Management Corporation of Grange Heights Strata Title No 301 v Lee Tat Development Pte
Ltd
[2007] SGHC 32

Case Number : OS 706/2004
Decision Date : 05 March 2007
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Edwin Lee and Looi Ming Ming (Rajah & Tann) for the plaintiff; Tan Cheng Han SC (TSMP Law Corporation) and Ernest Balasubramaniam (Arfat Selvam Alliance LLC) for the defendant
Parties : Management Corporation of Grange Heights Strata Title No 301 — Lee Tat Development Pte Ltd

Land – Easements – Rights of way – Right of way over servient tenement – Whether owner of dominant tenement giving up right of way by amending development plans to exclude original proposed road on servient tenement – Whether owner of dominant tenement entitled to repair and/or maintain such right of way

5 March 2007

Woo Bih Li J:

1 The plaintiff is Management Corporation of Grange Heights Strata Title No. 301 (“the MC”). It is the management corporation of a condominium development known as Grange Heights. The development stands on lot 687 of Town Sub-division 21. Lot 687 is an amalgamation of what was formerly lot 111-34 and an adjoining plot of land which was formerly lot 561 of Town Sub-division 21.

2 The defendant Lee Tat Development Pte Ltd (“Lee Tat”) was previously known as Collin Development (Pte) Ltd. At all material times Lee Tat was and is the owner of lots 111-32 and 111-33 of Town Sub-division 21.

3 Adjoining lots 111-32, 111-33 and what was formerly lot 111-34 is lot 111-31. Lot 111-31 is a long, narrow but irregular strip of land. A right of way was granted over lot 111-31 to the owners of lots 111-30, 111-32, 111-33 and 111-34. Lots 111-30, 111-31, 111-32, 111-33 and 111-34 were formerly parts of a larger piece of land owned by a company, Mutual Trading Ltd. In or about 1919, Mutual Trading Ltd, then in voluntary liquidation, sold and conveyed lots 111-30, 111-32, 111-33 and 111-34 and granted a right of way over the Reserve for Road to the purchaser of the four lots. In the context of lot 111-34, the right of way was granted in a deed of conveyance dated 19 March 1919. The grant was in the following terms:

And together with full and free right and liberty for the Purchaser his executors administrators and assigns being the owner or owners for the time being of the land hereby conveyed or any part thereof and their tenants and servants and all other persons authorized by him or them in common with others having a similar right from time to time and at all times hereafter at his and their will and pleasure to pass and repass with or without animals and vehicles, in along and over the Reserve for Road coloured yellow in the said plan.

4 Based on the colouring in the plan attached to the deed of conveyance, the Reserve for Road

mentioned in the grant occupies the entire lot 111-31 which is the servient tenement. On 17 January 1997 Lee Tat acquired lot 111-31.

5 By this originating summons, the MC sought a declaration that it was entitled to repair and/or maintain the right of way in the manner set out in the schedule to the action. The schedule also set out the dimensions of the road to be repaired/maintained. I should mention here that the width of the proposed road works is less than the width of the Reserve for Road itself. I will elaborate on this later.

6 After hearing arguments, I made the substantive declaration sought and clarified that the repair/maintenance was at the expense of the MC, subject to the MC obtaining such regulatory approval as may be required. Lee Tat was directed to allow the MC to take all measures to obtain such approval and to sign and endorse all appropriate documents failing which the Registrar of the Supreme Court would do so on behalf of Lee Tat. However, Lee Tat was not precluded from making representations to any relevant authority. Lee Tat has appealed against my decision and I now set out my reasons.

Reasons

7 The thrust of Lee Tat's submissions before me was that the MC could no longer enjoy the right of way. Hence, there was no question of repairing or maintaining such a right of way. Lee Tat ran its case in the following manner.

8 Lee Tat asserted that on 15 October 1970, the developers of the condominium Hong Leong Holdings Ltd ("Hong Leong") obtained permission from the relevant authority to develop Grange Heights in accordance with a plan annexed to the Grant of Written Permission. A road was to have been built on lot 111-31 providing the entrance to the condominium from Grange Road.

9 As the owner of other dominant tenements, but not yet the owner of the servient tenement, Lee Tat, under its previous name of Collin Development, objected to the proposed road. Consequently Hong Leong amended its plan to delete the road on lot 111-31. The revised Notice of Grant of Written Permission dated 13 March 1975 stated that lot 111-31 was excluded from the site layout.

10 Accordingly, Lee Tat submitted that the MC's present action was an attempt to get through the back door what the relevant authority had rejected several years ago.

11 To bolster its submission, Lee Tat further submitted that Hong Leong's revised plan showed an internal road within Grange Heights which stopped short of the boundary between Grange Heights and lot 111-31. This, according to Lee Tat, also showed that the original intended road on lot 111-31 was rejected by the relevant authority.

12 It seemed to me that while this was all very well and good from Lee Tat's point of view, there had been court decisions against Lee Tat which I could not ignore. Indeed, Lee Tat relied on evidence which was given in the first of these actions but ignored the outcome thereof. I will now set out in some detail the various actions which Lee Tat was involved in in respect of the right of way, whether under its previous or present name.

13 In 1974, Lee Tat commenced Suit No. 3667 of 1974 against Hong Leong ("the First Action/1974"). Notwithstanding Hong Leong's revision of its plan for a road on lot 111-31, the litigation continued. The nature of the complaints and the reliefs sought were set out in the judgment of Justice FA Chua in *Collin Development (Pte) Ltd v Hong Leong Holdings Ltd* [1975-1977] SLR 457. At pg 458, Chua J said:

The plaintiff complained that (1) the defendant had permitted its contractors employed for the construction of Grange Heights to use the right of way for access into and egress from Lot 561; (2) the defendant's contractors had excavated the side table of the metal road on the right of way and the earth excavated was removed to the Grange Heights site for filling purposes; (3) the defendant was in the course of making up a metal road which led from Grange Heights in the direction of the right of way and the defendant intended to link up the road with Grange Road through the right of way; (4) the defendant was in the course of selling the apartments in Grange Heights, and in its brochure regarding Grange Heights the defendant represented that it intended to give the purchasers access to Grange Heights at three points, one of them from Grange Road through the right of way.

The plaintiff now claims against the defendant for:

(1) A declaration that the defendants Hong Leong Holdings Ltd as the owners of Lot 561 of TS XXI by their directors, officers, servants, workmen or agents or any of them or otherwise howsoever are not entitled to use, nor as such owners to permit or invite any persons or purchasers of apartments in the Grange Heights to use Lot 111³¹, of TS XXI, District of Claymore, Singapore or any part thereof for the purpose of passing either to or from Grange Road, Singapore aforesaid.

(2) An injunction to give effect to the said declaration restraining the defendants as the owners of Lot 561 of TS XXI by their directors, officers, servants, workmen or agents or any of them or otherwise howsoever from so using and inviting their purchasers and other persons so to use the said passage.

(3) Damages.

14 I should mention that in the First Action/1974, Lee Tat was making its claim as owner of two of the dominant tenements. As mentioned above, it acquired lot 111-31 only on 17 January 1997.

15 In the action before me, Lee Tat referred to the evidence of one Steven Ang a planner in Development Control Division, Public Works Department which was given in the First Action/1974 before Chua J on or about 20 November 1975. The relevant part of the notes of evidence in that action stated:

I have the file of my department in relation to the development of Grange Heights. My department received a letter from the developers' architects on 25th August 1970... The architect enclosed a letter from Drew & Napier regarding the right of way through Lot 111-31. They asked us to exclude Lot 111-31 from the development.

Xxd by Mr Lee.

(L: Ex. D.1 2nd para)

Yes the original submission included Lot 111-31 in the development and Lot 111-31 is taken into the calculation of the density. Yes the purpose of this letter was to tell us to exclude Lot 111-31 from the calculation for density and that they were prepared to pay more development charges. The approval of the plans included Lot 111-31 but it was subsequently amended and approval was given on 13th March 1975 and this excluded Lot 111-31. The amended plan does not include Lot 111-31 as an excess [*sic*] road. The first amended plan was submitted on 27th October 1970

but it included Lot 111-31. The amended plan excluding lot 111-31 as an access road was submitted on 2nd August 1974 and the amended plan was approved on 13th March, 1975.

Yes as from 13th March 1975 Lot 111-31 as excess [sic] road is completely excluded from the development.

Yes the only access road to Grange Heights is now through River Valley Road and through St. Thomas Walk.

We received a letter dated 30th July 1974 from plaintiffs' former solicitors Lee & Lee pointing to us that the developers have wrongly included Lot 111-31 in their development that Lot 111-31 does not belong to the developers. (L: It is at AB.6 p 1). We must have informed the developers of this and the developers submitted an amended plan excluding Lot 111-31.

16 I was of the view that this evidence did not assist Lee Tat in the present action for the following reasons.

17 First, it suggested that perhaps the relevant authority had not "rejected" Hong Leong's original plan as contended by Lee Tat. Steven Ang's evidence suggested that perhaps it was Hong Leong who chose not to pursue its original plan for the road on lot 111-31 when Lee Tat objected and Hong Leong decided in the face of such objection to amend its plan accordingly. Accordingly, there might have been no ruling by the relevant authority on the point. It is also unclear whether Hong Leong had relied on its express right of way over lot 111-31 in its communication with the relevant authority then as the emphasis appeared to be on the fact that Hong Leong was not the owner of lot 111-31.

18 More importantly, even if the relevant authority had made a ruling then, the fact, as I have mentioned, was that there was still a live issue before the court even after the Notice of Grant of Written Permission dated 13 March 1975 was given on Hong Leong's revised plan.

19 The fact that Steven Ang's evidence was before Chua J in 1975 was worse for Lee Tat's position in the present action because Lee Tat could not now claim that Chua J did not have the full facts before him. Indeed at pg 460 at I Chua J noted that:

"As from March 1975 Lot 111³¹ as an access road is excluded from [Hong Leong's] development"

20 Earlier at pg 457 at I Chua J also noted that it was not in dispute that the owners of lots 111-32, 111-33 (ie Lee Tat) and 111-34 (ie Hong Leong) had vested in them a right of way over lot 111-31.

21 Chua J found that there was no substantial interference of Lee Tat's enjoyment of its right of way as owner of two dominant tenements and dismissed its claim with costs. It seemed to me that that decision must be on the premise that Hong Leong was still entitled to enjoy the right of way. Indeed, as mentioned above, Chua J had noted that the right of way was not in dispute.

22 The appeal by Lee Tat to the Court of Appeal was dismissed, see *Collin Development (Pte) Ltd v Hong Leong Holdings Ltd* [1975-1977] SLR 202.

23 The development was completed sometime in 1976 (according to the judgment of Justice Punch Coomaraswamy which I shall come to) and the MC was constituted pursuant to the relevant legislation. However, about 13 years later on 25 April 1989, Lee Tat caused to be erected an iron

gate across the Grange Road end of lot 111-31 and a fence across the Grange Heights end. This interfered with the residents' use of lot 111-31 for gaining access to and from Grange Road.

24 Consequently, the MC commenced Originating Summons No. 404 of 1989 ("the Second Action/1989") to seek an injunction and damages against Lee Tat.

25 In the Second Action/1989, Coomaraswamy J had granted an interim injunction against Lee Tat at an opposed ex parte hearing. Thereafter, Lee Tat applied to set aside the interim injunction. That application was heard together with the MC's substantive originating summons by Coomaraswamy J.

26 The judge noted at pg 1194 at G/H that it was not in dispute that the MC had a right of way over lot 111-31. He again noted at pg 1195 at D that it was common ground that the MC as the owner of lot 111-34 and Lee Tat as the owner of lots 111-33 and 111-32 had a right of way over lot 111-31. Lee Tat's application to set aside the interim injunction was dismissed and the MC's substantive action was allowed, see *Management Corporation of Grange Heights Strata Title No. 301 v Lee Tat Development Pte Ltd* [1990] SLR 1193.

27 Lee Tat's appeal to the Court of Appeal was dismissed in 1992, see *Lee Tat Development Pte Ltd v Management Corporation of Grange Heights Strata Title No. 301*[1992] 2 SLR 865.

28 As mentioned, Lee Tat acquired lot 111-31 on 17 January 1997.

29 On 4 June 2004, the MC commenced the present action ie Originating Summons No. 706 of 2004 ("the Third Action/2004" or "the present action"). The hearing of the present action was deferred till the outcome of yet another action this time filed by Lee Tat in Originating Summons No. 825 of 2004 ("the Fourth Action/2004"). In the Fourth Action/2004, the issue was whether the right of way claimed by the MC could be used by the residents of Grange Heights to reach the former lot 111-34 and then to cross over to the former lot 561 ("the Issue"). Grange Heights had been developed on those two plots of land which were amalgamated as I have said.

30 I heard the Fourth Action/2004 and I decided that the Court of Appeal had already ruled on the Issue in favour of the MC in the Second Action/1989. Hence, Lee Tat was bound by that decision, see *Lee Tat Development Pte Ltd v Management Corporation of Grange Heights Strata Title No. 301* (No. 2) [2004] 4 SLR 828. In the Fourth Action/2004, Lee Tat was also the owner of lot 111-31 as well as lot 111-32 and 111-33.

31 Lee Tat's appeal in the Fourth Action/2004 to the Court of Appeal was dismissed by a majority of that court, see *Lee Tat Development Pte Ltd v Management Corporation of Grange Heights Strata Title No. 301* (No. 2) [2005] 3 SLR 157.

32 Coming back to the Third Action/2004, I had intimated to Lee Tat's counsel that in the light of the various court decisions, the parties had to proceed on the basis that the MC still had a right of way over lot 111-31. While Lee Tat's lead counsel Mr Tan Cheng Han SC assured me that he accepted this premise, his co-counsel Mr Balasubramaniam said that although there was a right of way, the user thereof could not be allowed. This was a disingenuous argument. What was the point of the MC having a right of way if it could not use it? Mr Balasubramaniam also submitted that Hong Leong had given up the right of way when it amended its plan which was subsequently approved. The submissions of Mr Balasubramaniam reflected the true position Lee Tat was taking before me in the Third Action/2004. Notwithstanding the various decisions I have referred to, Lee Tat was not accepting that the MC still had and could enjoy the right of way. Lee Tat's emphasis on what had transpired between Hong Leong and the relevant authority in the 1970s, which I shall refer to as "the

events in the 1970s", demonstrated that it wanted to litigate the existence of the right of way. In my view, it was not entitled to do so for the reasons I have stated and which I will now elaborate on:

(a) After Hong Leong had revised its plan there was still litigation on the right of way in the First Action/1974. The events in the 1970s, which Lee Tat was emphasizing before me, had been raised before Chua J. On this point, Lee Tat's director Mdm Ching Mun Fong had said in paragraph 12 of her first affidavit filed on 1 June 2004 for the present action that Lee Tat "now" have evidence that Hong Leong in fact tried to include lot 111-31 in planning submissions for a road. The crux of this assertion was untrue. Whether or not Lee Tat had, in the 1970s, the very same documents that it was in possession of from 2004, it was clear to me that it knew enough in the 1970s about Hong Leong's earlier plan and the amendment thereof after Lee Tat itself had objected to a road on lot 111-31. Neither the MC's present counsel nor Lee Tat's present counsel elaborated on the submissions which were made before Chua J. For example, did Lee Tat then assert that the right of way had been given up by Hong Leong and that the MC was bound by this? If it had done so, it would be obvious that it could not raise the same issue again in the present action. However, even if it had not done so, that would still not help Lee Tat as it was obliged to raise whatever arguments that were available to it then. Hong Leong's right of way was, according to Chua J's judgment, not disputed. Furthermore, Chua J's ruling was implicitly on the basis that Hong Leong could still enjoy the right of way. Likewise for the ruling of the Court of Appeal in the First Action/1974.

(b) It was not clear to me whether in the Second Action/1989, Lee Tat had also relied on the events in the 1970s. There was no reference to such events in the judgment of Coomaraswamy J who also noted that the MC's right of way was not in dispute. The decision of Coomaraswamy J to dismiss the application to discharge the interim injunction and allow the substantive action must have been on the basis that the MC was still entitled to enjoy the right of way over lot 111-31. Likewise for the decision of the Court of Appeal in the Second Action/1989.

(c) In the Fourth Action/2004, the Issue was different because it concerned the question whether the right of way could be used not only to gain access to the former lot 111-34 but to then cross over from the former lot 111-34 to the former lot 561. However, the Issue was still on the premise that the existence and enjoyment of the right of way per se was not in dispute. In the Fourth Action/2004, Mdm Ching's supporting affidavit filed on or about 26 June 2004 complained, inter alia, about the events in the 1970s but did not specifically take up the point that Hong Leong had given up the right of way and that this was binding on the MC. Neither did Lee Tat's counsel take up that point, then.

33 I should add that there were various committal proceedings taken out against Lee Tat and/or Mdm Ching on the basis that Lee Tat was interfering with the right of way. Lee Tat's response to such proceedings and the court's rulings thereon were also on the basis that the MC was entitled to enjoy the right of way. The committal proceedings are referred to in paragraphs 18 to 21 of the judgment of Justice Belinda Ang who delivered the majority judgment of the Court of Appeal in the Fourth Action/2004.

34 In the circumstances, I was of the view that it was not the MC that was trying to get through the back door something that had been rejected by the relevant authority in the events in the 1970s. It was Lee Tat who was conveniently ignoring the various decisions in its submissions before me in the present action.

35 As for the right to repair and maintain, the case-law authorities submitted for the MC clearly established its entitlement as the owner of a dominant tenement to repair and maintain the right of

way at its own expense, see *Newcomen v Coulsen* [1877] 5 Ch D 133, *Mills v Silver* [1991] Ch 271 and *Donald et al v Friesen et al* [1990] 72 OR (2d) 205. This right is also mentioned in various textbooks like *Principles of Singapore Land Law* 2nd Edition by Tan Sook Yee at pg 529 to 530 and *Land Law* by Peter Butt, 4th Edition at pg 414. The right also extends to making improvements.

36 This brings me to another point. Lee Tat asserted that the right of way had not been used for vehicular traffic and perhaps the right of way should not be used by vehicles. The MC disputed that the right of way had not been used for vehicular traffic. In any event, the grant of the right of way expressly referred to vehicular traffic and the case-law authorities submitted for the MC were to the effect that a grantee may make as much or as little use of his right as he pleases without affecting his substantive right as such a right does not depend on user but on an express grant, see *Alvis v Harrison* [1990] 62 P & CR 10 and *Bulstrode v Lambert* [1953] 2 All ELR 728. Lee Tat did not contest the authorities submitted for the MC for this point or for the right to repair and maintain.

37 In the circumstances, it was immaterial for the purpose of the present action whether the right of way had been used for vehicular traffic or not. Nevertheless, I would like to say something about Lee Tat's assertion as it may give rise to other disputes in the future. The assertion was based on paragraphs 10 and 24 of the judgment of Ang J in the Fourth Action/2004. Paragraph 10 stated:

...The Court of Appeal found that the residents of Grange Heights had, since 1976, only been using Lot 111-31 as a foot path and they were allowed to continue this activity. Lee Tat was not entitled to erect the gate and fence.

Paragraph 24 stated:

The residents of Grange Heights had, since 1976, only been using lot 111-31 as a footpath and not for vehicular traffic. (That we understand is still the position in the current proceedings).

Both paragraphs were in turn referring to the judgment of the Court of Appeal in the Second Action/1989 delivered by Justice Goh Joon Seng. He said at pg 870 to 871:

The residents of Grange Heights have not subjected Lot 111-31 to such heavy vehicular traffic as to substantially interfere with the right of way of the defendants. In fact, they do not use it for vehicular traffic at all but only as a footpath.

In his affidavit filed in these proceedings on 27 April 1989, RM Ghadiali, the chairman of the plaintiffs, stated:

The manner in which the right of way over the said servient tenement has not changed as a result of the amalgamation. The servient tenement was used as a footpath to and from Grange Road and since the amalgamation continues to be used as such a footpath.

...

38 I will divide the overall time frame between 1974 to 2006 into different segments to avoid confusion.

39 It seemed to me that when the First Action/1974 was commenced, there was vehicular traffic using the right of way even if that traffic then was probably from the contractor and sub-contractors and other persons involved in the development of Grange Heights. Indeed, such user was one of Lee Tat's complaints, see [13] above. Chua J also said at pg 460 that he had inspected the right of way

and found the road therein to be in fairly good condition. He was of the view that even if lot 111-31 was to be used as an access road between Grange Road and Grange Heights, it was highly improbable that vehicular traffic would be so heavy as to substantially interfere with Lee Tat's own enjoyment of the right of way.

40 In the Second Action/1989, the MC was seeking an injunction against Lee Tat as I have mentioned. It was due to the first affidavit of Mr Ghadiali filed on 27 April 1989 in that action that Goh J said that the right of way was not being used for vehicular traffic. However, Goh J did not actually say that the right of way had not been used for vehicular traffic "since 1976". The reference by Ang J in the Fourth Action/2004 to the absence of vehicular traffic "since 1976" may have been based on the same affidavit of Mr Ghadiali where he asserted that the manner in which the right of way had been used had not changed as a result of the amalgamation of the former lot 111-34 and lot 561. The amalgamation was apparently in 1976 according to his same affidavit.

41 Later, in an affidavit filed on or about 4 March 2004 in the Second Action/1989 in the context of committal proceedings arising from certain conduct of Lee Tat in or about early 2004, Mr Ghadiali took the position that his earlier affidavit of 27 April 1989 was being taken out of context by Lee Tat and was never intended to exclude the use of the right of way by vehicular traffic. This was supported by an affidavit of Ivan Steinbock filed also on or about 4 March 2004 stating that he had moved to Grange Heights in 1990 and had for about 13 years since drove through the road on lot 111-31. He stopped driving in 2003 when the road deteriorated substantially.

42 It is true that that part of Mr Ghadiali's affidavit of 27 April 1989, as cited by Goh J, did not explicitly say that the right of way was used as a footpath "only" but that was the impression given. On the other hand, the subsequent affidavit of Mr Ghadiali and the affidavit of Mr Steinbock of about 4 March 2004 presented a different picture. The MC's position as reflected in those later affidavits was repeated in Mr Ghadiali's affidavit filed on or about 19 July 2004 in the Fourth Action/2004. Whether all those 2004 affidavits are to be accepted or not is another matter which may have to be looked at in greater detail if and when the point about the use of the right of way by vehicular traffic becomes material.

43 In view of the affidavit of Mr Steinbock, it may be that after 2003, all vehicular traffic along the right of way had stopped due to the deteriorating condition of the road. That was not an issue I had to decide in the Fourth Action/2004 or in the present action. According to Ang J's judgment in the Fourth Action/2004, it appears to have been accepted by the parties that the right of way was not being used by vehicles, for whatever reason, in early 2005 when they were before the Court of Appeal then.

44 There was also initially a dispute as to whether regulatory approval was required for the proposed works. Eventually the MC was prepared to accept whatever order the court was inclined to make in its favour subject to such regulatory approval. Accordingly, I made the declaration sought subject to such approval, as I have said above.

45 As Lee Tat is the owner of lot 111-31, it is likely that applications for such approval will require it to endorse the applications before they are even considered by the relevant authority. However, Lee Tat argued that there was no evidence that the owner's signature would be required for any such application. This was incorrect. For example, paragraph 2f of the affidavit of Mr Liew Kian Heng, its own Qualified Professional Engineer, filed on 24 October 2005 in the present action, said that the owner of lot 111-31 must be informed and must agree to apply for any proposal on street works which included the proposed works by the MC. In any event, the order I was intending to make was on the premise that Lee Tat's endorsement was required. If it was not, then it need not endorse. Accordingly

I directed Lee Tat to endorse all such applications but allowed it to make representations to any relevant authority. The situation is not satisfactory but that is the situation which arises when the owner of a servient tenement is not only uncooperative but obstructive and if regulatory approval is required to repair or maintain or improve a right of way.

46 Lee Tat also submitted that no order should yet be made requiring it to provide its endorsement since the MC should first seek its endorsement on any relevant application which the MC had not done. I was of the view that in the light of the many disputes, it was obvious that Lee Tat was not going to co-operate and it was pointless to defer making an order for its endorsement until it actually refused to do so.

47 As regards the dimensions of the proposed road, Lee Tat's only objection was to the width thereof. The MC's proposed works was for a road to be 6 metres in width. Lee Tat submitted it should be 3 metres in width. Yet, in the first affidavit of Mdm Ching filed on 28 June 2004 in the present action, she said at para 10 (i) that the right of way cannot exceed 18 feet, which was less than 6 metres. She did not then assert that the right of way was only 3 metres although in her second affidavit filed on 24 October 2005 in the present action, she alleged at paragraph 7 thereof that the existing pathway was 4.7 metres at its widest. In any event, the right of way comprised in the Reserve for Road, as opposed to the existing pathway or the proposed road works, is more than 18 feet at its narrowest point. As stated in the judgment of the Court of Appeal in the First Action/1974 at pg 202:

Lot 111-31 is a long narrow but irregular strip of land containing an area of 9,274 sq ft. It is a reserve for road, is approximately 280 ft long, at its widest point is approximately 60 ft and at its narrowest point is approximately 21 ft. At present it contains a metalled road the width of which varies from 11 to 16 ft.

48 Also, in the First Action/1974, the Court of Appeal noted at pg 203 at H, that Hong Leong was proposing to metal the existing road to a width of 18 feet throughout its entire length.

49 The width of the road which the MC intended to repair and/or maintain was still no more than the width of the right of way at its narrowest point because 6 metres is about 19.07 feet, still less wide than 21 feet. Naturally, the proposed road must not go beyond the boundaries of the right of way but, subject to that, I saw no reason why it should not be 6 metres wide.

50 On yet another point, paragraph 13 of Mdm Ching's affidavit filed on 24 October 2005 in the present action said that Lee Tat would not have purchased lot 111-31 if a road was already on the land or if a road could have been built on the land. I found this to be an unmeritorious assertion. Lee Tat was aware of the various court decisions in the First Action/1974 and the Second Action/1989 before it purchased lot 111-31 on 17 January 1997.