IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1981] SGCA 7

CA 52/1980

Between

Kaolim Pte Ltd

… *Appellant*

And

United Overseas Land Ltd

… *Respondent*

GROUNDS OF DECISION

Revenue Law — Property tax — Recovery

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

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Kaolim Pte Ltd v United Overseas Land Ltd

[1981] SGCA 7

CA 52/1980
D C D'Cotta J; T Kulasekaram J; Sinnathuray J
15 September 1981

1 This appeal relates to the sale of land and building known as Kaolim Building at No 20 Kramat Lane (the property). The appellants were the owners and the respondents are the purchasers of the property.

2 The owners bought the property in June 1976 for $4,850,000. To complete the purchase, they mortgaged the property to Far Eastern Bank Ltd (the Bank) for an overdraft facility of $3,m. In November 1976 a second mortgage was made to the Bank to increase the facility up to $3,500,000.

3 On 10 March 1980 the Bank, in exercise of its statutory power of sale, offered the property for sale by tender. On 20 March the purchasers` tender was accepted by the Bank. The property has since been conveyed to the purchasers.

4 On 2 April 1980 the Bank received a letter from the Property Tax Div of the Inland Revenue dated 31 March wherein the Comptroller of Property Tax (the Comptroller) said that as the property had been sold, and property tax is a first charge, `kindly let me have immediately your cheque for $521,242.53 in settlement of the arrears of property tax ...` due for about three years. Copies of

this letter were also sent to the solicitors for the owners, purchasers and the Bank.

5 On the same day, 2 April the solicitors for the Bank wrote to the Comptroller with copies to the other solicitors that as the property was sold subject to the condition that the purchaser `shall be deemed to have purchased with full knowledge and notice of all ... charges ...`, the claim for property tax should be made to the purchasers.

6 The purchasers joined issue with the Bank on the interpretation of the abovementioned condition in the conditions of sale in the tender document. They took out a vendor and purchaser summons in which the Bank were the first defendants and the owners the second defendants.

7 The learned Chief Justice who heard the summons granted a declaration in favour of the purchasers that upon payment of the arrears of property tax to the Comptroller at the date of completion in respect of the property, the purchasers are subrogated to the rights of the Comptroller or the owners to the extent of the amount paid in any surplus arising from the proceeds of sale held in trust for the owners.

8 On appeal against the said order, at the hearing before us, it was submitted for the owners that the true and proper construction of the condition is that it was the purchasers who have to pay and discharge the arrears of property tax before the completion of the sale. Another submission was that the learned Chief Justice was wrong in holding that the doctrine of subrogation applied to the facts in this case.

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9 At the conclusion of the hearing, we dismissed the appeal with costs. We now give our reasons.

10 On the first submission the condition we have referred to as in cl 16(c) of the conditions of sale in the tender document which, it is accepted, forms the contract between the Bank and the purchasers. Clause 16(c) provides as follows:

> *The property is sold subject to:*
>
> *(a) ...*
>
> (b) ...
>
> (c) all notices, charges, orders of court, charging orders, caveats and court or other claims affecting the property made or served whether before on or after the date of Sale. The Purchaser shall be deemed to have purchased with full knowledge and notice of all such schemes or proposed schemes, layouts, notices, demands, charges, orders of court, charging orders caveats and court or other claims which shall be complied with and discharged by and at the expense of the Purchaser who shall not be entitled to make or raise any objection or requisition whatsoever in respect thereof.

11 It is clear from the order of the learned Chief Justice that he did not construe cl 16(c). We venture to think the reason is that the appellants were not a party to the contract of sale between the Bank and the respondents. The appellants were strangers to the contract. The appellants therefore cannot rely on cl 16(c), or for that matter on any of the other provisions in the said contract (see ***Scruttons Ltd v Midland Silicones Ltd*** [1962] AC 446).

12 As regards cl 16(c), we are of the view that it is one of the general standard clauses found in a tender document when an owner offers his property for sale. The clause has no application to sale of property by a mortgagee.

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13 Next, as regards subrogation, as was the view of Lord Edmund-Davies in ***Orakpo v Manson Investments*** [1978] AC 95, we too are of the view that there is no reason why in principle subrogation should be limited to the so far recognised categories of cases ie suretyship, bills of exchange, insurance, and administration of trusts and estates. In the same case Lord Diplock at p 234 said that subrogation `is a convenient way of describing, a transfer of rights from one person to another, without assignment or assent of the person from whom the rights are transferred and which takes place by operation of law in a whole variety of widely different circumstances.` And Lord Salmon at p 240 said: `The test as to whether the courts will apply the doctrine of subrogation to the facts of any particular case is entirely empirical. It is, I think, impossible to formulate any narrower principle than that the doctrine will be applied only when the courts are satisfied that reason and justice demand that it should be.`

14 In this case, property tax of $521,242.53 was due and owing on the property by the owners. Had the Bank under the mortgage paid the tax it could deduct the amount from the proceeds of sale. When the Comptroller came to know that the property had been sold by the Bank, he properly looked to the Bank for payment. He could also look for payment from either the owners or purchasers of the property: see The Property Tax Act (Cap 144). The learned Chief Justice therefore directed the purchasers to pay the arrears of property tax so that the property was freed of the charge. He must have concluded that reason and justice demanded that the purchasers be subrogated either to the rights of the Comptroller or the owners who would be entitled to the surplus of the proceeds of sale of the property held in trust for them by the Bank. In practical terms, the purchasers having paid the Comptroller, they would deduct that amount in making payment of the purchase price to the Bank. We see no reason to interfere with the order of the learned Chief Justice.

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15 ***Appeal dismissed.***

D C D'Cotta J
T Kulasekaram J
Sinnathuray J

Robert Hsieh (Boswell, Hsieh & Lim) for the appellants
Chan Sek Keong (Shook Lin & Bok) for the respondents

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