

Fong Yoke San & Another v Chan Lee Pa
[2002] SGHC 292

Case Number : OS No 1358 of 2002

Decision Date : 09 December 2002

Tribunal/Court : High Court

Coram : Woo Bih Li JC

Counsel Name(s) : Lim Kim Song (Song Ling & Partners) for the plaintiffs; Lee Mong Jen (Leong Chua & Wong) for the defendant

Parties : —

Contract – Contractual terms – Express terms – Option to purchase property – Option not executed by all joint tenants – Whether option perfected – Whether contract valid

Judgment

GROUND OF DECISION

Background

1. By an Option to Purchase dated 21 August 2002 ('the Option'), the Defendant Chan Lee Pa ('CLP') granted the Plaintiffs Fong Yoke San and Kwok Sing Cheong an option to purchase a property known as No 50 Jalan Lembah Thomson Singapore 577520 ('the Property') at a price of \$1.15 million. The option fee was \$11,500 and the expiry time and date for the exercise of the Option was 4pm of 18 September 2002.

2. The Plaintiffs' solicitors subsequently made a title search of the Property which revealed that there were three owners of the Property who were joint tenants thereof:

(a) CLP

(b) Chan Tze Wun (who is the son of CLP)

(c) Wong Kim Hoo (who is the wife of CLP)

3. The Plaintiffs' solicitors wrote to CLP's solicitors on 17 September 2002 asserting that because there were three joint tenants of the Property and the Option was given and signed by CLP only, the Option was incomplete and unperfected. Accordingly, they demanded the return of the option fee i.e \$11,500.

4. CLP's solicitors replied on 18 September 2002 stating that the other two owners 'are at all times able, willing and ready to sign the said Option'.

5. I would add that apparently the two housing agents involved had arranged an appointment at 6.30pm on 17 September 2002 for the Plaintiffs to meet CLP and the other two owners for the other two owners to sign the Option but that appointment was cancelled. However, it was not clear whether the appointment was fixed with the knowledge of the Plaintiffs before it was cancelled. Furthermore, as CLP's Counsel, Ms Lee Mong Jen, did not rely on estoppel or waiver, I need say no more about this appointment.

6. The Plaintiffs did not exercise the Option and the option fee was forfeited. The Property was eventually sold to another purchaser at a price of \$1.11 million i.e \$40,000 less than the price stated in the Option. The Plaintiffs brought this action to claim the repayment of the option fee of \$11,500. After hearing arguments, I dismissed the Plaintiffs' claim with costs. I now give my written reasons.

Arguments and my reasons

7. Mr Lim Kim Song, Counsel for both the Plaintiffs, submitted that as CLP was the only one of the three joint tenants to sign the Option, the Option was incomplete and unperfected. He relied heavily on the decision of the Court of Appeal in *Mookka Pillai Rajagopal & Ors v Khushvinder Singh Chopra* [1996] 3 SLR 457. However, it is important to understand the facts there.

8. In that case, there were three joint tenants of a property known as 91 Jalan Seaview. The first appellant was the father of the second appellant. The third appellant was the wife of the second appellant. An option was granted to the respondent to purchase this property, the respondent being an advocate and solicitor. The option was expressed to be given by the three appellants but only the second and third appellants signed it (see p 459 at G of the law report). It was on these facts that L P Thean JA said at p 462:

‘The option was intended to be given and signed by the three appellants, who held and still hold the property as joint tenants. It was signed by only two of them. Neither of them purported to sign the option on behalf of the first appellant. It was an incomplete or unperfected option and was ineffective as an option to the respondent to purchase the property. It follows from this that when the respondent exercised the option on 25 October 1993 there did not arise an agreement between the appellants and the respondent for the sale and purchase of the property. At any rate, the option was certainly not binding on the first appellant, and on that date there was no agreement binding on him to sell or join in the sale of the property to the respondent, whatever might be the effect of the agreement, if any, that was made between on the one hand the respondent and on the other hand the second and third appellants - we shall refer to this as the unperfected agreement - and their liability thereunder.’

9. At p 467, Thean JA also said:

‘... The option signed by the second and third appellants were an incomplete or unperfected option and the respondent’s purported exercise thereof did not result in an agreement. At any rate, assuming that by the exercise of the option, a binding agreement was made with the second and third appellants, the agreement was not binding on the first appellant. The property being held by the three appellants as joint tenants, such an agreement was not effective to dispose of the entire property in favour of the respondent. The respondent would have serious difficulty in enforcing the agreement even as against the second and third appellants. It seems to us that, at the most, he would be able to recover only the consideration paid for the option.’

10. Relying on the passage I have cited from p 467, Mr Lim submitted that the Option before me was also incomplete and unperfected. However, it seemed to me that in *Mookka Pillai*, the option was incomplete and unperfected because it purported to emanate from all three joint tenants but only two had signed. Even then, Thean JA was prepared to consider the possibility that it might still constitute a binding agreement on the second and third appellants. I would add that in *Mookka Pillai*, the main substantive issue before the Court of Appeal was whether the respondent purchaser had exercised undue influence on the appellants or any one or more of them (see p 462 at B of the law report). Indeed both Ms Lee and Mr Lim informed me that the three cases listed in p 458 of the law report were on undue influence.

11. In the course of submissions, Ms Lee also drew my attention to another decision of our Court of Appeal in *Tay Joo Sing v Ku Yu Sang* [1994] 3 SLR 719. In that case, two brothers Tay Joo Sing and Tay Joo Meng were tenants-in-common in equal shares of a commercial unit in Lucky Plaza, Orchard Road, Singapore, known as B1-124 (‘No 124’). They had tried to sell No 124 as far back as 1985 but were not successful. Joo Meng then emigrated to Australia and left the sale to Joo Sing. Eventually Joo Sing purported to sell No 124 to a purchaser Ku Yu Sang. For this purpose, a document prepared by a property broker was signed. It was referred to as ‘PB1’ and it stated:

‘Mr Tay Joo Sing and Mr Tay Joo Meng

48 Marshall Road

Singapore 1542

2 May 1987

Re: B1-24 Lucky Plaza, 304 Orchard Road, Singapore 0923

This is to confirm that we, Mr Tay Joo Sing and Mr Tay Joo Meng, owners of the abovementioned property, hereby agree to sell to Mr Ku Yu Sang, NRIC No 1841358B, at the purchase price of SGD470,000 (Singapore Dollars Four Hundred Seventy Thousand only).

We hereby confirm that we have received a deposit of SGD5,000 (DBS 588590) only as part of option fee.

This contract is valid for 14 days only.

This property is sold with vacant possession.

Seller's signature

Mr Tay Joo Sing (IC No 0068340Z)

Buyer's signature

Mr Ku Yu Sang (IC No 1841358B)

Witness

Mr Victor CT Sim (IC No 1461894E)

The number of 'B1-24' should have referred to 'B1-124' but this was not material.

12. On 4 May 1987, Joo Sing's solicitors informed Yu Sang's solicitors that he was not agreeable to selling the property to Yu Sang and the cheque for \$5,000 was returned. However, Yu Sang would not accept this position and, on his instructions, his solicitors sent to Joo Sing's solicitors a cheque for \$42,000 being the balance of the 10% of the purchase price, in accordance with his understanding of the agreement reached with Joo Sing on 2 May 1987 and also retendered the earlier cheque for \$5,000. On 16 May 1987, Joo Sing's solicitors returned both cheques to Yu Sang's solicitors. Yu Sang's attempts to resolve the dispute not being successful, he commenced action on 30 June 1989.

13. Yu Sang's claim was firstly against both brothers for specific performance and secondly against Joo Sing for specific performance of Joo Sing's undivided half share in No 124, and damages.

14. Joo Sing denied that he had represented to Yu Sang that Joo Meng had authorised him to sell No 124. He also raised other defences but it is not necessary for me to specify them.

15. On these facts, the Court of Appeal found that looking at PB1 alone, Joo Sing had offered to sell No 124 to Yu Sang for \$470,000 on his own behalf as well as on behalf of Joo Meng (see p 727 at I of the law report).

16. Apparently this case was not cited to the Court of Appeal in *Mookka Pillai*. In any event, it also appears that in *Tay Joo Sing*, no argument was made to the effect that PB1 was in fact an incomplete and unperfected option on the ground that it purported to emanate from two persons but was signed by only one of them. Indeed, Joo Sing did not sign twice i.e once for himself and once on behalf of Joo Meng. Had that argument been raised, the Court of Appeal might have concluded that PB1 was incomplete and unperfected or that such an option might be binding only on the person signing it.

17. In the case before me, the facts were different from those in *Tay Joo Sing* and *Mookka Pillai*. The Option did not purport to emanate from all three joint tenants but one only i.e CLP. True he did not have full title to the Property but, in my view, that was a separate matter.

The beginning of the Option stated:

‘ OPTION TO PURCHASE

To: FONG YOKE SAN (S1739971C)	From: MR CHAN LEE PA
KWOK SING CHEONG	No.50 JALAN LEMBAH
(S1714489H) &/OR NOMINEES	THOMSONSINGAPORE
	577520
APT BLK 287D JURONG EAST	S0138196B
ST 21 #14-316 S(604287)’	

18. At the end of the Option, only CLP signed:

‘SIGNED by the Vendor)
Name: Chan Lee Pa) [Signature of CLP]
NRIC No.: 01381916)’

19. In my view, the Option was complete and binding on CLP as a contract. Had the Plaintiffs exercised the Option, CLP would have been obliged to complete the sale and purchase by procuring the other two joint tenants to execute the instrument of transfer together with him. If he could not do so, he would have been in breach of contract vis--vis the Plaintiffs who would have been entitled to sue him for damages.

20. On the last point, Mr Lim submitted that in *Mookka Pillai*, Thean JA had said that the purchaser would be able to recover only the consideration paid for the option. However, it must be borne in mind that this was because the primary view there in respect of that option was that that option was incomplete and unperfected. If an option was complete and valid, I did not see why the person who had the benefit of the option would be unable to sue on it.

21. Indeed, that was the outcome in *Malhotra v Choudhury* [1979] 1 All ER 186, which Ms Lee relied on. In that case, an option to purchase a property was granted by the defendant to the plaintiff but the property was owned by the defendant and his wife as joint tenants. The plaintiff gave notice that he intended to exercise the option but the defendant asserted that the option was not exercisable and refused to sell the property. The plaintiff then commenced an action seeking specific performance of the option. Eventually, the defendant was ordered by the English Court of Appeal to pay substantial damages.

22. Mr Lim also sought to rely on s 6(d) of the Civil Law Act (Cap 43) which states:

‘6. 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;

(e) ...

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.’

23. In my view, this provision did not assist the Plaintiffs. If they had exercised the Option and if CLP was unable to complete the sale, the Plaintiffs would have been able to bring an action against CLP, although not against the other two joint tenants.

24. It seemed to me that the existence of a valid contract should not be confused with its performance. In my view, it is not necessary for a person granting the option to be the full legal owner of the property in question at the time the option is granted or when the option is exercised, before the option can be said to be binding on him.

25. For example, if, A, the owner of a property, grants an option to purchase to B and before B exercises the option, B grants an option to purchase to C, there is a binding obligation on B vis--vis C even though B is not the legal owner of the property.

26. In addition, even if B does not have a legally enforceable right against A at the time B grants an option to purchase to C, there is still a binding obligation on B vis--vis C. Therefore, if, for example, A is the mother of B and A tells B that she will give or sell a property in Singapore to him when she returns to Singapore in four weeks' time, B does not need to wait for A to return to Singapore, although it would be prudent for him to do so in case something happens to A or A changes her mind.

27. On the other hand, in some cases, it may be obvious after an option is granted that the person granting the option will not be able to complete the sale in any event. For example, the person granting the option is not the owner of the property and has no contractual or other relationship with the owner which will cause the owner to complete the sale. In such a case, there might be an anticipatory breach of contract by the person granting the option, but the point is that there is a binding obligation on him which entitles the other contracting party to sue him if he defaults.

28. On the facts before me, it was not suggested that CLP would be unable to complete the sale since the other two joint tenants had made it clear that they were able, willing and ready to be parties to the Option and consequently to complete the sale, if the Option was exercised. Instead, the Plaintiffs' argument was that the Option was incomplete and unperfected.

29. In the circumstances, I was of the view that the Plaintiffs were trying to take advantage of the situation but the Plaintiffs had no legal basis to seek the refund of the option fee. Accordingly, the Plaintiffs' claim was dismissed with costs.

Sgd:

WOO BIH LI

JUDICIAL COMMISSIONER