

Koh Kim Seng and another v Zhang Run-Zi
[2013] SGHC 79

Case Number : Originating Summons No 1639 of 2007
Decision Date : 10 April 2013
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Balasubramaniam Ernest Yogarajah (UniLegal LLC) for the plaintiff; Defendant in person.
Parties : Koh Kim Seng and another — Zhang Run-Zi

Land

10 April 2013

Tay Yong Kwang J:

The background

1 This originating summons sought the following orders:

- (1) the Registrar of Titles be directed to cancel, remove or otherwise expunge all record entry or endorsement of Caveat IA/583776J, lodged on 25 January 2007 by the defendant from the land register comprised in Certificate of title Volume 636 Folio 18;
- (2) the defendant pays to the plaintiffs compensation pursuant to s 128(1)(c) of the Land Titles Act (Cap 157 2004 Rev Ed) ("Land Titles Act") as set forth in the affidavit in support filed herein, alternatively that the compensation payable by the defendant to the plaintiffs be assessed;
- (3) the costs of this application be borne by the defendant on an indemnity basis; and
- (4) there be any further reliefs that this Honourable Court may deem fit.

2 The plaintiffs, who are spouses, own 10, Hoot Kiam Road ("the property"), a two-storey terrace house. On 3 January 2007, the plaintiffs granted the defendant an option to purchase the property upon the payment of \$10,200 as the option fee. On 24 January 2007, the defendant exercised the option to purchase through her then solicitors, Ascentia Law Corporation. Legal completion was due on 21 March 2007. In early February 2007, correspondence took place between the defendant and the plaintiffs' solicitors wherein the defendant alleged that the plaintiffs had concealed the fact that future road lines would affect the property. The defendant demanded the return of \$51,000 which she had paid pursuant to the option. Her allegations were denied by the plaintiffs' solicitors. On 15 February 2007, the defendant wrote to the plaintiffs stating "As you did not respond to my letter, I will retract it without prejudice to all my rights". On 21 and 26 February 2007, the plaintiffs' solicitors further wrote to the defendant to refute her allegations relating to the property.

3 On 16 March 2007, Ascentia Law Corporation informed the plaintiffs' then solicitors that it had

no instructions from the defendant regarding the purchase of the property. The plaintiffs' solicitors requested the return of the original option and this was done the next day. On 26 March 2007, the plaintiffs' solicitors gave the defendant a 21-day notice to complete the purchase of the property. This notice was sent by registered mail to the defendant's residential address as well as to her business address. The defendant did not respond.

4 The defendant lodged a caveat on the property on 25 January 2007 claiming an interest "by virtue of Option/Option to Purchase duly exercised by the Caveator on 24/01/2007" with the purchase price stated as \$1,020,000. Pursuant to clause 29 of the Law Society's Conditions of Sale 1999 ("clause 29"), it was the responsibility of the defendant to procure the cancellation of any entry relating to the contract in any register at her own expense.

5 On 26 April 2007, the plaintiffs gave an option to purchase the property to another buyer at a price of \$1,100,000. Completion due on 5 July 2007 was delayed because the defendant's caveat remained on the register. On 5 July 2007, the plaintiffs' solicitors sent a letter to Ascentsia Law Corporation to request the withdrawal of the defendant's caveat on the property. On 2 August 2007, the plaintiffs lodged an application to cancel the caveat, supported by their statutory declarations setting out essentially the same facts stated above.

6 However, the defendant sent an undated letter to the Registrar of Titles to object to the cancellation. In that letter, she alleged that after the first plaintiff offered her the property for a reduced price of \$1,020,000, she asked him many times "if there were any problems with this land". She was worried as she had found out that the plaintiffs purchased the property for about \$500,000 14 months before January 2007. She claimed that the first plaintiff told her that "he had done a lot of searching to find this land, and that there were no problems with this land". It was in March that year that her solicitors discovered the property was wholly affected by the proposed Singapore Underground Road System and because of this, the property had a value of only \$580,000, much less than the purchase price of \$1,020,000, as evidenced in a valuation report dated 23 March 2007 from Acreage Property Consultants which she enclosed with her letter. She claimed that as a result, "the bank will not loan me money to develop the property". She further alleged in her letter that "because he has cheated me from the beginning, before I even signed the option to purchase, I have lost SGD\$50K cash, and lost the chance to use this money to find alternative properties". She ended the letter claiming that "I am in the process of suing him in court over this matter, and I respectfully ask that the property in question is not allowed to be sold to another owner until this matter is cleared by the courts".

7 As a result of the defendant's letter, the Registrar of Titles requested the plaintiffs to apply to court for a determination of the matter and stated that the Registry of Titles would withhold the cancellation of the caveat pending any orders by the court.

8 Accordingly, the plaintiffs commenced this originating summons seeking the orders set out at [1]. Without going into the merits of the defendant's allegations set out in her letter to the Registrar of Titles, the plaintiffs claimed that the defendant no longer had any legal or equitable interest in the property as she had refused to complete the purchase even after the 21-day notice. The caveat remaining on record was therefore maintained vexatiously and/or frivolously and/or not in good faith. The plaintiffs also claimed damages pursuant to clause 29 and to s 128 of the Land Titles Act resulting from the late completion of the sale to the new buyer.

The court orders and subsequent proceedings

9 On 29 November 2007, the plaintiffs were represented by counsel while the defendant, a

business woman, attended court in person. She spoke in Mandarin through a court interpreter. She repeated in essence what she had alleged in her letter to the Registrar of Titles. She also claimed that she did not receive the 21-day notice to complete as she was away from home for 8 to 9 months and only received the said notice by fax from her previous solicitors in April 2007. She said she had to travel quite a lot and asked that the case be adjourned for her to consult a solicitor on whether she would be able to sue the plaintiffs.

10 I decided to lift the caveat so as to stop late completion interest from continuing to run against the plaintiffs in respect of the re-sale of the property. I granted the order sought in prayer (1) of this originating summons and ordered all the other prayers to be adjourned. I also directed the defendant to consult her solicitors and to commence action, if so advised, against the plaintiffs within 2 months from 29 November 2007. In the event that no action was commenced by 29 January 2008, the plaintiffs would be at liberty to restore the remaining prayers for hearing. The question of costs was reserved.

11 Instead of complying with the directions given in [9], the defendant lodged another caveat against the property on 4 December 2007. This led to the plaintiffs taking out Originating Summons No 2 of 2008 to remove the second caveat.

12 This was heard by Lee Seiu Kin J ("Lee J") on 10 January 2008. Lee J ordered the removal of the second caveat and prohibited the defendant from taking any steps which may interfere and/or otherwise delay the completion of the sale and purchase of the property by the plaintiffs. My direction of 29 November 2007 regarding the restoration of the remaining prayers of the present originating summons was repeated, with the additional direction that the delay caused by the second caveat would be included for assessment of damages. Lee J also ordered the defendant to pay the plaintiffs costs of \$2,000.

13 Pursuant to my directions in [9] above, the defendant engaged solicitors and commenced MC Suit 2619 of 2008 in the Subordinate Courts on 29 January 2008 against the plaintiffs. The statement of claim in that suit averred that the first plaintiff in this originating summons was aware that the defendant intended to finance the purchase of the property through a mortgage and that her intention was to develop it. She pleaded that one of the express terms of the option to purchase was that she was deemed to have notice and knowledge of road lines affecting the property and shall not annul the sale and purchase nor shall any abatement or compensation be allowed in respect thereof (citing clause 11 of the said option). She also averred that no road interpretation plans were annexed to the option.

14 The defendant alleged further in the said statement of claim that the plaintiffs had not sought approval for the change of use from residential to office and that the entire property was earmarked as "land required as road reserve" for future road widening. The property was also wholly affected by the proposed Singapore Underground Road System. It would therefore be acquired compulsorily when the proposed works take place. As a result of this, the open market value of the property was \$580,000 and the defendant would not receive what she had bargained for. She was also unable to finance the purchase of the property because of this.

15 The defendant denied the plaintiffs' allegation that she was advised by an agent on whether to accept the option. She averred that the plaintiffs did not point out to her the full extent the property would be affected by the proposed works. Accordingly, clause 11 of the option to purchase (see [12] above) did not apply.

16 The defendant pleaded that she was entitled to decide not to proceed with the completion of

the sale and purchase and that the consideration for the \$51,000 paid by her had totally failed. She therefore demanded the repayment of this sum.

17 The suit was subsequently struck out by a Deputy Registrar of the Subordinate Courts for having no reasonable cause of action. The defendant appealed to a District Judge who dismissed her appeal in January 2012 after a protracted hearing. The defendant did not appeal further from the District Judge.

18 The parties attended before me again on 20 July 2012 for the hearing of the remaining prayers of the present originating summons. The defendant argued the matters herself. She repeated her allegations about having been cheated by the plaintiffs. As her action in the Subordinate Courts against the plaintiffs had been dismissed, there was no defence available to the defendant. Accordingly, I ordered that damages for the plaintiffs be assessed by the Registrar and that costs on an indemnity basis be paid by the defendant to the plaintiffs.

The defendant's application in Summons No 72 of 2013

19 As the preparations for the assessment of damages got underway, the defendant applied on 5 January 2013, by way of Summons No 72 of 2013 in this originating summons, for the setting aside or variation of my orders of 29 November 2007 and 20 July 2012 and Lee J's order dated 10 January 2008 in Originating Summons No 2 of 2008 ("the 3 orders"). She also prayed for the present originating summons to continue as if the action had been begun by writ of summons. Further or in the alternative, she asked for leave to file supplementary affidavit(s). Alternatively again, she asked that she be granted an extension of time in relation to paragraph (3) of my order dated 29 November 2007 (*ie*, the defendant to consult her solicitors and to commence action, if so advised, against the plaintiffs within 2 months from 29 November 2007 and that in the event no action was commenced by 29 January 2008, the plaintiffs would be at liberty to restore the remaining prayers for hearing).

20 In her affidavit filed in support of this application, she stated that she wished to make 2 applications to the court. The first was for the assessment of damages to be adjourned and the second was for the prayers set out in [18] above to be granted. In respect of the first application, she stated that she discharged her then solicitors (M/s Koh & Partners) on 2 January 2013 and needed more time to engage new solicitors. Further, as she was seeking to set aside my order of 20 July 2012, which directed that damages be assessed, the assessment of damages should be deferred until after the hearing of the second application.

21 The defendant's grounds for making the second application were:

- (a) at the time the 3 orders were made, "the factual matrix and evidence of the matter was not before" the court or properly presented to the court for consideration;
- (b) a material witness (Adrian Koh) has indicated his willingness to be a witness for the defendant and his testimony will support her case that the 3 orders ought to be set aside.

22 The defendant claimed that at a meeting held on 3 January 2007 in the first plaintiff's office, the first plaintiff handed the defendant the option to purchase in respect of the property. Her friend and property agent, Adrian Koh, joined the meeting subsequently at her request.

23 Before accepting the said option and paying the option fee to the plaintiffs, the defendant asked the first plaintiff whether there were any issues or problems with the property. The first plaintiff replied that there was none and that the terms of the option were typical or standard ones and the

defendant therefore need not review the said terms in detail or check with her solicitors prior to paying the option fee. In reliance on those representations, the defendant accepted the option and paid the option fee.

24 Adrian Koh was a witness to the fact that the first plaintiff had made those representations to the defendant. At the defendant's request, Adrian Koh flipped through the option on her behalf. After that, he said that the option was a typical option for the sale of property. She enclosed a copy of Adrian Koh's email of 5 December 2007 to her which stated:

Hi Ms Zhang Runzi,

With regards to our telephone call just now, this is confirmed that the LTA 'drawing' and clause no. 11 is not inclusive in the option when we were shown the option.

During our meeting with the Seller, we have asked the Seller twice and he has confirmed that this property has not problem/issue.

The Seller also insisted that the option is a standard one and we need not verify it (with our lawyers).

Best regards,

Adrian Koh

25 The option was signed by the plaintiffs in the presence of Adrian Koh and the first plaintiff's secretary. The first plaintiff then stood up and said he needed to get a copy of his identity card. He excused himself and brought the signed option with him. After a few minutes, he returned and handed over the original option to the defendant for her to sign on every page. The defendant referred to this signed option as the "version 2 option" in her affidavit. She did not pay much attention to the version 2 option as a result of the first plaintiff's said representations.

26 On 24 January 2007, the defendant exercised the option by paying another 4% (\$40,800) of the agreed purchase price (\$1.02m) to the plaintiffs. Subsequently, her solicitors informed her that the entire property was earmarked as "land required as road reserve". It would be affected by road widening and the proposed Singapore Underground Road System. The defendant was shocked to hear this.

27 On 1 February 2007, the defendant confronted the first plaintiff about the above revelation. She decided to tape-record the meeting during which she asked specifically whether the property would be subject to road lines reserved by the Land Transport Authority. The first plaintiff said that he was not aware of that. Before she left the meeting, she asked for a copy of the option in the first plaintiff's files. His secretary handed her a copy subsequently. However, this copy showed that the signatures of the witnesses were original and those of the sellers were duplicates. This convinced the defendant that the first plaintiff had switched copies of the option.

28 After discovering that the property was affected by road reserves, she checked and confirmed with Adrian Koh that the version of the option that he saw on 3 January 2007 did not mention anything about road lines. This led the defendant to believe that the first plaintiff had fraudulently switched the original option to the version 2 option when he excused himself from the meeting that day.

29 On 9 February 2007, the defendant demanded a refund of the 5% of the purchase price already paid by her. The plaintiffs' solicitors replied on 21 February 2007 stating that the first plaintiff had shown the defendant a road interpretation plan and informed her that the property was affected by road lines. However, this assertion contradicted the matters stated by him during the meeting of 1 February 2007. Further, the property was valued at only \$580,000. All these showed that the first plaintiff had dealt fraudulently with the defendant.

30 The plaintiffs refused to return the said 5% of the purchase price paid by her and insisted that she complete the sale transaction. The plaintiffs' solicitors compounded the problem by sending her the letters relating to the completion to the wrong address at 5 Leng Kee Road instead of the correct one at 2 Leng Kee Road. She was also not able to obtain financing for the purchase of the property because of the huge difference between the purchase price and the valuation.

31 When she attended the court proceedings on 29 November 2007, she was not able to present the above evidence to the court because she was not represented by solicitors. If she had done so, the outcome would have been different. Because of the "significant disputes in this matter", this case should have been heard as a writ action. As for paragraph (3) of my order dated 29 November 2007, the defendant claimed that she did not comply with it as she continued to be unrepresented and "did not truly appreciate the significance of the order". At that time, she was heavily pregnant and had just emerged from a "messy divorce". She was therefore not in a proper state of mind to deal with the issues arising from the said order of 29 November 2007. Similarly, because she did not have solicitors, she made the mistake of lodging a second caveat against the property.

32 The defendant believed that she was a victim of fraud committed by the plaintiffs and wished to set things right. She had many sleepless nights, knowing that the victim had become the alleged wrong-doer.

33 Adrian Koh affirmed an affidavit in support of the defendant's application. He stated that he attended the meeting on 3 January 2007 purely as a friend to assist the defendant who was not conversant in English. When he reviewed the original option to purchase, it made no mention of any road lines. There was no map attached and no clause 11 on the purchaser knowing about the road lines affecting the property.

34 In December 2007, the defendant contacted Adrian Koh and, after discussions with her, he sent her the email set out at [23] above.

35 In his affidavit in reply, the first plaintiff set out the salient parts of the procedural history of these proceedings. He stated that the alleged new evidence was already before the court when the orders of 29 November 2007 and 10 January 2008 were made. The defendant had consulted solicitors and acted on the order of 29 November 2007 by commencing action in the Subordinate Courts. The present originating summons was then heard by the High Court on 20 July 2012, with the defendant attending the hearing in person and speaking through a Mandarin court interpreter. Before the hearing of 20 July 2012, the defendant had written directly to the High Court setting out the alleged new evidence. The court proceeded to hear the matter and made the orders set out at [17] above. No appeal was filed by the defendant and the time for appealing has long lapsed.

36 Where the assessment of damages was concerned, the defendant adopted her usual method of applying for adjournments. She failed to attend the pre-trial conference on 31 July 2012. The registrar then adjourned the matter to enable the defendant to engage solicitors.

37 The defendant engaged Koh & Partners to represent her in the assessment of damages. She

subsequently filed and served her affidavit of evidence-in-chief and her list of documents out of time. Her affidavit was totally irrelevant, essentially repeating the same allegations set out earlier above.

38 On 7 January 2013, the defendant attended the assessment of damages in person but applied orally for an adjournment as she had just discharged her solicitors. Over the past 5 years, she engaged 3 different firms of solicitors and discharged them at or shortly before the relevant hearings thereby depriving the plaintiffs of the compensation sought. The first plaintiff went on to explain that there was no new evidence at all before the court and that all the matters raised in the present originating summons had been dealt with in MC Suit No 2619 of 2008.

The hearing on 7 February 2013

39 On 7 February 2013, when the defendant's application came before me, the defendant again raised the same issues about having been cheated by the first plaintiff. She argued that the district judge in MC Suit No 2619 of 2008 had "ruled on the road-line not on the cheating". She told the district judge that she would be making a police report on the alleged cheating. However, when she spoke with her lawyer, one Dr Koh, telling him that she had email to prove the cheating, he advised her to make the police report later. Each time she asked him, he would say, "Later, later, assess the situation first". She then claimed that she would be making a police report after the hearing but added immediately her doubt whether the police "can deal with such a complicated matter". She asserted that she was not doing all this for money and that she would donate to charitable causes any money that she was awarded. She only wanted the parties and the witnesses to come to court to testify and the truth to emerge. She said that Adrian Koh was with her during the signing of the option and that he could speak English but the first plaintiff "switched the documents".

The decision of the court

40 It can be seen from the narration of the background and the latest hearing before me that the defendant was given all the legal avenues to pursue her allegations against the first plaintiff and she did so by commencing the MC Suit. When that was struck out, she did not appeal to the High Court but let the matter rest. Even after the order of 20 July 2012 was made in respect of the remaining prayers of this originating summons, she took no steps until the plaintiffs started the process for the assessment of damages.

41 There was absolutely no reason to set aside the 3 orders or any one of them. Everything that could be canvassed before the courts was before the courts. There was no allegation that Adrian Koh could not be located or that he was unwilling or unable to file an affidavit to support the defendant's case at the earlier stages of this case. His email (set out at [23] above) was available to the defendant since 5 December 2007. If the defendant and/or her solicitors decided not to produce the said email or to ask Adrian Koh to file an affidavit, that was a conscious decision taken and is no ground for the court to now re-open the proceedings. In any event, the fact that Adrian Koh was present during the signing of the option was acknowledged by the plaintiffs. That has been considered by the courts and has not made any difference to the outcomes.

42 Accordingly, I dismissed the defendant's application for the various orders stated in [18] above. I also ordered her to pay the plaintiffs costs fixed at \$3,500 (including disbursements) for this application.