Perbadanan Pengurusan Marina Crescent v Tribunal Pengurusan Strata, Putrajaya & Anor and another case

HIGH COURT (KUALA LUMPUR) — JUDICIAL REVIEW NOS WA-25–24–02 OF 2023 AND WA-25–25–02 OF 2023
AMARJEET SINGH J
3 SEPTEMBER 2024

Civil Procedure — Judicial review — Application for — Application for judicial review against decision of Strata Management Tribunal in only allowing claims to recover outstanding statutory charges against purchaser and in dismissing claims against registered owner/developer — Whether s 121 of Strata Management Act 2013 ousted High Court's supervisory jurisdiction of reviewing decisions of inferior tribunals — Whether registered proprietor of strata property who had entered into sale and purchase agreement to sell property and who had received full payment of purchase price was liable for maintenance charges under Strata Titles Act 1985 and Strata Management Act 2013 — Whether meaning of 'proprietor' under s 52 of Strata Management Act 2013 was confined to that section only — Whether Strata Management Tribunal committed illegality and/or irrationality when taking into account s 52(1) and (8) of Strata Management Act 2013 and concept of 'bare trustee' — Strata Management Act 2013 ss 2, 52(1), (8), 60(4), 61(4), 78 & 121 — Strata Titles Act 1985 s 4

The applicant as the management corporation of Marina Crescent Condominium ('the condominium') had brought two claims before the Strata Management Tribunal at Putrajaya ('SMT') against the registered owner (the registered owner was also the developer of the condominium) ('the second respondent') as well as the purchasers of Units 3A-A, 3A-B and 3A-C of the condominium to recover outstanding statutory charges under ss 60(4) and 61(4) of the Strata Management Act 2013 ('the SMA') totalling RM288,602.18. The first claim was in relation to Unit 3A-A whilst the second claim was in respect of Units 3A-B and 3A-C. The SMT dismissed the applicant's claims against the registered owner but allowed the claims against the purchasers. Aggrieved, the applicant filed the present judicial review applications for an order of certiorari to quash the SMT's decision in dismissing the claim against the registered proprietor and for the matters to be remitted back to the SMT for reconsideration upon the present court determining the following question of law in the affirmative or negative: whether the registered proprietor of a strata property who had entered into a sale and purchase agreement to sell the property and who had received full payment of the purchase price, was liable for maintenance charges under the Strata Titles Act 1985 ('the STA') and the SMA ('the question of law').

Held, allowing the judicial review application:

(1) The court was unable to accept the registered owner's submission that the only remedy was to set aside the decision of the SMT under s 121 of the SMA. Section 121 of the SMA did not oust the High Court's supervisory jurisdiction of reviewing decisions of inferior tribunals. More importantly, it was the function of the supervisory jurisdiction of the High Court to ensure that inferior tribunals and other decision-making bodies did not commit errors of law that would necessitate intervention (see paras 14–15).

(2) Misconstruing a provision of the statute was an error of law necessitating curial intervention by way of judicial review. The SMT, being an inferior tribunal exercising its quasi-judicial function, had no jurisdiction to commit an error of law. In the instant case, the SMT not only misconstrued a statutory provision ie s 52 of the SMA but also failed to consider relevant provisions ie ss 60, 61, and 78 of the SMA. On the other hand, the situations where s 121(1) of the SMA applied were very specific to three situations: (a) where the SMT had not acted fairly and impartially; (b) where the SMT failed to deal with the relevant issues which was a deprivation of the right to be heard; and (c) where the award of the SMT was uncertain or ambiguous. In the court's view, the complaint made by the applicant did not fall into either of these situations and even if it did the applicant was not prevented to pursue the remedy of judicial review. In light of the above reasons, the court held that the remedy of judicial review was properly invoked (see paras 17–19).

(3) The relevant provisions that imposed liability to pay the outstanding amounts in the maintenance account and the sinking fund account were ss 60(4) and 61(4) of the SMA. The word 'proprietor' was, according to s 2 of the SMA had the meaning assigned to it in s 4 of the STA. In s 4 of the STA, the word 'proprietor' was defined as '… a person or body for the time being registered as the proprietor of a parcel …'. Thus, the person from whom the unpaid contributions were to be collected from was the person or body registered as the proprietor of the parcel or unit. In the instant proceedings, it was not disputed that the body registered as the proprietor was the second respondent. In view of the plain and unambiguous provisions, the concept of 'bare trustee' did not apply. Under the said provisions the person who was statutorily identified was the person who was liable. To say otherwise would be adding words into the provisions which were not intended by the legislature (see paras 33–36).

(4) The error of law the SMT committed was to not accept or disregard the applicant's case and submissions on ss 60(4) and 61(4) of Chapter 3 of Part V of the SMA which were applicable in the case before it and

instead relied on s 52(1) and (8) of Chapter 2 of Part V of the SMA which were clearly not applicable on the facts of the case. The SMT had committed the fatal error of interpretation when it considered and interpreted s 52(1) and (8) in isolation from the rest of the sections in Chapter 2 of Part V of the SMA ie ss 47–55. Chapter 2 concerned the phase when the developer and not the management corporation was to manage and maintain the subdivided building. Thus, s 52 concerned the duty of a developer and not the management corporation. The meaning of 'proprietor' under s 52 of the SMA was therefore confined to that section only (see paras 37, 39–41 & 44).

(5) For the above reasons, the court held that the SMT committed an error of law of the illegality and/or irrationality type when taking into account s 52(1) and (8) of the SMA and the concept of 'bare trustee'. The court answered the question of law in the affirmative. Since the determination by the SMT was either in the affirmative or in the negative, in view of the affirmative answer, the decision of the SMT on this point was quashed and the matter remitted back to the SMT to hold the registered proprietor liable for the outstanding amounts in both claims (see paras 45 & 47).

[Bahasa Malaysia summary

Pemohon sebagai perbadanan pengurusan bagi Marina Crescent Condominium ('kondominium tersebut') telah memfailkan dua tuntutan di hadapan Tribunal Pengurusan Strata di Putrajaya ('TPS') terhadap pemilik berdaftar (pemilik berdaftar juga merupakan pemaju kondominium tersebut) ('responden kedua') serta pembeli-pembeli Unit 3A-A, 3A-B dan 3A-C kondominium tersebut untuk mendapatkan semula bayaran berkanun tertunggak di bawah ss 60(4) dan 61(4) Akta Pengurusan Strata 2013 ('APS') berjumlah RM288,602.18. Tuntutan pertama adalah berkaitan Unit 3A-A manakala tuntutan kedua adalah berkenaan Unit 3A-B dan 3A-C. Tribunal Pengurusan Strata menolak tuntutan-tuntutan pemohon terhadap pemilik berdaftar tetapi membenarkan tuntutan-tuntutan terhadap pembeli-pembeli. Terkilan, pemohon memfailkan permohonan semakan kehakiman semasa untuk mendapatkan perintah certiorari untuk membatalkan keputusan TPS dalam menolak tuntutan terhadap pemilik berdaftar dan untuk kes tersebut dikembalikan kepada TPS untuk dipertimbangkan semula setelah mahkamah semasa menentukan persoalan undang-undang berikut secara afirmatif atau negatif: sama ada pemilik berdaftar harta strata yang telah memeterai perjanjian jual beli untuk menjual harta tersebut dan yang telah menerima bayaran penuh harga belian, bertanggungjawab untuk bayaran penyelenggaraan di bawah Akta Hakmilik Strata 1985 ('AHS') dan APS ('persoalan undang-undang tersebut').

Diputuskan, membenarkan permohonan semakan kehakiman:

(1) Mahkamah tidak dapat menerima hujahan pemilik berdaftar bahawa satu-satunya remedi adalah mengenepikan keputusan TPS di bawah s 121 APS. Seksyen 121 APS tidak menghapuskan bidang kuasa penyeliaan Mahkamah Tinggi untuk menyemak keputusan tribunal-tribunal bawahan. Lebih penting lagi, adalah menjadi fungsi bidang kuasa penyeliaan Mahkamah Tinggi untuk memastikan tribunal-tribunal bawahan dan badan-badan pembuat keputusan lain tidak melakukan kesilapan undang-undang yang memerlukan campur tangan (lihat perenggan 14–15).

(2) Salah tafsir peruntukan statut merupakan kesilapan undang-undang yang memerlukan campur tangan mahkamah melalui semakan kehakiman. Tribunal Pengurusan Strata, sebagai tribunal bawahan yang menjalankan fungsi separa kehakimannya, tidak mempunyai bidang kuasa untuk melakukan kesilapan undang-undang. Dalam kes semasa, TPS bukan sahaja salah mentafsir peruntukan berkanun iaitu s 52 APS tetapi juga gagal untuk mempertimbangkan peruntukan-peruntukan yang berkaitan iaitu ss 60, 61, dan 78 APS. Sebaliknya, situasi di mana s 121(1) APS terpakai adalah sangat khusus kepada tiga situasi: (a) di mana TPS tidak bertindak secara adil dan saksama; (b) di mana TPS gagal menangani isu berkaitan yang merupakan penafian hak untuk didengar; dan (c) apabila award TPS tidak pasti atau samar-samar. Pada pandangan mahkamah, aduan yang dibuat oleh pemohon tidak termasuk dalam salah satu daripada situasi ini dan jika ya pun, pemohon tidak dihalang untuk meneruskan remedi semakan kehakiman. Berdasarkan alasan-alasan di atas, mahkamah berpendapat bahawa remedi semakan kehakiman telah dibangkitkan dengan betul (lihat perenggan 17–19).

(3) Peruntukan-peruntukan berkaitan yang mengenakan liabiliti untuk membayar jumlah tertunggak dalam akaun penyelenggaraan dan akaun kumpulan wang penjelas adalah ss 60(4) dan 61(4) APS. Perkataan 'pemilik' adalah, menurut s 2 APS mempunyai makna yang diberikan kepadanya dalam s 4 AHS. Dalam s 4 AHS, perkataan 'pemilik' ditakrifkan sebagai '... orang atau badan yang pada masa itu didaftarkan sebagai pemilik sesuatu petak ...'. Oleh itu, orang yang daripadanya caruman yang tidak dibayar tersebut akan dikutip ialah orang atau badan yang didaftarkan sebagai pemilik sesuatu petak atau unit tersebut. Dalam prosiding semasa, tidak dipertikaikan bahawa badan yang berdaftar sebagai pemilik adalah responden kedua. Memandangkan peruntukan yang jelas dan nyata tersebut, konsep 'bare trustee' tidak terpakai. Di bawah peruntukan-peruntukan tersebut, orang yang dikenal pasti secara berkanun adalah orang yang bertanggungjawab. Untuk mengatakan sebaliknya akan menambah perkataan ke dalam peruntukan-peruntukan tersebut yang tidak dimaksudkan oleh badan perundangan (lihat perenggan 33–36).

(4) Kesilapan undang-undang yang dilakukan TPS adalah untuk tidak menerima atau mengabaikan kes dan penghujahan pemohon berkaitan ss 60(4) dan 61(4) Bab 3 Bahagian V APS yang terpakai dalam kes dihadapannya dan sebaliknya bergantung pada s 52(1) dan (8) Bab 2 Bahagian V APS yang jelas tidak terpakai pada fakta kes. Tribunal Pengurusan Strata telah melakukan kesilapan tafsiran yang memudaratkan apabila ia menimbangkan dan mentafsir s 52(1) dan (8) secara berasingan daripada seksyen-seksyen lain dalam Bab 2 Bahagian V APS iaitu ss 47–55. Bab 2 adalah berkenaan dengan fasa apabila pemaju dan bukan perbadanan pengurusan mengurus dan menyelenggara bangunan yang dipecah bahagi. Oleh itu, s 52 melibatkan tugas pemaju dan bukannya perbadanan pengurusan. Maksud 'pemilik' di bawah s 52 APS adalah terhad kepada seksyen itu sahaja (lihat perenggan 37, 39–41 & 44).

(5) Atas sebab-sebab di atas, mahkamah memutuskan bahawa TPS melakukan kesilapan undang-undang jenis kepenyalahan undang-undang dan/atau ketidakrasionalan apabila mengambil kira s 52(1) dan (8) APS dan konsep 'bare trustee'. Mahkamah menjawab persoalan undang-undang tersebut secara afirmatif. Memandangkan penentuan oleh TPS adalah sama ada dalam afirmatif atau negatif, memandangkan jawapannya ialah afirmatif, keputusan TPS mengenai kes ini telah dibatalkan dan kes tersebut dikembalikan kepada TPS untuk memutuskan bahawa pemilik berdaftar adalah bertanggungjawab ke atas amaun tertunggak dalam kedua-dua tuntutan (lihat perenggan 45 & 47).]

Cases referred to

Brightvite Sdn Bhd v Pantai Towers Management Corp and another appeal [2018] MLJU 709; [2019] 2 CLJ 439, CA (refd)

Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd [2010] 6 MLJ 1; [2010] 8 CLJ 629, FC (refd)

Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union [1995] 2 MLJ 317; [1995] 2 CLJ 748, CA (refd)

Legislation referred to

Strata Management Act 2013 ss 2, 3, 46(1), (2), 47, 48, 49, 50, 50(1), 51, 51(1), 52, 52(1), (2), (3), (4), (5), (6), (7), (8), 53, 54, 55, 56, 57, 58 , 59, 60, 60(1), (4), 61, 61(4), 62, 78, 78(1), (2), 121, 121(1), (3), Part V, Chapters 2, 3

Strata Titles Act 1985 ss 4, 39, 45

Chok Zhin Theng (with Alicia Ng) (Cheah Teh & Su) for the applicant.

Yap Hsang Chwan (with Wong Siew Fan) (Tho, Hock & Chwan) for the second respondent.

Amarjeet Singh J:

INTRODUCTION

[1] The applicant, Marina Crescent Management Corporation ('MC') brought two claims before the Strata Management Tribunal at Putrajaya ('SMT') to recover outstanding statutory charges under the Strata Management Act 2013 ('the SMA') totalling RM288,602.18 in respect of three condominium units comprising of Unit 3A-A, Unit 3A-B and Unit 3A-C ('the properties') in a development known as Marina Crescent Condominium ('the condominium').

[2] The condominium was developed and completed in 1998 by the second respondent, Admiral Cove Development Sdn Bhd ('the developer' or 'the registered proprietor'). The claims in the SMT were jointly against the developer, which to date remains the registered proprietor of all three units ('registered proprietor'), and the purchasers of the properties ('the purchasers'). The purchaser of Unit 3A-A is Sung Chiu Yueh Yin a citizen of Taiwan while the purchaser of Units 3A-B and Unit 3A-C is Song Chiung Jen is also a citizen of Taiwan.

[3] Claim No TPS/N-1662–5 of 2022 ('Claim 1662') is for the outstanding charges in respect of Unit 3A-A and Claim No TPS/N-1663–5 of 2022 ('Claim 1663') is for the outstanding charges in respect of Unit 3A-B and Unit 3A-C. The MC sought to recover the outstanding amounts jointly and severally against the registered proprietor and the purchasers (who were to be duly registered as a proprietors). Both the claims were heard together.

[4] At the conclusion of the hearing, the SMT on 10 November 2022, dismissed the claims against the registered proprietor and allowed the claims against the purchasers in respect of both claims.

[5] The MC filed separate judicial review proceedings challenging the dismissal of the claim against the registered proprietor. Judicial Review Application No WA-25–24–02 of 2022 ('JR 24') is in respect of Claim 1662 which concerns Unit 3A-A while Judicial Review Application No WA-25–25–02 of 2022 ('JR 25') is in respect of Claim 1663 which concerns Unit 3A-B and Unit 3A-C.

[6] In both JR 24 and JR 25 the relief sought is for an order of certiorari to quash the decision dismissing the claim against the registered proprietor and for the matters to be remitted back to the SMT for reconsideration upon this court determining the following question of law in the affirmative or negative:

Whether the registered proprietor of a strata property who has entered into a sale and purchase agreement to sell the property and who has received full payment of the purchase price, is liable for maintenance charges under the Strata Titles Act 1985 ('the STA') and the Strata Management Act 2013?

[7] On 25 March 2024, I allowed both applications as follows:

(a) in JR 24, an order quashing the decision of the SMT dismissing the claim for outstanding maintenance charges against the registered proprietor, answering the question in the affirmative, and remitting the matter back to the SMT for reconsideration based on the fact that the question was answered in the affirmative; and

(b) in JR 25, an order quashing the decision of the SMT dismissing the claim for outstanding maintenance charges against the registered proprietor and answering the question in the affirmative, remitting the matter back to the SMT for reconsideration based on the fact that the question was answered in the affirmative.

[8] This judgment contains the reasons for my decision.

DECISION OF THE SMT

[9] The claims by the MC against the registered proprietor and the purchasers were in respect of the outstanding amount due and payable under two accounts: (a) the maintenance account under s 60 of the SMA; and (b) the sinking fund account under s 61(4) of the SMA. The SMT found the purchasers liable but not the registered proprietor. In the written grounds, the SMT gave the following reasons in finding the registered proprietor not liable for the outstanding charges: (i) that the registered proprietor was merely a bare trustee; and that s 52(8) of the SMA which provides for the liability to pay is to be given a 'disjunctive' and 'exhaustive' interpretation. Section 52(8) of the SMA provides as follows:

For the purposes of this section, 'proprietor' includes —

(a) the person for the time being receiving the rent of the parcel, whether as an agent or a trustee or a receiver, and who would receive the same if the parcel were let to a tenant;

(b) a purchaser to be duly registered as a proprietor; or

(c) a developer in respect of those parcels in the development area which have not been sold.

[10] The interpretation, according to the SMT means that only one category of persons of the three categories stated are liable to pay the outstanding charges and in the instant case that persons are the purchasers 'to

be duly registered as a proprietor' and that the registered proprietor, as a 'developer', is only liable to pay the outstanding maintenance charges for units which have not been sold.

[11] In arriving at this decision, the SMT distinguished the decision of the Court of Appeal in *Brightvite Sdn Bhd v Pantai Towers Management Corp and another appeal* [2018] MLJU 709; [2019] 2 CLJ 439 which had held that both a registered proprietor and a purchaser who is to be duly registered as a proprietor are liable to pay outstanding maintenance charges. The SMT distinguished *Brightvite* on the ground that can be distinguished because *Brightvite* did not concern a claim for outstanding maintenance charges against a 'developer'.

GROUNDS OF REVIEW

[12] The grounds of review were that:

(a) the finding that the registered proprietor is not liable to pay the outstanding amounts under the relevant provisions of the STA and the SMA is an illegality;

(b) the SMT failed to take into account the decision in *Brightvite* where a registered proprietor was found jointly and severally liable with the purchasers; and

(c) the SMT took into account the principle of 'bare trustee' which principle has no application when interpreting the relevant provisions of the STA and the SMA.

JUDICIAL REVIEW OR S 121 OF THE SMA

[13] The MC by this application for judicial review complained that the SMT had committed an error of law by misconstruing the provisions of the SMA and STA. Misconstruing provisions of a statute when making a decision is an established ground for review. If established, the SMT would have committed an error of law of the illegality and/or irrationality kind necessitating curial intervention of the High Court supervisory jurisdiction (*Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 8 CLJ 629).

[14] The registered proprietor submitted that the only remedy is to set aside the decision of the SMT under s 121 of the SMA. I am unable to accept this submission. Section 121 of the SMA does not oust the High Court's supervisory jurisdiction of reviewing decisions of inferior tribunals. In this regard, it is apposite to reproduce s 121(1) of the SMA. It reads as follows:

A party to the proceedings of the Tribunal may, upon notice to the other party and to the Tribunal, apply to the High Court challenging an award in the proceedings on the ground of *serious irregularity* affecting the awards.

While the and words 'serious irregularity' is clarified by s 121(3) of the SMA as follows:

For the purpose of this section, 'serious irregularity' means an irregularity of one or more of the following kinds which the court considers has caused substantial injustice to the applicant:

(a) failure by the Tribunal to comply with section 113;

(b) failure of the Tribunal to deal with all the relevant issues that were put to it; or

(c) uncertainty or ambiguity as to the effect of the award.

[15] Clearly, s 121 of the SMA does not affect the remedy of judicial review. More importantly, it is the function of the supervisory jurisdiction of the High Court to ensure that inferior tribunals and other decision-making bodies do not commit errors of law that would necessitate intervention. The principle was propounded in the landmark case of *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317; [1995] 2 CLJ 748 in the following words:

In my judgment, the true principle may be stated as follows. *An inferior tribunal or other decision-making authority, whether exercising a quasi-judicial function or purely an administrative function has no jurisdiction to commit an error of law.* Henceforth, it is no longer of concern whether the error of law is jurisdictional or not. If an inferior tribunal or other public decision taker does make such an error, then he exceeds his jurisdiction. So too is jurisdiction exceeded where resort is had to an unfair procedure (see *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308; [1995] 1 CLJ 619), or where the decision reached is unreasonable, in the sense that no reasonable tribunal similarly circumstanced would have arrived at the impugned decision. (Emphasis added.)

[16] The Court of Appeal then set out the following list, which is not exhaustive, as to what would amount to an error of law ie where the decision-maker:

(a) asks himself the wrong question;

(b) takes into account irrelevant considerations and omits to take into account relevant considerations;

(c) *misconstrued the terms of any relevant statute;* or

(d) misapplies or misstates a principle of the general law.

[17] Thus, misconstruing a provision of the statute is an error of law necessitating curial intervention by way of judicial review. The SMT, being an inferior tribunal exercising its quasi-judicial function, has no jurisdiction to commit an error of law. In the instant case, the SMT not only misconstrued a statutory provision ie s 52 of the SMA but also failed to consider relevant provisions ie ss 60, 61, and 78 of the SMA.

[18] On the other hand, the situations where s 121(1) of the SMA applies are very specific to three situations: (a) where the SMT has not acted fairly and impartially; (b) where the SMT failed to deal with the relevant issues which is a deprivation of the right to be heard; and (c) where the award of the SMT is uncertain or ambiguous. In my view, the complaint made by the MC does not fall into either of these situations and even if it did the MC is not prevented to pursue the remedy of judicial review.

[19] In light of the above reasons, I hold that the remedy of judicial review was properly invoked.

ANALYSIS AND DECISION

[20] With regard to the merits of the application, a proper starting point would be the provisions of law that govern subdivided buildings, in particular, the management corporation and its functions.

The management corporation

[21] I begin with the management corporation. There is no dispute that the MC was established pursuant to s 39 of the Strata Titles Act 1985 ('the STA') whose function is to, amongst others, manage and maintain the condominium. The MC is also conferred power to determine statutory charges to be paid by each registered proprietor of the parcel or unit in the condominium. The MC is conferred body corporate status and is empowered to collect outstanding charges not paid by proprietors of their units.

[22] On 18 October 2008, the MC at its first annual general meeting resolved the various charges to be paid by each proprietor and maintained the accounts for these statutory charges. The accounts were established under the provisions of the STA.

[23] Subsequently, the management and maintenance provisions concerning these accounts which were in the STA were deleted by the Strata Titles (Amending) Act 2013 (Act A1450) with effect from 1 June 2015. On the same date the Strata Management Act 2013 ('the SMA'), a new statute, came into force. The provisions governing management and maintenance which

were previously housed and deleted from the STA are now parked in the SMA, namely, in Part V. Thus, there is a continuity of the management corporation and the accounts it maintains under the SMA on the statute coming into force.

[24] The relationship between the two statutes are made clear vide s 3 of the SMA which requires the SMA to be read and construed with the STA in the following words:

> This Act shall be read and construed with the Strata Titles Act 1985 and the subsidiary legislation made under that Act in so far as they are not inconsistent with the provisions of this Act or the regulations made under this Act.

[25] Section 46(1) of the SMA provides that Part V shall apply, whether the management corporation had come into existence *before* or *after the commencement of the SMA.* Thus, if it was 'before' then the management corporation had come into existence under the provisions of the STA. Under the SMA, the management corporation is interpreted to mean the management corporation which came into existence under the STA and the accounts that were required to be opened and maintained by the management corporation for the statutory charges were also established under the STA. This was how the legislature transitioned the management corporation and the accounts it maintained from the STA to the SMA.

Maintenance account

[26] The word 'Charges' is defined in s 2 of the SMA to mean 'money collected to be deposited into the maintenance account' maintained by the management corporation. Section 60 of the SMA governs the maintenance account. Section 60(1) of the SMA provides as follows:

> If the maintenance account in the name of the management corporation had not been earlier established under subsection 50(1), the management corporation shall open and maintain a maintenance account in the name of the management corporation, with a bank or financial institution.

[27] While s 60(4) of the SMA provides that any money due and payable under the maintenance account is recoverable from the person or persons stipulated in the manner provided under s 78 of the SMA. Section 60(4) of the SMA provides as follows:

> Any Charges imposed under subsection (3) in respect of a parcel shall be due and payable on the passing of a resolution to that effect by the management corporation and in accordance with the terms of that resolution and may be recovered in the manner set out in section 78 *from the proprietor of, or his successor-in-title to, the parcel, or the person for the time being receiving the rent of the parcel, whether as an agent or a trustee or a receiver and who would receive the same if the parcel were let to a tenant.*

Sinking fund account

[28] The other account maintained is the sinking fund account governed by s 61 of the SMA. Section 61(1) of the SMA provides as follows:

> If the sinking fund account in the name of the management corporation had not been earlier established under subsection 51(1), the management corporation shall open and maintain a sinking fund account with a bank or financial institution, into which shall be deposited the contribution to the sinking fund paid by the proprietors

[29] Similarly, s 61(4) of the SMA provides that any money due and payable under the sinking fund account is recoverable from the stipulated person or persons in the manner provided under s 78 of the SMA. Section 61(4) of the SMA provides as follows:

> Any contribution to the sinking fund imposed under subsection (3) in respect of a parcel shall be due and payable on the passing of a resolution to that effect by the management corporation and in accordance with the terms of that resolution and may be recovered in the manner set out in section 78 *from a proprietor of, or his successor-in-title to, the parcel, or the person for the time being receiving the rent of the parcel, whether as an agent or a trustee or a receiver and who would receive the same if the parcel were let to a tenant.*

Recovery of unpaid contributions

[30] The recovery of unpaid contributions in respect of the maintenance account or the sinking fund account is provided by s 78 of the SMA. Section 78(1) of the SMA provides as follows (relevant parts only):

> (1) Where a sum becomes recoverable by a management corporation by virtue of subsection 52(4), 60(4), 60(5), 61(4), 61(5) or 77(3), from a proprietor under this Act, the management corporation ... may serve on the proprietor a written notice demanding payment of the sum due within the period as may be specified in the notice which shall not be less than two weeks from the date of service of the notice.

While s 78(2) provide as follows:

> (2) If any sum remains unpaid by the proprietor at the end of the period specified in the notice under subsection (1), the management corporation ... may file a summons or claim in a court of competent jurisdiction or before the Tribunal for the recovery of the said sum or, as an alternative to recovery under this section, resort to recovery under section 79.

[31] In the instant case, the MC brought the claim against the registered proprietor and the purchasers in the SMT, amongst others, under ss 60(4) and 61(4) of the SMA.

MY DECISION

[32] The provisions of the SMA are clear and unambiguous with respect of the contribution to be made by the proprietors of a subdivided building to the maintenance account and the sinking fund account. The provisions also impose a mandatory duty on the said proprietors to pay the said contributions and when the proprietors fail to pay, the management corporation is empowered to recover the said amount in certain ways including making a claim at the SMT.

[33] The relevant provisions that impose liability to pay the outstanding amounts in the maintenance account and the sinking fund account are ss 60(4) and 61(4) of the SMA. Under both these sections the person or persons from whom the outstanding contributions are to be recovered from are:

(a) from a *proprietor* of, or his successor-in-title to, the parcel; or

(b) the person for the time being receiving the rent of the parcel, whether as an agent or a trustee or a receiver, and who would receive the same if the parcel were let to a tenant.

[34] The word 'proprietor' is, according to s 2 of the SMA has the meaning assigned to it in s 4 of the STA, and in the latter section the word 'proprietor' as follows:

> ... a person or body for the time being registered as the proprietor of a parcel, ...

[35] Thus, the person from whom the unpaid contributions are to be collected from is the person or body registered as the proprietor of the parcel or unit. In the instant proceedings, it is not disputed that the body registered as the proprietor (referred to as the registered proprietor) is the second respondent.

[36] In view of the plain and unambiguous provisions the concept of 'bare trustee' does not apply. Under the said provisions the person who is statutorily identified is the person who is liable. To say otherwise would be adding words into the provisions which were not intended by the legislature.

[37] The error of law the SMT committed was to not accept or disregard the MC's case and submissions on ss 60(4) and 61(4) of Chapter 3 of Part V of the SMA which were applicable in the case before it and instead relied on ss 52(1) and 52(8) of Chapter 2 of Part V of the SMA which were clearly, as will be shown below, not applicable on the facts of the case. Section 52(1) of the SMA states:

> Each proprietor shall pay the Charges and contribution to the sinking fund, to the

A management corporation for the maintenance and management of the subdivided building or land and the common property in a development area.

And was read with s 52(8) which provided meaning for the word 'proprietor'.

B

[38] The meaning of the word 'proprietor' was provided by s 52(8), reproduced below, which was solely to interpret the word 'proprietor' in s 52 of the SMA in the following words:

C For the purposes of this section, 'proprietor' includes —

(a) the person for the time being receiving the rent of the parcel, whether as an agent or a trustee or a receiver, and who would receive the same if the parcel were let to a tenant;

(b) a purchaser to be duly registered as a proprietor; or

D

(c) a developer in respect of those parcels in the development area which have not been sold.

[39] Based on the meaning provided in s 52(8) of the SMA, the SMT E reasoned that a registered proprietor does not include a developer who has sold a parcel to a purchaser who is yet to be registered as a proprietor. One could not be faulted for arriving at the interpretation the SMT did based only on the wording of ss 52(1) and 52(8) of the SMA. Herein, lies the fatal error of interpretation committed by the SMT. The SMT considered and interpreted F the sections in isolation from the rest of the sections in Chapter 2 of Part V of the SMA.

[40] Chapter 2 of Part V of the SMA consists of ss 47–55 under the heading of 'Management by the developer before the first annual general meeting of G management corporation'. Chapter 2 concerns the phase when the developer and not the management corporation is to manage and maintain the subdivided building. The period known as the 'preliminary management period' refers to the period commencing from the date of delivery of vacant possession of a parcel to a purchaser by the developer until one month after the H first annual general meeting of the management corporation (see s 46(2) of the SMA).

[41] Thus, s 52 concerns the duty of a developer and not the management corporation. This is obvious from the other provisions in Chapter 2 of Part V I of the SMA. It suffices to reproduce the following sections that make up the said chapter. First is s 47 which provide as follows: *This Chapter shall apply to a development area specified in* subsection 46(1) *where no joint management body is established under* subsection 17(1) *for the development area.* Next comes the following provisions of s 48 which state:

(1) A *developer* shall, during the preliminary management period and subject to the provisions of this Act, be responsible to maintain and manage properly the subdivided building or land, and the common property.

(2) The *developer* shall exercise the powers and perform the duties of the management committee of the management corporation from the time the management corporation comes into existence until the expiry of the preliminary management period.

[42] Then comes s 50(1) which requires the developer to open and maintain a maintenance account in the name of the management corporation and s 51(1) which requires the developer to open and maintain a sinking fund account in the name of the management corporation. Clearly, it is the developer who is at this time under a statutory duty to open and maintain the said accounts.

[43] This is followed by s 52(1) which provides the statutory duty to make payments into the maintenance account and the sinking fund account. This statutory duty refers to both the period before the management corporation came into existence and after the management corporation came into existence. However, for the period known as the 'preliminary management period,' this is what ss 52(2)–52(8) state:

(2) During the preliminary management period, the amount of the Charges to be paid under subsection (1) shall be determined by the *developer* in proportion to the share units assigned to each parcel.

(3) The amount of the contribution to the sinking fund to be paid under subsection (1) shall be a sum equivalent to ten percent of the Charges.

(4) The proprietor shall, within fourteen days of receiving a notice from the *developer,* pay the Charges, and contribution to the sinking fund, to the management corporation, and if any sum remains unpaid by the proprietor at the expiry of the period of fourteen days, the *developer may in the name of the management corporation recover the sum in the manner set out in* section 78.

(5) If any sum remains unpaid by the proprietor at the expiry of the period of fourteen days specified in subsection (4), the proprietor shall pay interest at the rate of ten percent per annum on a daily basis.

(6) Any proprietor who is not satisfied with the sums determined by the *developer* under subsection (2) or (3) may apply to the Commissioner for a review

...

(7) ...

(8) For the purposes of this section, 'proprietor' includes —

A (a) the person for the time being receiving the rent of the parcel, whether as an agent or a trustee or a receiver, and who would receive the same if the parcel were let to a tenant;

(b) a purchaser to be duly registered as a proprietor; or

B (c) a developer in respect of those parcels in the development area which have not been sold.

[44] Then comes s 55 which provide the time when the developer hands over the function of managing and maintaining the subdivided building to the C management corporation. When this is done, Chapter 3 of Part V comes into play. The heading of Chapter 3 is 'Management after the first annual general meeting of the management corporation'. This Chapter consists of ss 56–62 of the SMA. It is in this Chapter that ss 60(4) and 61(4) of the SMA are housed and any outstanding contributions to the maintenance account and the D sinking fund account are to be recovered under s 78 of the SMA. Therefore, the meaning of 'proprietor' under s 52 of the SMA is confined to that section only.

[45] For the above reasons, I hold that the SMT committed an error of law E of the illegality and/or irrationality type when taking into account ss 52(1) and 52(8) of the SMA and the concept of 'bare trustee'. The application for judicial review is allowed.

CONCLUSION

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[46] Section 45 of the STA relied by the MC was correctly not considered by the SMT as the provision has been deleted by the Strata Titles (Amending) Act 2013 (Act A1450) with effect from 1 June 2015. The situation is now governed by the SMA. The issue does not require this court's consideration.

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[47] For the above reasons, the question is whether the registered proprietor of a strata property who has entered into a sale and purchase agreement to sell the property and who has received full payment of the purchase price is liable for the statutory charges under ss 60(4) and 61(4) of the SMA is answered in H the affirmative. Since, the determination by the SMT was either in the affirmative or in the negative, in view of the affirmative answer, the decision of the SMT on this point is quashed and the matter remitted back to the SMT to hold the registered proprietor liable for the outstanding amounts both in Claim 1662 and Claim 1663.

I

Judicial review application allowed.

Reported by Dzulqarnain Ab Fatar