Muharrem Unsal *v* M K Sivalingam Jaganathan
[2010] SGHC 241

Case Number : Suit No 162 of 2010 (Summons No 2462 of 2010)
Decision Date : 18 August 2010
Tribunal/Court : High Court
Coram : Shaun Leong Li Shiong AR
Counsel Name(s) : Siraj Omar, Dipti Jauhar (Premier Law LLC) for the plaintiff; Kanthosamy Rajendran (Raj Prasanna & Partners) for the defendants.
Parties : Muharrem Unsal — M K Sivalingam Jaganathan

Civil Procedure – Summary Judgment – Treatment of assertions in affidavits – Consistency with undisputed contemporaneous documentary evidence

Land – Option to Purchase – Housing and Development (Agreements for Sale and Purchase) Rules

Contract – Estoppel by Convention

18 August 2010

Shaun Leong Li Shiong AR:

Introduction

1 This was an application for summary judgment pursuant to Order 14 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules"), where the Purchaser sought specific performance of a contract (for the sale and purchase of a Flat) entered into between the Vendors and the Purchaser. The Vendors refused to perform the contract. They attempted to raise triable issues based on allegations that there was total failure of consideration, and that the sale and purchase agreement was void. I awarded summary judgment in favour of the Purchaser. Before I state the grounds of my decision, I will revisit the pertinent facts below.

The Undisputed Facts

2 The defendants in this action, M K Sivalingam Jaganathan ("D1") and Thangaveloo Thenmolee ("D2") (collectively referred to as 'the Vendors") are the registered owners of a Housing and Development Board ("HDB") apartment addressed at Block 657 Jalan Tenaga #02-110 Singapore 410657 ("the Flat"). The Vendors granted the plaintiff, Muharrem Unsal ("the Purchaser") an option to purchase the Flat for the price of $426,000 ("the Option"). The Option was dated 9 December 2009 [note: 1], and the agreed Option fee and Option exercise fee was $1,000 and $4,000 respectively [note: 2]. It was not disputed that the Vendors signed on the Option. The stated Option expiry date was 23 December 2009 [note: 3]. Clause 5.2 of the Option provides that the Option and Acceptance signed by the Purchaser will form a binding contract for the sale and purchase of the Flat ("the Contract") [note: 4]. Notably, the Vendors and Purchaser had affirmed this clause by signing against it [note: 5]. The Completion Date was stated to be within 8 weeks from the date of the first HDB appointment [note: 6].

3 It is undisputed that the Vendors had appointed HSR Property Consultant ("HSR") as the property agency to facilitate the sale and purchase of the Flat [note: 7]. One Fion Chia ("Chia") from HSR assisted the Vendors in the sale and purchase. This was confirmed by Chia's evidence [note: 8]. It is also undisputed that a HDB resale application was submitted by HSR on 11 December 2009 [note: 9] to apply for HDB approval. The resale application was submitted to HDB via Chia's email address [note: 10]. In reply, HDB wrote a letter to the Vendors dated 14 December 2009 to inform them that they have received the HDB resale application on 12 December 2009 sent on behalf of the Vendors by their housing agent ("HDB letter") [note: 11]. The HDB letter informed the Vendors that a HDB appointment date (being 5 March 2010) has been booked by the Vendors' housing agent. The same letter informed that a technical officer will be conducting an inspection of the Flat on 21 December 2009 to check for any unauthorised renovation works in the Flat.

4 The Option granted was in the prescribed standard form with a sale and purchase agreement ('SPA'), as found in the Schedule section of the Housing and Development (Agreements for Sale and Purchase) Rules (Cap 129, R 11, 2004 Rev Ed) (hereinafter referred to as 'HDASPR'). The HDASPR provides that there shall be no additions or variations of the SPA, non-compliance of this rule would render the SPA *void*:

> 2. In these Rules, unless the context otherwise requires –
>
> "agreement for sale and purchase" means any contract, agreement or other document relating to the sale and purchase of an HDB flat between the owner of the HDB flat and a buyer thereof…
>
> Form of agreement for sale and purchase
>
> 3.-(1)Subject to paragraph (2), every agreement for sale and purchase shall be in the Form in the Schedule.
>
> (2) No agreement for sale and purchase *shall contain any addition to, deletion from or variation* of the Form in the Schedule *unless the addition, deletion or variation is made with the authorisation of the Board*.
>
> Void agreement
>
> 4. Any agreement for sale and purchase which does not comply with rule 3 shall be void
>
> [emphasis added]

5 The Vendors requested to remain in possession of the Flat for another 3 months after completion to facilitate their personal arrangements [note: 12]. The Purchaser agreed to this request and an agreement on extension of stay was entered into between the Vendors and the Purchaser on 21 November 2009 (hereinafter referred to as the "collateral agreement') which allowed for the Vendors to stay in the Flat for 3 months upon the completion date [note: 13]. The collateral agreement stated that no rent was to be charged for the duration of the extended stay [note: 14].

6 The Vendors, in their attempt to discharge themselves from the Option and SPA, argued that the collateral agreement is a *variation* of the SPA, because Clause 19 of the SPA mandates that the Flat be sold with *vacant possession* on completion. The Vendors argued that, as a variation of the

SPA, this contravenes rule 3 of the HDASPR, which rendered the SPA void under rule 4 of the same.

7 The Vendors further made the assertion that there was a total failure of consideration as they have only received the cheques for the Option fee and Option Exercise fee at as late as 14 January 2010. The Vendors' solicitors wrote a letter dated 12 February 2010 [note: 15] to the Purchaser, stating that Chia handed over 2 cheques to the Vendors only as late as 14 January 2010, and because of this, there was no consideration for the sale and purchase of the Flat. No issue was raised in this letter in relation to the collateral agreement rendering the SPA void. The Purchaser's solicitor wrote a letter dated 24 February 2010 in reply asking for the Vendors to confirm that they would perform their obligations under the Contract [note: 16]. There has been to date no reply to this letter [note: 17].

The Purchaser's case

8 According to the Purchaser, the Vendors were "contriving means and ways to get out of the Contract" [note: 18]. The Purchaser claimed that the option fee was paid when the Purchaser handed over a cheque of $1,000 to the Vendor's agent, Chia, on 21 November 2009 [note: 19]. Chia at that time informed the Purchaser that she would pass the cheque to the Vendors. Chia gave evidence to support the Purchaser's version [note: 20]. Chia further stated that the cheque was handed over to D1 soon after she had collected it from the Purchaser [note: 21].

9 Subsequently, the Purchaser met Chia on 10 December 2009, where the Option *dated 9 October* was handed to the Purchaser *already signed* by the Vendors; this was not disputed by the Vendors [note: 22]. In addition, I note that the Vendors did not dispute that the signatures on the Option were made by them. The Purchaser paid the Option exercise fee when he handed a cheque of $4,000 to Chia on 10 December 2009. Chia again at that time informed the Purchaser that she would pass the cheque to the Vendors [note: 23]. This version was supported by Chia's evidence [note: 24]. Chia further claimed that the cheque was handed over to D1 very shortly after having received the cheque from the Purchaser, before the Option expiry date of 23 December 2009 [note: 25].

10 Given the above, there was no contractual basis for the Vendors to refuse to perform the Contract as shown in their solicitors' letter dated 12 February 2010; the Vendors were therefore in repudiatory breach of contract and the Purchaser is seeking specific performance of the Contract.

The Vendors' case

11 The Vendors gave two main arguments to justify their refusal to perform the Contract. The first was based on the argument that the collateral agreement had varied the terms of the SPA, thus rendering the latter void by way of rule 3(2) read with rule (4) of the HDASPR (see above at [4]-[6]).

12 The second argument was that there was a total failure of consideration. D1 explained that the Vendors signed the Option on 21 November 2009 [note: 26]. After D1 had signed the Option, he was informed by Chia that the Purchaser have not handed her the Option fee [note: 27]. D1 further claims that when he received the HDB letter dated 14 December 2009, Chia informed D1 that she had not received the cheques but will collect them from the Purchaser soon [note: 28]. According to D1, the cheques for the Option fee and Option exercise fee (at $1,000 and $4,000 respectively) were received by D1 only as late as 14 January 2010 [note: 29]. D1 claims that he informed Chia on two occasions that he no longer wished to sell the Flat since he did not receive the cheques from

Purchaser: the first occasion was in December 2009 after the Vendors received the HDB letter, and the second occasion after he had received the allegedly late cheques in 14 January 2010 [note: 30].

13 Subsequently, D1 proceeded to HDB to inform that he had received the cheques only on 14 January 2010, and that he wished to cancel the first HDB appointment [note: 31].

Whether there were triable issues raised in the Defence

Relevant principles governing summary judgment – The Court will not accept uncritically all assertions made in affidavits

14 Before I proceed to review the evidence, it is apposite to visit some general principles governing summary judgment relevant to the decision in the present case. Some general points of guidance have been laid down by the Court of Appeal in the decision of *Habibullah Mohamed Yousuff v. Indian Bank* [1999] 3 SLR 650 at [21]:

> Under O 14 r 3(1) of the Rules of Court, summary judgment should not be given where the defendant "satisfies the Court ... that there is an issue or question in dispute which ought to be tried". The power to give summary judgment under O 14 is *intended only to apply to cases where there is no reasonable doubt that a plaintiff is entitled to judgment, and where it is inexpedient to allow a defendant to defend for mere purposes of delay*; *Jones v Stone* [1894] AC 122. Where a defendant *shows* that he has a fair case for defence or reasonable grounds for setting up a defence, or even a fair probability that he has a *bona fide* defence, he ought to have leave to defend; *Ironclad (Australia) Gold Mining Co v Gardner* (1887) 4 TLR 18, *Ward v Plumbley* (1890) 6 TLR 198.
>
> [emphasis added]

15 In an application for summary judgment, the plaintiff has to show that he is entitled to judgment at this stage without the need to bring the matter to trial, and that it is just to deprive the defendant the opportunity to ventilate, in further detail, his defence at trial. The defendant has to raise triable issue(s) to show that there is sufficient cause to be granted an opportunity to fully investigate the issues in a trial, and that there is an acceptable basis for depriving the plaintiff of a judgment at this stage. In this regard, both parties' evidence is led by way of affidavit; the plaintiff by way of Order 14 rule 2(1), (5) and (8) of the Rules. The defendant is required to "show cause" in an affidavit by way of Order 14 rule 2(3) read with rule 2(8) of the Rules. However, just because the defendant raises contrarian assertions, it does not *ipso facto* necessitate the raising of triable issues; if that was the case, all the defendant has to do to ensure that the matter proceeds to trial is by simply stating assertions contrary to the plaintiff's position. As Ackner LJ observed in *Banque de Paris et Des Pays-Bas (Suisse) SA v Costa de Naray* [1984] 1 Lloyd's Rep 21 (at 23):

> It is of course trite law that O 14 proceedings are *not decided by weighing the two affidavits*. It is also trite that the *mere assertion* in an affidavit of a given situation which is to be the basis of a defence does not, *ipso facto*, provide leave to defend; the Court must *look at the whole situation* and ask itself whether the defendant has satisfied the Court that there is a fair or reasonable probability of the defendant's having a real or *bona fide* defence.
>
> [emphasis added]

16 Lord Ackner's observations were endorsed in *Prosperous Credit Pte Ltd v. Gen Hwa Franchise International Pte Ltd and others* [1998] 1 SLR(R) 53 where the High Court held at [14] that a *bare*

assertion was insufficient to raise a triable issue; as well as in *Goh Chok Tong v. Chee Soon Juan* [2003] 3 SLR(R) 32 where the High Court observed at [25]:

> It is a settled principle of law that in an application for summary judgment, the defendant will not be given leave to defend based on mere assertions alone: Banque de Paris et des Pays-Bas (Suisse) SA v Costa de Naray and Christopher John Walters [1984] 1 Lloyd's Rep 21 at 23. The court must be convinced that there is a reasonable probability that the defendant has a real or bona fide defence in relation to the issues. In this regard, the standard to be applied was well-articulated by Laddie J in Microsoft Corporation v Electro-Wide Limited [1997] FSR 580, where he said at 593 to 594 that:
>
> > [I]t is not sufficient just to look at each factual issue one by one and to consider whether it is possible that the defendant's story in relation to that issue is credible. The court *must look at the complete account of events put forward by both the plaintiff and the defendants and ... look at the whole situation*. The mere fact that the defendants support their defence by sworn evidence does not mean that the court is obliged t*o suspend its critical faculties* and accept that evidence as if it was probably accurate. *If, having regard to inconsistency with contemporaneous documents, inherent implausibility and other compelling evidence, the defence is not credible, the court must say so*. It should not let the filing of evidence which surpasses belief deprive a plaintiff of its entitlement to relief.
> >
> > [emphasis added].

17 It is clear, from the principles propounded above, that the Court will not simply accept assertions stated in the respective affidavits as representing the whole truth. Although the stage of summary judgment is not the proper forum to make findings on the merits of the case, the Court will not look at the assertions in the affidavits *in isolation*, neither will the Court ignore *undisputed documentary and contemporaneous evidence*, especially when they are clearly inconsistent with the assertions found in the parties' affidavits. In so far as Order 14 rule 2 requires the plaintiff and the defendant to make their respective cases by way of affidavits, the Court will not accept ***uncritically*** every fact in issue raised in the affidavits. As Lord Diplock observed in the Privy Council decision of *Eng Mee Yong v. Letchumanan* [1979] 2 MLJ 212 at 217:

> Although in the normal way it is not appropriate for a judge to attempt to resolve conflicts of evidence on affidavit, *this does not mean that he is bound to accept uncritically*, as raising a dispute of fact which calls for further investigation, every statement on an affidavit however equivocal, lacking in precision, inconsistent with *undisputed contemporary documents* or other statements by the same deponent, or inherently improbable in itself it may be.
>
> [emphasis added]

18 Lord Diplock's observations have been endorsed in *Bank Negara Malaysia v. Mohd Ismail* [1992] 1 MLJ 400, where it was observed at 408 that:

> Under an O 14 application, the duty of a judge does not end as soon as a fact is asserted by one party, and denied or disputed by the other in an affidavit. Where such assertion, denial or dispute is equivocal, or lacking in precision or is *inconsistent with undisputed contemporary documents* or other statements by the same deponent, or is inherently improbable in itself, then the judge has a duty to reject such assertion or denial, thereby rendering the issue not triable. In our opinion, unless this principle is adhered to, a judge is in no position to exercise his discretion judicially in an O 14 application. Thus, apart from identifying the issues of fact or law, the court

must go one step further and determine whether they are triable. This principle is sometimes expressed by the statement that a complete defence need not be shown. The defence set up need only show that there is a triable issue.

[emphasis added]

19 As will be seen below (see [21]-[27]), the Vendors' assertions in the present case are plainly contradicted by the undisputed contemporaneous documentary evidence.

The argument based on total failure of consideration

20 The Vendors attempted to raise a triable issue with the assertion that the Option fee and Option Exercise fee were received only as late as 14 January 2010. I find this to be plainly without basis as the assertion was evidently inconsistent with the undisputed documentary evidence.

21 First, the copies of cheques for $1,000 and $4,000 adduced by the *Vendors themselves* show that the cheques were dated 20 November 2009 and 10 December 2009 respectively [note: 32]. This was entirely consistent with the Purchaser's evidence that he handed Chia the Option fee on 21 November 2009 and the Option exercise fee on 10 December 2009. The same page showing the copies of the cheques stated "given to [D1] on 14 January 2010". This is a moot point. There was no need for the cheques to be handed personally to the Vendors; there was effective payment so long as the cheques were handed to Chia as it was undisputed that Chia had been acting as the Vendors' agent. Any dispute between the Vendors and Chia with regard to the collection of cheques is a matter for a separate suit and does not concern the Purchaser. On this basis alone, it is clear that the Vendors have no defence. However, since D1 has alleged that Chia informed him (in November and December 2009) that the Purchaser did not pass her the cheques [note: 33], I will proceed further in reviewing the evidence.

22 It was undisputed that the Vendors signed the Option before the Option was handed over to the Purchaser on 10 December 2009. This would mean that the Vendors had received the $1,000 Option Fee *even before* 10 December 2009. By affixing their signatures on the Option, the Vendors had represented, under the first two clauses of the Option (clauses 2.1 and 2.2), that:

2.1 The Seller *has received* the Option Fee from the Buyer.

2.2 *In consideration of the Option Fee*, the Seller *grants to the Buyer* the option to buy the Flat upon the terms set out in the Option to Purchase ("Option")

[emphasis added]

23 These two clauses are clear and unequivocal. By way of clause 2.2, consideration has already been received in exchange for the grant of the Option. If the Vendors had not received the Option fee before 10 December 2009, they would have chose not to sign on the Option. Alternatively, even if the Option fee had not been collected on 21 November 2009, the Vendors would have instructed Chia to seek payment of the Option fee from the Purchaser when the Option was handed over to the Purchaser on 10 December 2009, however it was not pleaded nor was it alleged in D1's affidavit that the Vendors have given Chia such instructions.

24 Second, the fact the Purchaser and the Vendors entered into the collateral agreement on 21 November 2009 is consistent with the Purchaser's version of events that the Option fee had been paid on the same date.

25 Third, it was undisputed that the HDB resale application was submitted through Chia's email address to HDB on 11 December 2009. This was entirely consistent with the Purchaser's version of events that the Option exercise fee was paid on 10 December 2009, as clause 11 [note: 34] of the SPA read with clause 5.1 of the Option provides for the submission of the HDB resale application ***after*** the Option exercise fee has been paid. Clause 11 of the SPA states:

> 11. Application for HDB's approval
>
> 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.
>
> [emphasis added]

26 Clause 5.1 of the Option explains what was meant by 'exercise' of the Option:

> 5.1 To *exercise this Option*, the Buyer *must* do all of the following on or before the Option Expiry:
>
> (a) sign the "Acceptance" in this Option; and
>
> (b) deliver the signed Option (original copy) to the Seller; and
>
> *(c) pay the Seller $4000 ("Option Exercise Fee")*
>
> [emphasis added]

27 Reading both clauses together, the HDB resale application would be submitted within 30 days from the exercise of the Option; where the Option was exercised when payment of the Option exercise fee has already been made. Indeed, the submission of the HDB resale application speaks volumes; the sale and purchase application process had been carried into motion when HSR submitted the HDB resale application on the Vendors' behalf. This would not have been the case if the Option exercise fee was not received. It was not pleaded nor alleged (in the submissions or D1's affidavit) that HSR had acted without authority in the submission of the resale application on the Vendors' behalf. In addition, if the Option fee and Option exercise money had not been received, the Vendors would have given instructions to HSR and Chia not to proceed; but it was not the Vendors' pleaded case that they had given such instructions.

28 Fourth, the HDB letter to the Vendors dated 14 December 2009 had plainly informed the Vendors that the HDB resale application *was sent by the Vendors' agent* and had been received by HDB. If there had indeed been total failure of consideration, or if there had been some issues with the proper authority to submit the HDB resale application, the Vendors would have written a letter to inform HDB to cancel the resale application or at least to inform them of such issues. No such letter has been adduced. I point out that the Vendors did not plead nor allege that there had been any such letter written to the HDB. Likewise, HDB's letter dated 14 December 2009 informed the Vendors of the appointment date for Flat Inspection on 21 December 2009, and the 1st HDB appointment dated 5 March 2010. Again, if indeed no consideration had been received, the Vendors would have written a letter to cancel both appointments, but that was not the situation in the present case. The Vendors did not state that he made any attempts to contact HDB to cancel these appointments after receiving HDB's letter dated 14 December 2009.

29 The Vendors did claim however, that after they have received the cheques for the Option fee

and the Option exercise fee on *14 January 2010*, they had informed HDB of the alleged total failure of consideration. There were however, no reasons given for why the Vendors had given notice to HDB only after 14 January 2010 when they could have done so after they had received the HDB letter dated 14 December 2009. The Vendors had no evidence of any letters or correspondence written to the Purchaser, or to the HDB, to raise the issue of total failure of consideration or non receipt of cheques, after they have already received HDB's letter dated 14 December 2009. Indeed, if any notice to the Purchaser or HDB had been given, it would have been made before the Flat Inspection appointment on 21 December 2009, and not on the alleged date of 14 January 2010.

30 D1's assertion that he had contacted Chia in November and December 2009 where Chia informed him that she had not received the cheques from the Purchaser, were bare assertions unsupported by documentary evidence. Neither emails nor letters have been adduced. Contrary to D1's bare assertions, and in support of the Purchaser's version of events, Chia has given evidence that she collected the Option fee and Option exercise fee from the Purchaser on 21 November 2009 [note: 35] and on 10 December 2009 [note: 36] respectively.

31 Based on a review of the totality of the evidence adduced, I am convinced that the Vendors have not raised any triable issues. Given that the Vendors' assertions are wholly unsupported by a single substratum of evidence, and that the assertions flies against their own conduct manifested in the undisputed contemporaneous documents (including the cheques copies the Vendors themselves had adduced), there is plainly no defence which can deny the Purchaser judgment.

32 Before I conclude on the argument based on total failure of consideration, I will discuss two alternative arguments which have been raised by D1. These arguments can be summarily dismissed. Under the first alternative argument, D1 claims that HSR was not authorised to place the Option date as "9 December 2009", and that HSR was only authorised to state the Option Date as 21 November 2009 [note: 37], which was the date when the Vendors signed the Option; following from that, the Option expiry date should be 5 December 2009 (contrary to what was stated in the Option documentation). Therefore, even if Chia had received the Option exercise fee on 10 December 2009, it was received too late.

33 I note however, that the Vendors did not dispute the fact that the Option date stated on the Option was indeed 9 December 2009, and that the Option expiry date stated on the Option was 23 December 2009. Also, it was not disputed that the signatures affixed below the Option date belonged to the Vendors. It was also common ground that the Option was handed to the Purchaser on 10 December 2009 with *the Option already signed and the Option date already stated as 9 December 2009*. In this regard, I find that this is essentially a simple matter. If the Vendors had signed the Option when the Option date had been clearly stated as 9 December 2009, no dispute would arise. If the Option date had been left blank at the time when the Vendors signed the Option, the Vendors had assumed for themselves the risk that the Option date will be stipulated at a later date by their own agent. If the Vendors had issues with the stated Option Date and the stated Option expiry date, they would have written to the Purchaser or at the very least informed Chia in relation to these issues; but this was not pleaded nor alleged by the Vendors. On the contrary, the Vendors' action in submitting the HDB resale application after the Option exercise money has been paid showed that there had indeed been no issues with the stated Option date and Option expiry date. Furthermore, I find that since the Vendors' specific claim is that the Option date was filled by HSR without authority, the proper recourse is for them to claim against HSR for breach of mandate and/or for having acted without authority. There is no recourse for this alleged matter against the Purchaser for as far as they are concerned, they have transacted with Chia who was ostensibly acting as the Vendors' agent (it was also undisputed that Chia was acting as the Vendors' agent in

the sale and purchase of the Flat [note: 38]).

34 D1's second alternative argument was that the cheque issued for the Option fee of $1,000 was issued in the name of one "M K Sivalingam *Jajanathan*", when it should have been "M K Sivalingam *Jaganathan*". The Purchaser, in reply, pleaded the material facts constituting estoppel and detrimental reliance [note: 39] . I find that there is an operative estoppel by convention in the present case. The Court of Appeal has, in the decisions of *Travista Development Pte Ltd v. Tan Kim Swee Augustine and others* [2008] 2 SLR(R) 474 at [31] and at *Singapore Telecommunications Ltd v. Starhub Cable Vision Ltd* [2006] 2 SLR(R) 195 at [28], clarified the elements of estoppel by convention:

> On the basis of existing authorities, for estoppel by convention to operate, the following elements must be present (see [*Singapore Telecommunications Ltd v Starhub Cable Vision Ltd* [2006] 2 SLR(R) 195] at [28]; see also *Chitty on Contracts* (H G Beale gen ed) (Sweet & Maxwell, 29th Ed, 2004) vol 1 at para 3-107):
>
> (a) The parties must have acted on "an assumed and incorrect state of *fact or law*" [emphasis added] (*per* Bingham LJ in *The Vistafjord* [1988] 2 Lloyd's Rep 343 at 352) in their course of dealing.
>
> (b) The assumption must be either shared by both parties pursuant to an agreement or something akin to an agreement, or made by one party and acquiesced to by the other.
>
> (c) It must be unjust or unconscionable to allow the parties (or one of them) to go back on that assumption.

35 It has been observed in Sir Alexander Turner, *Spencer Bower and Turner, Estoppel By Representation* (4th ed, 2004 LexisNexis) at p 180:

> An estoppel by convention...is founded, not on a representation made by a representor and believed by a representee, but on an agreed statement of facts or law, the truth of which had been assumed, by convention of the parties, as a basis of a transaction into which they are about to enter. When the parties have acted in their transaction upon the assumption that a given state of facts is to be accepted between them as true, then as regards that transaction each will be estopped as against the other from questioning the truth of the statement of facts so assumed.

36 These observations were cited with approval in *Amalgamated Investment & property Co Ltd (in liquidation) v. Texas Commerce International Bank Ltd* [1982] QB 84 at 126 and *Norwegian American Cruises A/S v. Paul Mundy Ltd (The Vistaford)* [1988] 2 Lloyd's Rep 343. In the present case, there is no doubt that both parties had assumed that the Option fee had been paid. When the Option fee was paid by the Purchaser on 21 November 2009, that had represented the beginning of the sale and purchase process as well as the basis of which the Option was granted to the Purchaser. On that basis, the Purchaser and Vendors entered into the collateral agreement on the same date of 21 November 2009. In addition, as already described above (see [22]-[23]), when the Vendors had affixed their signatures on the Option, it was clear to both parties that the Option fee had been paid and the Option was granted to the Purchaser. This was clear from clauses 2.1 and 2.2 of the Option.

37 Subsequent to the payment of the (wrongly named) cheque and the affixing of the Vendors' signature, both parties had proceeded on the basis that the Option fee had been paid; the Purchaser paid the Option exercise fee on 10 December 2009, thereafter, the Vendors' agent submitted the HDB resale application on 11 December 2009, the Vendors' agent had also fixed the first HDB appointment

on 5 March 2010. I note that the Vendors themselves did not realise the mistake; the issue of the wrongly stated name on the cheque was not raised to the Purchaser or Chia before or after the Option was exercised; nor was it raised to them or the HDB after the Vendors received HDB's letter dated 14 December 2009. It is pertinent to note that even at a very late stage, when the Vendors' solicitors wrote a letter dated 12 February 2010 to the Purchaser, the letter made no mention of the wrongly stated name in the cheque. The issue of the wrongly named cheque was only added in by way of an *amended* defence at as late as 14 July 2010 [note: 40]. Based on the objective evidence, there is no doubt that both parties had proceeded in the sale and purchase on the basis that the Option fee had been paid.

38 I find that it would be unconscionable to allow the parties to go back on that assumption at such a late stage given that the Purchaser had, on the basis that a valid sale and purchase agreement had been entered into, undisputedly secured finance for the sale and purchase of the Flat from Citibank Singapore Ltd and had ceased to search for alternative flats to purchase [note: 41]. These two facts were not disputed by the Vendors. Furthermore, I find that there is no prejudice to the Vendors if the parties are not allowed to go back on that assumption. Clauses 2.1 and 2.2 of the Option could not be drafted any clearer; the Vendors had the opportunity to ensure that the cheque for the Option fee was valid before signing the Option. The Vendors also had more than ample time to discover the mistake and to raise this issue to the Purchaser, Chia, and/or HDB at an earlier time, between 21 November 2009 to January 2010 but had failed to do so.

The argument based on the collateral agreement

39 The Vendors tried to raise a second triable issue with the argument that the collateral agreement (which they had requested for and which has been granted for their benefit) had avoided the SPA. This argument is plainly unsustainable. As will be seen below (at [42]-[46]), the Vendors' contentions can be easily dismissed with a simple reading of the HDASPR and a straightforward construction of the collateral agreement. In this regard, I was mindful of the decision of *Tokyo Investment Pte Ltd and another v. Tan Chor Thing* [1993] 2 SLR(R) 467:

> The fact that a point of law or points of law were raised in an O 14 application did not necessarily mean that leave to defend must be given as was urged upon us by the appellants: see *European Asian Bank AG v Punjab & Sind Bank (No 2)* [1983] 2 All ER 508 at 516; [1983] 1 WLR 642 and *Carter (RG) Ltd v Clarke* [1990] 2 All ER 209 at 213. To our mind the answers to the legal issues raised in this appeal were clear. There was no arguable defence to the respondent's claim to possession of the shares. A decision on the legal issues would finally decide the rights as between the parties. There was no point in granting leave to defend merely on the ground that there was a triable legal issue or were several triable issues of law. This was so even if the issues of law were of some complexity. The High Court was correct in hearing arguments on the issues of law and deciding them. To grant leave to defend in circumstances such as the present would not serve any useful purpose; instead it would only cause unnecessary delay, a course which the courts should certainly not countenance.

40 In the same vein, the Court observed in the decision of *MP-Bilt Pte Ltd v. Oey Widarto* [1999] 1 SLR(R) 908 held at [13]-[14]:

> ...Since then a new provision was inducted into the Rules of Court 1996. Order 14A, now O 14 r 12, was introduced to enable the court to effect summary disposal of cases by determining any question of law or construction of any document arising in any cause or matter at any stage of the proceedings. This is an implement of a recent and present movement towards a speedy

solution to civil disputes where oral evidence is unnecessary. The new procedure should be put to use in cases where all relevant and necessary evidence is documentary*. Even in a case where an application is made under O 14 r 1, if the matter can be disposed of by the application of well-settled principles of law, the court should not flinch from its obligation under O 14. The court should take judicial notice of the law and at once grapple with the issue*. This rule of practice is founded on the following principle of practice found in The Supreme Court Practice 1999 para 14/4/12 headed "Questions of Law" [the same is found in para 14/4/8 of *The Supreme Court Practice* 2007]:

> Where the court is satisfied that there are no issues of fact between the parties, it would be pointless to give leave to defend on the basis that there is a triable issue of law, and this is so even if the issue of law is complex and highly arguable.

The principle was applied in European Asian Bank AG v Punjab and Sind Bank (No 2) [1983] 2 All ER 508; [1983] 1 WLR 642, Israel Discount Bank of New York v Hadjipateras [1983] 3 All ER 129; [1984] 1 WLR 137 and more recently in Stocznia Gdanska v Latvian Shipping Co [1998] 1 All ER 883; [1998] 1 WLR 574, where the House of Lords decided a point raised in an O 14 application. This practice has been approved and applied by the Singapore Court of Appeal in Tokyo Investment Pte Ltd v Tan Chor Thing [1993] 2 SLR(R) 467 .

[emphasis added]

41 I will now proceed to discuss the contentions raised by the Vendors. The Vendors contended that the SPA was varied by the collateral agreement, and this variation rendered the SPA void under rule 3(2) read with rule 4 of the HDASPR. By way of background, it is perhaps appropriate to place a short note on the general function of the HDASPR: - these rules govern the sale and purchase of HDB resale transactions. Although there have been no parliamentary reports on the precise policy behind these rules, it has been helpfully observed in Tang & Low, *Tan Sook Yee's Principles of Singapore Land Law* (3rd ed, 2009 LexisNexis) at p 456:

> In 2003, the regulation of contracts for the sale of resale HDB flats was introduced via the Housing and Development (Agreements for Sale and Purchase) Rules (hereinafter 'HDASPR'). The rationale for the introduction of these rules is clearly very different than those for the regulation of developer sales of residential or commercial properties, where the obvious concern is for the protection of purchasers who are often in a considerably weaker bargaining position from unscrupulous developers. The Rules that apply to HDB flats are concerned with private sales of resale flats rather than direct purchases from the HDB. As such, both parties are likely to be individuals of relatively equal bargaining power. Rather than protect a weaker party, the objectives of the HDB rules appears to be geared towards standardisation, partly to ensure compliance with the HDB's rules on eligibility to resell and/or purchase resale flats, and partly to provide for fair and efficient default rules in respect of common disputes.

42 Nonetheless, there is no need to probe deeper into the precise policy and purpose of these rules, as the present matter can be disposed of efficaciously with a simple reading of the HDASPR and the collateral agreement. I start off with the exact words of the collateral agreement, which have been reproduced as follows:

> Agreement on Extension of Stay
>
> This agreement is made on 21 November 2009 between [the Purchaser] and [D1] (seller) [i]n [*sic*] regards to the matter of allowing the seller of [address of Flat] to stay within the above

premises for 3 months *upon completion date, under the consent of the purchaser*.

[emphasis added].

43 As is plainly evident from the above, this agreement can only be carried out upon Completion of the SPA. If parties failed to complete the SPA, there is no question of allowing the Vendors to remain in possession for another 3 months. In my view, so long as *HDB approval* has been obtained for the collateral agreement *before* Completion date (and thus before the collateral agreement can be carried into effect), the SPA would not be void, as rule 3(2) of the HDASPR allows for the variation of the SPA with *HDB's authorisation*:

> 3(2)No agreement for sale and purchase shall contain any addition to, deletion from or variation of the Form in the Schedule *unless the* addition, deletion or *variation is made with the authorisation of the Board*.

44 There is an *additional* reason. In view that there had been *no consideration* for the extension of stay as the Purchaser agreed not to charge rent for the Vendors' extended stay in possession (and as there has been no adjustment of any kind with regard to the Option fee, the Option Exercise fee and the Purchase price), and in view of the operative words of the collateral agreement "*under the consent of the purchaser*", I find, on a proper construction of the collateral agreement, that the Purchaser had gratuitously granted a *bare license* which could be revoked at will at any time (at the very least) before Completion date; that is, before the collateral agreement is carried out into effect; see *Wood v Leadbitter* (1845) 13 M & W 836 and *Tan Hin Leong v. Lee Teck Im* [2000] 1 SLR(R) 891 at [16] to [19]. The Purchaser had graciously given the Vendors *permission* to remain in possession temporarily. Nothing more was conferred. If and when the Purchaser decides to revoke the bare license which is the collateral agreement before it is carried into effect upon completion, (one can immediately think that an obvious reason for doing so would be the Vendors' failure to obtain HDB approval for the collateral agreement), the Vendors would *still have delivered vacant possession*. In that event, clause 19 of the SPA would not be varied.

45 Given the reasons in [42] – [44] above, the Vendors' refusal to carry out the sale and purchase of the Flat by way of their solicitors' letter dated 12 February 2010 (this was way before Completion Date which was 8 weeks from 5 March 2010, the date of the first HDB appointment) is a repudiatory breach of contract. There would only be a proper case to argue that the collateral agreement has avoided the SPA under rule 3(2) and (4) of the HDASPR *if*, at completion date, no HDB approval for the collateral agreement has been obtained, and parties have carried out the collateral agreement such that *no vacant possession was delivered*. Clause 19 of the SPA would have been varied in such a situation. In any case, I am of the view that *even if* the Vendors had waited until Completion date before using the collateral agreement as a reason to void the SPA, it would not necessarily deny the Purchaser of any remedies whatsoever. This is because clause 15.2 of the SPA states:

> 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.
>
> [emphasis added]

46 I find that the phrase "*HDB's approval for the sale and purchase of the Flat*" to be wide enough to encapsulate all approvals from HDB necessary to facilitate the completion of the SPA and to bring the SPA into effect, and this would necessarily include the HDB approval required to vary Clause 19 of

the SPA (as without such approval, the SPA would be void). Likewise, the phrase "*HDB's terms of resale or requirements*" is broad enough to encapsulate rule 3(2) of the HDASPR that requires HDB approval to vary the terms of the SPA. There is no doubt that the Vendors have the burden to obtain HDB approval for the collateral agreement, as they had requested for the extension of stay and the agreement was made for their benefit. As such, if the Vendors failed to obtain approval for the collateral agreement before the completion of the SPA, the Vendors would have, pursuant to clause 15.2 of the SPA stated above, defaulted in complying with rule 3(2) of the HDASPR. The Purchaser would (pursuant to clause 15.2 of the SPA) have been entitled to its remedies in specific performance or damages. As such, the proper course would be for the Vendors to obtain HDB approval for the collateral agreement that they had requested for.

47 Given that the collateral agreement had been requested by the Vendors, and the Purchaser had gratuitously (and perhaps graciously) granted the 3 months extended stay for the Vendors' benefit, and without charging rent during the extended stay; it does not lie in their mouth to use the collateral agreement as a convenient excuse to get out of an arms-length transaction that they had entered into; indeed, by doing so, they have thrown serious doubts on the *bona fides* of their defence. In the final analysis, I make the point that, as long as the completion date has not arrived, there is always a chance to obtain HDB approval for the collateral agreement. The burden is on the Vendors to obtain HDB approval before Completion, any attempt to void the SPA beforehand would be premature, and in the specific context of the present case, an act lacking in *bona fides*.

Conclusion

48 Based on the evidence and the reasons given above, I grant summary judgment in favour of the Purchaser and order specific performance of the Contract between the Vendors and Purchaser. It is clear that the collateral agreement is unenforceable until and unless the requisite approval from HDB has been obtained. I make the consequential order that the Vendors shall take all necessary steps to obtain the requisite approval from HDB for the extension of stay in the Flat by way of the collateral agreement, one week before Completion. The collateral agreement is subject to the Purchaser's power of revocation in the event of the Vendors' failure to obtain the requisite HDB approval. Accordingly, I grant OIT 1, 2 and 3. I order costs to be paid by the Vendors to the Purchaser fixed at $7,000 excluding reasonable disbursements. Costs for amendment of pleadings ordered to the Purchaser fixed at $400 excluding reasonable disbursements.

[note: 1] Exhibit MU-4 of Muharrem Unsal's affidavit dated 20 May 2010 at p24.

[note: 2] *Ibid*.

[note: 3] *Ibid*.

[note: 4] Exhibit MU-4 of Muharrem Unsal's affidavit dated 20 May 2010 at p 25.

[note: 5] *Ibid*.

[note: 6] Clause 12 of the Sale and Purchase Agreement in exhibit MU-4 of Muharrem Unsal's affidavit.

[note: 7] Affidavit of M K Sivalingam Jaganathan dated 1 July 2010 at para [1]

[note: 8] Affidavit of Chia Lai Yee dated 3 June 2010 at para [1].

[note: 9] Exhibit MU-6 of Muharrem Unsal's affidavit dated 20 May 2010 at p 46.

[note: 10] *Ibid*.

[note: 11] Exhibit MU-7 of Muharrem Unsal's affidavit dated 20 May 2010 at p 62.

[note: 12] Affidavit of Muharrem Unsal dated 23 July 2010 at para [6].

[note: 13] Exhibit A of M K Sivalingam Jaganathan's affidavit dated 1 July 2010.

[note: 14] *Ibid*.

[note: 15] Exhibit MU-10 of Muharrem Unsal's affidavit dated 20 May 2010 at p 69.

[note: 16] Exhibit MU-11 of Muharrem Unsal's affidavit dated 20 May 2010 at p 71.

[note: 17] Affidavit of Muharrem Unsal dated 20 May 2010 at para [30].

[note: 18] *Ibid* at para [27].

[note: 19] *Ibid* at para [7].

[note: 20] Affidavit of Chia Lai Yee dated 3 June 2010 at para [18].

[note: 21] *Ibid*.

[note: 22] Affidavit of Muharrem Unsal dated 20 May 2010 at para [13].

[note: 23] *Ibid*.

[note: 24] Affidavit of Chia Lai Yee dated 3 June 2010 at para [25].

[note: 25] *Ibid* at para [26].

[note: 26] Affidavit of M K Sivalingam Jaganathan dated 1 July 2010 at para [6].

[note: 27] *Ibid*.

[note: 28] *Ibid* at para [7].

[note: 29] *Ibid* at para [8].

[note: 30] *Ibid* at para [7]-[8].

[note: 31] *Ibid* at para [9].

[note: 32] Exhibit A of M K Sivalingam Jaganathan's affidavit dated 1 July 2010.

[note: 33] Affidavit of M K Sivalingam Jaganathan dated 1 July 2010 at para [6]-[7].

[note: 34] Exhibit MU-6 of Muharrem Unsal's affidavit dated 20 May 2010 at p 26.

[note: 35] Affidavit of Chia Lai Yee dated 3 June 2010 at para [18].

[note: 36] Affidavit of Chia Lai Yee dated 3 June 2010 at para [25].

[note: 37] Affidavit of M K Sivalingam Jaganathan dated 1 July 2010 at para [13].

[note: 38] See Affidavit of M K Sivalingam Jaganathan dated 1 July 2010 at para [1].

[note: 39] Reply (Amendment No. 1) dated 26 July 2010 at para [7]-[12].

[note: 40] Defence (Amendment No. 1) dated 14 July 2010 at para 10.

[note: 41] Reply (Amendment No. 1) dated 26 July 2010 at para [7(b)]