IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 91

HC/Tax Appeal No 17 of 2018

Between

Ong Beng Chong

… *Appellant*

And

Commissioner of Stamp Duties

… *Respondent*

JUDGMENT

[Revenue Law] — [Stamp duties] — [Instruments liable to ad valorem duty]
[Revenue Law] — [Stamp Duties Act]

Ong Beng Chong
v
Commissioner of Stamp Duties

[2019] SGHC 91

High Court — Tax Appeal No 17 of 2018
Choo Han Teck J
1, 19 November 2018, 7 February 2019; 29 March 2019

5 April 2019 Judgment reserved.

Choo Han Teck J:

1 Ong Beng Chong ("the Appellant") was the landlord of an undivided plot of land known as Lot 550P Mukim 13 ("the Land"). This is his appeal pursuant to s 40 of the Stamp Duties Act (Cap 312, 2006 Rev Ed) ("SDA") against an assessment of stamp duty by the Commissioner of Stamp Duties ("the Respondent"). This court was asked to determine whether stamp duty is chargeable on six instruments ("the Instruments") relating to the delivery of vacant possession of:

(a) No. 21 and 23 Meng Suan Road;

(b) No. 22 Meng Suan Road;

(c) No. 24 Meng Suan Road;

(d) No. 26 Meng Suan Road;

(e) No. 27 Meng Suan Road; and

(f) No. 28 Meng Suan Road

(each a "House" and collectively referred to as "the Houses") to the Appellant.

2 The Houses were seven terrace houses situated on the Land, built by the respective tenants who paid ground rent to the Appellant. No land title was issued in respect of the Houses. The Appellant sought to recover vacant possession of the Land for the purposes of redevelopment. The Appellant then entered into five agreements with the respective owners of the Houses (except No. 24 Meng Suan Road) for the delivery of vacant possession of the Houses in exchange for payment which ranged between $200,000 to $250,000 ("the Agreements"). It was undisputed that the Appellant agreed to make this payment because the tenants, who owned the Houses, had an equity that must be satisfied before the Appellant can recover vacant possession of his Land (see *Ong Beng Chong v Goh Kim Thong* [2010] SGHC 195 ("*Goh Kim Thong*") at [7] and *Ong Beng Chong v Jayaram Victoria and another matter* ("*Jayaram Victoria*") [2009] SGHC 66 at [37]–[40]).

3 In relation to No. 24 Meng Suan Road, the Court of Appeal by an Order of Court dated 11 November 2010 ("the Order of Court") ordered the owner of the House to deliver vacant possession of his House to the Appellant in exchange for payment of $200,000 as compensation. On 16 November 2012, the Appellant sold the Land and the Houses to Meng Suan Development Pte Ltd for $15.5m, and the Houses were demolished. In 2016, the Respondent conducted stamp duty audit investigations and determined that stamp duties of $19,700 and penalties of $35,800 are payable on the Instruments. The Appellant appealed against the Respondent's decision which is the issue before this court.

4 Pursuant to s 22 and Article 3 of the First Schedule of the SDA read with the definition of a "conveyance on sale" under s 2 of the SDA, the Instruments will be chargeable with stamp duty if the following requirements are satisfied:

(a) The Instruments are executed in Singapore or relate to any property situated in Singapore;

(b) The Houses are immovable property; and

(c) There is a conveyance, assignment or transfer on sale of the Houses.

5 I will deal with each requirement in turn. The first requirement is satisfied as it is incontrovertible that the Houses were situated in Singapore. In relation to the second requirement, s 2(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) defines "immovable property" to include:

> [L]and, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth[.]

Counsel for the Respondent, Mr Lau Kai Lee submitted that the Houses were immovable property since they were terrace houses that had to be demolished for the Land to be redeveloped and as such were permanently fastened to the Land. Mr Tan Bar Tien, counsel for the Appellant, does not dispute that the Houses were immovable property. The Houses were for all intent and purposes fastened to the Land, and I accept counsel's submission that the Houses were immovable properties. The second requirement is satisfied.

6 I now move to the third requirement which is the main issue in dispute. Mr Tan made two submissions. First, he submitted that the Houses being

fixtures on the Land, became part of the Land which belonged to the Appellant and consequently, it is the Appellant who owned the Houses. As such, Mr Tan argued that there could be no sale of the Houses to the Appellant when the Appellant himself was the owner of the Houses. Mr Lau demurred and submitted that the Houses belonged to the tenants for three reasons:

(a) First, the High Court had previously accepted in *Jayaram Victoria* and *Goh Kim Thong* which involved the same facts that the tenants were the owners of the Houses in dispute.

(b) Secondly, the Appellant stated in his affidavit dated 5 September 2018 that the tenants were the owners of the Houses.

(c) Thirdly, the Agreements expressly provide that the tenants were the owners of the Houses.

I accept Mr Lau's submission in this regard and it is clear that the Houses were owned by the tenants and not the Appellant. Nevertheless, it is still necessary to consider whether there was a "conveyance, assignment or transfer on sale" of the Houses to fulfil the third requirement.

7 Mr Tan's second submission was that the statutory requirement of a "conveyance, assignment or transfer on sale" was not satisfied since the payment of $200,000 - $250,000 was not payment for the sale of the Houses, but payment for the satisfaction of the equity that each tenant had in their respective Houses that they built or purchased, and this equity cannot be sold to the Appellant. Mr Lau relied on *Littlewoods Mail Order Stores Ltd v Inland Revenue Commissioners* [1962] 2 WLR 1228 which defines a sale to include the following four elements:

(d) Parties competent to contract;

(e) Mutual asset;

(f) A thing, the absolute or general property in which is transferred from the seller to the buyer; and

(g) A price in money paid or promised.

Mr Lau submitted that the instruments reflected a sale of the Houses because the Houses were transferred from the respective owners to the Appellant in exchange for payment which ranged between $200,000 – $250,000, and it was not the tenants' equity that were sold. In support of his argument, Mr Lau drew a distinction between why such payment was made – payment in satisfaction of the tenants' equity, against how such payment was made – payment for the expropriation of the Houses. Mr Lau submitted that it is the latter which attracted stamp duty liability.

8 To determine whether stamp duty is chargeable on the Instruments, it is necessary to ascertain "the real and true meaning of the instrument … [and] the description of it given in the instrument itself by the parties is immaterial" (*Tan Kay Thye and others v Commissioner of Stamp Duties* [1991] 1 SLR(R) 306 at [5]). The Agreements are worded similarly and expressly state that the Appellant is to pay to the tenants, a sum which ranged between $200,000 – $250,000 for the delivery of vacant possession of the Houses. To illustrate, cl 3 of the agreement dated 1 April 2011 between the Appellant and one Foo Sing Fat provides that:

> In exchange for delivery of vacant possession of the House the [Appellant] shall pay to [Foo Sing Fat] the sum of Singapore Dollars Two Hundred Thousand (S$200,000.00).

The Order of Court similarly states that:

> The Appellant shall deliver up vacant possession of No. 24 Meng Suan Road Singapore 779225 ("the said House") to [Goh Kim Thong] by 31st of December 2010 in exchange for payment of [$200,000.00 as] compensation.

9 The Appellant who wishes to exercise his common law right to obtain vacant possession of his Land must compensate his tenants if he wishes to have them relinquish their tenants' equity in the Houses without being compensated for the money expended in building or purchasing the Houses (see *Lee Suat Hong v Teo Lye* [1987] SLR(R) 70 at [22]). This equity may be satisfied in various ways and in this instance, it was best satisfied by way of monetary compensation (See *Low Heng Leong Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2013] 3 SLR 710 at [25]–[27]). In most cases, the landlord owns the houses on the land. In this case, the Houses were constructed or purchased by the tenants, and thus the tenants not the landlord owned the Houses. This is the only difference, but it does not stop the landlord from evicting the tenants, all it means is that any equitable compensation has to be higher to reflect the expenses incurred by the tenants in building or purchasing the Houses. The Instruments were drafted as payment for the delivery of vacant possession of the Houses for the Appellant to recover vacant possession of his Land. This is the "real and true meaning of the instrument", and I am of the view that compensation in satisfaction of equity does not fall within the meaning of a "conveyance on sale" of the Property, nor is it deemed to be one by any other provision in the SDA. Therefore, the third requirement is not satisfied and the Instruments are not chargeable with stamp duty.

10 For the reasons above, I allow the appeal and for the avoidance of doubt, hold that no penalties pursuant to s 46 of the SDA are payable. Costs to follow the event and be taxed if not agreed.

- Sgd -
Choo Han Teck
Judge

Tan Bar Tien and Tan Xin Er, Slyvie (B T Tan & Company) for the Appellant;
Lau Kai Lee and Shawn Joo Jian Hua (Inland Revenue Authority of Singapore (Law Division)) for the Respondent.