IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1978] SGHC 9

OS 24/1977

Between

Asia Commodity Traders Pte Ltd

… *Plaintiff*

And

Fook Hai Development Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Contract — Misrepresentation; Contract — Misrepresentation — Recission

Version No 1: 11 Sep 2026 (01:05 hrs)

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Asia Commodity Traders Pte Ltd v Fook Hai Development Pte Ltd

[1978] SGHC 9

OS 24/1977
Chua F A J
16 February 1978

1 By an agreement in writing dated 7 October 1974, (the Agreement), made between Asia Commodity Traders Pte Ltd (the plaintiffs) and Fook Hai Development Pte Ltd (the defendants), the plaintiffs agreed to buy and the defendants agreed to sell the office described in the First Schedule annexed to the said Agreement being part of the premises on the fifth floor of the building known as `Fook Hai Building` in South Bridge Road, for the price of $350,020, subject, ***inter alia*** , to cl 27 of the said Agreement and to `The Singapore Conditions of Sale` (revised) (the General Conditions) so far as they were not varied or inconsistent with the terms and conditions of the said Agreement.

2 The plaintiffs now apply by way of Originating Summons for (1) a declaration that they are entitled to rescind the said Agreement and (2) an order that the sum of $315,018 paid by them to the defendants to be repaid by the defendants to them with interest.

3 The First Schedule annexed to the said Agreement was as follows:

> *All that office having an area of approximately 1,591 square feet and for the purpose of identification delineated and edged red*

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> *and marked No 5.05 on the plan annexed hereto which office is on the Fifth Floor of the building known as `Fook Hai Building` erected on part of the land situate in the Singapore Town in the Island of Singapore and marked on the Government Resurvey Map as Lot 389 of Town Subdivision VI.*

4 The price of $350,020 was arrived at by taking a price of $220 per square feet on the aforesaid area of 1,591 square feet.

5 Clause 27 of the said Agreement was as follows:

> *The area shown in the First Schedule hereto is only an estimate. The area shall be measured at floor level and shall include half thickness of common party wall and full thickness of walls along corridor public spaces and full thickness of all external walls and area occupied by structural supports with the said premises shall be included. Provided on the date of completion herein (i.e. upon the issue of the Subsidiary Strata Certificate of Title) that in the event of any difference in the actual area of the said Premises on resurvey and the area stated in the First Schedule hereto there will be an adjustment in the capital payment and/or service charges herein. In the event of any dispute as to the new area of the said Premises the Purchaser shall with the consent of the Vendor and at his own cost and expense procure a Licensed Surveyor approved by the Vendor and the report by the said Licensed Surveyor on the exact area of the said Premises shall be final and conclusive.*

6 The said General Conditions provided, ***inter alia*** , as follows:

> *The Property is believed and shall be taken to be correctly described as to quantity and otherwise and is sold subject to all chief, quit, and other rents and outgoings and to all incidents of tenure, rights of way and other rights and easements (if any) affecting the same and if any error, misstatement, or omission (not of a serious or vital nature nor considerably affecting the value of the property) shall be discovered in the Particulars Special Conditions or Contract the same shall not annul the sale nor shall any compensation be allowed by or to either party in respect thereof.*

7 The plaintiffs have paid to the defendants in pursuance of the provisions of the said Agreement as to payment of instalments of the price a total sum of $315,018. The last instalment payment made by the plaintiffs was on 19 July

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1976. The amount still left to be paid is the 10% of the purchase price, that is $35,002.

8 The office purchased by the defendants was then known as Unit 505. In May 1975, the plaintiffs requested that a brick partition wall be erected in the office. Thereafter the office became two units known as units 505/505A.

9 By letter dated 11 November 1976, to the plaintiffs, the defendants said:

> *Please be informed that the Comptroller of Property Tax has revised the abovementioned units No 505/505A which were purchased by you to units 504 (1285 sq ft) and 504A (603 sq ft) respectively. Kindly take note.*

10 The total area purchased by the plaintiffs according to this letter was 1,888 square feet which is 297 square feet more than the estimated contractual area of 1,591 square feet, an increase of approximately 17.82%. The price of the extra 297 square feet at the rate of $220 per square feet would be $65,340.

11 On 16 November 1976, the plaintiffs` solicitors wrote to the defendants` solicitors in these terms:

> *Our clients, Asia Commodity Traders Pte Ltd, who are the intended purchasers of the above referred to unit have received a letter directly from Fook Hai Development Pte Ltd dated 11 November 1976, a copy of which was sent to you. By this letter our clients had been informed that the area of their premises will now be 1,888 instead of 1,591 or an additional 297 sq ft.*

12 It is true that under cl 27 of the Agreement for Sale it is stated that the area shown in the first Schedule is only an estimate and reference is made to a resurvey and that there will be an adjustment in the capital payment and/or the service charges but we have advised our clients that where there is a difference of approximately 20%, we do not think that cl 27 can be relied upon to cover such a large difference.

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13 We have advised our clients that the difference in area of 20% is not a mere misdescription covered by the provisions of cl 27 but that it is an error of such magnitude as to entitle our clients to resile from the contract. If you agree please let us have your cheque for $315,010. If you do not agree, we propose taking out a vendor/purchaser summons.

14 There was no answer from the defendants` solicitors. A reminder was sent by the plaintiffs` solicitors on 5 January 1977, and a reply was asked for by 7 January 1977, failing which the defendants` solicitors were told that the plaintiffs` solicitors had been instructed to take out a vendor, purchaser summons. On 25 January 1977, the plaintiffs commenced the present proceedings.

15 On 5 February 1977, the defendants wrote to the plaintiffs reminding them that the premises purchased by them were ready for immediate occupation and requesting the plaintiffs to collect the keys and take possession of the premises and warning the plaintiffs that if they failed to move in by the end of February 1977, they would have to pay 50% of the current monthly maintenance charges for three months from March to May 1977, and if they failed to move in by the end of June 1977, they would have to pay in full the monthly maintenance charges. The maintenance charges were based on the area of the premises. The plaintiffs did not take possession of the premises. The parties then tried to reach an amicable settlement but without success.

16 On 6 April 1977, the defendants wrote to the plaintiffs informing them of the new area of the premises. The defendants said (***inter alia***):

> *The estimated area of 1,591 sq ft of the two units as stated in the sale and purchase agreement has now been surveyed and re-measured by our registered surveyor, Mr Lee Eng Kwang. His measurements show that the total area of Unit 504 is 1,184 sq ft*

> *and Unit 504A is 603 sq ft. The total area of the two units is therefore 1,787 square feet or an excess of 196 square feet over the estimated area of 1,591 square feet stated in the Sale and Purchase Agreement.*

17 The letter concluded by setting out the terms under which the defendants were prepared to settle the dispute.

18 On 7 April 1977, the plaintiffs rejected the defendants` offer. 196 square feet is 12.32% more than it was before and the price would be $43,120 more.

19 The issue in this case is whether the plaintiffs are entitled to rescind the said Agreement when they were told that the area of the premises was 1888 square feet and not 1,591 square feet.

20 The argument of counsel for the defendants was this. Clause 27 of the said Agreement provided that the area of the premises as shown in the First Schedule was only an estimate and the parties were to take the area of the premises on the date of completion that is the area as appears in the Subsidiary Strata Certificate of Title (the Certificate of Title) and that until the Certificate of Title was issued the area envisaged under cl 27 was unknown. In this case the Certificate of Title had not yet been issued and the defendants had not yet called upon the plaintiffs to complete the sale and purchase of the premises. There was no obligation on the part of the plaintiffs to take possession of the premises when asked to do so by the defendants but they might do so if they wanted to and if they did they would have to pay maintenance fees. It was submitted that there was no need for the plaintiffs to institute the present proceedings and that the plaintiffs should have waited for the date of completion to determine the area of the premises which would be shown in the Certificate of Title.

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21 The plaintiffs were requested by the defendants to take possession of the premises on 5 February 1977, and the plaintiffs were warned that if they did not take possession by the end of February 1977, they would have to pay 50% of the current monthly maintenance charges and if they failed to take possession by the end of June 1977, they would have to pay in full the monthly maintenance charges. It is clear from the authorities that if the plaintiffs had gone into possession they would have lost all their remedies. In my view it is not premature for the plaintiffs to commence these proceedings. They had to take a stand when they received the letter of 11 November 1976.

22 Counsel for the defendants said that the defendants had at the request of the plaintiffs sub-divided the premises into two units by constructing a brick wall and in consequence the plaintiffs were not entitled to a remedy and that rescission was not the appropriate remedy. It is to be noted that the partitioning of the premises was carried out more than one year before the plaintiffs were informed of the increased area. There can be no question of waiver.

23 Next, counsel for the defendants submitted that there had been no misdescription of the premises and that the plaintiffs knew exactly what they were purchasing.

24 The evidence was that before the said Agreement was executed by the parties, the plaintiffs signed a Booking Form booking unit 505, the approximate floor area of which was stated as 1591 square feet. According to the defendants this figure of 1591 square feet was obtained from the Tenancy Drawing prepared by their architects of the fifth floor of the building. The Tenancy Drawing showed the floor areas of all the units on the fifth floor. The Tenancy Drawing was dated 26 June 1972, and was revised no less than six times. The last revision was on 4 April 1973. On 22 June 1976, the defendants received

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from their architects a set of reduced plans showing the revised tenants` lot numbers as approved by the Property Tax Division and the architects requested the defendants to inform their solicitors and the tenants of their respective new lot numbers. The defendants did not inform the plaintiffs until five months later on 11 November 1976. The defendants said that they were under the impression that their solicitors had informed the plaintiffs. On 10 September 1976, the defendants received from their surveyors `A new list of the areas calculated to the nearest 1 sq ft.` According to the defendants a mistake was made when the plaintiffs were informed on 11 November 1976, that the area of unit 504 was 1,285 square feet and unit 504A was 603 square feet. The correct areas should have been 1184 square feet for unit 504 and 603 square feet for unit 504A as disclosed in the surveyor`s `new list`. The confusion according to the defendants arose due to the renumbering of the units. The defendants said that they did not discover their mistake until sometime in April 1977, and they wrote the letter of 6 April 1977 to the plaintiffs.

25 A discrepancy of 18% in the area of the premises and an increase of $65,000 in the price of the premises are substantial differences. Even a discrepancy of 12.32% in the area of the premises and an increase of $43,120 in the price of the premises are substantial differences. The property which the defendants now wanted to convey differ materially from the property which had been agreed to be sold by the defendants to the plaintiffs. The defendants ought to have known that the area of unit 505 at the time the said Agreement was executed was more than 1,591 square feet as the Tenancy Drawing had been revised a number of times, the last being 4 April 1973, over a year before the said Agreement was executed. It is clear in this case that there had been a misdescription of the premises. On the evidence I find that the misdescription was not wilful or designed but due to carelessness on the part of the defendants.

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The question was whether the misdescription was such as to entitle the plaintiffs to rescind the contract altogether.

26 In ***Flight v Booth*** 131 ER 1160 Tindal CJ said (at p 1162):

> *It is extremely difficult to lay down, from the decided cases, any certain definite rule which shall determine what misstatement or misdescription in the particulars shall justify a rescinding of the contract, and what shall be the ground of compensation only. All the cases concur in this, that where the misstatement is wilful or designed, it amounts to fraud; and such fraud, upon general principles of law, avoids the contract altogether. But with respect to misstatements which stand clear of fraud, it is impossible to reconcile all the cases; some of them laying it down that no misstatements which originate in carelessness, however gross, shall avoid the contract, but shall form the subject of compensation only;* ***Duke of Norfolk v Worthy*** *(1 Campb 340),* ***Wright v Wilson*** *(1 Mood & Rob 207); whilst other cases lay down the rule, that a misdescription in a material point, although occasioned by negligence only, not by fraud, will vitiate the contract of sale;* ***Jones v Edney*** *(3 Campb 284),* ***Waring v Hoggart*** *(1 Ry & Mood 39), and* ***Stewart v Alliston*** *(1 Mer 26). In this state of discrepancy between the decided cases, we think it is, at all events, a safe rule to adopt, that where the misdescription, although not proceeding from fraud, is in a material and substantial point, so far affecting the subject-matter of the contract that it may reasonably be supposed, that, but for such misdescription, the purchaser might never have entered into the contract at all, in such case the contract is avoided altogether, and the purchaser is not bound to resort to the clause of compensation. Under such a state of facts, the purchaser may be considered as not having purchased the thing which was really the subject of the sale; as in* ***Jones v Edney****, where the subject-matter of the sale was described to be `a free public house,` while the lease contained a proviso, that the lessee and his assigns should take all their beer from a particular brewery; in which case the misdescription was held to be fatal.*

27 The plaintiffs` evidence was that they wanted to purchase an office to the amount of $320,000 to $350,000 and that in 1974 they had liquid cash to purchase up to $350,000 and that was the limit they were prepared to spend. The plaintiffs said that if at the time when discussion took place to purchase the property they were told that the price would be $415,000 they would not have

entered into the said Agreement and that they were not prepared to raise the extra $65,000 by mortgage. They said that the extra sum they were asked to pay considerably affects the value of the property and they were shocked when they received the letter of 11 November 1976. I came to the conclusion that the plaintiffs had been greatly prejudiced by the misdescription of the premises.

28 I came to the view that the plaintiffs had every right to rescission and I therefore gave judgment for the plaintiffs for rescission and the return of the $315,018, together with interest at the rate of 8% from 7 January 1977, to date of judgment, and costs.

29 ***Application allowed***

Chua F A J

HE Cashin (Murphy & Dunbar) for the plaintiff
David de Souza (Tang & Tan) for the defendants

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