

Poh Choon Kia and another v Lim Hoe Heng and another
[2012] SGHC 88

Case Number : Originating Summons No 767 of 2011
Decision Date : 26 April 2012
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : A. Thamilselvan (Subra TT Law LLC) for the plaintiffs; Jimmy Yap (Jimmy Yap & Co) for the first defendant; Nirmal Singh (S K Kumar Law Practice LLP) for the second defendant (at the hearing on 24 Nov 2011).
Parties : Poh Choon Kia and another — Lim Hoe Heng and another

Contract – remedies – specific performance

Contract – remedies – damages

Land – caveats – wrongful lodgment

26 April 2012

Tay Yong Kwang J:

Introduction

1 This dispute concerns the sale of a Housing Development Board (“HDB”) maisonette at Block 121 Potong Pasir Avenue 1 #11-273 Singapore 350121 (“the flat”) by the first defendant to the plaintiffs. The second defendant, a Chinese national, is the wife of the first defendant. In this originating summons, the plaintiffs seek an order for specific performance of the option to purchase against the first defendant. The plaintiffs also seek late completion interest and damages and other consequential orders. In respect of the second defendant, the plaintiffs seek an order for her to withdraw her caveat lodged against the flat within five days of the order by the court.

2 At the first hearing on 24 November 2011, the defendants were separately represented by solicitors. However, the solicitor for the second defendant was not able to obtain instructions from the second defendant who was not in Singapore. After hearing arguments by the parties that day, I granted the orders sought by the plaintiffs and directed that the sale be completed within three months from the date of the order. I awarded late completion interest but did not award any damages to the plaintiffs as they were unable to prove that they had suffered such. I ordered the second defendant to withdraw her caveat within two weeks from the date of the order and made certain consequential orders as between the first and the second defendants as they were in the midst of their matrimonial dispute. I also ordered costs of \$7,000 (which included disbursements) against the defendants for this originating summons and the plaintiffs’ application for leave to commence legal proceedings against the first defendant because of his bankruptcy.

3 At the first defendant’s request, I heard further arguments on 6 February 2012 on the issue of the late completion interest. The second defendant’s newly instructed solicitors (M/s Goh JP & Wong) were unable to attend this further hearing but agreed to abide by whatever order the court made. The first defendant was not able to persuade me to change my decision on the issue canvassed. As

the plaintiffs' solicitors were willing to waive costs for the further arguments, no order on costs was made.

4 On 2 March 2012, the first defendant filed an appeal against my decision relating to the issues of the late completion interest and the costs of the proceedings.

The facts

5 The second plaintiff, a divorcee, filed two affidavits. Both plaintiffs are housing agents. They had planned to get married on 13 November 2011 and therefore started looking for a matrimonial home sometime in December 2010.

6 In January 2011, they went to view the flat. The first defendant is the registered sole owner of the flat while the second defendant was the registered occupier. After negotiation with the first defendant, a purchase price of \$645,000 was agreed. Subsequently, they found out about the first defendant's bankruptcy and wondered whether they could purchase the flat from him.

7 On 14 January 2011, the plaintiffs and the first defendant went to the HDB branch office in Toa Payoh. There, a HDB officer told them that the first defendant was in arrears on the loan owing to the HDB and that he had to sell the flat in the open market or surrender it to the HDB. The officer also told the plaintiffs that they were eligible to purchase the flat. The first defendant then said he could get the second defendant's consent to sell the flat.

8 An option to purchase the flat was given by the first defendant on 15 January 2011. The plaintiffs proceeded to obtain a bank loan to purchase the flat. On 21 January 2011, they exercised the option. The relevant clauses of the option are as follows:

8.1 In this Option –

...

"Completion Date" means the date on which completion of the sale and purchase of the Flat is to take place in accordance with Clause 12;

...

9.1 The Seller sells to the Buyer, free from all encumbrances, the remaining leasehold interest in the Flat at the Purchase Price.

...

9.3 The Flat is sold subject to –

(a) the Housing and Development Act (Cap 129) and any rules and regulations made under the Act;

(b) the terms and conditions of resale and purchase of an HDB resale flat as prescribed by the HDB from time to time;

(c) the policies of the HDB in force from time to time;

(d) the terms and conditions of this Option;

(e) the conditions in the Law Society Conditions which-

(i) apply to a sale by private contract; and

(ii) are not varied by or inconsistent with the terms and conditions in this Option; and

...

11 The Seller and Buyer will within 30 calendar days from the date of exercise of this Option, jointly apply to the HDB for its approval for the sale and purchase of the Flat.

12. Completion Date

12 Unless extended by the HDB, the Completion Date will be within 8 weeks from the date of the HDB's first appointment with the Seller and Buyer for the sale and purchase of the Flat.

...

13.3 The Seller must carry out such acts and sign such documents as the HDB or the Buyer's solicitor may direct to discharge any existing mortgage, charge, third party caveat or other encumbrance with respect to the Flat on or before completion.

...

13.5 The Seller agrees to take such steps as the Buyer may reasonably request to help the Buyer obtain the HDB's approval for the purchase of the Flat.

...

15. Non-approval of sale and purchase

15.1 If the HDB's approval for the sale and purchase of the Flat is not obtained, is refused or is revoked before the Completion Date and it is not due to the Seller's or Buyer's default in complying with the HDB's terms of resale or requirements -

(a) the sale and purchase will be cancelled;

(b) this Option will be rescinded and become null and void and of no further effect;

(c) the Seller will immediately, without demand, refund to the Buyer the Option Fee, Option Exercise Fee and any other monies paid by the Buyer to the Seller, without any interest or deduction;

(d) each party will bear his own costs in the matter; and

(e) neither party will have any other claim against the other.

15.2 If the HDB's approval for the sale and purchase of the Flat is withheld, refused, revoked or not obtained before the Completion Date and it is due to the Seller's or Buyer's default in complying with the HDB's terms of resale or requirements, the other party will be entitled to enforce the terms of this Option for specific performance, damages and/or any other remedy.

...

19.1 The Flat is sold with vacant possession on completion.

...

19.3 On the Completion Date, the Seller must give to the Buyer –

- (a) vacant possession of the Flat; and
- (b) the keys to the Flat.

...

20.1 Completion of the sale and purchase of the Flat will take place on the Completion Date in accordance with this Clause.

20.2 If the HDB so requires, the sale and purchase of the Flat will be completed at its office and at such time fixed by the HDB.

9 The relevant conditions from the Law Society's Conditions of Sale 1999 ("LSCS"), referred to in Clause 9.3(e) of the option above, are as follows:

8.2 Interest Payable by Vendor

8.2.1 If –

- (a) the sale is not completed on or before the date fixed for completion; and
- (b) the delay in completion is due solely to the default of the Vendor,

he must pay interest (as liquidated damages) commencing on the day following the date fixed for completion up to and including the day of actual completion. Interest will be calculated on the purchase price at 10% per annum.

8.2.2 ...

8.3 No Interest Payable

No interest (as liquidated damages) will be payable if the delay in completion is due to some cause other than the default of the Vendor or the Purchaser or to the default of both the Vendor and the Purchaser.

...

29. Notice to Complete

29.1 This Condition applies in every case except where the Special Conditions provide that time is to be of the essence of the contract concerning the date fixed for completion.

29.2 A notice to complete means a notice in writing requiring completion of the contract in accordance with this Condition.

29.3 If the sale is not completed on the date fixed for completion, either party may give to the other party a notice to complete.

29.4 The notice to complete may be given on the date fixed for completion or at any time after that date, unless the contract has already been rescinded or become void.

29.6 Upon service of an effective notice, parties must complete the transaction within 21 days after the day of service of the notice (excluding the day of service) and time will be of the essence of the contract.

...

29.10 No interest (as liquidated damages) will be payable if the delay in completion is due to some cause other than the default of the Vendor or the Purchaser or to the default of both the Vendor and the Purchaser.

If the Vendor does not comply with the terms of an effective notice served by the Purchaser under this Condition, then the Purchaser may elect either –

- (a) to enforce against the Vendor such rights and remedies as may be available to the Purchaser in law or in equity without any other notice under the contract; or
- (b) to give a written notice to the Vendor to repay immediately to the Purchaser any deposit and any money paid on account of the purchase price. This is without prejudice to the Purchaser's rights to damages.

10 Subsequently, the HDB fixed the first appointment for the sale and purchase of the flat on 25 February 2011. That day, the HDB scheduled the completion to take place on 8 April 2011. A letter from the HDB dated 25 Feb 2011 was sent after the meeting stating the following:

STAGES	RESALE PROCEDURES	RESALE OFFICER
1. RESALE APPROVAL Resale is estimated to be approved around 11/03/2011	Both sellers and buyers will receive approval letter. They need not respond to the letter. Sellers and buyers may call Sales/Resale Customer Service Line at 1800-866 3066 on weekdays from 8 am to 5pm or login to www.hdb.gov.sg – My HDBPage to enquire on the resale approval date or completion date.	TAY RUO OI REGINA TEL: [xxx] FAX: [xxx] Email: [xxx] Workstation No: [xxx] For best service response, please call between _____ and _____

2. COMPLETION OF RESALE The resale transaction is estimated to be completed around 08/04/2011	One week before the scheduled date for the completion, both sellers and buyers will receive 2nd letter from Resale Office to inform them of the appointment date to complete the transaction. On this appointed day:- - the sellers will execute transfer instruments - the buyers will execute mortgage instruments (if applicable) - the sellers will handover keys to the buyers and collect net sales proceeds (if any) CPF monies will be refunded to respective CPF accounts of sellers one week after the completion of resale.	
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11 Some time after the first appointment, the HDB informed the plaintiffs that the sale and purchase could not be completed as the second defendant had not signed the spousal consent form for the sale (a HDB requirement). On 23 March 2011, the HDB wrote to inform the plaintiffs that it would be cancelling the intended sale due to the first defendant's inability to obtain the said written consent unless the plaintiffs were willing to defer the transaction until the matter was resolved. In an email sent by the HDB to the plaintiffs' solicitors' conveyancing executive on 19 April 2011, the HDB enquired, "So are the buyers willing to wait and defer the resale? If we do not receive any confirmation that they are willing to defer the resale, we will have to cancel the case at our end". The said conveyancing executive replied the same day stating, "From what I understand from the buyers yesterday they are very willing to wait until this issue is resolve (sic)".

12 In early April 2011, the plaintiffs learnt from their solicitors that the second defendant had lodged a caveat on the flat, asserting an equitable and proprietary claim over part of the flat.

13 The plaintiffs then spoke to the first defendant about the above two impediments to the sale. The first defendant said that he would settle those issues. However, he did not do anything about them.

14 On 12 April 2011, the plaintiffs went to seek the assistance of their member of parliament ("MP"). The MP helped them and managed to get the HDB to waive the requirement of spousal consent to the sale of the flat on 31 May 2011. The second defendant's caveat was thereafter the only impediment that remained.

15 About 22 June 2011, the first defendant claimed that he and the second defendant had agreed to the removal of the caveat. However, despite repeated requests, no step was taken by either defendant to remove the caveat from the record.

16 In the meantime, the plaintiffs sold their flat in Potong Pasir. From around March 2011, they rented a flat in Geylang ("the Geylang flat") from a female friend at \$2,000 a month. They had expected to stay in the Geylang flat until May or June 2011 when the flat that they purchased from the first defendant would have been renovated. However, on 7 April 2011, the electrical circuit in the

Geylang flat caught fire and they had to move out of the Geylang flat, leaving their furniture there. They went to stay temporarily in another female friend's flat, inconveniencing the sister of that friend who let them have her bedroom and went to stay at her boyfriend's home.

17 Subsequently, the plaintiffs decided to move into another female friend's apartment in a condominium ("the Jalan Taman flat"), paying the owner \$1,800 for the use of a bedroom and the utilities and services of a cleaner. After the Geylang flat's power supply was restored, they returned there on 22 August 2011.

18 The plaintiffs claimed that the first defendant's failure to complete the sale of the flat caused them to incur the following expenses:

- (a) Rental for the Geylang flat at \$2,000pm from March 2011 and continuing
- (b) Rental for the Jalan Taman flat at \$1,800pm for five months (April to August 2011).

19 The plaintiffs have a 12 year old son (from the second plaintiff's previous marriage) who was going to sit for the Primary School Leaving Examinations at the end of 2011. It was therefore critical for the son to have a good study environment. Further, as mentioned earlier, they intended to get married on 13 November 2011 and wanted their own home. The prices of resale flats in the Toa Payoh/Potong Pasir area have been rising and they would have to pay a lot more for an equivalent flat in that area.

20 The first defendant, a bankrupt, is 54 years old while the second defendant is 31. They married in July 2002. At that time, the first defendant was a widower. They have two children. The first defendant has three other children from his previous two marriages. He was and still is the sole bread winner of his family.

21 In June 2008, his business as a contractor failed and he went into bankruptcy. He began to default in the mortgage payments on his HDB housing loan. The HDB gave him the option of selling the flat in the open market or surrendering it to the HDB.

22 His wife, the second defendant, knew about the plight he was in. Instead of helping him to resolve the financial problems, she abandoned the family in December 2010. Her only concern thereafter was her share of the matrimonial assets.

23 The option that the first defendant gave to the plaintiffs provided that the sale of the flat was subject to the conditions set out in Clause 9.3 thereof. The sale was also conditional upon the approval of the HDB (Clauses 11, 13.5, 14.1, 14.2, 15.1 and 15.2).

24 There was no completion date fixed and the time for completion was not expressed to be of the essence of the contract. Clause 12 merely stated that "Unless extended by the HDB, the Completion Date will be within 8 weeks from the date of the HDB's first appointment with the Seller and Buyer for the sale and purchase of the Flat". At the first appointment on 25 February 2011, the HDB did not fix any date for the completion of the sale. However, in a note dated the same day, the HDB indicated that "the resale transaction is estimated to be completed around 08/04/2011".

25 The HDB required the second defendant's written consent to the sale of the flat. When the first defendant asked the second defendant for her consent, she demanded that he give her most of the sale proceeds despite knowing that he required the money to pay for a smaller HDB flat which he had already agreed to purchase from a third party.

26 On 8 March 2011, the second defendant lodged a caveat against the flat, claiming an interest "pursuant to divorce" although no divorce proceedings had been commenced then. The first defendant's offer to her to lodge a caveat against the smaller HDB flat which he had agreed to buy was rejected by her. The seller of that flat has since rescinded the sale because of the delay.

27 After the issue of spousal consent was finally resolved with the help of the MP, the HDB wrote to inform the parties on 6 July 2011 that the sale of the flat was approved. Thereafter, the first defendant tried to complete the sale by asking the second defendant to remove her caveat against the flat and lodge a caveat against the smaller HDB flat but she refused. He then sought the consent of the Official Assignee ("OA") to start an action against her to compel her to remove the caveat. However, the OA required a third party to fund the legal proceedings and he could not comply with the OA's condition. He then instructed his solicitors to request the Registrar of Land Titles to cancel the caveat under s 127(2) of the Land Titles Act. However, the second defendant decided to show cause against the removal of her caveat and the Registrar of Land Titles then decided that the matter should be resolved by the court.

28 The first defendant prayed for an order against the second defendant to remove her caveat as she did not have an interest protectable by caveat at the time of lodging it as no divorce proceedings had been commenced then. He renewed his offer to her to preserve whatever rights she may have by allowing her to lodge a caveat against another flat that he intended to buy.

29 The second plaintiff filed an affidavit in reply to the first defendant's affidavit. She stated that the plaintiffs tried to help the first defendant with the caveat issue by suggesting that their solicitors hold the net sale proceeds as stakeholders pending the resolution of the matrimonial dispute between the defendants. While the second defendant was agreeable to this, the first defendant did not accept the suggestion as he needed the money to buy another flat. The first defendant took no action in court against the second defendant. In fact, he informed the plaintiffs at one stage that the caveat had been removed, giving them a false sense of happiness.

30 In the circumstances, the plaintiffs had no choice but to incur legal expenses by commencing this originating summons. In order to do so, they had to obtain leave of court to commence legal proceedings against a bankrupt. No new date for completion was given by the HDB after the original tentative date of 8 April 2011 because of the matters raised here. The plaintiffs had already sold their HDB flat and therefore had to stay with friends due to the first defendant's default and delay. The plaintiffs did not ask the friends for receipts for the rent paid. The plaintiffs remain ready, willing and able to complete the sale transaction.

The plaintiffs' arguments

There exists an obligation to complete

31 The plaintiffs submitted that the obligation to complete the sale is implicit in the very nature of the contract for sale and purchase of the flat and is not dissolved just because the plaintiffs did not give the first defendant a 21- day notice pursuant to Condition 29 of the LSCS. This condition required a notice in writing requiring completion of the contract if a sale was not completed on the date fixed for completion. The plaintiffs argued that the notice was but a mechanism for triggering a claim for specific performance under Condition 29(10) of the LCSC.

32 Clause 15.2 of the option was clear in that the party not in default would be entitled to specific performance, damages or any other remedy if the HDB's approval for the sale and purchase of the flat was withheld, refused, revoked or not obtained before the completion date by reason of the other

party's default in complying with the HDB's terms of resale or requirements. The LSCS apply only to the extent that they were not varied by or were not inconsistent with the option (Clause 9.3(e)(ii) of the option). Clause 15.2 was incompatible with Condition 29(10) of the LCSC and therefore the latter provision was not applicable to this transaction.

33 Moreover, in equity it is not a requirement for the time of performance to arrive before a claim for specific performance can be made. In *Hasham v Zenab* [1960] 1 A.C. 316, the Privy Council held that it was a fallacy that the right to sue for specific performance could be equated with a cause of action. Rather, all that has to be shown are circumstances which would justify the intervention by a court of equity. As such, the plaintiffs argued that the first defendant's failure to get the second defendant's consent to the sale and to remove the caveat, coupled with his refusal to allow the net sale proceeds to be held by the plaintiffs' solicitors as stakeholders pending the resolution of his matrimonial dispute with the second defendant, were sufficient grounds for intervention.

Interest for late completion

34 Condition 8.2 of the LSCS provides that if the sale was not completed on or before the date fixed for completion and the delay was due solely to the seller's default, then the seller must pay interest (as liquidated damages) commencing on the day following that fixed for completion up to and including the day of actual completion, calculated on the purchase price at 10% per annum. Since Clause 12 of the option stated that unless extended by the HDB, the completion date will be within 8 weeks from the date of the HDB's first appointment with the buyer and seller for the sale and purchase of the flat, the completion date was that fixed by the HDB, namely 8 April 2011 (which was six weeks from the first appointment). The HDB's letter dated 25 February 2011, contrary to the first defendant's arguments, confirmed the completion date as 8 April 2011 and stated it to be an estimated date only in the sense that the HDB might extend the date on its own accord. The sale and purchase of HDB flats is usually conducted on the basis that there would be a completion date determined by the HDB after the first appointment. Accordingly, the first defendant's argument that late completion interest did not arise for lack of a completion date must fail.

35 The completion was delayed by reason of the first defendant's default, which is the other requirement of Condition 8(2) of the LSCS. The first defendant was obliged to obtain the second defendant's consent to the sale. It is a well known policy of the HDB that sellers must obtain their occupiers' consent to the sale in order to obtain approval for the sale. The first defendant should not even have agreed to sell if he could not obtain such consent. In addition, the failure to remove the caveat was also a default on the first defendant's part: *Panjacharam Raveentheran v Mooka Pillai Rajagopal* [1997] 2 SLR(R) 700).

36 The plaintiffs stated that they did not consent to the postponement of the completion date subsequent to the HDB's letter dated 25 February 2011. Even if they did, that would not preclude the payment of late completion interest. Since the late completion interest was actually liquidated damages to be paid by the defaulting party (as stated in Condition 8(2) of the LSCS), the plaintiffs' entitlement to such damages cannot be disputed (*Oakacre Ltd v Claire Cleaners (Holdings) Ltd* [1982] 1 Ch. 197).

37 The delay was due solely to the first defendant's default. In failing to ensure that the second defendant's consent would not be an obstacle to the completion, he breached his duty to the plaintiffs who had tried to assist him by giving him an advance payment of \$10,000.00, waiving late completion interest for February 2012 and waiting for nearly a year to take possession of the flat. Under these circumstances, coupled with the fact that they had been inconvenienced by having to stay in temporary accommodation for a year, the late completion interest would be the only means of

compensating them.

Rent for the Geylang flat and the Jalan Taman flat

38 The plaintiffs submitted that there was an error in the second plaintiff's affidavit filed on 6 September 2011 in that the first defendant should compensate the plaintiffs for rent paid by them beginning in April 2011 and not March 2011 (see [\[18\]](#) above), calculated as follows:

Rent of Geylang flat @ S\$2,000.00 from March 2011	S\$12,000.00
LESS:	
(a) Rent for March 2011	(S\$2,000.00)
(b) Pro-rated reduction of rent from 1 April 2011 to 8 April 2011	(S\$533.00)
Total	S\$9,467.00

Hence, the total rent claimed for the Geylang and Jalan Taman flats should be S\$18,467.00 (S\$9,467.00 + S\$9,000.00).

39 The plaintiffs did not have evidence in writing to show payments for rent as these arrangements were made hastily in view of the changing circumstances. Had the sale been completed on 8 April 2011, these alternative accommodation arrangements would not have been necessary. Moreover, the sums claimed were reasonable amounts.

Removal of the caveat

40 The plaintiffs also wanted the removal of the caveat lodged by the second defendant. They based this claim on section 127 of the Land Titles Act which reads:

127 At any time after the lodgement of a caveat, the caveatee may summon the caveator to attend before the court to show cause why the caveat should not be withdrawn or otherwise removed, and the court may make such order, either ex parte or otherwise, as seems just.

...

(6) for the purposes of this section, a person claiming an estate or interest in the land under another caveat shall be deemed to be a caveatee.

41 In view of the plaintiffs' bank's caveat no. IC/324207W (lodged on 20 April 2011) and the plaintiffs' own caveat no. IC/355308H (lodged on 12 May 2011), as "caveatees", the plaintiffs were entitled to rely on the abovementioned provision. The second defendant lodged the caveat wrongfully as no divorce proceedings had been commenced at the time of lodging, let alone an interim judgment against the first defendant (*Lim Kaling v Hangche Valerie* [2003] 2 SLR(R) 377 and *Tan Huat Soon v Lee Mee Leng* [2009] SGHC 199).

The first defendant's arguments

No obligation to complete the sale

42 The first defendant claimed that it was premature for the plaintiffs to claim that he was in

breach of his obligation to complete the sale when the time for completing the sale was not of the essence and was not made of the essence and the plaintiffs had failed to give him notice to complete.

The late completion interest

Condition 8 of the LSCS not applicable

43 The LSCS only applied insofar as they were not varied by or were not inconsistent with the conditions in the option (Clause 9.3 of the option). The first defendant argued that Condition 8 of the LSCS (on late completion interest) was inconsistent with Clause 15 (describing consequences if the HDB's approval is not obtained, is refused or is revoked before the date of completion) read with Clause 11 of the option (requiring the seller and buyer to jointly apply to the HDB for its approval for the sale and purchase). Applying Condition 8 would amount to varying these two clauses in the option:

(a) Since Clause 15 essentially made the sale and purchase conditional upon the HDB's approval and such approval only arrived on 6 July, the parties' obligation to complete the sale could not have arisen before then.

(b) Even if the delay in obtaining such approval was due to the first defendant's default, Clause 15.2 which provides that the party not in default would be entitled to "enforce the terms of this Option for specific performance, damages and/or any other remedy" expressly spells out the consequences of that default.

(c) Applying Condition 8 would effectively vary the agreement in Clause 15 and was inconsistent with the agreed obligation in it. .

No evidence to show that a date has been fixed for the completion of sale

44 Even if Condition 8 applied, it could only be invoked if there existed a date fixed for the completion which was not complied with. Clause 12 of the option, which concerns the date of completion, merely states:

Unless extended by the HDB, the Completion Date will be within 8 weeks from the date of the HDB's first appointment with the Seller and Buyer for the sale and purchase of the Flat.

45 The phrase "unless extended" indicated that the completion date was not an inflexible and unchangeable one. Construed within the factual matrix of the sale, this clause meant that the date of completion could be decided by the HDB after the first appointment. The HDB's letter dated 25 Feb 2011, sent in the follow up to the first appointment, was not a confirmation of 8 April 2011 as the completion date but merely an explanatory document of the resale procedures for the following reasons:

(a) Under the first column "Stages", there were two listed stages, "Resale Approval" and "Completion of Resale". Accordingly, this showed that the obligation to complete the sale could only arise after the HDB's approval is obtained.

(b) Under "Resale Approval", the HDB officer indicated that the resale was "estimated to be approved around 11/03/2011". Moreover, under the second column on "Resale Procedures" parties were told that pending approval, they could call or login to the HDB website to enquire

about the approval or completion dates.

(c) Under the second stage "Completion of Resale", the HDB officer stated that the resale transaction was "estimated to be completed around 08/04/2011". Under the "Resale Procedures" column, both seller and buyer would receive the second letter from the Resale Office to inform them of the appointment date to complete the transaction one week before the scheduled date for completion. Clearly 8 April 2011 was only an estimated date with the actual date to be made known through a second letter.

46 Since the HDB did not send the second letter or any other letter, there was no date fixed. Accordingly, Condition 8 could not be used to render the first defendant liable for late completion interest.

Even if there was a date for completion, it was not 8 April 2011

47 The HDB's letter dated 25 February 2011 stated that 8 April 2011 was a mere estimation. Subsequently, another letter from the HDB dated 23 March 2011 stated the following:

We wish to inform that we are unable to proceed with the processing of your purchase as the seller, Mr Lim is unable to obtain his spouse consent for the sale and we are unable to waive this requirement. Please let us have your written confirmation on whether you are willing to defer the resale transaction till the matter is resolved. Please let us have your letter latest by 4 Apr 11. Otherwise, we will proceed to cancel the resale.

48 If cancelled, the plaintiffs would have recourse against the first defendant under Clause 15.2 of the option. However, the first defendant had since found out that the plaintiffs' solicitors did in fact send the HDB an email confirming that the plaintiffs were willing to defer the resale. Having agreed to defer, the plaintiffs could not contend that the date for completion was 8 April 2011. Hence the plaintiffs' only recourse against the first defendant, if any, was to invoke Clause 15.2.

Even if 8 April 2011 was the date for completion, the first defendant had already done all that he could

49 Condition 8.2 of the LSCS stated that the delay in completion must be due solely to the seller's default. Condition 8.3 also stated that the interest will not be payable if the default was due to some cause other than the seller's and/ or the buyer's default. According to *Toh Teck Sun v Mandarin Gardens Pte Ltd* [1988] 1 SLR(R) 294 (in which Chan Sek Keong JC (as he was then) considered Parker J's judgment *In re Bayley-Worthington & Cohen's Contract* [1909] 1 Ch 648), such a "default" as described in Condition 8 must necessarily involve a breach of some duty owed to another.

50 Despite the fact that the HDB was entitled to compulsorily acquire the flat on account of the first defendant's failure to keep up with his loan repayments, the HDB allowed him to sell it in the open market instead. Thus, the HDB should have waived the requirement of obtaining the second defendant's consent in the first place since it was the HDB which compelled the first defendant to sell the flat. Having proceeded with diligence in trying to fulfil this requirement, the first defendant, while arguably in breach of his contractual obligations, did not "default" in the sense of breaching his duty to the plaintiffs within the meaning of Condition 8 of the LSCS.

Order to require removal of caveat by second defendant

51 The first defendant sought an order requiring the second defendant to remove the caveat on

the following grounds:

(a) The second defendant did not even have a caveatable interest in the flat. Her claim to an interest in the flat was based on the false premise that her marriage to the first defendant was being dissolved by the court and the court was exercising its power to treat the flat as a matrimonial asset for the purpose of asset division under the Women's Charter.

(b) The caveat effectively operated as a statutory injunction (*Alrich Development Pte Ltd v Rafiq Jumabhoy* [1993] 1 SLR(R) 598) and, based on a balance of convenience, an order to remove the caveat should be given (*Tan Yow Kon v Tan Swat Ping* [2006] 3 SLR(R) 881).

The decision of the court

52 Having entered into a contract for the sale and purchase of the flat, the parties involved had a clear obligation to complete the transaction. The absence of a 21 days' notice under Condition 29 of the LSCS did not detract from the first defendant's obligation to complete the sale. Condition 29 is not applicable here and there is no need to resort to Condition 29 because Clause 15.2 of the option provides the remedies for the party not in default if the HDB's approval for the sale and purchase of the flat is withheld, refused, revoked or not obtained before the completion date and it is due to the seller's or the buyer's default in complying with the HDB's terms of resale or requirements. The remedies are "specific performance, damages and/or any other remedy" and the plaintiffs' claims fall within the ambit of these words. Clearly, the first defendant was in breach of Clause 15.2 by the time of the completion date arranged by the HDB. He remained in breach of the sale agreement as at the date of the hearing as he was still unable to give the plaintiffs vacant possession of the flat free from all encumbrances (see Clauses 9.1, 13.3 and 19).

53 The parties could not get past the first stage of the HDB resale procedure for several months after the first appointment because the first defendant could not keep to his end of the bargain, *i.e.* to obtain the occupier's consent to the sale. The matrimonial dispute is a matter between him and the second defendant and it was incumbent on him to clear the resale approval stage so that the parties could move on to the completion stage. He could not do so and only managed to get a waiver several months later. If he was not able to get the second defendant to cooperate in the resale, then he should have surrendered the flat to the HDB and should not have attempted to sell it himself.

54 The caveat by the second defendant compounded the problem but that again is a matter between the first defendant and the second defendant and has nothing to do with the plaintiffs as buyers of the flat. It was the first defendant's duty to remove the caveat if it was an improper one but he took no steps beyond asking the Registrar of Land Titles to invoke s 127 of the Land Titles Act. His bankruptcy may have caused him to be unable to satisfy the OA regarding the costs of any prospective action against the second defendant but again that is not the plaintiffs' concern. He ought to have considered all this, bearing in mind his bankruptcy and his bad relationship with the second defendant, before contemplating a resale himself instead of surrendering his flat to the HDB. As a result of his choice, he unfortunately brought this problem upon himself. He appears to be blaming the HDB for his predicament (see [\[50\]](#) above) but has not brought the HDB into this action. The default was therefore "solely" his within the meaning of Condition 8 of the LSCS.

55 The completion date of 8 April 2011 may have been stated to be an "estimated" one by the HDB but that is only for the HDB's purposes. It has to complete its own administrative procedures and checks before approving the sale. The date given was six weeks after the first appointment, well within the eight weeks stated in Clause 12 of the option. If the first defendant had fulfilled his part of the bargain by getting the second defendant's consent to the sale, there could be no doubt that

completion would have taken place on 8 April 2011 with the plaintiffs taking vacant possession of the flat and the first defendant going on to settle his purchase of the smaller HDB flat that he had contracted to buy, indisputably by using the sale proceeds expected from the sale of the flat on 8 April 2011.

56 There was no question of extension of the completion date by the HDB as the parties could not even cross the first stage of the resale process. The plaintiffs, in responding to the HDB, had to agree to wait as the HDB would otherwise cancel the sale. They sincerely wanted to buy the flat. It could not be that there would therefore be no completion date in these circumstances while the first defendant works out his matrimonial issues with the second defendant over an indefinite period of time. The plaintiffs also could not be deemed to have waived their right to late completion interest in the circumstances. The completion date remained 8 April 2011 and the first defendant remained in breach of his obligations under the option given by him.

57 Late completion interest is a remedy open to the plaintiffs under Condition 8 of the LSCS which has been incorporated into the agreement by Clause 9.3 of the option. Condition 8 has not been varied by the option and it is not inconsistent with any of the terms and conditions in the option. The first defendant is therefore liable for late completion interest with effect from 8 April 2011 pursuant to Condition 8.2 of the LSCS. Even if I am wrong on 8 April 2011 being the completion date, then late completion interest should at least start running from the day after the eighth week after the first appointment (see Clause 12 of the option).

58 I therefore ordered specific performance of the contract for the sale of the flat for the price of \$645,000.00 as provided in the option. The Registrar of the Supreme Court would be empowered to sign all documents necessary to give effect to the sale and transfer of the flat to the plaintiffs on behalf of the first defendant should he fail to comply. The plaintiffs would also have leave to issue a writ of possession against the first defendant in the event that he fail to vacate the flat upon completion of the said sale and purchase.

59 However, I did not award any damages to the plaintiffs insofar as their claim for rental expenses for alternative accommodation was concerned. No satisfactory evidence on the payment of such rent was adduced. Further, in both affidavits filed in this case, the second plaintiff stated her residential address as a HDB flat in Potong Pasir and not the Geylang flat. The plaintiffs have not appealed against this part of my orders.

60 As for the first defendant's claim that he had already done all that he could to obtain the second defendant's consent and to have the caveat removed, while I could sympathise with his situation, it must be reiterated that a contractual duty is not concerned with fault of the parties. By entering into a sale agreement with the plaintiffs, the first defendant owed a duty to them to complete the transaction and give vacant possession to them by the appointed date. Even if the second defendant was being totally unreasonable and he had made his best efforts to get her cooperation, it was still incumbent on him to clear the path of resale from all obstacles on his side and this he failed to do. The fact that late completion interest will deplete his financial resources even further is an unfortunate but unavoidable consequence of his inability to fulfil his end of the bargain.

61 Accordingly, I ordered that late completion interest at 10% per annum be paid by the first defendant to the plaintiffs with effect from 8 April 2011 until the date of completion, which should be within three months from the date of the first hearing (24 November 2011). The said interest, together with the costs payable to the plaintiffs, would be deducted by the plaintiff's solicitors from the net sale proceeds of the flat. Upon completion, the net proceeds would be paid to the first defendant's Central Provident Fund account, with any excess amount to be held by the first

defendant's solicitors as stakeholders. The first defendant would be allowed to withdraw from such money held by his solicitors an amount of \$1,800.00 per month for his living expenses and up to a maximum of \$2,000.00 per month for rent, if proof of tenancy is given. If the first defendant purchases a flat, he would be allowed to withdraw all amounts necessary from his solicitors to purchase the flat. Once the option to purchase a flat has been exercised by the first defendant, his solicitors are to notify the second defendant's solicitors in writing about this fact. The second defendant's solicitors are to lodge a caveat against that flat, if they consider it proper to do so. The stakeholding money would be subject to such orders as the Family Court deems fit to make in the matrimonial dispute between the first defendant and the second defendant. The first defendant's solicitors have liberty to apply to the Family Court in respect of the stakeholding money.

62 In the absence of divorce proceedings at the time when the caveat was lodged, the caveat was wrongfully lodged as the second defendant did not even have a caveatable interest then – see *Lim Kaling v Hangche Valerie* [2003] 2 SLR(R) 377; *Tan Huat Soon v Lee Mee Leng* [2009] SGHC 199. I therefore ordered her to withdraw it within two weeks of the order. She is not permitted to lodge any further caveat in respect of the flat. If she fails, refuses or neglects to withdraw it, the Registrar of the Supreme Court is empowered to sign the necessary documents for the withdrawal of the caveat on her behalf.

63 The plaintiffs had to apply for leave in Bankruptcy No. B1099 of 2008 to commence legal proceedings against the first defendant and thereby incurred costs of \$2,000.00. I fixed the costs of the bankruptcy application and of this originating summons at a total of S\$7,000.00 (inclusive of disbursements) to be paid by the defendants to the plaintiffs. I did not order any costs for the hearing of further arguments on 6 February 2012 as the plaintiffs were willing to waive costs for that hearing.

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