IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1978] SGCA 34

CA 57/1977

Between

Lee Kay Guan
Another

… *Appellant*

And

Phoenix Heights Estate (Pte) Ltd

… *Respondent*

GROUNDS OF DECISION

Land — Sale of land — Conditions of sale; Contract — Contractual terms — Express terms; Contract — Remedies — Liquidated damages

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Lee Kay Guan and Another v Phoenix Heights Estate (Pte) Ltd

[1978] SGCA 34

CA 57/1977
Chua F A J; D C D'Cotta J; Wee Chong Jin CJ
24 November 1978

1 Cur Adv Vult

2 (delivering the judgment of the court): On 6 January 1973 the parties entered into an agreement for the sale and purchase of a building plot in a building estate then being developed by the respondents together with a detached bungalow in the course of erection thereon at the price of $180,000. The material provisions of the agreement read as follows:

> *Clause 3. The purchase price shall be paid by the Purchaser to the Vendor by the instalments and at the times following, that is to say:*
>
> (a) Immediately upon the signing of this Agreement a sum equivalent to 10% of the purchase price such sum to include the booking fee if any paid.
>
> (b) Within fourteen (14) days after receipt by the Purchaser of the Vendor`s notice in writing that the foundation work of the building has been completed a sum equivalent to 10% of the purchase price.
>
> (c) Within fourteen (14) days after, receipt by the Purchaser of the Vendor`s notice in writing that the reinforced concrete framework of the building has been completed a sum equivalent to 15% of the purchase price.

(d) Within fourteen (14) days after receipt by the Purchaser of the Vendor`s notice in writing that the brick walls of the building with door and window frames in position have been completed a sum equivalent to 15% of the purchase price.

(e) Within fourteen (14) days after receipt by the Purchaser of the Vendor`s notice in writing that the roofing and internal plastering of the building have been completed a sum equivalent to 15% of the purchase price.

(f) Within fourteen (14) days after receipt by the Purchaser of the Vendor`s notice in writing that the electrical wiring and plumbing (without fittings) to the building have been completed a sum equivalent to 10% of the purchase price.

(g) Within fourteen (14) days after receipt by the Purchaser of the Vendor`s notice in writing that the Vendor`s Architect has certified that the roads and drains serving the building have been completed a sum equivalent to 15% of the purchase price.

(h) On completion of the sale and purchase herein as hereinafter provided and on delivery to the Purchaser of vacant possession of the property sold the balance of 10% of the purchase price, 5% of which shall forthwith be paid to the Vendor and the remaining 5% shall be paid to the Purchaser`s solicitors as stakeholders to be paid to the Vendor only on production of the Certificate of Fitness for Occupation of the Chief Building Surveyor in respect of the building.

Every such Notice shall be supported by the requisite certificates of the Vendor`s Architect and shall be accepted without objection or enquiry as conclusive of the fact that the works therein referred to have been completed.

Clause 10. The Vendor shall at its own cost and expense obtain the approval of the Competent Authority under s 9(3) of the Planning Act, Cap 279 of the 1970 Revised Edition for the subdivision of the property sold but any delay in obtaining such approval shall not be a ground for any delay by the Purchaser in the payment on due date of any of the instalments of the purchase price hereinbefore referred to in cl 3 hereof and the interest thereon (if any).

Clause 11. The sale and purchase herein shall be completed at the office of the Vendor`s Solicitors Messrs Guok & Ganesan of No 11, D`Almeida Street, Singapore fourteen (14) days after the receipt by the Purchaser or his Solicitors of the Notice to Complete of the Vendor`s or of its Solicitors such notice to be accompanied by the Vendor`s Architects` certificate that the building and road drainage and sewerage works have been completed in accordance with the relevant approved plans and that sewerage water and electricity and/ or gas services have been duly

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> *connected to the building and that the said approval of the Competent Authority for subdivision has been obtained. On completion, the Vendor shall make and execute to the Purchaser an assurance of the property sold such assurance to be prepared by and at the expense of the Purchaser. The said Notice to Complete shall be given by the Vendor on or before 30 June 1973 or such other subsequent date or dates as may after the date hereof be appointed by the Controller of Building. If the Vendor shall fail to give the said Notice to Complete on the appointed date the Vendor shall pay to the Purchaser liquidated damages calculated from day to day in respect of the period commencing from the appointed date up to the date when the said Notice to Complete shall have actually been given at the rate of nine per centum (9%) per annum on the purchase price such interest to be paid and deducted from the balance of the purchase price payable on completion.*

3 The facts which are not in dispute are these. The appellants have, in compliance with cl 3, paid 95% of the purchase price amounting to $171,000. There was considerable delay on the part of the respondents in completing the building of the house which was finally completed in November 1974. On 28 November 1974 the relevant authority issued a Temporary Occupation Licence granting permission for the house to be occupied. The respondents offered to hand over possession of the house to the appellants on 1 December 1974 but the appellants refused to take possession asserting that they were entitled to refuse possession until completion of the sale. Subsequently however, before completion, the appellants took possession of the house on 17 April 1975. The respondents failed to give notice to complete on the appointed date which fell on 31 December 1973 as stipulated under cl 11 and eventually gave the requisite notice to complete which was served on the appellants on 7 December 1975.

4 Before the High Court hearing the respondents had admitted liability for damages calculated in accordance with cl 11 up to the date when the Temporary Occupation Licence was issued and the damages so calculated have been paid to the appellants. The issue in the High Court was whether the appellants were

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entitled to damages as stipulated in cl 11 from 29 November 1974 to the date when the notice to complete was served on them on 7 December 1975. Choor Singh J held, on the undisputed facts, that the appellants were not so entitled. He held that the appellants` claim was in essence a claim for compensation for financial loss. He found that the appellants had no valid reason for refusing to take possession of the completed house when possession was offered to them by the respondents on 1 December 1974 following on the issue of the Temporary Occupation Licence on 28 November 1974. In respect of the period 1 December 1974 to 16 April 1975 Choor Singh J took the view that the appellants could have been in occupation of the house and had no valid reason for not taking possession of it when offered. In respect of the period after the appellants took possession on 17 April 1975 Choor Singh J found that as they were in possession they suffered no financial loss. [See [1978-1979] SLR 237 .]

5 The appellants now appeal and contend that on the true construction of cl 11 of the contract they were entitled to the liquidated damages as therein specified. They contend that the payment stipulated in cl 11 was not in the nature of a penalty but was in truth liquidated damages. In our opinion the agreement between the parties is similar to a building contract. The contract contains a definite date from which liquidated damages for delay in giving a notice to complete are to run. The provision in question, having regard to all the terms of the contract, is clearly a genuine pre-estimate of the loss which is likely to flow from a breach of the contract and accordingly is recoverable without proof of the actual loss suffered. The fact that it is difficult to ascertain the loss caused to the purchaser by delay in giving a notice to complete indicates that the provision to pay a sum as specified in cl 11 is in the nature of liquidated damages so long as the sum specified as payable is not excessive.

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6 In the present case it is clear that the sum specified as payable is not excessive having regard to all the terms of the contract.

7 It is contended on behalf of the respondents that they were unable to give the notice to complete as provided by cl 11 because they were then unable to make title to the land and premises for reasons beyond their control in that the competent authority had delayed in issuing a certificate for title for the land in question. We are unable to see how this difficulty can affect the bargain agreed upon by the parties.

8 In the result, the appeal succeeds and the appellants are entitled to judgment calculated in accordance with the provisions of cl 11 for the period 29 November 1974 to 7 December 1975. The appellants are also entitled to costs here and in the High Court.

9 ***Appeal allowed.***

Chua F A J
D C D'Cotta J
Wee Chong Jin CJ

Cheng Tim Pin (Yap & Yap) for the appellants
Peter Guok (Guok & Co) for the respondents

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