

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1981] SGHC 14

Civil Suit 1332/1981

Between

Kau Nia Enterprise (Pte) Ltd

... Appellant

And

Teck Wah Corp (Pte) Ltd

... Respondent

GROUND OF DECISION

Contract — Remedies — Specific performance; Land — Sale of land —
Contract

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Kau Nia Enterprise (Pte) Ltd v Teck Wah Corp (Pte) Ltd

[1981] SGHC 14

Civil Suit 1332/1981

Lai Kew Chai J

24 July 1981

1 This is an appeal by the defendants from an order of the learned registrar made on 12 May 1981 in which specific performance was ordered under the provision of RSC O 81, r 3 and in which the purchase price for the property was abated by \$144,000.

2 After hearing the appeal, I dismissed it with costs and ordered that completion of the sale and purchase shall take place not later than 21 July 1981. But I set aside the registrar's order of abatement in the sum of \$144,000 and, in lieu thereof, I ordered that an inquiry on the amount of the abatement shall be conducted by the registrar after the encroachments on the property were cleared by the plaintiffs and if the encroachments were not cleared by the defendant on completion of the sale and purchase.

3 I also refused the defendants' application for a stay of execution. It had no merits. The matter of completion has been delayed long enough. The plaintiffs also had to commence the development of the eight-storey factory to avert the second lapsing of the written planning permission which was issued by the competent authority and re-validated up to 18 October 1982.

4 Order 81, r 3 of the Rules of Supreme Court provides:

Unless on the hearing of an application under r 1 either the court dismisses the application or the defendant satisfies the court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the action, the court may give judgment for the plaintiff in the action.

5 Although a court is given the discretion to order specific performance, it must be borne in mind that the proceedings are summary in nature with the consequence that once the order is made it is final, subject to the usual appeals, and the matter does not go formally to trial. The scope of O 81 r 1 is such that it usually involves substantial rights of parties which may have arisen under agreements (whether in writing or not) for dealings in `any property` or in respect of the rescission of such agreements. In that context, r 1 also covers the forfeiture or return of any deposit made under those agreements.

6 Seeing the summary nature of the proceedings and the subject matter within the scope of O 81, it seems to me that an order should be made only if the learned Registrar thinks it is a plain case and ought not therefore be tried: see **Bigg v Boyd** [1971] 1 WLR 913) per Russell LJ at 915 B, C. If it is a matter involving the construction of documents, in which a trial including oral evidence (if any) will not take the matter any further, it seems to me that the Registrar is in as good a position as a trial judge and ought to decide what is in his judgment the true construction. He is able in those circumstances to decide if there is a concluded contract, the essential terms thereof, whether these are evidenced in writing to comply with the Statute of Frauds and whether specific performance ought to be ordered.

7 In my view, the learned registrar was right in ordering specific performance. The defendants did not, and indeed, on the facts could not show how the decision was erroneous.

8 The defendants were the owners of the property known as Lot 441-2 of Mukim XXIV, Singapore (the property). The property has an area of 1067.1 square metres. It was also known as No 90, Lorong 23, Sims Avenue, Singapore. It was slightly encroached upon along the northern and southern boundaries of the property. The property was rectangular in shape. The encroachments did not stand in the way of the erection of the proposed factory on the property.

9 By an option in writing given on 10 June 1980, the defendants for the sum of \$5,000 gave the plaintiffs an option to purchase the property with vacant possession and at the price of \$720,000. Completion of the sale and purchase was to take place on 10 November 1980. The option was exercisable at or before 4pm on 30 July 1980. The mode of acceptance was prescribed. The plaintiffs had to sign at the foot of the option at the portion entitled `acceptance copy` and deliver it duly signed together with the balance of the 10% of the purchase price at or before the time aforesaid.

10 The plaintiffs did not exercise the option in the mode prescribed. Instead, they handed to the defendants and the defendants accepted two cheques aggregating the sum of \$67,000 which together with the option fee amounted to 10% of the purchase price. Although the plaintiffs did not exercise the option in the manner and within the time prescribed, I am satisfied that the defendants had waived these terms and had in truth and in fact accepted the plaintiffs' belated and altered mode of converting the option into a concluded contract.

11 This is conclusively evidenced by the letter dated 31 July 1980 and written by the defendants. In view of the defendants' attempt to cast a different interpretation on the effect of this letter it is reproduced in full, without any amendment to the obvious grammatical errors:

31 July 1980

Messrs

KAU NIA ENTERPRISE PTE LTD

No 478, Serangoon Road

Singapore 0821

Attn: Mr Yeo Chu Teng

Dear Sirs,

Re: The Sale of No 90, Lorong 23, Sims Avenue

*Referring to the above sale, we have receiving from you today
two cheques, inclusive:*

1. \$5,000 cash cheque No

Bank, and,

(2) . \$62,000 post-dated cheque No

Bank

Date: 23 August 1980

*together with the previous \$5,000 option fee, we have received
10% deposit (S`PORE DOLLARS: \$72,000) from you.*

*Since we have confirmed the sale to you, and you have already
exercise the said sale, thus, the above post-dated cheque must
be able to draw on the stated date, in case any delay, we will
charge you accordingly.*

Yours faithfully

TECK WAH CORP PTE LTD

Sgd

Accepted By

Sgd (In Chinese)

MR YEO CHU TENG

(CHEE)

12 The letter acknowledged the receipt of the two cheques, one of which was for \$5,000 and the other for \$62,000 which was post-dated to 23 August

1980. It made reference to the option fee. The defendants `confirmed the sale` to the plaintiffs. By saying `you have already exercise the said sale` they meant or must be taken to mean that the plaintiffs had been deemed by the defendants to have duly exercised the option. The letter even went on to provide for interest to be charged if the post-dated cheque was not duly honoured on presentation. The letter was accepted by the plaintiffs.

13 On 8 September 1980 the plaintiffs requested the defendants to encash the post-dated cheque. The defendants did. Completion of the sale and purchase was delayed. On 6 December 1980 the defendants` solicitors stated that the transfer had been executed by the defendants. They asked for a firm date for the completion.

14 Up to this stage, it is clear that every act of the defendants was in affirmation that the agreement for sale and purchase was concluded and the actions of the defendants were steps taken by them towards the completion of the sale.

15 On 21 January 1981 the defendants took an extraordinary step. They wrote to their mortgagee bank to auction the property. It was calculated to deprive the plaintiffs of the property. It was stated by counsel on both sides that the property was by then about \$1.6m. The defendants should not be allowed to renege on their contract just because the property market was rising.

16 The plaintiffs gave notice of completion. The defendants could not give vacant possession of the property. The encroachments mentioned earlier in this judgment were still there. The plaintiffs insisted on completion notwithstanding the encroachments. As evidenced by the letter dated 3 April 1981 and written by the plaintiffs` solicitors, both parties agreed price to meet the cost and

expense of removing the encroachments. No agreement was reached on the amount of the abatement.

17 As the defendants failed to complete the sale notwithstanding repeated notices from the plaintiffs, these proceedings were commenced from specific performance and for an appropriate abatement of the price in view of the encroachments.

18 On behalf of the defendants, it was argued that the option, not having been exercised in the mode and within the time prescribed, had lapsed. It was also argued that the letter of 31 July 1980 was not a sufficient memorandum, as it allegedly did not contain the essential terms. The first contention is not consistent with the plain words and tenor of the defendants' letter of 31 July 1980, the effect of which I had already dealt with. It is so clear and unambiguous. This is one case where happily the contemporaneous documents are such that they conclusively demonstrate the conclusion of a contract in writing. Oral evidence to the contrary, even if admissible, is not even asserted on behalf of the defendants.

19 The defendants sought to rely on *Holwell Securities Ltd v Hughes* [1973] 2 All ER 476. It was decided in that case that the mere posting of the notice purporting to exercise the option was contrary to the mode prescribed by agreement and was not a valid exercise of the option. The case is not applicable here. We have a vastly different situation.

20 Even if the letter of 31 July 1980 was completely unrelated to the option (which is not my finding), it does contain within it sufficient terms to satisfy the requirements of the Statute of frauds. The defendants also fail on this contention.

21 For these reasons, I dismissed the appeal and ordered an enquiry on the amount of the abatement of the purchase price.

22 ***Appeal dismissed.***

Lai Kew Chai J

Ng Liang Pho (Ng Liang Poh & Co) for the appellant
Tan Geok Ser (Chung & Co) for the respondent
