

DALAM MAHKAMAH TINGGI DI MALAYA DI KUALA LUMPUR

BAHAGIAN SIVIL

SAMAN PEMULA NO. S2-24-1984-2004

Dalam perkara perjanjian jual beli di antara Plaintif dan Defendan bagi Sri Manja Court Condominium, Batu 6 ½, Jalan Kelang Lama, 46009 Petaling Jaya, Selangor.

Dan

Dalam perkara Akta Hakmilik Strata 1985.

Dan

Dalam Perkara Aturan 29 Kaedah-Kaedah Mahkamah Tinggi Kuala Lumpur 1980

ANTARA

1. PAK SOW LOON (P)
2. KOK YIT WAH
3. PANG MEY YOCK (P)
4. YONG WAI HO
5. OH SOON CHUAN
6. MOI SOOI FONG (P)

.....PLAINTIF

DAN

1. SUSUNAN BARU SDN BHD
2. SUSUSNAN BARU MANAGEMENT SERVICES SDN BHD

.....DEFENDAN

GROUND OF JUDGMENT

This is the application by the Plaintiffs for:

- a) a mandatory injunction for an order that the 1st defendant to apply for the issue of strata title in accordance to the Strata Title Act 1985 in relation to a building known as the SRI MANJA COURT which consists of 480 units of kondominium (said building) which was built on a piece of Land in Petaling Jaya;
- b) a declaration that the management fees for the said building for the year 1999 until 2003 amounting to RM 768, 000 to be borne by the 1st Defendant and that the 1st Defendant do pay the said amount to Account No. 2 of the 2nd Defendant pending the establishment of the Management Corporation for the said building as envisaged under section 39 and 64 of the Strata Title Act 1985;
- c) a declaration that pending the establishment of the Management Corporation as envisaged under section 39 and 64 of the Strata Title Act 1985 for the said building, any transfers of monies from Account No. 1 of Susunan Baru Management Services Sdn Bhd to Account No 2 of Susunan Baru Management Services Sdn Bhd, after 2003 for the management fees which was imposed on 2nd Defendant pending the establishment of the management Corporation as envisaged under section 39 and 64 of the Strata Title Act 1985, is to be borne by the 1st Defendant.

- d) general damages for the breach of contract committed by the Defendants;
- e) Interests at the rate of 8 % on the judgement sum from the date of this Originating Summons until full realization; and
- f) costs to be paid forthwith.

Brief Facts

The 1st Defendant is the owner and the developer of a housing project known as Sri Manja Court which consists of 7 blocks of 480 condominiums which was built on a piece of land located in Petaling Jaya, Selangor. The 2nd defendant is the management body that was appointed by the 1st Defendant to manage and maintain the said building and the common facilities. Plaintiffs are purchasers of the condominiums and had entered into a Sales and Purchase Agreement (SPA) with the with the 1st Defendant.

Under clause 10 of the SPA the 1st defendant had agreed to apply for the subdivision of the land so as to obtain a separate strata title for the individual parcel in the building.

Under clause 16 (1) of the SPA, the purchasers shall be liable to pay service charges for the maintenance and management of the common property prior to the setting up of the management Corporation under the Strata Title Act 1985.

The Plaintiffs alleged that the 1st Defendant had breached its obligations as developer pursuant to section 20 of the Strata Title Act 1985 when it had failed to apply for the issuance of strata title

within 6 months from the date of Certificate of Completion which was issued on 21.3.1997.

As a consequent upon such breach by the 1st Defendant, the Management Corporation could not be established to manage and maintain the said housing project. Nevertheless, the management and the maintenance of the said housing project had been carried out by the 2nd Defendant, who had set up 2 accounts, i.e. Account No 1 for the collection of service charges and Account No. 2 for the collection management fees from Account No. 1.

The Plaintiffs alleges that, if the 1st Defendant had applied for the issuance of the strata title within 6 months from the date of the Certificate of Completion as envisaged under section 20 of the Strata Title Act 1985, a Management Corporation would have been established to manage and maintain the said building and the management fee would not have to be paid to the 2nd Defendant.

The Court's Findings:

Issue: whether the 1st Defendant had breached its obligation under the Strata Title Act 1985

The obligation on the 1st Defendant to apply for the issuance of the strata title is provided under section 7 of the Strata Title Act 1985. This particular section does not impose any time limit for the proprietor of any land and there are various procedures to be complied in making the application. However it has to be made within a reasonable time.

From the affidavits filed by the 1st Defendants in enclosure 3 and 9, it shows that the 1st Defendant has taken efforts and steps towards the application of obtaining the strata title. The delay has been explained in detail in enclosure 3.

Therefore it does not serve any purpose now for a mandatory injunction to be granted against the 1st Defendant.

Prayers (b) and (c)

The Plaintiff have prayed under paragraph (b) for a declaration that the management fees for the said building for the year 1999 until 2003 amounting to RM 768, 000 to be borne by the 1st Defendant. From the accounts which have been exhibited, all of the amounts which were paid by the Plaintiffs were to the 2nd Defendant in a lump sum. The 1st Defendant had not collected any money.

The Plaintiffs failed to show what are the amounts which they ought to pay to the Management Corporation had it been established in the event the strata title is obtained, as compared to the amount which they have been paying to the 2nd Defendant. Are there losses incurred by the Plaintiffs as a result of the 1st Defendant's failure to obtain the strata title and set up the management corporation? These losses have not been shown by the Plaintiffs.

A further point to note is that whatever payments made by the Plaintiffs to the 2nd Defendant would have been used for the maintenance of the building and the common areas. These would include payment to workers to maintain and upkeep of the building and the common surrounding areas of the building.

Plaintiffs does not represent all the purchasers which would have contributed to the management fees.

The Plaintiffs in this case consists of only 5 persons out of 480 purchasers and they cannot claim to be representing the other purchasers to state the stand as far as the RM 768 000 is concerned. The amount of RM 768 000 consists not only of the payment made by the Plaintiffs, but inclusive of the other 480 purchasers. Therefore it is not appropriate for this court to make an order which may affect others who are not parties to this suit.

Based on the above reasons the application by the Plaintiffs is dismissed with costs.

Datin Zabariah Mohd Yusof
Tarikh : 24.6.2009

Bagi pihak Plaintiff : Encik L.H. Yap
(Tetuan Edwin Lim & Suren)

Bagi pihak Defendan : Encik Jasvinjit Singh
(A.J Ariffin & Co)