Cheok Doris *v* Commissioner of Stamp Duties
[2010] SGCA 28

Case Number : Civil Appeal No 18 of 2010

Decision Date : 11 August 2010

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Gan Hiang Chye (Rajah & Tann LLP) for the appellant; Foo Hui Min and Jimmy Oei (Inland Revenue Authority of Singapore) for the respondent.

Parties : Cheok Doris — Commissioner of Stamp Duties

Revenue Law – Stamp Duties

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2010] 2 SLR 371.]

11 August 2010 Judgment reserved.

Chan Sek Keong CJ (delivering the judgment of the court):

Introduction

1 This is an appeal against the decision of a High Court Judge ("the Judge") dismissing the appeal of the appellant ("the Appellant") against the decision of the Commissioner of Stamp Duties ("the Respondent") that the Appellant was not entitled to a refund of stamp duty of $174,600 paid under s 22 of the Stamp Duties Act (Cap 312, 2006 Rev Ed) ("the SDA") in connection with an aborted property transaction (see *Cheok Doris v Commissioner of Stamp Duties* [2010] SGHC 17).

2 The proceedings in the High Court were brought in the form of a case stated dated 13 May 2009 ("the Case Stated") under s 40(1) of the SDA. Section 40(1)(*b*) of the SDA provides that any person who is dissatisfied with the Commissioner's decision under s 39A(5) on a notice of objection may, upon payment of the duty assessed, appeal against the decision to the High Court, and for that purpose, require the Commissioner to state and sign a case, setting forth the question upon which his opinion was required, and the decision made by him.

Background Facts

3 The dispute between the Appellant and the Respondent on this issue arose in the following circumstances as set out in the Case Stated:

(a) the Appellant and her husband (collectively referred to as "the Purchasers") had on 26 May 2004 exercised an option to purchase ("the S&P Agreement") the property known as Residency at Mount Sophia, 96 Sophia Road, comprising 8 residential strata units (collectively called "the Property", together with the common property) from its owner ("the Vendor") at the price of $6 million;

(b) each of the strata units had been issued with a Subsidiary Strata Certificate of Title ("SSCT") stating the area of the unit to be exactly the same as that described in the S&P Agreement;

(c) prior to the completion of the sale and purchase of the Property, disputes arose between the Vendor and the Purchasers as to (i) whether the Vendor was entitled and could give vacant possession of three out of eight of the strata units; and (ii) the area of the strata units as represented to the Purchasers;

(d) the Purchasers' case was that the Vendor (through his estate agent) had represented to them that the net lettable area of the Property was the same as the total strata area of the Property, *ie*, 1045 sq m; however, the valuation report obtained by the Purchasers showed that 230 sq m of void space had been computed as part of the total strata area of 1045 sq m (by reason of each living room having a higher than normal ceiling); as a result, the Property had a lettable area of only 815 sq m, and this deficiency in lettable area would reduce the market value of the Property by 14% to $5.159 million;

(e) as a result of these disputes, the parties mutually agreed to rescind the S&P Agreement.

4 After the S&P Agreement was rescinded, the Respondent assessed it to be chargeable for ad valorem stamp duty under s 22(1) of the SDA and assessed the duty at $174,600. The Purchasers served a notice of objection on the Respondent under s 39A(1) of the SDA, relying on the following three grounds to contend that stamp duty was not payable:

(a) the S&P Agreement was mutually rescinded *ab initio* and from the date of such rescission, in law, with retrospective effect, the S&P Agreement did not exist, or alternatively there was no longer in existence any agreement to be stamped;

(b) the total strata area of 1045 sq m was stated in the SSCTs, but as 22% of that area was void space, the Vendor's title to the Property was not a good (or marketable) title; and

(c) by reason of the fact that the total strata area as stated in the SSCTs included 22% of void area which carried little or lesser value, the Vendor could not rightfully be said to be able to deliver or prove a title to the Property he had contracted to sell.

5 The Respondent rejected the above arguments and affirmed his assessment on 10 September 2008 under s 39A(5) of the SDA. In his s 39A(5) notice, the Respondent stated:

> We are of the view that the deficiency in net lettable area in the present case does not constitute substantial misdescription. The facts of Yeo Brothers Co (Pte) Ltd v Atlas Properties (Pte) Ltd [1988] 1 MLJ 150 are distinguishable from those of the present case: the former involved the sale and purchase of a single unit in which there was a pure misdescription of the gross floor area (177.07 sq. m instead of 158 sq. m), whereas the latter involved the sale and purchase of an entire development on an en-bloc basis for which your client had erroneously believed that the gross strata area is the same as the net lettable area.
>
> We do not consider such a misunderstanding to amount to substantial misdescription of the said properties. In fact, according to the valuation report by Allied Appraisal Consultants [P]te Ltd which you have provided on the said properties, the high ceilings of the family lounges have to be included in the computation of the strata areas to reflect the true value of the properties. As there is no substantial misdescription in the present case amounting to a lack of good title, a refund of any stamp duty paid cannot be made under section 22(6)(a).

6 The Appellant paid the assessed stamp duty and required the Respondent to state a case to the High Court to determine issues stated therein. The Case Stated contained the material facts set

out at [3] above and also the Respondent's s 39A(5) notice set out at [5] above. The questions for determination are set out at [16] of the Case Stated ("the Questions") as follows:

> The questions for the opinion of the Court are:
>
> (a) Whether the [S&P] Agreement is liable to the stamp duty as assessed by the Respondent;
>
> (b) If so, whether [the] Appellant is entitled to be refunded such stamp duty paid under s 22(6) of the [SDA];
>
> (c) If the [S&P] Agreement is not liable to the stamp duty as assessed, to what stamp duty, if any, is it liable.

7 The Judge dismissed the Appellant's appeal as set out in the Case Stated in a short judgment, for the reasons set out in the following paragraphs:

> 2 ... counsel for the [A]ppellant submitted a technical argument as to why the [V]endor was unable to prove a good title in this case. The argument was advanced on the claim that the parts of the flats, namely, the designated family areas had far higher ceilings than the rest of the flats. However, the [V]endor had calculated the space where the floors were omitted to make way for those high ceilings and counted it as part of the total strata area. The purchase price thus included "empty space". Counsel submitted that the [V]endor was unable to prove title in the void space. Indeed, that was the allegation against the [V]endor - that he had breached his obligation to deliver a good title. This might have been a fascinating issue had the dispute between the [V]endor and [P]urchasers come to trial. The matter was settled without a determination of the issue in dispute.
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> 3 [Counsel for the Appellant] cited passages from the Parliamentary Debates on the amendment of the Act and submitted that the amendment to s 22 was to curb speculation and was not intended to change the position that a vendor must convey a good title. Counsel submitted that "good title" meant "marketable title". He submitted that the [V]endor here wanted to convey 1,045m^2 (of each flat) but 22% of that stipulated area was not physical floor area but space.
>
> 4 I agree with [counsel] for the [R]espondent, that the burden of proof lay with the [A]ppellant and she had not discharged the burden. Whether the contract in this case was enforceable by either party ([V]endor and [Purchasers]), and whether the [V]endor was able to transfer good title, were questions of fact that cannot and had not been answered on a case stated. The [V]endor was not a party before this court. If that question was not answered, then the [R]espondent was entitled to rely on the [S&P Agreement] and assess the ad valorem duty on the basis of the land area stipulated in it.
>
> 5 The appeal is therefore dismissed. I will hear parties on the question of costs at a later date.

8 It can be seen from these passages that the Judge did not answer the Questions stated for the opinion of the court in accordance with s 40(3) of the SDA. He dismissed the Appellant's appeal on the ground that the Appellant had failed to discharge the burden of proof on two issues of fact, *viz*, (a) whether the S&P Agreement was enforceable by either party, and (b) whether the Vendor was able to transfer a good title. The Judge did not accept the facts as stated in the Case Stated which was filed by the Respondent.

Issues on appeal

Issues on appeal

9 Before us, the Appellant contended that the Judge was wrong to hold that the Appellant had not proved the facts and to dismiss her appeal based on the Case Stated on the following grounds:

(a) the Appellant had disclosed to the Respondent the exchange of letters between the Purchasers' solicitors and the Vendor's solicitors which documented the main reason why the parties had mutually rescinded the S&P Agreement (*viz*, there was a shortfall of 230 sq m in the net lettable area of the Property);

(b) the Respondent had not rejected the reason or reasons for the rescission, and accordingly the facts stated in the Case Stated should be accepted at face value, and the Judge should have decided the Questions referred to him on the basis of those facts; and

(c) if the Judge did not accept the facts as set out in the Case Stated, he should have ordered a trial of the Questions raised instead of dismissing the Appellant's appeal.

10 With respect to Question (a) set out at [6] above, the Appellant's case is that she is entitled to a refund as the Vendor was unable to give a good or marketable title to the net lettable area of the Property that was represented to the Purchasers. The Appellant's counsel argued that s 22(6) of the SDA should be construed purposively and given a broad interpretation so as not to apply to any speculative transaction as Parliament's intention in enacting s 22 of the SDA was to curb speculative activities in the property market. Accordingly, s 22 of the SDA should not be interpreted to penalise *bona fide* purchasers like the Appellant where the evidence is clear that the S&P Agreement was rescinded because of a *bona fide* dispute between the Vendor and the Purchasers as to the terms of the sale, and the parties had not wished to incur unnecessary costs in litigating the dispute in court. The Appellant's counsel pointed out that as the misdescription of the net lettable area of the Property was about 22% of the total strata area and this had resulted in a diminution of 14% of the market value of the Property (*ie*, from $6 million to $5.159 million), a court of law would not have compelled the Purchasers to complete the purchase without compensation. The Appellant's counsel contended that in those circumstances, the Vendor could not give a good title on the authority of *Yeo Brothers Co (Pte) Ltd v Atlas Brothers (Pte) Ltd* [1988] 1 MLJ 150 ("*Yeo Brothers*").

11 In his submission as set out in the Skeletal Arguments, the Respondent accepted (correctly, in our view) that the facts relating to why the S&P Agreement was rescinded were not in dispute, but pointed out that the Purchasers agreed to purchase the Property on an "as is where is" basis and that the description of the Property (in terms of its area) in the S&P Agreement corresponded to the description of the Property in the SSCTs. The Respondent accordingly contended that these matters had nothing to do with the title of the Vendor and that the decision of the Judge was correct in dismissing the appeal for the reasons given by him.

12 On the issue of whether on the facts as set out in the Case Stated the Vendor could have given a "good title" to the Purchasers, the Respondent argued that the Vendor could have deduced a good root of title to the Property for the following reasons:

(a) each of the strata units comprised in the Property has its own SSCT in the name of the Vendor;

(b) that the Singapore Titles Automated Registration System did not show that there were any encumbrances registered against the titles which could not have been discharged prior to or at the time of completion.

Decision of this court

13 With respect to Question (a) set out at [6] above, the Appellant had made an argument in the notice of objection that there was no agreement which could be subjected to stamp duty as the Vendor and the Purchasers had rescinded the S&P Agreement *ab initio*. As this argument was not raised before us, we shall not consider whether, as a matter of contract law, it is possible for contracting parties to rescind a contract which would otherwise be a valid contract but for the rescission, or to rescind a contract in a manner that would affect the rights of third parties (such as the right of the Respondent to assess stamp duty payable on it). Accordingly, we shall deal with Questions (a) and (b) together as they are two sides of the same coin in this appeal. The underlying issue in both the Questions is whether the mutual rescission of the S&P Agreement on the grounds stated in the Case Stated falls within the terms of s 22(6)(*a*) of the SDA.

14 As we have mentioned earlier, the Judge had dismissed the Appellant's appeal on the ground that she had failed to discharge the burden of proof on two issues: (a) whether there was an enforceable agreement; and (b) whether the Vendor was able to give a good title, as the Vendor was not a party to the proceedings. In our view, this was a rather unorthodox approach to determine questions of law referred to a court on a case stated. It would appear that the Judge had required these two issues to be determined against the Vendor first before he could answer the Questions in the Case Stated. But, the only purpose of the case stated was to facilitate the court to answer the stated questions on the basis of facts as stated. There is no burden of proof on any party as the issues to be decided are issues of law.

15 In our view, the Judge has adopted the wrong approach. Whilst this approach would have been completely justified if these proceedings had been ordinary adversarial proceedings with respect to disputed issues of fact, a case stated is a different kind of court proceedings. A case stated is an established forensic device whereby questions of law are referred to the court for determination on stated facts on the basis that the facts are true. For this reason, the circumstance that the Vendor is not a party in the proceedings is not material to the Case Stated. If the stated facts are not sufficient to enable the court to answer the questions referred to it, then the court should direct that the case stated be amended to include the necessary additional facts for the questions to be answered. The court should not dismiss it on the ground that inadequate facts have been stated or another interested party has not been made a party to the proceedings. The case stated states an issue or issues of law between the stated parties. In the present case, the Case Stated was filed by the Respondent and he was estopped from denying or resiling from the facts in the Case Stated, one of which was that the S&P Agreement was mutually rescinded for the reasons stated in the Case Stated. Furthermore, for the same reason, the Appellant should not have been made to bear the costs of the dismissal.

16 Before us, the Respondent has proceeded on the basis that the facts set out in the Case Stated are not in dispute. This is an entirely correct position to take, and which should have been taken in the hearing below. In our view, there is no reason why the Questions set out in the Case Stated (see [6] above) cannot be answered on the facts stated therein. The underlying issue is a short one. It is whether the Vendor was able to prove his title to the Property for the purposes of s 22(6)(*a*) of the SDA, leading up to the mutual rescission of the S&P Agreement. The fact that both the Vendor and the Purchasers believed that the Vendor did not have a good title to pass to the Purchasers is irrelevant to the liability to pay stamp duty under s 22(6)(*a*) of the SDA. The issue has to be decided on the basis of a judicial determination, and not on the basis of mutual agreement between the parties to the S&P Agreement, as to the meaning of the expression "title" in s 22(6)(*a*) of the SDA.

Meaning of "title" in s 22(6)(*a*) of the SDA

17 Section 22(6) provides as follows:

> Subject to subsection (7), the ad valorem duty paid under this section upon any contract or agreement for the sale of property shall, on application, be refunded by the Commissioner where the contract or agreement is later rescinded or annulled on the ground that –
>
> (*a*) the vendor is unable to prove his title to the property;
>
> ...

18 The expression "title" is not defined in the SDA. However, it is a well established expression in common law conveyancing which is now applicable to all registered title transfers in Singapore. In the absence of any evidence to the contrary, we must assume that the draftsman had the common law meaning in mind when he drafted this provision.

19 The established principle is that in the absence of any express stipulation to the contrary as to title, the "vendor is required to prove that the property to be sold is that which he has and the title which he has agreed to convey is that which he can actually give. A good title is one which shows the entire interest, legal and equitable, in the vendor, free from encumbrances and which can be proved according to the law." (Tan Sook Yee, Tang Hang Wu & Kelvin FK Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009)("*Tan Sook Yee*") at pp 404–405). This obligation is also described as the requirement to give a good marketable title. The vendor discharges this obligation when he shows that he, or some other person whose concurrence he can require, can transfer to the purchaser the whole of the legal and equitable interest in the land sold (see *Halsbury's Laws of Singapore* vol 14(2) (LexisNexis Singapore, 2009 Reissue, 2009)("*Halsbury's*") at para 170.1286). Accordingly, we accept the submission of counsel for the Appellant that the word "title" in s 22(6)(*a*) of the SDA refers to a good title or a good marketable title as described in *Tan Sook Yee*.

20 The Property is registered land under the Land Titles Act (Cap 157, 2004 Rev Ed) ("the LTA"). Before its conversion into registered land, the Property had a common law title. A good title under the law is shown by deducing the root of title for a period of at least 15 years preceding the sale. Section 3(4) of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) provides that "A purchaser of land shall not be entitled to require a title to be deduced for a period of more than 15 years or for a period extending further back than a grant or lease by the Crown or the State, whichever period is the shorter." Before 1993, the minimum period for deducing title was 30 years. Both requirements are easy to comply with because all assurances as defined in s 2 of the Registration of Deeds Act (Cap 269, 1989 Rev Ed) ("the RDA") are required to be registered under the RDA, in default of which they would not be admissible in any court of law as evidence of title to such land (see s 4 of the RDA). A search in the Register of Deeds will show the assurances that are material for the purposes of deducing title.

21 Deducing title to land in Singapore became even easier under the system of title registration under the Land Titles Ordinance (now the LTA) since 1960 with respect to unqualified titles. The registered proprietor has an indefeasible title against the whole world except overriding interests mentioned in s 46 of the LTA and encumbrances protected by caveats and which are therefore apparent in the land register. Currently, the bulk of common law land held in Singapore has been converted to registered land, except for small pockets of land which have no practical significance in

the property market (see *Tan Sook Yee* at p 265, n 11). Proving a good root of title to land, whether common law or registered land, therefore requires little legal skill or effort in the vast majority of property transactions in Singapore (see *Algemene Bank Nederland NV v Tan Chin Tiong and another* [1985–86] SLR(R) 1154 at [11]–[12]).

22 In the present case, the Property is registered land and comprises eight strata titled units registered in the name of the Vendor. The sale of the Property included the common property which is also registered land comprised in a certificate of title which is registered in the name of the Vendor. There can be no doubt that, at all material times, the Vendor was able to prove his title to the Property under the LTA, and therefore should be able to prove his title in the terms of s 22(6)(*a*) of the SDA. However, counsel for the Appellant argues that s 22(6)(*a*) of the SDA should be interpreted broadly and purposively to give effect to the objective of the law. He has referred to the parliamentary materials to show (and this is not denied by the Respondent) that s 22 of the SDA was enacted to curb speculation in property transactions. His argument is that the Purchasers agreed to purchase the Property for investment and not for speculation, and that the S&P Agreement was mutually rescinded because of the discrepancy in the net lettable area of the Property, and that this amounted to the Vendor being unable to prove a good or marketable title to the Property. However, counsel for the Appellant has not explained to us what the parties had meant by the term "net lettable area". Presumably, he meant the "net built-up" or "floor area" as that would be the area a tenant would be expected to pay rent for.

23 In support of his broad interpretation, counsel for the Appellant referred to the decision of *Yeo Brothers* as authority for the proposition that the Vendor could not give a good marketable title. In that case, the purchaser had contracted to purchase a flat with an area of 177.07 sq m at the price of $378,937.00 (or $198.81 per sq foot), but the final strata area was 158 sq m, resulting in a shortfall of 19.07 sq m (or a 10.77% shortfall in area or $40,810.56 plus $2,522.80 in value). Lai Kew Chai J held that the misdescription was substantial and that the purchaser was under no obligation to complete the purchase without an abatement of the price. Lai J also said that where the deficiency is not substantial, and is made innocently by the vendor, the vendor is entitled in equity to obtain an order of specific performance on the condition, which a court in exercise of its equitable jurisdiction imposes, that he compensates the purchaser usually by an abatement of the purchase price. The issue of whether the vendor could give a good marketable title did not arise in that case. Similarly, another decision cited by the Appellant, *viz, Chong Ah Kwee and another v Viva Realty Pte Ltd* [1990] 1 SLR(R) 244 ("*Viva Realty*") was also concerned with whether the purchaser there was entitled to an abatement of the purchase price and not with whether the vendor was able to give a good title. In *Viva Realty* at [50], the High Court observed that in the case of the purchase of a strata flat, every square foot of space counted as what the purchaser was acquiring, and paying for, was air space bounded by common party walls. It may be said that this observation is even more pertinent today bearing in mind the high price of property in Singapore. However, in our view, this observation is not relevant to the issue in this appeal, *viz*, whether the Vendor had a good title to the Property in the circumstances where the dispute between the Vendor and the Purchasers was not in relation to the title as such, but to whether the Vendor had misrepresented the lettable area of the Property.

24 The Appellant has also referred to *In re Spollon and Long's Contract* [1936] 1 Ch 713 ("*In re Spollon and Long's Contract*") where Luxmoore J said at 718:

> The purchaser having bought on an open contract, was entitled to have a good marketable title, which, as I understand it, is a title which will enable him to sell the property without the necessity of making special conditions of sale restrictive of the purchaser's rights.

In that case, one of the title deeds was not properly stamped. This defect was considered a matter

of importance to the purchaser because if the title were subsequently challenged, he would not be able to produce in evidence the improperly stamped deed as part of the chain of title. For this reason he might have difficulty in selling the property without making special conditions. When translated in the context of the present case, presumably the Appellant is claiming that if the Purchasers wanted to sell the Property to another purchaser subsequently, they would have to state expressly that the SSCTs of the eight strata units do not have a lettable area of 1045 sq m and the 230 sq m consists of air space. Put in this way, the argument merely begs the issue to be decided.

25 In his reply, the Respondent relied on the judgment of the High Court in *Sheriffa Taibah bte Abdul Rahman v Lim Kim Som* [1992] 1 SLR(R) 375 ("*Sheriffa Taibah (HC)*") as authority for the court's endorsement of the attributes of a good title. At [94] of *Sheriffa Taibah (HC)*, the High Court summarised the submission of counsel for the defendant on the attributes of a good title by reference to five situations. The court rejected this submission and held that the cases cited (which included *In re Spollon and Long's Contract, Jeakes v White* (1851) 6 Ex 873; 155 ER 800 ("*Jeakes v White*") and *Manning v Turner and Another* [1975] 1 WLR 91) were not applicable and that generalised definitions of "good title" could not be applied literally, as the courts have generally tried to describe rather than to define "good title" and have decided whether particular defects can be shown to affect the vendor's title on a case-by-case basis rather than attempting all embracing definitions.

26 In *Sheriffa Taibah (HC)*, the purchaser could not complete the purchase of the property on the day fixed for completion on 7 July 1983 under the terms of a sale and purchase agreement dated 29 April 1983. Consequently, the vendor gave a 21-day notice dated 13 July 1983 to the purchaser to complete the purchase. On the same day, *ie*, 13 July 1983, the Collector of Land Revenue made a declaration to acquire the property under the Land Acquisition Act (Cap 272, 1970 Ed) ("the LAA") for a public purpose. According to the High Court, the declaration was due to or precipitated by a fire on the property on 17 February 1983. One of the issues raised by the defendant was whether in the circumstances the vendor could pass a good title to the purchaser on completion. The High Court applied the decision of Rath J in *Tsekos and Another v Finance Corporation of Australia Ltd* [1982] 2 NSWLR 347 and held that a declaration made under s 5 of the LAA did not affect the ability of the vendor (who had a good title) to pass a good title to the property to the purchaser as such a notice did not have the effect of vesting the title of the property in the Collector under the LAA (see [97] of *Sheriffa Taibah (HC)*).

27 On appeal, *Sheriffa Taibah (HC)* was reversed by this court in *Lim Kim Som v Sheriffa Taibah bte Abdul Rahman* [1994] 1 SLR(R) 233 ("*Sheriffa Taibah (CA)*") on the grounds that the contract was frustrated by the intended acquisition and that the vendor could not give a good marketable title. As to the latter ground, the court held as follows at [57]:

> 57 We note Rath J's view that the state of affairs there existed did not amount to "a defect" in the vendor's title. *But it seems to us* that *what we have here is not truly "a defect" as such in the title to the property*. Nor is it a question that the property is affected by any encumbrance or charge. It is a question of a change in the nature or duration of the title. The process of compulsory land acquisition which de facto had begun with the s 5 declaration had changed the nature or duration of the title. The title had become no longer one as provided in the agreement - be it a fee simple or in perpetuity - but a defeasible one which within a short period of time would vest in the State, as it did. Hence, again, giving the matter a sense of reality, what the purchaser would have got had he completed the purchase, would not, in our opinion, be a good and marketable title; what he would have got would be a defeasible title and an unsaleable one. It clearly was not what he had bargained for.
>
> [emphasis added]

28 It would appear from the italicised words in the above passage that, although the court in *Sheriffa Taibah (CA)* held that the title the purchaser would have got had he completed the purchase would not have been a good marketable title but only a defeasible or unsaleable title, the decision, in our view, would have been better justified on the ground that the contract for sale was frustrated by the intended acquisition, rather than that on the date of completion, the vendor could not have been able to transfer a good title to the land to the purchaser. In any event, this issue is not relevant to the present case as the Vendor was able to give a good title to the Property to the Purchasers.

29 We are unable to accept the Appellant's argument that the deficiency in the lettable area of the Property is relevant to the question of whether the Vendor had a good title to the Property. The Respondent's argument is that the Vendor was in a position to give a good title of the same area of strata land that he had agreed to sell to the Purchasers because the total area of the eight units was exactly 1045 sq m as set out in the SSCTs. In our view, the Respondent's argument is to be preferred because as a matter of language, logic and common sense, the total area of the strata units must be the same as the lettable area. Given that the SSCTs show the total area of the eight strata units as 1045 sq m, it is impossible to argue that the Vendor was not able to give a good title to what is really a conclusive area under the law. We are unable to accept an argument that if the Vendor could give a good title to 1045 sq m of strata land, he could not give a good title to 1045 sq m less 230 sq m of the same strata land. The Appellant's real claim appears to be that the Purchasers had understood the Vendor's representation as to the "lettable" area to mean the "built-up" or "floor" area of the strata units. This may or may not be the true state of affairs, but even if we accept that this was the true state of affairs, the issue as to the discrepancy in the description of the area has nothing to do with the Vendor's obligation to give a good title. A breach of that obligation merely gives rise to an issue as to whether the Vendor is entitled to specific performance, with or without abatement of the purchase price (see *Yeo Brothers*), or whether the Purchasers are allowed to repudiate the contract. A misdescription of this nature has never been considered as a defect in title (see generally *Halsbury's* at para 170.1239 and G. Battersby, *Williams' Contract for Sale of Land and Title to Land* (Butterworths, 4th Ed, 1975) at p 528).

30 In *Jeakes v White*, Pollock CB said (at 881; 803):

> ... where a question arises between parties who are about to enter into the relationship of vendor and vendee, as to the meaning of a good or sufficient title, there must be such a title as the Court of Chancery would adopt as a sufficient ground for compelling specific performance; and that by a stipulation for a good title, must be understood, not such a title as would support a verdict for the purchaser in an action of ejectment against a mere stranger, but such a one as would enable the purchaser to hold the property against any person who might probably challenge his right to it.

An inability to give a good title will provide a good defence to the purchaser to an action for specific performance by the vendor. However, on the basis of the test laid down in this passage, the Vendor was undoubtedly in a position to pass to the Purchasers title to the Property that could withstand any challenge by any claimant after the Property is registered in their names. Hence, the remedy of specific performance is not exclusive to questions of title, but will also cover disputes on misdescription of the area of the property agreed to be sold. Generally, specific performance would be refused where severe hardship would be caused to the purchaser (see *Denne v Light* (1857) 8 De GM & G 774; 44 ER 588), but where the vendor is unable to give a good title, it is not a question of hardship but of a failure to comply with a fundamental term of the contract, *ie*, the obligation of the vendor to give a good title.

31 In our view, therefore, the rescission of the S&P Agreement by mutual agreement of the Vendor

and the Purchasers on the basis of a substantial discrepancy in the area of the Property represented to the Purchasers did not affect the Vendor's ability to prove or give a good title to the Purchasers, even though he might not have been able to enforce the S&P Agreement without an abatement of the purchase price. On the basis that the transaction was not a speculative transaction, it would seem hard on the Purchasers that they are not entitled to a refund of the stamp duty (which is a considerable sum) since the transaction was outside the purposes of s 22 of the SDA. But, in our view, the wording in s 22(6)(*a*) of the SDA is so clear that it cannot be said that the Respondent's decision not to grant the refund of stamp duty was not an act within the terms of that section.

32 The ambit of s 22(6)(*a*) of the SDA, as drafted, is obviously too narrow to give relief to many genuine non-speculative property transactions which have been or may be annulled or aborted for *bona fide* or legitimate reasons by the parties concerned. On the existing wording of s 22(6)(*a*) of the SDA, the purchaser would not be entitled to any refund of stamp duty even where the agreement has been annulled or rescinded on any ground other than a lack of good title. We do not know whether this drafting was deliberate or otherwise, but we note that in 2005, the Minister for Finance, in exercise of his powers under s 74 of the SDA, made the Stamp Duties (Aborted Sale and Purchase Agreements) (Remission) Rules 2005 ("the 2005 Rules") to cater to cases where it would be unjust for the State not to refund stamp duty. However, the 2005 Rules apply only to contracts or agreements rescinded or annulled on or after 18 February 2005. Under s 74 of the SDA, the Minister could have made the 2005 Rules to apply retrospectively to cover cases like the present case. There is nothing to prevent the Appellant from seeking to persuade the Minister to do so on the ground that the Purchasers are deserving of the Minister's favourable consideration on the basis of the facts as stated in the Case Stated and having regard to the considerable amount involved.

33 For the above reasons, we answer the Questions set out in the Case Stated (at [6] above) as follows:

Question (a) – the S&P Agreement is liable to the stamp duty as assessed by the Respondent;

Question (b) – the Appellant is not entitled to be refunded the stamp duty;

Question (c) – No answer is required.

Conclusion

34 In the result, the appeal is dismissed with costs and the usual consequential orders. Each party will pay his/her own costs in the court below as the Judge did not answer the Questions in the Case Stated.