

Teo Beng Ngoh and Others v Quek Kheng Leong Nicky and Another and Another Matter
[2008] SGHC 228

Case Number : OS 1833/2007, 72/2008
Decision Date : 09 December 2008
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Philip Ling Daw Hoong and Angeline Jansen (Wong Tan & Molly Lim LLC) for plaintiffs in OS 1833/2007 and for defendants in OS 72/2008; Murugaiyan Sivakumar and Parveen Kaur (Madhavan Partnership) for defendants in OS 1833/2007 and plaintiffs in OS 72/2008
Parties : Teo Beng Ngoh; Teo Yeow Khoon; Teo Yeow Hing; Teo Jean Seng Holdings Pte Ltd — Quek Kheng Leong Nicky; Lee Pheng

Land

9 December 2008

Lai Siu Chiu J:

1 These proceedings concern a dispute over the sale and purchase of a property situated at No. 13, Jalan Sindor, Singapore ("the property"). Teo Beng Ngoh, Teo Yeow Khoon ("the second vendor"), Teo Yeow Hing and Teo Jean Seng Holdings ("the developer") were the sellers ("hereinafter they will be referred to collectively as "the Vendors") of the property while Quek Kheng Leong Nicky ("the first defendant") and Lee Pheng who are husband and wife respectively (hereinafter collectively referred to as "the Purchasers") were the buyers. In Originating Summons No. 1833 of 2007 ("the first OS") the Vendors sued the Purchasers while in Originating Summons No. 72 of 2008 ("the second OS"), the Purchasers were the plaintiffs.

The facts

2 The Purchasers agreed to buy the property by an Option to Purchase dated 26 May 2007 ("the Option") at a consideration of \$1.36m ("the purchase price"). The Purchasers paid 1% of the purchase price amounting to \$13,600/- to secure the Option. The Purchasers exercised the Option on 11 June 2007 by paying the sum of \$54,400 equivalent to 4% of the purchase price, to make up the requisite 5% deposit required to exercise the Option.

3 The property is part of a development which comprised of seven units of dwelling houses erected by the developer, under a joint venture with the other three vendors. Under the joint venture, five adjoining properties along Jalan Sindor were acquired en bloc by the developer and subsequently redeveloped into seven new houses for resale ("the development"). In the process, the lots of the five acquired properties underwent amalgamation and subdivision in three phases. The property was sold by the Vendors to the Purchasers before an individual subdivided lot number or Certificate of Title ("CT") was issued.

4 The original lots numbers of the five acquired properties were as follows:

Name of registered proprietor	Address	Lot (Mukim18)
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Teo Yeow Hing	5 Jalan Sindor	2751
Teo Jean Seng Holdings Pte Ltd	7 Jalan Sindor	2752
Teo Jean Seng Holdings Pte Ltd	9 Jalan Sindor	2753
Teo Beng Ngoh	11, Jalan Sindor	2754
Teo Yeow Khoon	15, Jalan Sindor	2755

5 (a) Under Phase 1 of the amalgamation process, lots 2751, 2752 and 2753 (Nos. 5, 7 and 9 Jalan Sindor) were amalgamated and thereafter subdivided into 5 plots, to be developed as follows:

(i) Plots 1 to 4 (lots 16271L, 16272C, 16273M and 16274W)

4 new terrace houses were erected *viz* 5, 7, 9 and 9A Jalan Sindor.

(ii) Plot 5 (lot 16275V)

to be amalgamated with lot 2754 and part of lot 2755 (known as Plot 7) to form a single plot for development under Phase 3.

(b) Under Phase 2, lot 2755 (No 15 Jalan Sindor) was subdivided into 2 plots to be developed as follows:

(i) Plot 6 (lot 16276P)

One semi-detached house was erected *viz* a new No 15 Jalan Sindor

(ii) Plot 7 (16277T)

This was amalgamated with Plot 5 and lot 2754 (No 11 Jalan Sindor) to form a single plot for development under Phase 3 (see below).

(c) Under Phase 3, Plot 5 (lot 16275V), Plot 7 (lot 16277T) and lot 2754 (No 11 Jalan Sindor) were amalgamated and subdivided into 2 plots, to be developed as follows:

(i) Plot 8 (lot 16842T)

One semi-detached house was erected *viz* a new No 11 Jalan Sindor

(ii) Plot 9 (lot 16843A)

One semi-detached house was erected *viz* a new No, 13 Jalan Sindor.

6 The new No. 13 Jalan Sindor which has now been assigned a new lot number 16843A following phase 3 above, sits on the whole of the former lot 16277T and on part of the former lot 2754. The adjoining property which is the new No.11 Jalan Sindor sits on the other part of the former lot 2754 and the whole of the former lot 16275V.

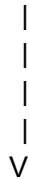
7 The following diagram gives a convenient illustration of the amalgamation and subdivision

exercise:

Phase 1

Lot 16275V (CT 618/Folio 1) owned by Teo Yeow Hing and developer	Lot 2754V (CT 44/Folio 102) Owned by Teo Beng Ngoh	Lot 16277T (CT 618/Folio 35) owned by Teo Yeow Khoon
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Amalgamation



Phase 2

Lot 16841 (single Lot)

Sub - division



Phase 3

Lot 16842T (No. 11 Jalan Sindor)	Lot 16843A (No. 13 Jalan Sindor)
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8 Under cl 1 of the Option, the balance 95% of the contract price was payable as follows:

(a) within twelve (12) weeks from the date of exercise of the Option a sum representing 94% of the purchase price shall be given to the Vendor in exchange for vacant possession of the property to be delivered by the Vendor to the Purchaser;

(b) the balance 1% shall be on legal completion in accordance with clause 3 hereof.

9 On 22 July 2007, at their request, the Purchasers were given vacant possession of the property by the Vendors for the purpose of carrying out renovation works. Thereafter, the Purchasers were given permission to occupy the property on 28 August 2007. Despite having given vacant possession of the property on 22 July 2007, the Vendors did not request payment of 94% of the purchase price until 15 October 2007.

10 However, the Purchasers refused to pay the required 94% (\$1,278,000) of the purchase price for the reason that there were certain caveats lodged against the parent lots of the development in particular on lot 16275V by the purchasers (and mortgagees) of the adjoining new No. 11 Jalan Sindor (hereinafter the caveats will be referred to as "the Lot 16275 caveats").

11 The Purchasers' solicitors had requested that the Lot 16275 caveats be removed. In their letter dated 7 November 2007 to the Vendors' solicitors; they wrote:

We refer to your letter dated 8 June 2007 which confirms that lot 16275V (ie together with lots 2754 and 16277) is a parent lot for lot 16843A which is the lot for No 13 Jalan Sindor.

Therefore, all caveats which affect the parent lots will similarly be reflected in the title for lot 16843A when the certificate of title is issued.

Please procure the withdrawal of these conflicting caveats as soon as possible.

12 The Vendors' solicitors disagreed with the Purchasers' interpretation of the Lot 16275 caveats on the basis that lot 16275V against which those caveats were filed did not form part of the property; it was pointed out that lot 16275V sat entirely on part of the adjoining property (No. 11 Jalan Sindor).

13 Consequently, the Vendors' solicitors demanded payment of 94% of the purchase price on 28 September 2007 and again on 15 October 2007, 24 October 2007 and 9 November 2007, all to no avail. In their letter dated 24 October 2007, the Vendors' solicitors also demanded that the Purchasers return possession of the property by 29 October 2007, if payment was not made in accordance with the Vendors' solicitors' previous notice dated 15 October 2007.

14 Purely out of goodwill as they said their clients were not obliged to, the Vendors' solicitors procured the Partial Withdrawals of Caveat of the lot 16275 caveats by the purchasers of No.11 Jalan Sindor and their chargee/mortgagee viz the Central Provident Fund Board ("CPF Board") and United Overseas Bank Ltd in relation to:

- (a) that part of Lot 2754V Mukim 18 which formed part of the property;
- (b) the whole of Lot 16843A Mukim 18 which was the new lot number for the property.

15 In their last demand letter dated 9 November 2007, the Vendors' solicitors gave notice that unless payment of the requisite 94% of the purchase price was made by the Purchasers by noon of 12 November 2007, the Vendors would treat the Purchasers' refusal to make payment as a repudiation of the Option. In the same letter, it was stated that the Vendors would present the Purchasers with good title to the property on completion.

16 The withdrawal of the Lot 16275 caveats set out in [14] did not satisfy the Purchasers' solicitors. The Purchasers did not make payment within the deadline stipulated by the Vendors' solicitors as their solicitors insisted on the removal of the caveat registered against the whole of

Lot 16275V. Neither did the Purchasers return possession of the property to the Vendors.

17 The Vendors' (new/present) solicitors then wrote a lengthy letter on 16 November 2007 to the Purchasers' solicitors pointing out that even if (which was denied), any of the Lot 16275 caveats registered against lot 16275V were in conflict with the Purchasers' interest as buyers of the property, that did not absolve the Purchasers from their obligation to pay 94% of the contract price which was to be in exchange for vacant possession. The Vendors' obligation to transfer title of the property to the Purchasers free from encumbrances only arose at the time of legal completion. The solicitors added that it was wholly inappropriate and premature for the Purchasers to raise any objections well before completion. Consequently, the Vendors' solicitors gave notice of the Vendors' acceptance of the Purchasers' repudiation of the Option as well as notice of the termination of the Option with immediate effect. The letter stressed that the parent lots of the property were Lots 2754V and 16277T not 16275V. The Vendors' solicitors reinforced this argument by forwarding to the Purchasers' solicitors on 22 November 2007 a title search conducted on Lot 16277T (on 16 November 2007) which showed no caveats lodged against the property other than those of or on behalf of, the Purchasers.

18 In their reply dated 19 November 2007 to the letter in [17], the Purchasers' solicitors:

- (a) disagreed that the Purchasers' non-payment up to then amounted to repudiation of the agreement for sale and purchase;
- (b) reiterated that the Lot 16275 caveats conflicted with the Purchasers' rights as buyers

but noted that the Lot 16275 caveats and all encumbrances would be removed at legal completion. The Purchasers' solicitors also enclosed two cashier's orders one dated 7 November 2007 in the sum of \$204,000 and the other dated 9 November 2007 in the sum of \$1,074,400. The two amounts totalled the completion sum of \$1,278,400 and were in favour of the developer.

19 The Vendors' solicitors rejected the payment; they returned the two cashier's orders to the Purchasers' solicitors on 21 November 2007 for the reason that the Option had already been terminated on 16 November 2007. The Vendors' solicitors demanded that the Purchasers reinstate the property to its original condition and deliver vacant possession to the Vendors by 30 November 2007 failing which legal proceedings would be commenced to compel the Purchasers to do so.

20 The Purchasers refused to reinstate the property and failed to deliver vacant possession of it to the Vendors within the deadline stipulated by the Vendors' solicitors or at all. In fact, they continue to reside there to this day.

21 The CT for the property (Volume 653 Folio 163) was issued on 22 January 2008 without the Lot 16275 caveats endorsed as encumbrances thereon. In fact the only caveats that appeared on the CT were those lodged by the Purchasers on 12 June 2007 and those of their chargee and mortgagee, viz the CPF Board and Overseas Chinese Banking Corporation Limited respectively.

The proceedings

22 In the first OS, the Vendors claimed against the Purchasers for:

- (a) a declaration that the Purchasers were in repudiatory breach of the Option in failing, refusing and/or neglecting to make timeous payment of the sum of \$1,278,400 being 94% of the purchase price of the property, in accordance with cl 1(a) of the Option;

(b) a declaration that the Vendors were entitled to accept and had accepted the Purchasers' breach of the Option and had validly terminated the Option with effect from 16 November 2007 by reason of such repudiatory breach;

(c) an order that the Purchasers forthwith reinstate the property to its original condition and deliver vacant possession to the Vendors;

(d) that the Purchasers pay damages to the Vendors to be assessed.

23 In the second OS, the Purchasers sought specific performance from the Vendors of the Option (which they said had been varied by three letters exchanged between the parties' solicitors) and claimed damages for breach of contract. Both OS were dealt with simultaneously for expediency.

24 At the conclusion of the hearing, I granted the Vendors' application as per prayers (a) and (b) of the first OS with ancillary orders (see [59] below) and dismissed the second OS. The Purchasers have now filed notices of appeal (in Civil Appeals No. 122 and 121 of 2008 respectively) against my decision.

The issues

25 The main issue that the court had to determine was whether the Purchasers were in repudiatory breach of the Option in: (i) not making payment within the deadline stipulated by the Vendors and (ii) in seeking to impose a condition that the Vendors remove the caveats registered by the purchasers and mortgagees of the adjoining property No. 11 Jalan Sindor against lot 16275V (which was not the parent lot of the property). The secondary issue was whether (as the Purchasers contended) the caveats registered by the purchasers and mortgagees of No. 11 Jalan Sindor against lot 16275V conflicted with the Purchasers' interest in the property.

26 Affidavits for the first OS (which were adopted for the second OS), were filed by the second vendor and by the Vendors' (previous) solicitors while the first defendant and the Purchasers' (previous) solicitors filed affidavits on behalf of the Purchasers. It will not be necessary to look at the affidavits in detail for the reason that the facts and the opposing stands taken by the parties have already been set out in the foregoing paragraphs. My only comment is that while the Vendors' solicitor in his affidavit gave a detailed account of what transpired in his telephone conversations with the Purchasers' solicitor, the latter (who filed two affidavits) could only depose (in her second affidavit) to the best of her recollection what was said between them, when her version of events was challenged by the former.

The expert's opinion

27 With the consent of the parties, Miss Phyllis Tan ("Miss Tan") an experienced practitioner was appointed as the expert witness on conveyancing practice in Singapore. Miss Tan (EW1) was cross-examined by counsel for the Purchasers on her opinion dated 22 July 2008 ("the Opinion") which in essence supported the position adopted by the Vendors' solicitors.

28 After she had set out the salient facts in paras 1 to 5 in the Opinion, Miss Tan framed the issue as follows:

6 I am asked my opinion as a conveyancer whether I take the view of the Purchasers solicitors that the caveats, if not removed at the time the Vendor requested for payment of the 94% meant that the Vendor could not give the Purchasers a good title to the property as the

caveats would be considered encumbrances on the property.

29 Miss Tan then gave the following views in the remaining paragraphs of the Opinion:

7 It is clear from the Contract that the Purchasers are to pay the Vendor 94% of the purchase price on being given vacant possession of the property within 12 weeks from the exercise of the Option. The Option was exercised on 11 June 2007 bringing the last date for vacant possession to be given to 3rd September 2007.

8 Vacant possession was given on 22 July 2007 and payment of the 94% should have been made then "in exchange".

9 By letter to the Purchasers' solicitors dated 15 October 2007 and by another letter dated 9 November 2007 the Vendor's solicitors requested payment of the 94% "which was due and payable on 29 October 2007.

10 The Purchasers refused to pay unless the caveats lodged against the parent lots were withdrawn. The Purchasers' reason for not paying was that the title was encumbered with the caveats and unless removed the Vendor could not give the Purchasers a good title to the property *i.e* a title free from encumbrances.

11 I am of the opinion that the objection to the title is premature. It is established law that so long as a vendor is able to give a purchaser good title on the date of completion he will have performed his part of the bargain for the contract of the land to a purchaser.

Addendum

My opinion is based on the facts provided in the Background of Facts set out in the Appendix which makes no mention of the variation of the terms of the Option-Contract.

The variation is referred to in:-

i the Purchasers' solicitors' letter dated 9 November 2007

"Please note that the agreement created by the duly exercised Option between the parties was varied by the terms set out in our letter to your firm dated 20 August 2007 and your firm's reply on 27 August 2007."

ii the letter dated 19 November 2007 from Purchasers' solicitors to Wong Tan & Molly Lim LLC -3rd paragraph item (b).

It is noted also that the Purchasers have at no time repudiated the Contract and that the Vendor has rescinded the same due to the Purchasers' breach in not paying the 94% after having been given vacant possession of the property.

The remedy of restitution does not entitle the Vendor to damages except in special circumstances. The object of rescission is to restore the parties to their original positions: the Vendor refunding the Purchasers the 5% deposit and the Purchasers returning the property to the Vendor in its original state.

The submissions

30 Before I set out the reasons for my findings, I shall first refer briefly to the submissions tendered by the parties, starting with those presented for the Purchasers.

(i) *the Purchasers' arguments*

31 Counsel for the Purchasers submitted that prior to the Vendors' solicitors' letter dated 9 November 2007, the Vendors' solicitors had not made time the essence for payment. Their letter dated 15 October 2007 merely requested payment of 94% of the purchase price within two weeks; that did not *ipso facto* make time of the essence for payment. By the Vendors' solicitors' follow-up letter dated 31 October 2007, the Vendors merely reserved their rights to charge reasonable rent for the Purchasers' continued occupation of the property, after the Purchasers failed to pay by 29 October 2007 (to which the response from the Purchasers' solicitors was to the effect that the Vendors were not entitled to charge rent). So time as the essence for payment was only made known to the Purchasers for the first time on 9 November 2007. Letters sent after 31 October 2007 and before 9 November 2007 by the Vendors' solicitors were merely reminders for payment.

32 Counsel complained that it was unreasonable of the Vendors to give notice on Friday 9 November 2007 that they required payment by the following Monday 12 November 2007. He cited the UK Court of Appeal case of *Behzadi v Shaftesbury Hotels Ltd* [1991] 2 All ER 477 ("*Behzadi's case*") to reinforce his argument.

(ii) *the Vendors' arguments*

33 Counsel for the Vendors pointed out that while the Purchasers had taken possession of and enjoyed occupation of the property after paying only 5% of the purchase price, they unreasonably insisted on an impossible condition to fulfil (removal of the caveat on the parent lot) to deny the Vendors receipt of 94% of the purchase price. The Vendors' stand that the lodgement of the Lot 16275 caveats did not affect their ability to deliver a good title to the Purchasers was vindicated in that the CT that was eventually issued on 22 January 2008 reflected no encumbrances on the title (save for the caveats lodged by the Purchasers and their chargee/mortgagee). Consequently, the Purchasers were clearly in breach of the payment terms under the Option (see [8]) and the Vendors were entitled to treat their non-payment as repudiation of the Option.

34 Counsel for the Vendors took issue with the Purchasers' contention that time was not made the essence of payment by the Vendors before 9 November 2007. He drew the court's attention to the Vendors' solicitors' earlier letter dated 24 October 2007 to the Purchasers' solicitors which paras 2 and 3 stated:

Our clients have, on a strictly without prejudice basis and in good faith, made every effort to accommodate your clients' request and we take the view that all areas of concern has been addressed in the manner you have requested. We are therefore surprised with the contents of your last letter indicating that you are not in a position to abide by the deadline of 29 October 2007.

Strictly without prejudice to the rights of our clients, pending the issues allegedly unresolved, our clients hereby demand that your clients return possession of the property immediately by the 29 October 2007 if payment is not made in accordance with our notice of 15 October 2007.

It was clear from the above extracts that the Vendors' solicitors had indeed made time the essence of payment.

35 Counsel for the Vendors further rebutted his opponent's complaint on the unreasonably short period (over a weekend) in which the Purchasers were required to make the 94% payment. He pointed out that in the first affidavit filed by the Purchasers' own solicitors, she had deposed that the cashier's order from the CPF Board was ready by 7 November 2007 (although it was not forwarded to the Purchasers' solicitors by the CPF Board's solicitors until Monday 19 November 2007).

36 Counsel for the Vendors then posed the question to the court – what had the Vendors done to the Purchasers that was so inequitable and unconscionable as to deny the Vendors their remedies for breach of contract on the part of the Purchasers? He pointed to the inequities of the situation. The Vendors' solicitors had done their best to accommodate the Purchasers' demands to the extent of even agreeing to procure the withdrawal of caveats of the neighbouring lot before completion. The Vendors' solicitors procured the removal of caveats on the middle lot 2754 and the Purchasers' solicitors then assured his clients on 1 November 2007 that they would let the Vendors have payment as soon as possible. Six days later, the Purchasers' solicitors did a *volte face* on the basis that there were further caveats filed on the parent lot which conflicted with the Vendors' title even though they did not affect the Vendors' CT. The Purchasers had fooled the Vendors into complying with their demands.

37 Counsel for the Vendors accused the Purchasers of being high-handed. Having taken possession of the property on 22 July 2007 and having paid only 5% of the purchase price at that stage, they then came up with unmeritorious claims when it came to paying a further 94% of the purchase price. In support of his complaint that the Purchasers' conduct had been less than forthright, Mr Ling referred to the Purchasers' solicitors' letter dated 23 October 2007 to the Vendors' solicitors. There, the Purchasers' solicitors said:

Please note that the irregularities prevent the release of both CPF Funds and the housing loan of the purchase price required by yourselves i.e. title is, simply, not in order.

Yet, on 19 November 2007, having been informed by the Vendors' solicitors that their clients had repudiated the Option, the Purchasers' solicitors tendered the two cashier's orders in [18] notwithstanding that the 'irregularities' remained. It called into question the *bona fides* of the Purchasers' objections.

38 Earlier [23], in referring to the second OS, I had stated that the Purchasers had claimed that the contract as evidenced in the Option had been varied by three letters; these were:

- (a) a "without prejudice" letter dated 20 August 2007 from the Purchasers' solicitors to the Vendors' solicitors;
- (b) a letter dated 27 August 2007 from the Vendors' solicitors to the Purchasers' solicitors, and
- (c) a letter dated 28 August 2007 from the Purchasers' solicitors to the Vendors' solicitors.

39 In the affidavit filed by the Vendors' solicitor who handled the abortive conveyance, he had objected to the reference by the Purchasers' solicitor in her first affidavit to the letters in (a) and (b) above as, (a) was clearly marked "without prejudice", while the reply in (b) was similarly written in the same vein. It was a valid objection raised by the Purchasers. Consequently I ignored the Purchasers' reference to the letters in (a) and (b). As for (c), the Purchasers' solicitors' letter dated 28 August 2007 states:-

Thank you for your letter dated 27 August 2007.

Notwithstanding the postponement we trust that the Vendor is attending to all matters necessary to regularise all outstanding issues expeditiously.

Further, we note from your letter that our clients were granted vacant possession with effect from 22 July 2007. However, the enclosed letter of undertaking refers specifically to possession for the purposes of renovation works only. Please confirm as soon as possible that our clients may occupy the property henceforth.

40 As it was not disputed that vacant possession of the property was handed to the Purchasers on 22 July 2007 for renovation purposes and subsequently for occupation on 22 August 2007 (see [9]), the question of variation of the Option by the above letter has no bearing on the issues that came up for determination. In any case, cross-examination of Miss Tan by counsel for the Purchasers revealed she had indeed taken into account the "without prejudice" letter (at 2AB 67) in (a) in the Opinion and the same did not change her view.

The decision

41 Based on the facts (which were largely undisputed) as extracted from the affidavits and the Opinion in [27] to [29] together with Miss Tan's cross-examination, I was of the view that it was the Purchasers not the Vendors, who had breached the terms of the Option and whose repudiation of the contract had been accepted by the Vendors. To adopt Miss Tan's language in the Opinion, the Purchasers' objections (as conveyed through their solicitors) to the existence of the Lot 16275 caveats was "premature". The Purchasers continued to adopt an unreasonable stand, notwithstanding the fact that the Vendors' solicitors arranged for the owner and mortgagees of No. 11 Jalan Sindor to file Partial Withdrawals of the Lot 16275 caveats pertaining to Lot 16843A (*viz* that of the property) on 1 November 2007. As early as 21 August 2007 (see 1AB54), the Vendors' solicitors had informed the Purchasers' solicitors that the caveats lodged against the property belonged to the purchasers of No. 11 Jalan Sindor and their respective chargee and mortgagee.

42 The Vendors' solicitors (and current counsel) had consistently informed his counterpart for the Purchasers in their exchange of correspondence that the Vendors would deliver to the Purchasers good title to the property free from encumbrances upon completion. This assurance did not satisfy the Purchasers' solicitors who continued to maintain an unreasonable stand.

43 I should point out that although the Purchasers' solicitors demanded that the Vendors procure the withdrawal of the caveats on the parent lot (16275V Mukim 18) before completion, the Purchasers themselves lodged caveats on 23 October 2007 over lot 16275V occupied by No 11 Jalan Sindor.

44 The Purchasers' complaint in [32] that the Vendors' solicitors' letter dated 9 November 2007 requiring payment of the 94% in three days over a weekend was too short was not borne out in the reply from the Purchasers' solicitors which full test I set out below:

We refer to your letter today.

We reiterate our letter dated 7 November 2007.

Please note that the agreement created by the duly exercised option between the parties was varied by the terms set out in our letter to your firm dated 20 August 2007 and your firm's reply on 27 August 2007.

Accordingly, we do not agree that our clients are in breach, nor would they be in breach if they fail to meet the deadline set out in your letter today. We reserve our clients' rights accordingly.

Please procure the withdrawal of the Caveats registered against the whole of the parent lot 16275V Mukim 18 insofar as they affect our clients' property as soon as possible. Until then we regret we cannot accept that any liability for payment has arisen.

There was no complaint that the notice period for payment was too short nor was there a request for an extension of time to make payment.

45 Much was made by the Purchasers' solicitor (in her first affidavit) that the objection to the Vendors' lack of good title came from the solicitors of the CPF Board. Unfortunately, save for one letter dated 16 August 2007 (at 1AB 50) from the CPF Board's solicitors (Aptus Law Corporation), no correspondence between the Purchasers' solicitors and the CPF Board's solicitors was produced to lend credence to this excuse and/or to disprove the suspicion that the Purchasers' solicitors were not the ones who were being difficult.

46 In the aforesaid letter, Aptus Law Corporation requested the child lot number of the property and confirmation that the same was 'live' in the lot base system. On 27 September 2007, the Chief Surveyor of the Singapore Land Authority emailed the developer's chartered surveyor to advise that the new lot number allocated to No 13 Jalan Sindor had been made 'live' in the lot base system. In turn the chartered surveyors informed the Vendors' solicitors that Lot 16843A Mukim 18 was No 13 Jalan Sindor while Lot 16842T Mukim 18 was No 11 Jalan Sindor. On the following day, the Vendors' solicitors duly conveyed the information to the Purchasers' solicitors. In that same letter dated 28 September 2007, the Vendors' solicitors requested for payment of the 94% of the purchase price from the Purchasers. The immediate response from the Purchasers' solicitors was that their search did not show that the two lot numbers were 'live'. On 15 October 2007, the Vendors' solicitors responded to say that Lot 16843A had been made 'live'. They repeated their request for payment of 94% of the purchase price. Thereafter nothing more was said about the new Lot number (16843A) as the focus of the parties' arguments centred on the withdrawal of the lot 16275 caveats filed by the purchasers of No. 11 Jalan Sindor.

The law

47 I noted that Miss Tan's testimony and her views in the Opinion (which counsel for the Purchasers did not challenge or question) vindicated the Vendors. I had pointed out more than once to counsel for the Purchasers in the course of the proceedings, that his clients wanted completion but always on their terms, not in accordance with the Option. The Purchasers' inflexible stand completely ignored the fact (as the Vendors submitted) that their predicament was of their own making. On the authority of such cases as *See Bee Hoon v Quah Poe Hoe* [1989] SLR 639, *Siti & Anor v Lee Kay Li* [1996] 3 SLR 310 and *Tian Teck Construction Pte Ltd v Exclusiv Auto Pte Ltd* [1992] 2 SLR 390, the Purchasers were in repudiatory breach of the Option when their solicitors' letter dated 7 November 2007 (see [44]) insisted their liability for payment had not arisen, thereby evincing an intention not to be bound by the terms of the Option.

48 The Purchasers' claim in the second OS was for specific performance of the Option. It is trite law that specific performance is an equitable relief and equitable remedies are discretionary. It is also axiomatic that he who comes into equity must come with clean hands and that he who seeks equity must do equity. Above all, equity acts on the conscience.

Relief against forfeiture

49 Even after I had dismissed the claim for specific performance in the second OS, counsel applied for the Purchasers to be granted relief against forfeiture, repeated Purchasers' desire to be allowed to retain the property and completely ignored the fact that the Purchasers had already repudiated the Option which repudiation the Vendors had accepted. This was yet another example of the Purchasers' unreasonable conduct.

50 Relief against forfeiture for leases is provided for under s 18A of the Conveyancing & Law of Property Act (Cap 61, 1994 Rev Ed) ("the CLPA") which provision states:

Relief against forfeiture by action for non-payment of rent.

(1) This section has effect where a lessor is proceeding by action to enforce against a lessee a right of re-entry or forfeiture in respect of any immovable property for non-payment of rent.

(2) If, within the time prescribed by rules of court for acknowledging service of the writ by which the action was commenced, the lessee pays into court all the rent in arrear and the costs of the action, the action shall cease, and the lessee shall hold the land according to the lease without any new lease.

51 The Vendors' counsel had argued (arguments which I accepted) that because of their conduct, the Purchasers were not entitled to the court's sympathy let alone that they should be granted relief against forfeiture, the reason being (drawing a parallel with s 18A of the CLPA) that they had not made payment into court. He added that the authorities cited by the Purchasers' counsel viz *Behzadi's* case ([32] *supra*) and *Pacific Rim Investments Pte Ltd v Lam Seng Tong & Anor* [1995] 3 SLR 1 ("*Pacific Rim*") in support of his arguments were not in point. I did not think the cases were helpful to the Purchasers' case as can be seen from their facts set out below.

52 In *Behzadi's* case, contracts for the purchase of a London hotel were exchanged between the purchaser/appellant and the vendor/respondent on 20 June with a deposit of £120,000 payable on or before 4 July (which was paid) and completion scheduled for 31 August. On 22 June, the purchaser requested the vendor to deduce title by supplying her with office copy entries, file plan and the vendor's authority to inspect the register. The vendor could not comply with the request because of delay by the Land Registry. The purchaser repeated the request several times and eventually on 30 August gave notice making time of the essence and giving the vendor seven days to deduce title. On 7 September the purchaser gave notice rescinding the contract and requested the return of the deposit. The vendor refused to return the deposit claiming that the purchaser was not entitled to rescind the contract and had therefore forfeited the deposit. On 12 September, the purchaser issued an originating summons claiming a declaration that she had been entitled to rescind the contract and an order that for the return of the deposit.

53 The judge held that the vendor had not been guilty of unreasonable delay by the time that the purchaser served the notice of 30 August and that the seven-day period within which she then required title to be deduced was unreasonable. He concluded that the purchaser had not been entitled to rescind the contract and that she could not recover her deposit. The purchaser's appeal was dismissed.

54 *Behzadi's* case has no application because as pointed out earlier at [34], the vendors' solicitors gave notice on 24 October 2007 that if payment was not made by 29 October 2007 (the deadline of 2 weeks stated in their earlier letter dated 15 October 2007), they required return of possession of the property. Time had therefore been made the essence of the contract on 29 October 2007. This was followed by the vendors' solicitors' letter dated 9 November 2007 requiring payment by Monday

12 November 2007. The notice period of 17 days (24 October–12 November 2007) cannot by any standards be said to be unreasonably short, particularly as one of the cheques (\$204,000) for completion was dated 7 November 2007 and presumably had been ready even before the vendors' solicitors' letter dated 9 November 2007. It bears remembering that the vendors' solicitors had chased for payment four times altogether (see [13]).

5 5 *Pacific Rim* likewise involved a sale and purchase agreement of a property that was under construction. By cl 3, payment of the purchase price by instalments had to be made within 14 days after receipt of a notice from the vendor/appellant that a particular stage of construction had been reached. Interest was payable on late payments of the instalments of the purchase price. Under cl 4, time was made the essence of the contract. By cl 5(1), if any of the instalments were unpaid for any period in excess of 14 days after the expiry of the period stated in the notice, the vendor was entitled to give the purchasers a further notice of its intention to treat the agreement as being repudiated by the purchasers and upon the expiry of the notice, the agreement would be annulled. By cl 11, the vendor was required to deliver vacant possession to the purchasers on or before 30 September 1993. In the event of delay, liquidated damages were payable by the vendor.

56 The vendor did not give notice of possession until 10 December 1993, at the same time it asked for payment of 20% of the purchase price (\$200,000) by 24 December 1993. The purchasers failed to pay by the deadline whereupon the vendor gave notice on 5 January 1994 to complete the purchase by 19 January 1994. The purchasers made part-payment of \$100,000 to the vendor on 8 January 1994. On 10 January 1994, the vendor served a notice under cl 5(1) expiring on 25 January 1994 demanding payment of the balance instalment and interest. On 12 January 1994, the purchasers paid the balance \$100,000. On 18 January 1994 the purchasers wrote to inform the vendor that they had decided to set off the interest of about \$900 against liquidated damages payable by the vendor (subsequently quantified at \$13,616.38). The vendor did not agree. Completion did not take place on 19 January 1994 and on 25 January 1994, the vendor informed the purchasers that the agreement had been annulled. The trial judge granted the purchasers' application for specific performance of the sale and purchase agreement.

57 The Court of Appeal dismissed the vendor's appeal holding *inter alia*, that the vendors' purported termination was based on cl 5(1) notice in respect of the purchasers' failure to pay the interest on the late payment of the instalment due under cl 3(1)(h), not on the failure to complete the purchase. The vendor was not entitled to treat the agreement as having been repudiated by the purchasers' failure to pay the amount due on completion. It was further held that the Court had jurisdiction to grant relief against forfeiture of an interest in land where there was a breach of a contractual provision as to payment, in respect of which time was of the essence but it would not ordinarily countenance a departure from contractual rights and obligations. *To invoke successfully the court's jurisdiction, the circumstances of the case must be exceptional and must also reveal elements of unconscionability and injustice* (emphasis added).

58 As stated earlier, the Purchasers' conduct did not warrant the court extending sympathy to them let alone granting them relief against forfeiture. I rejected their counsel's argument that it would be unconscionable and unjust to force the Purchasers to reinstate the property and return possession to the Vendors when they had only paid 5% of the purchase price, lived there rent-free for more than a year and rejected the Vendors' request for rent when completion did not take place as scheduled, when their predicament was of their own doing.

59 Even so, I gave the undeserving Purchasers an opportunity to remedy their breach and granted them relief against forfeiture on terms. I disallowed the Vendors' prayer for reinstatement of the property to its original condition (see [22(c)]) but granted them damages under para (d) of [22] being

the difference between the contract price and the valuation of the property as at 16 November 2007 (the date of the repudiatory breach). I further granted the Purchasers relief against forfeiture on the following conditions:-

A. The Purchasers would pay the Vendors all outgoings of the property from 22 July 2007 to 16 November 2007 plus rental from 16 November 2007 to the date for completion for which the Vendors would on Monday 4 August 2008 give notice to the Purchasers, pursuant to clause 6(a) of the Option.

B. In the event the Purchasers failed to accept the terms for relief against forfeiture and failed to complete the sale and purchase as ordered (which would be subject to the Law Society's Conditions of Sale, save that the 21 days' notice to complete under Condition 29.6 would not apply) the Vendors were at liberty to resell the property in the open market and the Purchasers would then be liable to the Vendors for damages to be assessed by the Registrar, such damages to be the difference between the purchase price and the market price that the Vendors would have obtained as of 16 November 2007.

Costs

60 The parties had exchanged Offers to Settle ("OTS") pursuant to Order 22A ("O 22A") of the Rules of Court (Cap 322, R5, 2006 Rev Ed). The Vendors' two OTS were dated 31 January 2008 while the Purchasers' OTS was dated 23 July 2008.

61 The Vendors' OTS required the Purchasers to consent to judgment in terms of the first OS and to discontinue the second OS against and pay costs to, the Vendors. The Purchasers' OTS required the Vendors to allow the Purchasers to complete the purchase of the property within three weeks by payment of \$1,292,000 and a goodwill sum of \$3,152.25. The proceedings in both OS were to be discontinued with each party bearing its own costs. The Purchasers' counsel argued that the Vendors' OTS did not offer any compromise at all and he was not relying on the OTS of his clients. The Vendors' counsel countered that his clients' two OTS were genuine. Although both OTS were open for acceptance for 14 days only, it was obvious from the Purchasers' OTS that they would not have accepted even if the Vendors' two OTS were open for acceptance until trial.

62 After hearing the parties' arguments, I decided against granting indemnity costs to the Vendors. I awarded them costs on a standard basis in the first OS but allowed them disbursements on a full indemnity basis against the Purchasers including the costs of Miss Tan as the expert witness. I awarded no costs for dismissal of the second OS but similarly allowed the Vendors all reasonable disbursements incurred therein.

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