IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHCR 8

HC/S 388 of 2019
HC/AD 12 of 2021

Between

(1) Bauer, Adam Godfrey
(2) Radmacher, Anne Marielle

… *Plaintiffs*

And

Wee Tien Liang, deceased

… *Defendant*

JUDGMENT

[Damages – Assessment]
[Probate and Administration – Personal representatives]

Bauer, Adam Godfrey and another
v
Wee Tien Liang, deceased

[2021] SGHCR 8

General Division of the High Court — Suit No 388 of 2019 (Assessment of Damages No 12 of 2021)
Justin Yeo AR
18 May 2021, 29 June 2021; 25 August 2021

8 September 2021

Justin Yeo AR:

1 The Plaintiffs, Mr Bauer Adam Godfrey ("Mr Bauer") and Ms Radmacher Anne Marielle ("Ms Radmacher"), were the joint owners of a landed property in Singapore ("the Property"). The Property was sold to the Defendant, the late Mr Wee Tien Liang. However, the Defendant failed to complete the sale ("the Abortive Sale") and the Plaintiffs eventually successfully sold the Property to another purchaser at a lower sale price ("the Successful Sale"). The Plaintiffs brought the present suit against the Defendant, claiming various heads of loss occasioned by the Abortive Sale.

2 Liability was entered against the Defendant for the Abortive Sale, with damages to be assessed. However, the Defendant passed away intestate before the trial on the assessment of damages ("the AD Trial") took place. No letters of administration were made in respect of his estate, and his only contactable

next-of-kin declined to be involved in his estate and in the present litigation. This gave rise to a preliminary issue because the framework in the Rules of Court (2014 Rev Ed) ("Rules of Court") did not appear to provide for how the matter may proceed in such a situation. After considering the submissions by Plaintiffs' counsel and the helpful opinion provided by the Public Trustee's Office, I exercised the inherent powers under O 92 r 4 of the Rules of Court and ordered that the AD Trial proceed in the absence of the Defendant or his personal representative.

3 Following the AD Trial, I awarded damages to the Plaintiffs, assessed at a net total of $242,112.58 (after taking into consideration the Defendant's deposit of $260,000). I provide, in this judgment, the reasons for my decision on the preliminary issue as well as on the assessment of damages.

Background

4 The Plaintiffs were the joint owners of the Property. On 1 March 2018, the Plaintiffs issued an Option to Purchase ("the OTP") to the Defendant. Clause (1) of the OTP stated that the sale and purchase of the Property was subject to the Law Society of Singapore's Conditions of Sale 2012 ("Conditions of Sale"). The sale price was $5.2million, and the sale was to be completed by 21 May 2018. The Defendant paid $52,000 for the OTP. On 15 March 2018, he further paid the option exercise fee of $208,000. The total deposit paid towards acquisition of the Property was therefore $260,000.

5 On 18 April 2018, the Defendant's then-solicitors wrote to the Plaintiffs' solicitors, requesting that completion be postponed to 6 June 2018. On 15 May 2018, the Defendant's then-solicitors wrote again, requesting a further postponement of completion to 31 August 2018. On 31 May 2018, the

Plaintiffs' solicitors served the Defendant with a notice to complete the sale within 21 days of the notice (*ie* by 21 June 2018). On 21 June 2018, the Defendant's then-solicitors again requested an extension of time to complete the sale by 10 September 2018. On 26 June 2018, Plaintiffs' solicitors replied, indicating that the Plaintiffs had decided not to agree to any variation or extension to complete the sale. The sale was therefore aborted, and the Plaintiffs issued a fresh option to purchase to a new set of buyers on 26 October 2018, at the sale price of $4.8million. The sale of the Property was completed on 11 January 2019 ("the Successful Sale").

Procedural History

6 The Plaintiffs brought the present suit on 11 April 2019, claiming that the Defendant's failure to complete the sale had resulted in the Plaintiffs suffering loss and damage, including – amongst other things – a reduced sale price. Taking into consideration the deposit of $260,000 paid towards the acquisition of the Property, the Plaintiffs claimed a total net loss of $301,943.33. The Plaintiffs subsequently revised this figure (see [11] below).

7 On 24 June 2019, the Plaintiffs filed an application under O 14 of the Rules of Court ("the Summary Judgment Application"), seeking summary judgment for the sum of $301,943.33 or, alternatively, for interlocutory judgment to be entered against the Defendant with damages to be assessed.

8 The Summary Judgment Application was heard on 19 August 2019. At the hearing, Plaintiffs' counsel urged the court to enter judgment on liability, and to grant certain parts of the quantified claims, while leaving the remaining parts for the AD Trial. In this regard, Plaintiffs' counsel pointed out that the dispute was as to quantum but not liability. He conceded that there were certain

valid points raised by Defendant's then-counsel in respect of some of the sub-claims, but suggested that the court could order the Defendant to pay the sum of $140,000 up front, being the difference between the loss of sale price (*ie* $400,000) and the deposit already paid (*ie* $260,000).

9 Defendant's then-counsel resisted the Summary Judgment Application. He argued that there was a possibility that if the Plaintiffs are found not to have taken reasonable steps to mitigate their loss, the Plaintiffs' claim for the loss of sale price may be less than $400,000. As such, he contended that the court was precluded from granting judgment with damages to be assessed because the court was not in a position to decide whether the Plaintiffs had discharged their duty to mitigate.

10 The court found that (a) the Plaintiffs had shown a *prima facie* case and produced the necessary evidence in support of their claim for breach and/or repudiation of contract; and (b) the Defendant had failed to raise any triable issue in relation to his liability arising from the breach of contract, the only issues raised being purely those relating to damages. As such, the court granted judgment to the Plaintiffs with damages to be assessed. The court declined to order that the Defendant pay the Plaintiffs the sum of $140,000 upfront because the Plaintiffs' mitigation of loss was still in issue, and instead ordered that this issue be reserved for determination at the AD Trial. The court also reserved issues of costs to the court hearing the AD Trial.

11 The Plaintiffs subsequently amended their Statement of Claim to take into consideration some of the points raised at the Summary Judgment Application. They claimed a revised total net loss of $303,714.71 (after taking into consideration the deposit of $260,000), quantified as follows:

(a) Loss of sale price of $400,000.

(b) Property agent's commission arising from the Successful Sale, amounting to $102,720.

(c) Legal fees incurred due to the Abortive Sale, amounting to $2,782.

(d) Bank interest on the mortgage loan incurred by the Plaintiffs from 21 June 2018 to 11 January 2019 ("the Holding Period"), amounting to $20,275.27.

(e) Opportunity cost of earning interests on the proceeds from the sale of the Property (*ie* $2,625,148), calculated at the interest rate of 1.88% per annum during the Holding Period, amounting to $31,639.87.

(f) Other incidental losses during the Holding Period, *ie*, pro-rated property tax of $4,208.15, mortgage insurance of $552.62 and costs of water and electricity used in the Property of $1,536.80.

12 The AD Trial was fixed in April 2020. However, the Defendant passed away shortly before the AD Trial was scheduled to take place. Defendant's then-counsel sought time to obtain instructions from the Defendant's family, including whether someone would be obtaining letters of administration of the estate.[1] It turned out that Defendant's then-counsel was unable to obtain any instructions from the Defendant's family over an extended period of time. On 21 May 2020, Defendant's then-counsel informed the court that they were

---

[1] Letter from M/s Yuen Law LLC (dated 15 April 2020).

unable to ascertain if anyone would obtain letters of administration of the Defendant's estate.[2] On 22 June 2020, Defendant's then-counsel stated that the Defendant's brother had indicated that none of the Defendant's family members were prepared to administer the Defendant's estate.[3]

13 On 9 September 2020, the Plaintiffs took out an *ex parte* application under O 15 r 7(2) ("the Substitution Application") for the Defendant's brother to be appointed the representative of the Defendant's estate for the purposes of the proceedings, and for the proceedings to be carried on as if the Defendant's brother had been substituted for the Defendant. The court ordered that the Substitution Application be served on the Defendant's brother. The service of papers proved to be a time-consuming task. Plaintiffs' counsel repeatedly sought adjournments due to his difficulties in effecting service on the Defendant's brother. At the third hearing of the Substitution Application on 4 January 2021, Plaintiffs' counsel informed the court that he was considering other options such as seeking the consent of the Public Trustee to be appointed in this matter. At the fourth hearing on 1 February 2021, Plaintiffs' counsel submitted that based on his research, the Public Trustee would not intervene in the present matter, and sought more time to find a solution. At the fifth hearing on 15 March 2021, Plaintiffs' counsel withdrew the Substitution Application. Thereafter, Plaintiffs' counsel sought directions at a pre-trial conference for the AD Trial to proceed.

---

2 Letter from M/s Yuen Law LLC (dated 21 May 2020).

3 Letter from M/s Yuen Law LLC (dated 22 June 2020).

Preliminary Issue

14 As a matter of first priority at the hearing of the AD Trial, I sought Plaintiffs' counsel's submissions on the preliminary issue of whether the AD Trial could proceed in the absence of the Defendant or his personal representative.

15 Plaintiffs' counsel submitted that the present scenario fell within a "large lacuna" in the Rules of Court.[4] He explained that the Rules of Court did not provide for a situation where the defendant had passed away post-commencement of proceedings, where no letters of administration were granted. Given the foundational importance of the preliminary issue and the absence of any adversarial countercheck on the position taken by Plaintiffs' counsel, I directed Plaintiffs' counsel to furnish researched submissions to assist the court on the preliminary issue. After considering the submissions, and given the paucity of cited authorities, I directed Plaintiffs' counsel to seek the opinion of the Public Trustee's Office on the alleged "large lacuna". The Public Trustee's Office provided a helpful and substantive response. In gist, the Public Trustee's Office opined that there was indeed a "lacuna in the law… which would necessitate the Court [exercising] its inherent powers under O 92 r 4 of the Rules of Court, to grant the plaintiffs an order for the assessment of damages hearing in absence of the Defendant or his personal representative".[5]

16 Upon careful study of the provisions of the Rules of Court, specifically O 15 rr 6A, 7 and 15 thereof, I agreed with Plaintiffs' counsel and the Public

---

4 Hearing of the AD Trial (18 May 2021).

5 Letter from M/s Matthew Chiong Partnership (dated 30 July 2021), enclosing an email from the Public Trustee's Office (dated 28 July 2021).

Trustee's Office that none of the provisions provided for the situation in the present case. To elaborate:

(a) O 15 r 6A relates to proceedings against estates. O 15 r 6A(1) deals with a situation where a cause of action "would have lain" against a person, and that cause of action "survives" the death of that person. In such a situation, "the action may, if no grant of probate or administration has been made, be brought against the estate of the deceased". O 15 r 6A(3) provides that where an action is commenced against a person who was deceased as at its commencement, it "shall be treated… as having been commenced against his estate in accordance with paragraph (1), whether or not a grant of probate or administration was made before its commencement". Had O 15 r 6A applied to the present case, the Public Trustee could have been appointed to represent the deceased's estate (see O 15 rr 6A(4) and 6A(6)). However, a plain reading of O 15 r 6A suggests that the rule was intended to apply where the intended defendant is deceased *as at the commencement of proceedings*; this was, indeed, also the view taken by the Public Trustee's Office.[6] O 15 r 6A therefore does not directly provide for the present situation where the Defendant was alive as at the commencement of the suit (and, indeed, has already progressed past the finding of liability to the assessment of damages).

(b) O 15 r 7 relates to a situation where a party's death occurs *after* proceedings have already commenced. O 15 r 7(1) provides that where

---

6 Letter from M/s Matthew Chiong Partnership (dated 30 July 2021), enclosing an email from the Public Trustee's Office (dated 28 July 2021).

a party to an action dies but the cause of action survives, the action does not abate by reason of the party's death. O 15 r 7(2) provides that where the interest or liability of a party is "assigned or transmitted to or devolves upon some other person", the court may order "that other person" to be made a party to the action and the proceedings to be carried on "as if he had been substituted for the first-mentioned party". In *Teo Gim Tiong v Krishnasamy Pushpavathi (legal representative of the estate of Maran s/o Kannakasabai, deceased)* [2014] 4 SLR 15, the Court of Appeal emphasised (at [50]) that (i) the effect of O 15 r 7(2) is that "only a personal representative may be substituted for the deceased person", this being "fundamental to the purpose of the rule"; and (b) the phrase "that other person" refers to the person to whom the interest or liability in the pending proceeding has been "assigned or transmitted to or devolve[d] upon". O 15 r 7 is inapplicable in the present case because there is no personal representative and no known person upon whom the interest or liability of the Defendant is "assigned or transmitted to or devolve[d] upon". This was, indeed, the very reason that Plaintiffs' counsel had withdrawn the Substitution Application.

(c) O 15 r 15 relates to a situation where a deceased person had an interest in an existing court action but was not a party to that action. This is clear from a plain reading of O 15 r 15(1). It is useful to also refer to *Wong Moy v Soo Ah Choy* [1995] 3 SLR(R) 822, where the High Court explained (at [22]) that O 15 r 15(1) was directed at the situation where "after an action had been started and both plaintiff and defendant were litigating it, it became apparent that a deceased person *who was neither the plaintiff nor the defendant and thus not a party to the litigation* had an interest in the subject matter of the litigation and therefore his estate

should be represented in the action" (emphasis added). O 15 r 15 does not apply to the present case because the deceased person is, in fact, the Defendant who is already a party to the litigation. As the Public Trustee's Office put it, "a plain reading of [O 15 r 15] suggests that it does not apply as this rule facilitates the representation of an estate in a proceeding to which it was, hitherto, not a party".[7]

17 In the circumstances, I agreed with Plaintiffs' counsel and the Public Trustee's Office that the present situation necessitated the court exercising its inherent powers under O 92 r 4 of the Rules of Court to hear the AD Trial in the absence of the Defendant or his personal representative.

Assessment of Damages

18 With the preliminary issue resolved, the AD Trial proceeded on 25 August 2021. Only Mr Bauer gave evidence at the trial; Ms Radmacher did not give any evidence. During the examination-in-chief, Mr Bauer clarified that the Plaintiffs had inadvertently overstated the claim on property agent's commission – specifically, the Plaintiffs ought to have claimed only $51,360 (instead of $102,720), being the amount that they had paid as vendors of the Property. As the Defendant was deceased and unrepresented, I posed a series of questions to Mr Bauer. These questions arose from a combination of my queries on the evidence before me as well as arguments raised by Defendant's then-counsel at the hearing of the Summary Judgment Application. The latter, in

---

7 Letter from M/s Matthew Chiong Partnership (dated 30 July 2021), enclosing an email from the Public Trustee's Office (dated 28 July 2021).

particular, was the best proxy available for arguments that the Defendant might have raised during the AD Trial.

19 Before turning to my decision on the assessment of damages, it is useful to first set out the two operative conditions of the Conditions of Sale, *ie*, Conditions 15.9 and 15.10:

> 15.9 If the Purchaser does not comply with the terms of any effective Notice to Complete served by the Vendor under this Condition, then the following terms apply:
>
> (a) on the expiry of the Notice to Complete or within such further period as the Vendor may allow, the Purchaser must immediately return all title deeds and documents in his possession that belong to the Vendor;
>
> (b) the Purchaser must at his own expense procure the cancellation of any entry relating to the Contract in any register; and
>
> (c) without prejudice to any other rights or remedies available to him at law or in equity, the Vendor may:
>
> i. forfeit and keep any deposit paid by the Purchaser; and
>
> ii. resell the Property whether by auction or by private agreement without previously tendering a Conveyance to the Purchaser.
>
> 15.10. The following terms apply to the Vendor's right to re-sell the Property:
>
> (a) if on any re-sale contracted within one (1) year after the Scheduled Completion Date the Vendor incurs a loss, the Purchaser must pay to the Vendor as liquidated damages the amount of such loss;
>
> (b) the liquidated damages payable by the Purchaser will include all costs and expenses reasonably incurred in any such re-sale or any attempted re-sale but the Vendor must give

> credit for any deposit and any money paid on account of the purchase price; and
>
> (c) the Vendor will be entitled to retain any surplus money from the resale.

20 Condition 15.9(c)(i) of the Conditions of Sale provides that if the purchaser does not comply with an effective notice to complete, then without prejudice to any other rights or remedies available to the vendor, the vendor may forfeit and keep any deposit paid by the purchaser. This point was uncontroversial at the hearing of the Summary Judgment Application – indeed, Defendant's then-counsel acknowledged that the Plaintiffs had forfeited the deposit.[8] In the circumstances and for the avoidance of doubt, I order that the Plaintiffs are entitled to forfeit and keep the deposit of $260,000.

21 I now turn to address each of the heads of claim in turn.

Loss of sale price

22 Condition 15.10(a) of the Conditions of Sale provides that if on any resale contracted within one year after the scheduled completion date the vendor incurs a loss, the purchaser must pay to the vendor as liquidated damages the amount of such loss. Here, the Successful Sale was completed on 11 January 2019, *ie*, about eight months after the initial scheduled completion date of the aborted sale. As the Plaintiffs suffered a loss of $400,000 (being the difference between $5.2million and $4.8million), Plaintiffs' counsel submitted that the Defendant had to pay this amount to the Plaintiffs as liquidated damages.

---

[8] Defendant's Written Submissions (dated 16 August 2019), filed in the Summary Judgment Application, at paragraph 21.

23 The main issue that Defendant's then-counsel had raised at the Summary Judgment Application was whether the Plaintiffs had sufficiently mitigated their losses when selling the Property at $4.8million. Defendant's then-counsel argued that notwithstanding Condition 15.10(a) of the Conditions of Sale, the Plaintiffs had to discharge their duty to mitigate and had failed to do so (see [9] above). In response, Plaintiffs' counsel took the position that (a) Condition 15.10(a) of the Conditions of Sale in and of itself contractually entitled the Plaintiffs to the loss in the Property's sale price, and (b) in any event, the Plaintiffs had reasonably mitigated their losses.

24 Unfortunately, and perhaps because this was not eventually required at the Summary Judgment Application, neither set of counsel fleshed out in detail how the common law duty to mitigate interacted with Condition 15.10(a) of the Conditions of Sale. I therefore directed that Plaintiffs' counsel address the issue in his written submissions after the AD Trial. Again, Plaintiffs' counsel merely asserted that the Plaintiffs were contractually entitled (pursuant to Condition 15.10(a) of the Conditions of Sale) to be paid the loss of sale price "regardless of any alleged issue pertaining to the duty to mitigate",[9] spending the majority of his submissions touching on the law concerning mitigation of loss and his contention that the Plaintiffs had reasonably mitigated their losses.

25 In the absence of comprehensive legal arguments on the interface between the common law duty to mitigate and Condition 15.10(a) of the Conditions of Sale, and given the focus of Plaintiffs' counsel's submissions, I

---

9 Plaintiffs' Written Submissions (dated 3 September 2021), at paragraph 21.

proceed on the basis that the duty to mitigate applies in the present case. The key legal principles are as follows:

(a) First, the defaulting party must properly plead and prove that the aggrieved party had failed to fulfil his duty to mitigate loss (see, *eg*, *Yip Holdings Pte Ltd v v Asia Link Marine Industries Pte Ltd* [2011] SGHC 227 ("*Yip Holdings*") at [23]). In relation to pleadings, the defaulting party has to plead "matters of materiality" relating to the alleged failure to take reasonable steps to mitigate loss, with "as much particularity as would be required in the circumstance" (*Yip Holdings* at [24]).

(b) Second, the defaulting party bears the burden of proving that the aggrieved party had failed in the duty to mitigate (see *The Asia Star* [2010] 2 SLR 1154 ("*The Asia Star*") at [25], recently cited in *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2020] 2 SLR 1256 at [250]).

(c) Third, in relation to the appropriate level of judicial scrutiny in assessing whether an aggrieved party's conduct in mitigation was reasonable, it should be kept in mind that the burden on the part of the defaulting party is "ordinarily one which is not easily discharged" (*The Asia Star* at [25]). The courts have sought to ensure that "the standard of reasonableness required of the aggrieved party will not be too difficult to meet" (*The Asia Star* at [31]), and there is "certainly support for the view that the court should adopt a generous approach in assessing the aggrieved party's conduct in mitigation" (*The Asia Star* at [43]). This is because the duty to mitigate may "appear to be an unfair obligation to impose on the aggrieved party in relation to a breach of contract (in that the defaulting party is to blame for the breach of contract)" (*The Asia*

Star at [31]). The Court of Appeal in *The Asia Star* also agreed with the oft-cited observations in *Banco de Portugal v Waterlow and Sons, Limited* [1932] AC 452 ("*Banco de Portugal*") at 506, as follows:

> Where the sufferer from a breach of contract finds himself in consequence of that breach placed in a position of embarrassment[,] the measures which he may be driven to adopt in order to extricate himself ought not to be weighed in nice scales at the instance of the party whose breach of contract has occasioned the difficulty. It is often easy after an emergency has passed to criticize the steps which have been taken to meet it, but *such criticism does not come well from those who have themselves created the emergency. The law is satisfied if the party placed in a difficult situation by reason of the breach of a duty owed to him has acted reasonably in the adoption of remedial measures, and he will not be held [to be] disentitled to recover the cost of such measures merely because the party in breach can suggest that other measures less burdensome to him might have been taken.* [emphasis added by the Court of Appeal in *The Asia Star*]

The Court of Appeal in *The Asia Star* further explained that the observations in *Banco de Portugal* were made in response to the defaulting party's argument that the aggrieved party should have taken some other action which would have further reduced the loss occasioned. On this point, the Court of Appeal cautioned that the court should not adopt too stringent a standard in enforcing the duty to mitigate against an aggrieved party, because "the court is not … the best-equipped arbiter of economic efficiency and the options available to the aggrieved part at the material time" (*The Asia Star* at [44]). It is important to bear in mind that the court should determine the issue of "whether the mitigation measures taken by the aggrieved party were reasonable", rather than the issue of "whether the aggrieved party took the best possible measures to reduce its loss" (*The Asia Star* at [44]).

26 In the present case, the Defendant did not plead *any* particulars whatsoever in relation to his allegation that the Plaintiffs had breached their duty to mitigate losses. The Defendant merely pleaded bare allegations that the Plaintiffs were "put to strict proof" that they had adequately discharged their duty to mitigate their loss, and that the Plaintiffs "have not taken reasonable steps in their discharge of their duty of mitigation".[10] Such a pleading is insufficient for pleading a defence relating to mitigation of damages.

27 Aside from the pleading-related issues, the only basis for the Defendant's position on mitigation appears to be two articles titled "Singapore private home prices dip 0.1% in Q4 on cooling measures, up 7.9% for 2018: URA flash data" (*The Straits Times*, 2 Jan 2019) ("the ST Article") and "Don't expect Singapore's private home prices to match growth of 2018: Experts" (*Channel NewsAsia*, 2 Jan 2019) ("the CNA Article"). Both articles were adduced in evidence for purposes of the Summary Judgment Application. The Defendant relied on the two articles to argue that private home prices in Singapore had increased by 7.9% in 2018, before cooling in early 2019,[11] and that there was a 2.3% increase in landed property prices from the second to third quarter of 2018, before a 1.8% decrease from the third to fourth quarter of 2018.[12]

28 In response to the Defendant's reliance on the two articles, the Plaintiffs adduced a copy of the announcement by the Monetary Authority of Singapore

---

10 Defence (Amendment No 1) (dated 20 November 2019) at paragraphs 13 and 15.

11 Affidavit of Wee Tien Liang (dated 10 July 2019), filed in the Summary Judgment Application, at paragraph 10.

12 Defendant's Written Submissions (dated 16 August 2019), filed in the Summary Judgment Application, at paragraph 42.

on 5 July 2018, relating to measures to cool the Singapore property market with immediate effect ("the MAS Announcement"). The Plaintiffs averred that these "drastic" measures "must have caused property prices in Singapore to slide" during the material time.[13] Plaintiffs' counsel reiterated these points in his written submissions after the AD Trial. He contended that in view of the cooling measures, it was "not unreasonable for the Plaintiffs to re-sell the property at the highest offer obtained some 4 months after the original contract was repudiated",[14] and went so far as to submit that the loss in sale price "clearly could not be averted no matter what steps were taken".[15]

29 In my view, the two articles and the MAS Announcement are generic in nature and do not relate directly to the Property, or to property of similar class and location to the Property. They therefore do not provide compelling evidence in demonstrating the effect of market forces on the sale price of the Property following the Abortive Sale. In particular, the two articles did not actually support the Defendant's assertion that the Property was not sold for the best possible price. This is because the 7.9% increase in property prices reported in both articles clearly referred to the overall increase in property prices *for the entirety of 2018*. The articles themselves contained explanations to the effect that property prices rose in the first half of 2018, but thereafter started to decline. Indeed, the ST Article stated that "[p]rices of landed homes led the slowdown,

---

13 2nd Affidavit of Bauer Adam Godfrey (dated 25 July 2019), filed in the Summary Judgment Application, at paragraph 5.

14 Plaintiffs' Written Submissions (dated 3 September 2021), at paragraph 13.

15 Plaintiffs' Written Submissions (dated 3 September 2021), at paragraph 19.

falling by 1.8 per cent, reversing a 2.3 per cent rise in the third quarter",[16] while the CNA Article explained that the 7.9% increase "was mainly contributed by what happened in the first two quarters as well as what happened early in July when developers quickly launched (properties) on the day that cooling measures happened".[17] If anything, both articles suggest that the property prices were slowing down during the period after the sale was aborted and when the Property was placed back on the market.

30 The Plaintiffs' evidence relating to the efforts in selling the property after the Abortive Sale is relevant for purposes of considering the duty to mitigate. To this end, the Plaintiffs adduced a table detailing the various viewings of the Property. On this, I make three observations.

(a) First, two property agents were engaged to act on behalf of the Plaintiffs. As Mr Bauer explained at the AD Trial, one was a "local agent", while the other "cover[ed] foreigners and PRs in Singapore", so that the Plaintiffs could "cast a wide net" for prospective purchasers.[18] There was also a need to cast a wide net, because the Plaintiffs had designed the Property to adopt the "Australian style of indoors and outdoors", which "wasn't very attractive to the local buyers". [19] In

---

16 Affidavit of Wee Tien Liang (dated 10 July 2019), filed in the Summary Judgment Application, at page 13.

17 Affidavit of Wee Tien Liang (dated 10 July 2019), filed in the Summary Judgment Application, at page 18.

18 Evidence of Bauer Adam Godfrey given at the AD Trial (25 August 2021).

19 Evidence of Bauer Adam Godfrey given at the AD Trial (25 August 2021).

particular, the Property did not have "certain features that would attract a local client", such as "having a room for parents on the ground floor".[20]

(b) Second, the Plaintiffs had "prepared the house for so many visits", and there was indeed "a huge range of visits".[21] It is noteworthy that in the lead up to the Defendant's purchase of the Property, the Property was viewed three times by prospective purchasers and was the subject of two firm offers. In contrast, in the lead up to the Successful Sale, despite the Property being viewed 17 times by prospective purchasers, only one firm offer was made (although there was another buyer who was "very keen",[22] but who did not eventually make an offer). These points support Mr Bauer's position that the market was "very hot in Singapore"[23] when the Property was sold to the Defendant, but had cooled considerably in the period after the sale was aborted.

(c) Third, the Plaintiffs took immediate steps to re-market and re-sell the Property. The sale was aborted on 21 June 2018, and the first visit to the Property by a prospective buyer took place on 29 June 2018. For completeness, I accept Mr Bauer's evidence that given the immediate steps taken to re-market and re-sell the Property, it was unrealistic and impractical for the Plaintiffs to have mitigated their

---

20 Evidence of Bauer Adam Godfrey given at the AD Trial (25 August 2021).

21 Evidence of Bauer Adam Godfrey given at the AD Trial (25 August 2021).

22 Evidence of Bauer Adam Godfrey given at the AD Trial (25 August 2021).

23 Evidence of Bauer Adam Godfrey given at the AD Trial (25 August 2021).

losses by leasing the Property in the interim, or by moving back into the Property.[24]

31 Having considered the matters in [26] to [30] above, and keeping in mind the appropriate level of judicial scrutiny in assessing whether an aggrieved party's conduct in mitigation was reasonable (see [25(c)] above), I am satisfied that there is no basis to believe that the Plaintiffs had failed in their duty to mitigate loss. Indeed, the evidence before me demonstrates that the Plaintiffs had taken reasonable steps to mitigate their losses. While I am unable to agree with Plaintiffs' counsel's submission that the loss in sale price "clearly could not be averted no matter what steps were taken" (see [28] above), that is – in any event – not the standard that the Plaintiffs are held to. As noted at [25(c)] above, the court is called to determine "whether the mitigation measures taken by the aggrieved party were reasonable", and not "whether the aggrieved party took the *best possible measures to reduce its loss*" (emphasis added). I therefore award the $400,000 difference in sale price as damages to the Plaintiffs.

Property agent's commission and legal fees

32 Condition 15.10(b) of the Conditions of Sale provides that the purchaser in the abortive sale would have to pay to the vendor, as liquidated damages, "all costs and expenses reasonably incurred in any such re-sale".

33 In relation to the claim for property agent's commission relating to the Successful Sale, Mr Bauer clarified that the Plaintiffs were claiming only

---

[24] Affidavit of Bauer Adam Godfrey (dated 17 June 2019), filed in the Summary Judgment Application, at paragraph 16.

$51,360 rather than $102,720 (see [18] above). He supported this claim by adducing a copy of the relevant invoice evidencing the sum.

34 In relation to legal fees incurred due to the Abortive Sale, Mr Bauer adduced a copy of the relevant solicitors' invoice for the sum of $2,782.

35 As these appear to be reasonable expenses incurred due to the Abortive Sale, I award the Plaintiffs the sums of $51,360 and $2,782 for the heads of claim relating to property agent's commission and legal fees respectively.

Bank interest on the mortgage loan

36 During the Holding Period, the Plaintiffs had to continue to pay bank interest on the mortgage loan which had been taken out to finance the purchase of the Property. The Plaintiffs therefore claimed this bank interest, as they would not have had to pay this amount had the sale been completed on 21 June 2018.

37 The Plaintiffs had initially pleaded the sum of $36,741.69 for this head of claim. In the context of the Summary Judgment Application, Defendant's then-counsel pointed out that the Defendant should not be liable for the entries relating to "late payment interest", and submitted that the interest debit amounts added up to $20,275.27 instead of $36,741.69. At the AD Trial, Mr Bauer confirmed that the Plaintiffs did not wish to contest the submissions of Defendant's then-counsel, and were prepared to accept $20,275.27 for this head of claim. I therefore award the Plaintiffs $20,275.27 for bank interest incurred on the mortgage loan during the Holding Period.

Other incidental losses during the Holding Period

38 The Plaintiffs claimed a sum of $4,208.15 as pro-rated property tax incurred during the Holding Period. Upon my query at the AD Trial, it transpired that the correct figure ought to be $3,668.65, based on the property tax of $6,564 pro-rated for Holding Period. Mr Bauer accepted that the calculation was erroneous, and explained that the $4,208.15 figure was derived from a calculation between the period from 22 May 2018 (being the day after the original completion date) to 11 January 2019, instead of the pleaded Holding Period. He indicated his willingness to proceed on the basis of the pleaded Holding Period. In the circumstances, I award the Plaintiffs $3,668.65 for the head of claim relating to pro-rated property tax incurred during the Holding Period.

39 The Plaintiffs claimed a sum of $552.62 as the amount paid for mortgage insurance during the Holding Period. When queried on the absence of documentary evidence for this item, Mr Bauer explained that he was unable to locate the primary documents as these date back to 2018. He explained that the figure of $552.62 was derived from his personal records, and that the figure was in any event "a standard amount for mortgage insurance".[25] Despite the absence of documentary evidence, I find it reasonable to award a sum representing the pro-rated mortgage insurance for the Holding Period given the oral evidence from Mr Bauer that the Plaintiffs had paid the mortgage insurance. There was no reason for me to disbelieve Mr Bauer's testimony in this regard, and in any event, the amount in question did not appear unreasonable. However, I am unable to rule out that a calculation error (akin to that in relation to the pro-rated

---

[25] Evidence of Bauer Adam Godfrey at the hearing on 25 August 2021.

property tax (see [38] above) and opportunity costs (see [41] below)) may have affected the claimed figure of $552.62. As such, I award to the Plaintiffs $481.77 (being a pro-ration of $552.62) for the head of claim relating to mortgage insurance during the Holding Period.

40 The Plaintiffs claimed costs of water and electricity used in the Property of $1,536.80, as evidenced in utilities bills from June 2018 to December 2018. At the AD Trial, I queried Mr Bauer on the relatively high utilities bill despite the fact that the Property was not occupied for six months. Mr Bauer explained that the major use of electricity was for the swimming pool filter, which had to be run "between 8 to 10 hours a day, which is lower than the recommendation, but sufficient to maintain the appearance of the pool".[26] He also explained that there were "multiple lights on in the house because I didn't want to leave the house completely dark and vacant", and that he had returned to the Property twice a week "to maintain the gardens and so there was water usage".[27] I accept the reasonableness of these explanations, especially given that viewings of the Property took place from June 2018 to October 2018 and maintenance of the Property would have been necessary. I therefore award the Plaintiffs $1,536.80 for the head of claim relating to the costs of water and electricity used in the Property.

Opportunity cost of earning interest on the proceeds of sale

41 Plaintiffs' counsel submitted that the Plaintiffs should be awarded an amount representing the opportunity cost of earning interest on the proceeds of

---

26 Evidence of Bauer Adam Godfrey given at the AD Trial (25 August 2021).

27 Evidence of Bauer Adam Godfrey given at the AD Trial (25 August 2021).

sale, as this would restore the Plaintiffs to the position they would have been in had the Abortive Sale been completed on 21 June 2018.[28] In this regard, the Plaintiffs claimed $31,639.87, representing interest that they could have earned, calculated based on the proceeds of sale (*ie* $2,625,148) at the rate of 1.88% per annum during the Holding Period.

42 Akin to the error in relation to pro-rated property tax (see [38] above), the figure of $31,639.87 is erroneous. The figure appears to be derived from a calculation between the period from 22 May 2018 to 11 January 2019, instead of the pleaded Holding Period. I will proceed on the basis of the pleaded Holding Period.

43 To support their claim for interest at the rate of 1.88% per annum, the Plaintiffs adduced a screenshot of the Standard Chartered Bank website which showed promotional fixed deposit interest rates of 1.8% per annum and 1.9% per annum (the latter of which applied as a "priority banking preferential rate").[29] For completeness, at the hearing of the Summary Judgment Application, the Plaintiffs also adduced a brochure from Cheyne Capital which showed returns of 7% per annum.[30] However, the Plaintiffs did not adduce the Cheyne Capital brochure at the AD Trial, possibly partly in view that Defendant's then-counsel had contended at the hearing of the Summary

---

28 Plaintiffs' Written Submissions (dated 3 September 2021), at paragraph 25.

29 Affidavit of Evidence in Chief of Bauer Adam Godfrey (dated 14 April 2021), at page 72.

30 Affidavit of Bauer Adam Godfrey (dated 17 June 2019), filed in the Summary Judgment Application, at pages 43 to 48.

Judgment Application that there was insufficient evidence about the guaranteed return of any investment with Cheyne Capital.[31]

44 At the AD Trial, Mr Bauer explained that he was a fund manager employed by Fairshore Asset Management with 20 years of experience in the banking fund managing industry.[32] He professionally invested money for clients, and the amounts invested "yield between 6 to 12%".[33] He further testified that one of the Plaintiffs' investments had returns of about 7% in "the last three months".[34] He claimed that based on his typical investments, his true opportunity cost arising from the Abortive Sale "would be in hundreds of thousands".[35] However, he decided to seek interest at the rate of 1.88% per annum instead. When I queried how the rate of 1.88% per annum was obtained, Mr Bauer clarified that this was "an arbitrary figure as a measure of opportunity cost of the most basic number".[36] He explained that he had sought but was unable to obtain information from banks concerning a fixed deposit rate for 6 months at the material time.[37] While he recognised the inaccuracy of the 1.88% figure, he explained that he had done his best to obtain a reasonable figure.

---

31 Affidavit of Wee Tien Liang (dated 10 July 2019), filed in the Summary Judgment Application, at paragraphs 27 to 34.

32 2nd Affidavit of Bauer Adam Godfrey (dated 25 July 2019), filed in the Summary Judgment Application, at paragraph 11.

33 Evidence of Bauer Adam Godfrey given at the AD Trial (25 August 2021).

34 2nd Affidavit of Bauer Adam Godfrey (dated 25 July 2019), filed in the Summary Judgment Application, at paragraph 12.

35 Evidence of Bauer Adam Godfrey given at the AD Trial (25 August 2021).

36 Evidence of Bauer Adam Godfrey given at the AD Trial (25 August 2021).

37 Evidence of Bauer Adam Godfrey given at the AD Trial (25 August 2021).

45 In response to my query on whether the Plaintiffs had indeed invested the sale proceeds following the Successful Sale, Mr Bauer testified that they had indeed invested money into Australia property and other investments. He further explained that the interest rate on his Australia property was "about 4% plus at the relevant time".[38] In this regard, he testified that if the initial sale had not been aborted, he could have paid off the Australia property and avoided paying interest of 4% per annum.[39] While he was seeking only interest at the rate of 1.88% per annum, he explained that this provided yet another "sense of the opportunity benefit I would have obtained".[40]

46 I am satisfied on the evidence before me that the Plaintiffs would have obtained some form of financial benefit had the Abortive Sale been completed on 21 June 2018. In relation to the interest rate to be applied in quantifying the opportunity cost, I decline to apply the rate of 1.88% per annum, for three reasons: (a) there is no evidence before me that the Plaintiffs would have been able to obtain a fixed deposit rate that is closer to the "priority banking preferential rate" (of 1.9% per annum) than the standard promotional rate (1.8% per annum); (b) the 1.8% per annum rate was a *promotional* rate that, in any event, was not available during the Holding Period; and (c) the Holding Period would not have met the tenor requirement for the promotional rate (even if the promotional rate was available and applicable). I therefore apply a discount on the interest rate for calculating opportunity cost. All matters considered, I award

---

38 Evidence of Bauer Adam Godfrey given at the AD Trial (25 August 2021).

39 Evidence of Bauer Adam Godfrey given at the AD Trial (25 August 2021).

40 Evidence of Bauer Adam Godfrey given at the AD Trial (25 August 2021).

opportunity cost at the rate of 1.5% per annum on $2,625,148 for the Holding Period, which works out to $22,008.09.

Conclusion

47 For the foregoing reasons, I award damages to the Plaintiffs assessed at a net total of $242,112.58 (after taking into consideration the deposit of $260,000). The details are as follows:

(a) Loss of sale price of $400,000.

(b) Property agent's commission arising from the Successful Sale, quantified at $51,360.

(c) Legal fees incurred due to the Abortive Sale, quantified at $2,782.

(d) Bank interest on the mortgage loan incurred by the Plaintiffs during the Holding Period, quantified at $20,275.27.

(e) Opportunity cost of earning interests on the proceeds from the sale of the Property, calculated at the interest rate of 1.88% per annum during the Holding Period, quantified at $22,008.09.

(f) Other incidental losses during the Holding Period, *ie*, pro-rated property tax of $3,668.65, mortgage insurance of $481.77 and costs of water and electricity used in the Property of $1,536.80.

48 I will hear Plaintiffs' counsel on the issue of costs.

Justin Yeo
Assistant Registrar

Mr Lawrence Lim (M/s Matthew Chiong Partnership)
for the Plaintiffs.
Defendant deceased and unrepresented.
