Management Corporation Strata Title Plan No 1938 v Goodview Properties Pte Ltd [2000] SGCA 56

Case Number : CA 29/ 2000

Decision Date : 09 October 2000

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA

Counsel Name(s) : Choi Yok Hung and Rodney Keong (Bih Li & Lee) for the appellants; Philip Jeyaretnam and Brendon Choa (Helen Yeo & Partners) for the respondents

Parties : Management Corporation Strata Title Plan No 1938 — Goodview Properties Pte Ltd

Land – Strata titles – Management corporation – Management corporation instituting action on behalf of some subsidiary proprietors – Whether necessary for all subsidiary proprietors to act together against developers in respect of common property – Whether management corporation entitled to sue developers on behalf of two or more subsidiary proprietors – s 116(1) Land Titles (Strata) Act (Cap 158, 1999 Ed)

Words and Phrases – 'All or some' – s 116(1) Land Titles (Strata) Act (Cap 158, 1999 Ed)

Words and Phrases – 'Jointly entitled' – s 116(1) Land Titles (Strata) Act (Cap 158, 1999 Ed)

Words and Phrases – 'The lots concerned' – s 116(1) Land Titles (Strata) Act (Cap 158, 1999 Ed)

Land – Strata titles – Common property – Tenants-in-common – Proportionately abated damages – Whether action commenced by management corporation on behalf of some subsidiary proprietors effectively and substantively for benefit of all subsidiary proprietors

(delivering the judgment of the court): ***Proceedings below***

The appellants are, and were at the material time, the management corporation of a condominium called Orchid Park (`the condominium`) located at No 91 Yishun Street 81. The respondents were the developers of the condominium which was completed sometime in 1994. The condominium has a total of 615 units.

The appellants instituted a representative action in Suit 1374/99 on behalf of 24 subsidiary proprietors of their respective units in the condominium under s 116(1) of the Land Titles (Strata) Act (Cap 158, 1999 Ed) (`the Strata Act`) against the respondents. These 24 subsidiary proprietors had severally entered into sale and purchase agreements with the respondents for the purchase of their respective units. In the action, the appellants, on behalf of the 24 subsidiary proprietors, claimed against the respondents damages for breach of certain terms of the sale and purchase agreements in respect of faulty and defective construction of certain areas of the common property in the condominium.

The terms and conditions of the 24 sale and purchase agreements were identical in all material respects. The material terms relied upon by the appellants in support of the claim are the following:

> *8(1) The [Respondents] shall forthwith erect in a good and workmanlike manner the building unit and the housing project together with all the common property thereof ...*
>
> *9 The [Respondents] shall at its own cost and expense cause to be constructed the roads, driveways, car parks, drains, culverts, sewerage mains, water works, sewerage plant serving the building unit and the housing project in*

accordance with the requirements and standards of the Building Authority and other authorities ...

11(1) The [Respondents] shall complete the building unit so as to be fit for occupation and remove all surplus material, plant and rubbish from the building unit and the housing project and deliver vacant possession of the building to the Purchaser on or before the 31st day of December 1997.

In the alternative, the appellants relied on an implied term in the respective sale and purchase agreements to the effect that the buildings in the condominium, including the common property, would be designed and constructed by the respondents to a reasonable, functional and safe standard and be reasonably free of defects.

The appellants claimed that the respondents had breached the express and/or implied terms of the sale and purchase agreements by failing to ensure that the buildings in the condominium, including the common property, were erected in a good and workmanlike manner and/or that they were fit for occupation and/or that they were designed and/or constructed to a reasonable, functional and safe standard and/or that they were reasonably free of defects. The appellants listed in their statement of claim a total of twenty-seven specific defects in the common property. Damages were sought by the appellants for the loss and damage sustained by the 24 subsidiary proprietors occasioned by the defects in the common property.

In their defence, the respondents denied any breach of the terms of the sale and purchase agreements and averred that the alleged defects, if any, were caused or contributed to by the negligence of the appellants and/or their breach of statutory duty to maintain the common property properly or at all.

Soon after the filing of the defence, the respondents applied by summons-in-chambers under O 18 r 19(1)(a), (b), (c) and/or (d) of the Rules of Court or under the inherent jurisdiction of the court for an order to strike out the statement of claim and to dismiss the action. In support of the application, the respondents filed an affidavit asserting that the appellants` claim in contract cannot be sustained under s 116(1) of the Strata Act, contending that the claim was only sustainable, if all the subsidiary proprietors in the condominium were purchasers, who had entered into sale and purchase agreements with the respondents.

In response, the appellants by a notice under the summons-in-chambers applied under O 14 r 12 of the Rules of Court for a determination of the following question of law, namely, whether the appellants were entitled in law to sue the respondents in the present action on behalf of two or more of the subsidiary proprietors, who had entered into sale and purchase agreements with the respondents for the purchase of their respective units in the condominium, and if the answer be in the affirmative, for an order that para 3 of the defence be struck out.

Both applications were heard together before the senior assistant registrar. He allowed the respondents` application and ordered that the statement of claim be struck out and the action be dismissed. No order was made on the appellants` application. The appellants appealed to a judge-in-chambers, and the appeal was dismissed. The appellants now appeal against the decision of the learned judge.

Preliminary procedural point

Before us, counsel for the respondents raised a preliminary procedural point. Under s 13(2) of the Strata Act, the common property is held by all the subsidiary proprietors of the condominium as tenants-in-common in proportion to their respective share value and for the same term and tenure as the respective lots held by them. Accordingly, in this case, the 24 subsidiary proprietors, on whose behalf the appellants brought the action, own the common property together with the rest of the subsidiary proprietors of the condominium as tenants-in-common in undivided shares. Counsel therefore submits that they cannot by themselves alone maintain an action against the developer in respect of the common property. It is contended that all the subsidiary proprietors of the condominium, being the owners of the common property, must act together or not at all, on matters that affect the property.

In support, counsel relies on the case of ***Bradburne v Botfield*** 14 M & W 559; 153 ER 597. We do not find this case of any assistance. There, a covenant in the lease was made in favour of the several parties therein named jointly. It was held that as the covenant was given to the covenantees jointly, all the covenantees must join in the action to enforce the covenant. However, it was not decided that if a covenant was given to the parties severally, all must be joined in suing to enforce the covenant: see the judgment of Parke B at 14 M & W 559, 574; 153 ER 597, 603.

The present case is entirely different. The respondents as the developers made a separate sale and purchase agreement with each of the 24 subsidiary proprietors concerned, and although the terms of all these agreements were identical, they were contained in the separate agreements, which were made by the respondents with the 24 subsidiary proprietors severally, and not jointly, and each individual subsidiary proprietor may bring an action against the respondents to enforce the same. In any case, the words `all or some` in s 116(1) of the Strata Act indicate that, for the purposes of this section, Parliament has not intended for all the subsidiary proprietors to act together at all times. We therefore reject the contention made on behalf of the respondents that the action can only be brought, if all the subsidiary proprietors of the 615 strata lots as tenants-in-common act together.

On this point, we find helpful the case of **Roberts v Holland** [1893] 1 QB 665. There, a lease was granted to a lessee, and the lessor`s reversion subsequently devolved on six tenants-in-common. The question arose whether one of the six tenants-in-common could bring an action to enforce a covenant contained in the lease without joining the other tenants-in-common. It was held that the lessee`s covenants became in effect separate covenants with each of the tenants-in-common, and that one of them alone could sue on the covenants without joining the others. The converse of such case arose in **United Dairies Ltd v Public Trustee** [1923] 1 KB 469 at 477, [1922] All ER Rep 444 at 449, where a lease containing a covenant to repair was subsequently vested in two lessees as tenant in common. It was held by Greer J that the lessor was entitled to recover damages in full from either of the tenants-in-common. In **Sheehan v Great Eastern Rly Co** [1880-81] 16 Ch D 59, Malins V-C held that one of the co-owners of a patent could by himself sue for an account of profits due for the use of the patent, and obtain an order for the payment to him of such part as he was entitled to.

The appeal

We now turn to consider the merits of the appeal. It is convenient at this stage to set out in full s 116 of the Strata Act which reads as follows:

116	(1)	Where all or some of the subsidiary proprietors of the lots in a subdivided building are jointly entitled to take proceedings against any person or are liable to have proceedings taken against them jointly (any such proceedings being proceedings for or with respect to common property), the proceedings may be taken by or against the management corporation as if it were the subsidiary proprietors of the lots concerned.
	(2)	Any judgment or order given or made in favour of or against the management corporation in any such proceedings shall have effect as if it were a judgment or order given or made in favour of or against the subsidiary proprietors.
	(3)	Where a subsidiary proprietor is liable to make a contribution to another subsidiary proprietor in respect of a judgment debt arising under a judgment referred to in subsection (2), the amount of that contribution shall bear to the judgment debt the same proportion as the share value of the lot of the first-mentioned subsidiary proprietor bears to the aggregate share value.

The present s 116 first appeared as cl 73 in the Land Titles (Strata) (Amendment) Bill No 10 of 1986, which then read as follows:

73	(1)	Where the subsidiary proprietors of the lots in a subdivided building are jointly entitled to take proceedings against any person or are liable to have proceedings taken against them jointly (any such proceedings being proceedings for or with respect to the common property), the proceedings may be taken by or against the management corporation and any judgment or order given or made in favour of or against the management corporation in any such proceedings shall have effect as if it were a judgment or order given or made in favour of or against the subsidiary proprietors.
	(2)	Where a subsidiary proprietor is liable to make a contribution to another subsidiary proprietor in respect of a judgment debt arising under a judgment referred to in subsection (1), the amount of that contribution shall bear to the judgment debt the same proportion as the share value of the lot of the first-mentioned subsidiary proprietor bears to the aggregate share value.

The Bill was referred to a Select Committee before its third reading. Representations were invited, and were received from various parties, including the Law Society of Singapore and Singapore Institute of Surveyors and Valuers. As a result of the representations made, two amendments were made to cl 73(1): one was the addition of the phrase `all or some of` immediately before the words `the subsidiary proprietors` at the commencement of the subsection, and the other was the addition of the phrase `as if it were the subsidiary proprietors of the lots concerned` immediately after the words `by or against the management corporation` in the middle part of the proposed section. In moving the amendment to add the phrase `all or some of`, Prof Jayakumar (the then Minister for Home Affairs and Second Minister for Law) said: `This amendment clarifies that a management corporation may represent all or some of the subsidiary proprietors in proceedings against any person.` And in moving the amendment to add the phrase `as if it were the subsidiary proprietors of the lots concerned`, he said: `This is an amendment of a drafting nature for the purpose of clarity.` The amended cl 73 was enacted and appeared as s 113 in the Land Titles (Strata) (Amendment) Act 1987. In the 1999 edition of the Strata Act, sub-s (1) of that section was split into two subsections, which are now sub-ss (1) and (2) of s 116.

Construction of s 116(1)

This section was first considered in **MCST Plan No 1279 v Khong Guan Realty Pte Ltd** [1995] 1 SLR

593 . In that case, the management corporation brought an action against a housing developer of a condominium on behalf of `persons interested in and described as purchasers`, claiming that the defects in certain parts of the common property were caused by poor workmanship and unsuitable materials provided by the developer. That was clearly a claim in contract. It was held by GP Selvam J that the management corporation could properly bring the action on behalf of the subsidiary proprietors. The learned judge said at p 596:

> *The action, however, is properly brought for the subsidiary proprietors and their successors or assigns for it comes squarely under s 116(1) of the Land Titles (Strata) Act. On the assumption that the claim relates only to common property, the plain words of s 116(1) entitle a management corporation to represent the subsidiary proprietors where the subsidiary proprietors have a cause of action whether it be an action in tort or contract. It is an action in a representative capacity authorized by statute.*

This case was considered and the above passage of the judgment was quoted with approval by this court in **RSP Architects Planners & Engineers v Ocean Front Pte Ltd and another appeal** [1996] 1 SLR 113 . In that case, the management corporation sued the developers of a condominium in tort and/or contract for damages arising out of faulty construction of the common property, which led to spalling of concrete in the ceilings of the car parks of the various blocks and water ponding in the area surrounding the lift. The court held that the management corporation was entitled to bring the action under s 33 or alternatively under s 116 of the Strata Act, as the management corporation there represented all the subsidiary proprietors of the condominium. The court held that the management corporation had no cause of action in contract, as they could not rely on certain contractual clauses in the sale and purchase agreements that had been made between the developers and the individual purchasers, some of whom were no longer the subsidiary proprietors of the lots. The court eventually decided that the management corporation had a cause of action in tort.

One of the points considered by the court was the extent of the operation of s 116(1) of the Strata Act. Dealing specifically with that section the court said at p 121C-E:

> *[T]he purpose of our s 116 is clear: it is to enable the management corporation to bring an action on behalf of all or some of the subsidiary proprietors, as the case may be, and also to enable a third party to bring an action against the management corporation as representing all or some of the subsidiary proprietors. As between, on the one hand, all or some of the subsidiary proprietors, as the case may be, and, on the other hand, a third party, the management corporation is interposed so that as a matter of convenience it would not be necessary for all or some of the subsidiary proprietors concerned to be joined in suing a third party, and, conversely, it would not be necessary for the third party to sue and name all the subsidiary proprietors concerned. As the learned judge held, and we agree, the management corporation represents the subsidiary proprietors, and it is the subsidiary proprietors who are the substantive party, although the proceedings are instituted by or against the management corporation. The purpose of this section is to simplify the procedural aspect of the proceedings so as to avoid naming all the subsidiary proprietors or some of them who are concerned in the proceedings as plaintiffs or defendants, as the case may be.*

The court then referred to the decision of GP Selvam J in ***Khong Guan*** and said further at p 121H-I:

> *This section may be invoked where there is some thing or matter in relation to the common property which is common to or affects all or specifically some only of the subsidiary proprietors concerned. In particular, this section may be invoked where the thing or matter in question affects only some of the subsidiary proprietors of the lots comprised in a condominium, for example, the subsidiary proprietors of the lots comprised in a particular block or subdivided building of a condominium.*

Decision below

We now turn to the decision under appeal. In dealing with s 116(1) of the Strata Act, the learned judge considered in some depth the judgment of this court in ***Ocean Front*** , and also the judgment of the High Court given by Warren LH Khoo J: **MCST Plan No 1272 v Ocean Front Pte Ltd (Ssangyong Engineering & Construction Co Ltd & Ors)** [1995] 1 SLR 751 . Among other things, the learned judge referred (at [para] 20) to what she considered as the crucial portion of the judgment of this court at p 121H-I (quoted above), which according to her `sets down the conditions triggering the operation of s 116(1)`. Having dealt with this passage, she turned to, inter alia, the following passage of the judgment of Warren LH Khoo J at pp 761H-762G:

> *[T]he terms in which s 116(1) is cast leads me to think that it is probably intended to cover cases where individual lots affect specially, or are affected specially by, the common property. Note the words `as if [the management corporation] were the subsidiary proprietors of the lots concerned`, particularly the words `the lots concerned`. These words seem to be apt to cover situations where something exists in the common property which specially and adversely affects some or all the lots in the condominium. An example would be where a common roof has been so poorly constructed that water leaks through it and adversely affects all or some of the units in the condominium. The subsidiary proprietors of the lots affected could take action under their sale and purchase agreements against the developer. Instead of those affected taking individual actions against the developer or joining in one action with numerous plaintiffs, the management corporation may, under this section, take action in its own name but substantively on behalf of the subsidiary proprietors concerned. The proceedings would be on account of the subsidiary proprietors.*
>
> *...*
>
> *If my view is correct, then s 116 would have no application to situations where no particular lots are specially affected by, or specially affect, the common property. Take the case of a dust bin centre or a visitors` car park, or a swimming pool, not constructed properly. The defect affects no lots in particular but it does affect the general body of owners in their enjoyment of the common facilities and amenities of the condominium. In these situations, it would be unrealistic to expect individual subsidiary proprietors, as subsidiary proprietors, to take proceedings. The management corporation is the suitable party to sue. It sues in its own name, on its own behalf and for its own account, and it sues under s 33(2), not s 116(1).*

The learned judge then held as follows at [para] 22:

> *The highlighted portion of LP Thean JA`s judgment is of particular significance.*

*Having examined and considered the entire judgment in the **Ocean Front** case, I am disposed towards the view that the operation of s 116(1) is confined to two situations:*

a when some of the strata lots are specially affected by or specially affect the common property in which case the management corporation can represent those affected subsidiary proprietors; and

b when all the strata lots are specially affected by or specially affect the common property in which case the management corporation can represent all the subsidiary proprietors.

Turning to the claim of the appellants, the learned judge found that the appellants did not either in the statement of claim or in their arguments advance the position that the units of the 24 subsidiary proprietors are specially affected by the alleged defects in the common property. She found that the benefit conferred by the material contractual provisions accrue to all the subsidiary proprietors and is not limited to any subsidiary proprietor or any group of subsidiary proprietors. In particular, the statement of claim lists a number defects in the common property in general terms, which are not limited to any particular lots of any subsidiary proprietors. It also does not claim that the subsidiary proprietors, on whose behalf the suit was instituted, suffered any special damage by reason of the alleged defects. Following that, the learned judge concluded thus at [para] 25:

*Under these circumstances, and applying the decision in the **Ocean Front** case, it is clear to me that the plaintiffs are not entitled to rely on that part of s 116(1) which authorises the management corporation to take proceedings on behalf of ` **some** of the subsidiary proprietors`. In other words, it is not enough, as sought to be argued by the plaintiffs, simply for each of these subsidiary proprietors to have a substantive cause of action against the developer. **In order to rely on s 116(1), it must be shown that the strata lots in question comprise a sub-group of proprietors who have been specially affected by the alleged defects in the common property**. In my opinion, the plaintiffs have not brought themselves within the ambit of the provision and hence, have no legal capacity to sustain an action on behalf of the 24 subsidiary proprietors under s 116(1) of the Act. [Emphasis is added.]*

The learned judge interpreted the judgments in the ***Ocean Front*** as setting down the conditions triggering the operation of s 116(1). In cases such as the present one, where the management corporation takes proceedings on behalf of some, and not all, of the subsidiary proprietors of a condominium, s 116(1) applies only where the strata lots of these subsidiary proprietors are `specially affected by` or `specially affect` the common property. In this case, however, as the alleged defects in the common property affect all the 615 lots in the condominium, the management corporation cannot represent only the 24 subsidiary proprietors alone. On the other hand, they also cannot represent all the subsidiary proprietors and sue in contract, for the simple reason that not all of them had entered into sale and purchase agreements with the respondents.

Our decision

The learned judge relied on that part of the judgment of this court in ***Ocean Front*** at p 121H-I (which

we have quoted in [para] 18 above), and said that this court thereby laid down the conditions triggering the operation of s 116(1). With respect, we have difficulty in accepting this. In our view, that part of the judgment must be read and understood in the context of the preceding passage of the judgment, where the court explained the purpose and function of s 116(1). Having done that, the court proceeded to show one or two situations where the section may be invoked. In so doing, the court was certainly not laying down an exhaustive or exclusive list of situations where the section may be invoked. In other words, what was said there was purely an illustration or example of a situation where the section may be invoked, and was not intended to be a definitive exposition of the type of situation for the operation of the section or to preclude the applicability of that section to other situations.

Having regard to the legislative history and the plain words used in the section, we are unable to agree, with respect, with the learned judge that for s 116(1) to apply, the subsidiary proprietors, whom the management corporation represents, must be subsidiary proprietors of the strata lots, which are `specially affected by or specially affect the common property`. In our view, the clear words in s 116(1) do not admit of such a restriction or condition in the operation of that section and, in our opinion, such a restriction or condition seems to go against the legislative intent of that section.

We think that the restriction or condition as imposed by the learned judge in the operation of s 116(1) may, and indeed would give rise to difficulty. Take as an example the case, where there are only 20 subsidiary strata lots in a condominium, of which one lot is retained by the developer, and all the other 19 subsidiary proprietors have entered into sale and purchase agreements with the developer. In such a case, if after the completion of the development, there are defects appearing in the common property, which were occasioned by bad workmanship or inadequate materials provided by the developer in the construction of the condominium, the management corporation would not be able to represent the nineteen subsidiary proprietors under s 116(1) in an action against the developer for breach of contract. As the defects affect all the strata lots, the management corporation would not be able to represent only the 19 subsidiary proprietors. On the other hand, equally they would not be able to represent all the subsidiary proprietors, because the developer cannot sue itself, and as a matter of practicality would probably decline to join with the other subsidiary proprietors in authorising the management corporation to take any action against it. In such a case, the only remedy would be for the nineteen subsidiary proprietors to bring the action against the developer in their own names. Given that the purpose of s 116(1) is to simplify the procedural aspect of the proceedings so as to avoid naming all the subsidiary proprietors or some of them who are concerned in the proceedings as plaintiffs or defendants, it could not have been the intention of Parliament for this representative provision to be rendered useless in such a case, where a single subsidiary proprietor who, for one reason or another, cannot be made a party or declines to be a party to the action.

Counsel for the respondents advances two arguments in support of the proposition of the learned judge. First, he lays considerable emphasis on the words `jointly entitled` in s 116(1), and submits that by reason of these words that section does not enable the management corporation acting on behalf of the 24 subsidiary proprietors to bring this action in contract, on the ground that the 24 subsidiary proprietors do not have a `joint` right against the respondents. Each of them entered into a separate sale and purchase agreement with the respondents, and accordingly their rights against the respondents are not `joint` but several. In his submission, by reason of this `joint` entitlement, s 116(1) is confined to situations where all or a subset of the subsidiary proprietors is specially affected by some matter in the common property. Such a group of subsidiary proprietors is bound together by a common interest in a special way in relation to the common property and such common interest exists, where a group comprises each and every subsidiary proprietor of the lot which is `specially affected` by defects in the common property.

We are unable to accept this submission. The term `jointly entitled` in s 116(1) does not refer to a joint substantive right, since s 13(1) of the Act deems all subsidiary proprietors of the common property as tenants-in-common. The term `jointly entitled` is of a procedural nature akin to the joinder of parties in civil proceedings under O 15 r 4 of the Rules of Court, without any requirement for a common interest binding the parties. This court in ***Ocean Front*** dealt with the point at pp 121-122:

> *The words, `jointly entitled` and `are liable to have proceedings taken against them jointly` refer to the procedural aspect of the proceedings and not to substantive rights of the subsidiary proprietors in the subject matter of the proceedings. As the learned judge said, and we agree, the operation of this section does not depend on whether the subsidiary proprietors concerned have a joint interest in the common property, the subject matter of these proceedings. Nor does it matter that their interest in the common property is that of tenants-in-common.*

Secondly, counsel relies on the words `the lots concerned` appearing at the end of s 116(1), and submits that these words cover the situation where something in the common property specially affects some or all the lots in the condominium. The support for this contention is no doubt the following passage of the judgment of Warren LH Khoo J in **MCST Plan No 1272 v Ocean Front Pte Ltd** [1995] 1 SLR 751 at p 761, which is repeated below for ease of reference:

> *[T]he terms in which s 116(1) is cast leads me to think that it is probably intended to cover cases where individual lots affect specially, or are affected specially by, the common property.* ***Note the words `as if [the management corporation] were the subsidiary proprietors of the lots concerned`, particularly the words `the lots concerned`****. These words seem to be apt to cover situations where something exists in the common property which specially and adversely affects some or all the lots in the condominium. [Emphasis is added.]*

In our opinion, those words do not refer to something in the common property specially affecting the subsidiary lots in the condominium. They refer simply to those lots of the subsidiary proprietors, who are entitled to take proceedings or have proceedings taken against them, and not to the fact that there is any special damage affecting the lots.

In our judgment, so long as some or all of the subsidiary proprietors have a cause of action against a party in relation to the common property, then s 116(1) may be invoked by the management corporation to bring the action against the party in the name of the management corporation on behalf of those subsidiary proprietors. We agree with counsel for the appellants that s 116(1) would enable the management corporation to represent a group of subsidiary proprietors in proceedings against a third party concerning the common property, without the need to show that the group or their lots are `specially affected` in relation to the common property.

The conclusion we have reached here does not detract from or qualify in any way what this court decided in ***Ocean Front*** . As this court held (at p 121C-E), the purpose of s 116(1) is to enable a management corporation to bring an action on behalf of all or some of the subsidiary proprietors, as the case may be, against a third party, and also to enable a third party to bring an action against a management corporation representing all or some of the subsidiary proprietors. The action may be in contract or in tort, depending on the circumstances. That section provides a procedural mechanism

for the management corporation to sue or to be sued as representing all or some of the subsidiary proprietors. The management corporation represents the subsidiary proprietors, whether they be the plaintiffs or the defendants, and it is the subsidiary proprietors who are the substantive party, although the proceedings are instituted by or against the management corporation. The section simplifies the procedural aspect of the proceedings so as to avoid naming all or some of the subsidiary proprietors who are involved in the proceedings as the plaintiffs or as the defendants, as the case may be. Apart from we have said, the only requirement imposed by the section is that the proceedings must relate to the common property.

The final issue to consider is the appellants` second contention that the trial judge erred in saying that the action was effectively and substantively for the benefit of all the subsidiary proprietors. The learned judge said at [para] 29:

> *In my view, the redress sought by the management corporation in such a situation is for collective damages with respect to the alleged damage to the common property. The exercise is in reality, effectively and substantively brought for the benefit of all the subsidiary proprietors, particularly as the alleged effects are not limited to any particular strata lots. Thus, the plaintiffs cannot seek to rely on s 116(1) unless it brings the action on behalf of all the subsidiary proprietors.*

Counsel for the appellants submits that the learned judge imposed on them an action they are not seeking to bring, because they seek to bring the present action not on behalf of all subsidiary proprietors but only for the 24 named in the further and better particulars dated 29 December 1999. The appellants seek not full damages, but the damages which would be proportionately abated.

With respect, we are unable to agree with the learned judge that the action was necessarily brought for the benefit of all the subsidiary proprietors just because the alleged effects were not limited to any particular lots. It is true that the common property is owned by all the subsidiary proprietors as tenants-in-common; however, so long as the 24 subsidiary proprietors have a cause of action, we see no reason why the appellants should not be allowed to represent the 24 subsidiary proprietors and seek proportionately abated damages.

Conclusion

In the result we allow the appeal and set aside the orders below. We dismiss the application by the respondents and allow the application of the appellants. We also award costs here and below to the appellants. The deposit in court, with interest, if any, is to be refunded to the appellant.

Outcome:

Appeal allowed.