

Reindeer Developments Inc v Mindpower Innovations Pte Ltd
[2007] SGHC 170

Case Number : OS 377/2007
Decision Date : 04 October 2007
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Madan Assomull and Vivian Chew Mong Fei (Assomull & Partners) for the plaintiff;
Hri Kumar and Benedict Teo (Drew & Napier LLC) for the defendant
Parties : Reindeer Developments Inc — Mindpower Innovations Pte Ltd

Contract – Formalities – Whether contract for sale of land fulfilled – Whether the property, price and parties were known – Section 6(d) Civil Law Act (Cap 43, 1999 Rev Ed)

Contract – Formation – Acceptance – Signed option to purchase not executed – Offer price and tendering of option money accepted by vendor's agent – Whether contract came into being

Equity – Maxims – He who comes into equity must come with clean hands – Whether vendor who reneged on agreement to sell the property at the offer price because a higher price could be obtained elsewhere came to the court with clean hands

Land – Caveats – Wrongful lodgment – Whether option holder may caveat interest in land – Whether valid and binding contract for sale of land vests in the purchaser an equitable interest in land that will support a caveat – Section 115(1) Land Titles Act (Cap 157, 2004 Rev Ed)

4 October 2007

Lai Siu Chiu J

1 The plaintiff Reindeer Developments Inc. is the owner of a flat situated at No 11 Ardmore Park #05-01, Singapore 259957 (“the property”) while the defendant Mindpower Innovations Pte Ltd was the party who was allegedly given an option on or about 6 February 2007 (“the Option”) to purchase the property at the price of \$6.3m (“the offer price”). The sale to the defendant was aborted by the plaintiff and the defendant responded by lodging a caveat no. IA/602678N (“the Caveat”) on 13 February 2007 against the title of the property.

2 The plaintiff filed the above originating summons (“the plaintiff’s application”) praying *inter alia* for an order that the defendant remove the Caveat and for a declaration that the defendant had not been granted a valid and enforceable option to purchase the property. I dismissed the plaintiff’s application and the plaintiff has filed a notice of appeal (in Civil Appeal No. 98 of 2007) against my decision.

The facts

3 The facts hereinafter set out are extracted from the affidavits filed by the parties. The plaintiff filed six affidavits with two by its director cum shareholder Lana Yuen Shiu Kinoshita (“Yuen”) and the remaining four by its solicitor Madan Assomull (“Assomull”) while the defendant filed three affidavits of which two were by its business consultant Lek Kee Meng (“Lek”) who was its representative in the transaction.

4 In her first affidavit, Yuen described the defendant as an intending purchaser who had made an

offer to purchase the property at the offer price. At the material time, Yuen (who resides in Hong Kong) had appointed Homelodge Realty Consultants ("Homelodge") as her marketing agents in particular its sole -proprietor Tey Song Kiem ("Tey") while Pauline Chen & Co ("the law firm") were her solicitors who were to act for her in the sale.

5 Yuen deposed that Homelodge and the defendant entered into negotiations on the terms of the proposed sale and a draft option was prepared by Homelodge (which she exhibited to her first affidavit). On or about 5 February 2007, the defendant issued a cheque in the plaintiff's favour in the sum of \$63,000 ("the option money") being the 1% option fee based on the offer price. She claimed that as the parties failed to reach an agreement on the terms of the intended sale and purchase, no option was granted to the defendant and on 15 February 2007, she instructed Assomull to return the option money to the defendant which he did, by forwarding the law firm's cheque for the option money to the defendant's solicitors.

6 Notwithstanding her return of the option money, Yuen complained that the defendant had failed and or refused to withdraw the Caveat that it had lodged against the property on 14 February 2007, despite a letter from her solicitor on 23 February 2007 to the defendant's solicitors that the Caveat had been wrongly lodged.

7 In Lek's first affidavit, the defendant gave an entirely different account of events from Yuen's version. Lek deposed that at end January or early February 2007, he had represented the defendant in its purchase of two properties at Ardmore Park. The agent who brokered the sales was Tey. In the course of conversation, Lek understood from Tey that she (Tey) was also marketing the property with \$6m being the plaintiff's asking price ("the asking price").

8 A few days later, Tey told Lek that she had secured the property for the defendant at the asking price. On 5 February 2007 however, Tey informed Lek that the plaintiff wanted a higher purchase price from the defendant than the asking price; she inquired if the defendant was willing to meet the offer price as that was what the plaintiff wanted.

9 Lek felt that even at the offer price, the purchase of the property was still a good investment due to the rising property market. After seeking and obtaining the permission of the defendant's managing director, he informed Tey that he agreed to and accepted the offer price on the defendant's behalf.

10 After discussions, Lek deposed that he and Tey agreed on the following terms of sale for the property:

- (a) the purchase price would be \$6.3m;
- (b) the option fee would be 1%;
- (c) the option period would be 2 weeks;
- (d) a further 4% of the purchase price would be paid on the exercise of the option;
- (e) completion of the sale would be 10 weeks from the exercise of the option;
- (f) the property would be sold subject to existing tenancy;
- (g) the option would be issued to the defendant and/or its nominee.

Tey informed Lek that the solicitor Pauline Chen ("Pauline") of the law firm had seen and approved the same terms as set out above in an earlier option prepared for the plaintiff and Yuen had agreed to the same.

11 Consequently, on the afternoon of 5 February 2007, Lek handed to Tey a cheque for the option money; he had written on the reverse of the cheque the terms set out in (b), (c), (d) and (e) above. On the same evening, Tey telephoned Lek to confirm that Tey had obtained Yuen's consent to the sale of the property on the terms set out in [10] and that Tey had handed the defendant's cheque for the option money to the law firm.

12 Tey subsequently informed Lek that the defendant's cheque had been cleared. (Bank statements produced by the defendant showed its cheque was cleared on 6 February 2007). On 6 February 2007, Tey informed Lek she had prepared the Option and that the document had been couriered to Hong Kong for signature by Yuen. He was advised by Tey on 9 February 2007 that the Option had arrived in Hong Kong but Tey could not confirm that the document had been signed as Yuen was not in Hong Kong.

13 On 13 February 2007, Lek telephoned Tey as he was concerned the Option was still not given to the defendant although it had paid the option money. He then learnt that Pauline had called Tey earlier to say that Yuen wanted to refund the option money to the defendant. Lek asked Tey to obtain an explanation from Pauline. At the same time, he instructed the defendant's solicitors to demand that the plaintiff execute the Option immediately and also to lodge a caveat against the title to the property which they did.

14 Lek asserted that as the defendant's cheque for the option money had been presented for payment and cleared, a valid and binding agreement had been made on 5 February 2007 for the plaintiff to issue the Option and the defendant was able, willing and ready to exercise the Option.

15 Tey filed an affidavit in support of the defendant. She corroborated Lek's affidavit in all material respects. Tey further deposed in her affidavit that she had been the plaintiff's property agent for more than ten years. The property was initially bought from the developers in the name of Yuen who subsequently transferred the title to the plaintiff. Since its purchase, the property had been rented out under Tey's management and she liaised solely with Yuen who was the plaintiff's representative. Tey would also meet Pauline to ensure all necessary paperwork was prepared for Yuen's execution. Tey said the arrangement was that all legal documents would be vetted by Pauline and if Pauline approved, the documents would likewise be accepted by Yuen.

16 Tey deposed that Yuen had in fact wanted to sell the property in or around April 2006 but because Tey managed to find her a good tenant, Yuen changed her mind. Around 20 January 2007, Yuen telephoned Tey to inform Tey that Yuen had received an offer for the property at the asking price (\$6m) from another property agent. Tey advised Yuen that as property prices were rising, Yuen should not be too hasty to sell. Tey inquired and was told by Yuen that she had not accepted the offer at the asking price.

17 As Yuen seemed keen to sell, Tey decided to secure buyers for the property. About a week later, Tey found a Korean buyer who offered the asking price and handed a cheque for \$60,000 as the 1% option fee to Tey. Not being able to contact Yuen in Hong Kong, Tey spoke to Pauline. As Pauline was aware that Yuen had received an offer at the asking price, Pauline advised Tey to prepare which she did, an option to sell the property at \$6m.

18 Tey faxed the draft option to the law firm on 30 January 2007 for Pauline's approval. The

following day, she was told by Pauline that the draft was in order. Tey then couriered the option to Hong Kong.

19 However, when Tey contacted Yuen in Hong Kong on 4 February 2007, she was told that Yuen was no longer prepared to sell the property at the asking price (even though the option in favour of the Korean buyer had been couriered to her and Tey was holding the Korean buyer's cheque for the 1% option fee). Yuen informed Tey she had received the offer price from another buyer and would be willing to sell the property to the Korean buyer if the latter paid the offer price.

20 Although Tey had informed Yuen that the Korean buyer was unlikely to agree to the offer price, Tey nonetheless conveyed Yuen's offer to the Korean buyer. The Korean buyer was unwilling to pay the offer price so Tey returned the Korean buyer's cheque for \$60,000.

21 It was thereafter that Lek came into the picture on the defendant's behalf. Tey corroborated the contents of Lek's affidavit as set out in [7] to [8], [10] to [13] above. Tey further deposed that on 5 February 2007, she had called on the law firm after receiving from Lek the defendant's cheque for the option money. To save time, Tey telephoned Yuen from the law firm to confirm she (Tey) had secured a buyer for the property at the offer price and had a cheque for the option fee. She passed the telephone to Pauline who, in Tey's presence, inquired of Yuen whether she (Yuen) wanted to sell the property at the offer price on terms similar to those set out in the option Tey had prepared for the Korean buyer. Yuen confirmed she did and that she would proceed with the sale to the defendant. Pauline further inquired of Yuen if she wanted Pauline to accept and bank-in the defendant's cheque; Yuen gave her confirmation again.

22 After her telephone conversation with Yuen, Pauline repeated Yuen's instruction to Tey who then handed over the defendant's cheque to Pauline. Tey was told to amend the draft option Tey had prepared for the Korean buyer to reflect the defendant as the buyer as well as the consideration at the offer price. Tey carried out Pauline's instructions and that same evening she faxed to the law firm the draft of the Option. Tey was subsequently informed by Pauline that the defendant's cheque had been cleared.

23 On 6 February 2007 Tey couriered the Option to Hong Kong. That same morning, Pauline telephoned Tey to say Yuen had wanted to stop the defendant's cheque. Pauline told Tey she had advised Yuen it was too late – the defendant's cheque had been presented for payment, it had been cleared and the deal was done.

24 Thinking that Yuen would proceed with the sale to the defendant in view of what Pauline had said, Tey decided to wait for Yuen to return the duly executed Option.

25 On Friday 9 January 2007 Tey tried to but could not contact Yuen at her residence as the latter had left Hong Kong the previous day. Tey informed Lek accordingly.

26 Tey was surprised when Pauline informed her on 13 February 2007 that Yuen had instructed Pauline to refund the option money to the defendant. Tey was asked to collect the cheque from the law firm. When this turn of events was conveyed to Lek after he called Tey to find out the status quo, Lek was unhappy and wanted an explanation.

27 Tey then contacted Pauline to find out why Yuen had changed her mind. Pauline informed Tey that Yuen had been advised by another housing agent not to accept the defendant's offer. Tey was further told that Yuen had expressed unhappiness over two terms in the Option viz (i) the fact that the Option was issued to the defendant 'and/or nominee' and (ii) that the deposit payable was only

5% and not 10% of the offer price. Tey understood from Pauline that she had explained to Yuen the two provisions were common in private property deals.

28 Tey herself contacted Yuen a few days later to inquire why the latter had decided against selling the property to the defendant. Yuen explained she had fully intended to sign the Option which she received late on 7 February 2007. However, on the following day when she flew to Taipei, Yuen met some property agents at an exhibition there of Singapore properties and they told her property prices were on the rise. Hence, she changed her mind.

29 Tey concluded her affidavit by saying that although she stood to gain financially had the sale to the defendant proceeded, she was deposing to the truth.

30 In reply, Yuen's second affidavit merely contended that the defendant did not have a valid and/or enforceable option to purchase the property. She denied that the defendant's cheque for the option money was evidence of the existence of a valid option to sell the property as well as the allegations made in the affidavits of the defendant. Yuen dismissed the conversations set out in the affidavits of Lek and Tey as of "no relevance" and deposed that in any case the plaintiff was not admitting to the same.

31 On 29 May 2007, the defendant filed summons no. 2344 of 2007 ("the defendant's application") for an order to convert the plaintiff's application into a writ.

32 In his (second) affidavit filed in support of the defendant's application, Lek deposed that as there were disputes of facts which could not be resolved without cross-examination of key witnesses viz himself, Tey, Yuen and Pauline, it was necessary to convert the plaintiff's application into a writ action. He pointed out a glaring omission in Yuen's affidavits. If as Yuen contended, she did not agree to the terms of the Option that Tey prepared for her to issue to the defendant, Yuen had failed to explain why she instructed the law firm to accept and bank-in the defendant's cheque for the option money. He noted that Yuen did not admit to the various conversations set out in his and in Tey's affidavits. That only made cross-examination even more necessary to determine the veracity of the allegations made by Lek and Tey in order to resolve the issue of whether a valid option had been agreed to be issued by Yuen to the defendant albeit not executed.

33 As I said earlier at [3], counsel for the plaintiff filed four affidavits on its behalf. In his third affidavit (para 4), Assomull responded to Lek's second affidavit with the comment that the plaintiff's application was a straightforward case and there were no material dispute of facts which necessitated the same being converted into a writ. He deposed that as the terms of the draft option were not settled, there was no option and/or agreement for the sale of the property within s 6(d) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("the CLA"). Counsel added that the fact the plaintiff credited the defendant's cheque for the option money did not confer any rights in the property on the defendant nor was it a waiver on the part of the plaintiff (which comment I did not understand).

34 In the fourth affidavit he filed on the plaintiff's behalf, Assomull exhibited his exchange of correspondence with the office of the Official Assignee ("the OA"), having discovered that Lek was adjudged a bankrupt on 18 June 2001. Assomull informed the OA that Lek had affirmed affidavits on behalf of the defendant in these proceedings and inquired whether Lek had been given permission by the OA's office to be involved in the management of the defendant, citing s 148 of the Companies Act (Cap 50, 2006 Rev Ed). The OA replied that its records showed that Lek was employed as a business consultant with the defendant, as per his affidavits.

The arguments

35 The plaintiff submitted that the defendant did not have a caveatable interest based on its ground of claim in the Caveat as an intending purchaser *viz* "arising from payment of the option fee and acceptance of the option fee by the registered proprietor". Relying on *Sim Kwang Mui Ivy v Goh Peng Khim* [1995] 1 SLR 186, Assomull submitted that there was no valid option. He added that payment (of the option money) *per se* with acceptance was no justification for lodgement of the Caveat. Moreover, no affidavit had been filed by any director or secretary or manager of the defendant but only by Lek who was indirectly participating in the management of the defendant and thereby contravened s 148(1) of the Companies Act as well as s 131 of the Bankruptcy Act (Cap 20, 2000 Rev Ed), citing *Asia Commercial Finance (M) Bhd v Pasadena Properties Development Sdn Bhd* [1991] 1 MLJ 111. Consequently, the Caveat must be removed.

36 Counsel for the defendant (Mr Kumar) on the other hand submitted that the plaintiff's arguments were misconceived. This case was different from the facts in *Sim Kwang Mui Ivy v Goh Peng Khim*. There, Kan Ting Chiu J found against the caveator/defendant because no option money was paid, only 'earnest money'. In this case, the defendant had paid the full option money, the terms of the Option were agreed between the parties' agents (Tey for the plaintiff and Lek for the defendant) and the Option was couriered to Yuen in Hong Kong on the basis she would execute the document on the plaintiff's behalf in exchange for the option money which had been accepted by the law firm and which cheque of the defendant in payment thereof was cleared.

37 Mr Kumar pointed out that although Yuen denied the facts as given by Lek and her own agent Tey, she had failed to give her own version of events. It was even more significant that nowhere in her affidavits did Yuen dispute that Pauline had her authority to bank-in the defendant's cheque for the option money. Indeed, Yuen's first affidavit filed in support of the plaintiff's application completely omitted mention of her acceptance of the defendant's cheque. It was not for Assomull as the plaintiff's solicitor to make the statement he did in para 10 of his third affidavit (at [33] above). How would he know why Yuen accepted the defendant's cheque? It was Yuen who should but had failed to, explain.

38 Mr Kumar added that contrary to the submissions tendered by the plaintiff, there was nothing wrong in Lek, even as a bankrupt, from affirming affidavits on the defendant's behalf. Where was the evidence from the plaintiff that he was involved in the management of the defendant and had contravened s 148 of the Companies Act and s 131 of the Bankruptcy Act? Lek filed affidavits for the defendant because he had direct knowledge of matters; there was no legal prohibition against him doing so and Lek had the express approval of the defendant's managing-director (see para 9 of his first affidavit) to proceed with the purchase of the property.

39 Finally, even if the Caveat was set aside, Mr Kumar reminded the court that the defendant had a counterclaim against the plaintiff, as set out in para 26 of Lek's first affidavit – the defendant had asked for a declaration that the parties had entered into a valid and binding option on 5 February 2007. Consequently, the defendant was entitled to file the Caveat.

The decision

40 I disagreed with the submission of Assomull and the affidavit (*supra* [33]) he deposed to the effect that this was a straightforward case without material disputes of facts. On the contrary, the facts involved were highly contentious and the only way to determine who was telling the truth was to have Lek, Tey and Yuen cross-examined on their affidavits, which was the order I made when I refused to grant the plaintiff's application.

41 I had pointed out to Assomull that had Yuen been in Singapore at the time the defendant's

cheque for the option money was handed over to the law firm, the plaintiff would have had to deliver to the defendant the executed Option in exchange thereof. In such a scenario which is common to conveyancing practice in Singapore, the plaintiff would not on or after 6 February 2007, have been able to change her mind on selling the property to the defendant at the offer price. The plaintiff would instead have been bound by the terms of the Option. I saw no difference between such a scenario and what transpired in this case, merely because the vendor's representative (Yuen) was not in Singapore to execute the Option on the plaintiff's behalf. Equity looks on that as done which ought to be done (see *Snell's Equity* 31st edition p 107 para 5-25).

42 I turn now to the relevant legislation. Section 115(1) of the Land Titles Act (Cap 157, 2004 Rev Ed) states "Any person claiming an interest in land...may lodge with the Registrar a caveat in the approved form..." while "interest" was defined under s 4 thereof "in relation to land, means any interest in land recognised as such by law and includes an estate in land". The question that arose for my consideration was, did the defendant have an interest in the property recognised by law? In my view it did. In this regard, Mr Kumar had referred the court to *Halsbury's Laws of Singapore* (2005 reissue vol 14) p 209 para 170.0239 which stated that persons who may caveat their interests in land included an option holder.

43 I agree that in this case, the signed Option was not handed to the defendant but that was for the geographical reason set out in [41] above. The lack of an executed option did not in my view detract from the fact that a contract had come into being. The offer price from the defendant and the defendant's performance of the contract by tendering the option money had been accepted by the plaintiff through its agent the law firm. There was offer and there was acceptance. The fundamental requirements of a contract had been fulfilled.

44 As it was relied on in the plaintiff's arguments, it would be appropriate at this juncture to refer to s 6(d) of the CLA. The section states:

No action shall be brought against —

(d) any person upon any contract for the sale or other disposition of immovable property, or any interest in such property

unless the promise or agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person lawfully authorised by him.

45 In my view, there was a "note in writing" and sufficient compliance with the above section as Lek had written on the reverse of the defendant's cheque the following particulars:

- (a) being 1% option fee to purchase property known as Blk 11 #05-01, Ardmore Park;
- (b) 2 weeks option to exercise option by paying 4% as stakeholders;
- (c) completion 10 weeks.

It seemed to me that the requisite three Ps (see JT Farrand's *Contract and Conveyance* fourth edition at pp 38-39) for a contract for a sale of land had been fulfilled as the property, the price and the parties were known. The property was identified on the reverse of the defendant's cheque in (a) above. As the cheque amount of \$63,000 was stated as 1% of the sale price, it meant that the price (\$6.3m) was also known while the parties to the contract were reflected on the cheque itself *viz* the

payee/vendor (the plaintiff) and the drawer/purchaser (the defendant).

46 My view is reinforced by the learned authors of *Principles of Singapore Land Law* (Second edition) and Cheshire, Fifoot and Furmston's *Law of Contract Second Singapore and Malaysian Edition*. The following extracts appear in *Principles of Singapore Land Law*:

At p 312:

There are no formal requirements for a contract for the sale of land. All that is needed for a contract to come into existence is known as 'the three Ps' – the property, the price and the parties. But in order that the contract be enforceable, section 6(d) of the Civil Law Act must be complied with.

At p 313:

The first point to note is that the *contract itself need not be in writing*. So if the parties have come to an oral agreement, there could be a valid contract between them... (emphasis mine).

47 Cheshire, Fifoot and Furmston's *Law of Contract Second Singapore and Malaysian Edition* expressed the same view on s 6(d) of the CLA in the following passage (at p 366):

1 The contents of the 'note or memorandum'

The agreement itself need not be in writing. A 'memorandum or note' of it is sufficient, provided that it contains all the material terms of the contract. Such facts as the names or adequate identification of the parties, the description of the subject matter, the nature of the consideration, comprise what may be called the minimum requirements.

48 I should add that although s 4 of the Statute of Frauds 1677 was repealed and replaced by s 6(d) of the CLA, it does not appear that the equitable doctrine of part-performance has been abolished, to which I alluded to in [43]. In this regard, I refer to *The Application of English Law Act* (Cap 7A, 1994 Rev Ed). Section 3(1) thereof states:

The common law of England (including the principles and rules of equity) so far as it was part of the law of Singapore immediately before 12 November 1993, shall continue to be part of the law of Singapore.

The authors of Cheshire, Fifoot and Furmston's *Law of Contract Second Singapore and Malaysian Edition* also appeared to accept (at p 374-375) that the doctrine of part-performance continues to apply in Singapore.

49 The following passage which appears at p 258 of *Principles of Singapore Land Law* (Second edition) is also helpful:

Where there is a valid and binding contract for sale of land, the equitable interest vests in the purchaser and so he has an interest in land that will support a caveat.

50 Assomull's fourth affidavit appeared to be an attempt to discredit Lek. With respect, I could not see how Lek's bankrupt status was relevant to the issue of whether there was a valid option or agreement for sale. Indeed, there was nothing wrong and/or illegal for a bankrupt to work as a business consultant for a company such as the defendant particularly when Lek did so with the knowledge if not blessings, of the OA's office. A business consultancy is also a job. Bankrupts should

work in order to earn a living to support themselves and/or their families and to pay off their creditors. If indeed Lek was directly or indirectly participating in the management of the defendant in contravention of s 148 of the Companies Act, it was for the plaintiff to prove that allegation on which it failed.

51 Section 148(1) of the Companies Act states:

Every person who, being an undischarged bankrupt (whether he was adjudged bankrupt by a Singapore Court or a foreign court having jurisdiction in bankruptcy), acts as director of, or directly takes part in or is concerned in the management of, any corporation, except with the leave of the Court or the written permission of the Official Assignee shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

52 Counsel had also cited s 131 of the Bankruptcy Act which states:

Where a bankrupt has not obtained his discharge —

(1) he shall be incompetent to maintain any action, other than an action for damages in respect of an injury to his person, without the previous sanction of the Official Assignee..

Again, I do not see the relevance of this section to our case. The defendant not Lek was the party sued by the plaintiff.

53 The plaintiff's application was a claim for equitable reliefs. It is trite law that he who comes into equity must come with clean hands (see *Snell's Equity supra* [41] p 98 para 5-15). The plaintiff's director cum shareholder Yuen did not come to court with clean hands. To my mind, she wanted to renege on the plaintiff's agreement to sell the property to the defendant at the offer price because she felt that she could obtain a higher price in a rising property market. Yuen economised on the truth in her affidavits. She ought to be cross-examined (like Lek and Tey) on her affidavits and generally.

54 Consequently, although I made no order on either the plaintiff's or the defendant's application, I directed that the deponents should be cross-examined on their affidavits and that the costs of both applications should abide the outcome of the cross-examination exercise. Meanwhile, the Caveat should remain on the register of the Singapore Land Authority.