IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1985] SGHC 33

OS 732/1984

Between

Wan Li Development Pte Ltd

… *Plaintiff*

And

Kai-Fa Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Land — Sale of land — Conditions of sale

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

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Wan Li Development Pte Ltd v Kai-Fa Pte Ltd

[1985] SGHC 33

OS 732/1984
A P Rajah J
29 October 1985

1 Pursuant to an order of court in Originating Summons No 296 of 1980, dated 7 July 1980, the vendors sold the land known as Lot 1124 of Mukim XXVIII (the property), the subject matter of the present application, to Peaksville Estate (Phase 11) Development Pte Ltd (Peaksville), a Singapore company within the meaning of the Residential Property Act 1976, without vacant possession for the sum of $330,000. By an indenture dated 14 October 1980 (PB1-4), the property was conveyed by the vendors to Peaksville `to hold the same unto the purchasers in fee simple`.

2 On November 1980 Peaksville, the legal owner of the property, entered into a sale and purchase agreement with one Wong Ah Ann, a Singapore citizen, to sell the property to him with vacant possession for the sum of $4,300,000. The increase of $4m in the purchase price reflects I take it the cost to Peaksville of getting rid of the several occupants of the property.

3 On November 1980 the said Wong Ah Ann in turn gave an option to purchase (PB8-13) to the defendants herein to purchase the property for the sum of $6,300,000, the title being in order and free from encumbrances and with

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

vacant possession. The said option to purchase was duly exercised by the defendants herein on 21 November 1980. The increase of $2m, the purchase price reflects I suppose the $2m cool profit that the said Wong Ah Ann was making for doing nothing.

4 On 8 November 1982 the defendants herein in turn entered into a sale and purchase agreement which incorporated `The Revised Singapore Conditions of Sale` (the sale agreement) with the plaintiffs herein whereby the defendants agreed to sell and the purchasers agreed to buy the property at the price of $9,900,000 subject, inter alia, to the following terms and conditions:

> (i) the purchase of the property to be subject to an in-principle approval being obtained by the plaintiffs to develop thereon a condominium project;
>
> (ii) vacant possession of the property to be delivered on completion;
>
> (iii) the date of completion to be three months from the date of the plaintiffs obtaining the in-principle approval by the Competent Authority or in the event of refusal of the in-principle approval by the Competent Authority and the plaintiffs electing to complete, in spite of such refusal, then the date of completion to be two months from the date of such refusal;
>
> (iv) the property to be sold subject to satisfactory replies to the requisitions to local authorities being received by the purchasers failing which the agreement to become null and void and the purchasers to be entitled to a refund of all monies paid.

5 Here again the increase of $3.6m in the purchase price reflects the profits the defendants were to make on the transaction.

6 Upon the execution of the sale agreement the plaintiffs paid 10% of the purchase price to the defendant`s solicitors to be held by them as stakeholders

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

pending confirmation to the purchasers` solicitors that replies to requisitions sent to various government departments were in order.

7 On 28 December 1982 (PB24) the plaintiffs received from the Competent Authority notice of refusal to develop the property for a condominium housing development comprising:

(i) three 19-storey blocks of 324 flats and one shop, and
(ii) two 4-storey blocks of 32 flats.

8 On 3 January 1983 (PA26), notwithstanding such refusal the plaintiffs elected under the sale agreement to proceed with their purchase and completion was therefore to take place within two months of 28 December 1982 that is to say on or before 28 February 1983, when vacant possession was to be given in terms of the sale agreement. On 9 February 1983 (PB28) the plaintiffs` solicitors wrote to the defendants` solicitors requesting, inter alia, completion account and confirmation that vacant possession would be given by 28 February 1983. In the event, completion of the purchase did not take place on or before 28 February 1983 as it was not possible for the defendants to give vacant possession for the reason that the property had not been freed of its occupants.

9 Between March 1983 and 4 June 1984, correspondence passed between the two firms of solicitors on the question of the vendors giving vacant possession of the property on completion. During this period of about 15 months the defendants from time to time made promises to the plaintiffs to have steps taken to clear all the occupiers from the property and deliver vacant possession thereof to the plaintiffs. However, none of the numerous promises materialized and it is quite clear from the affidavits filed herein and the oral evidence in Court that there are still a number of occupiers on the property, two of whom have

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

been on it for 40 years or so, which means that they are protected tenants under the Control of Rent Act (Cap 266) and so have a statute conferred interest in the land being sold.

10 The plaintiffs after the rejection of their in-principle application on 28 December 1983 resubmitted altered plans on guidelines suggested by the Competent Authority for the development of the property and this was approved on 16 July 1983 (Bundle of Pleadings, p 52) subject to a number of terms and conditions and in particular to the following:

> (a) that the occupiers of the property had to be cleared within one (1) year from 16 July 1983, the date of approval;
>
> (b) the payment of a development charge.

11 On 23 April 1984 the Ministry of National Development called upon the plaintiffs either to pay development charge within one month from date thereof or arrange with the Development and Building Control Division for instalment payments.

12 Against this background, on 4 June 1984 the plaintiffs gave the vendors 21 days` notice to complete the purchase of the property (PB63). The notice reads:

> *Re: Lot 1124 of Mukim XXVIII Land at Pari Dedap*
>
> *We refer to the various letters we have written to you concerning the considerable long delay in completion of the above matter. So far, we have received no firm indication from you as to the date fixed for completion.*

13 We are instructed by our clients to and do hereby give you twenty-one (21) days from the date hereof to complete the sale herein (time being the essence of the contract) in accordance with the provisions of the Sale and

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

Purchase Agreement dated 8 November 1982 with vacant possession to be given on completion.

14 In the event that your clients are unable to complete the matter (with vacant possession to be given on completion) on the due date, our clients will have no choice but to rescind the contract and to demand for the return of all moneys paid together with interest, damages, losses, whatsoever incurred by our clients arising from the breach of contract by your clients.

Yours faithfully

Sd Goh & Hin

cc clients

15 On June 1984 the plaintiffs` solicitors wrote to the defendants` solicitors requesting the return of the 10% deposit (PA67) but to date the defendants have refused and still refuse to refund the deposit.

16 It is in these circumstances that the plaintiffs (purchasers) have taken out this originating summons seeking :

(1) A declaration that they have effectively rescinded the sale.

(2) That the defendants be ordered to repay to them the deposit of the sum of $990,000 together with interest thereon.

(3) That the defendants be ordered to pay to them the sum of $29,348.95, being the costs of investigating the defendants` title and other expenses incurred by them in or about the purchase of the property.

(4) Costs.

(5) A declaration that they are entitled to a lien on the property for the said deposit and interest thereon, the said sum of $29,348.95 and the said costs.

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

17 Counsel for the defendants submitted that on the facts and law it would not be equitable for the plaintiffs to have an order for rescission as of now. He contended that the sale agreement (which, as previously stated, had incorporated into it the Revised Singapore Conditions of Sale) has no provision for rescission by the purchasers and that under it the plaintiffs could only ask for damages in lieu of rescission, which they have not done. Counsel suggested that the court could make a contingent order entitling the plaintiffs to rescind the sale agreement, if within six months of the said order the defendants were to fail to clear the property of occupiers and/or tenants thereon.

18 In setting out the law relevant to the instant case I can do no better than quote from the speech of Lord Parker of Waddington in the House of Lords case of ***Stickney v Keeble & Anor*** [1915] AC 386 (pp 415-6) to which case I will advert later.

> *My Lords, in a contract for the sale and purchase of real estate, the time fixed by the parties for completion has at law always been regarded as essential. In other words, courts of law have always held the parties to their bargain in this respect, with the result that if the vendor is unable to make a title by the day fixed for completion, the purchaser can treat the contract as at an end and recover his deposit with interest and the costs of investigating the title.*

19 In such cases, however, equity having a concurrent jurisdiction did not look upon the stipulation as to time in precisely the same light. Where it could do so without injustice to the contracting parties it decreed specific performance notwithstanding failure to observe the time fixed by the contract for completion, and as an incident of specific performance relieved the party in default by restraining proceedings at law based on such failure.

20 This is really all that is meant by and involved in the maxim that in equity the time fixed for completion is not of the essence of the contract, but

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

this maxim never had any application to cases in which the stipulation as to time could not be disregarded without injustice to the parties, when, for example, the parties, for reasons best known to themselves, had stipulated that the time fixed should be essential, or where there was something in the nature of the property or the surrounding circumstances which would render it inequitable to treat it as a non-essential term of the contract.

21 It should be observed, too, that it was only for the purpose of granting specific performance that equity in this class of case interfered with the remedy at law. A vendor who had put it out of his own power to complete the contract, or had by his conduct lost the right to specific performance, had no equity to restrain proceedings at law based on the non-observance of the stipulation as to time.

22 In the case of ***Cook v Taylor*** [1942] 1 Ch 349:

> *A vendor entered into a written agreement (which incorporated the Law Society`s Conditions of Sale 1934) with a purchaser for the sale to him of a freehold house. The agreement contained no reference to vacant possession, but particulars containing the statement `vacant possession on completion` had been delivered by the vendor`s agents to the purchaser. Before the date fixed for completion the house was requisitioned by the government under reg 51(1) of the Defence (General) Regulations 1939:*
>
> *Held, that the particulars were used in connection with the contract and were incorporated therein by the Law Society`s conditions of sale and therefore there was a contract expressly to sell the property with vacant possession.*
>
> *Held, also, that, apart from this, there was according to the general law an implication that the property was to be sold with vacant possession; that, from the moment when the requisition notice was served on the vendor, he was not in a position to give vacant possession; and that he was not entitled to specific performance of the contract.*

23 Simonds J who heard the case after having held (i) that on the particular facts of the case there was expressly a contract to buy and sell with vacant possession and (ii) that as a matter of law, on a contract of this character, there is the implied term that vacant possession shall be given on completion, then went on to ask the question `What, then, is the result of this incident?` and answered it by saying (p 352 para 2):

> *I will assume that the vendor was, apart, from the question of possession, ready to complete on the day fixed for completion. It has been urged that although in the ordinary sense he was bound to give actual possession that which took place was not a breach by the plaintiff of his obligation in that regard. In the first place it was said that the requisition notice and what took place before 25 February, the date fixed for completion, did not preclude actual possession from being given. I do not take that view. It seems to me that, from the moment when the requisitioning authority served the notice and took the keys from the vendor, the vendor was not in a position to allow the purchaser to enter on the property. It does not appear to me to be material whether it was before or after 25 February that occupation was actually taken by those persons who ultimately became the occupants.*

24 The aforementioned case of ***Stickney v Keeble & Anor*** decided that:

> *Where in a contract for the sale of land the time fixed for completion is not made of the essence of the contract, but the vendor has been guilty of unnecessary delay, the purchaser may serve upon the vendor a notice limiting a time at the expiration of which he will treat the contract as at an end, and in determining the reasonableness of the time so limited the court will consider not merely what remains to be done at the date of the notice, but all the circumstances of the case, including the previous delay of the vendor and the attitude of the purchaser in relation thereto.*

25 The facts in that case were that:

> *In June 1911, the plaintiff, a farmer, agreed to purchase from the defendants agricultural land for occupation as a farm and paid a deposit on the purchase money. The date fixed for completion was 11 October. At the date of the contract the defendants had no legal title to the land, it being part of a larger estate which the defendants had agreed to purchase as a speculation and which*

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

> *they resold in lots to 23 purchasers. The defendants delayed completion of the plaintiff`s contract in order to complete their title and to procure the simultaneous execution of the conveyance to the sub-purchasers. On 30 January 1912, the plaintiff, who had repeatedly pressed for completion, gave notice to the defendants, requiring them to complete in a fortnight, and, on their failure to complete within the time, brought an action for the return of his deposit. At the date of the notice the plaintiff`s conveyance awaited the approval of certain mortgagees on the estate and required execution by eight parties residing in various parts of England.*
>
> *Held, that there had been unnecessary delay in completion for which the defendants were responsible, and that in the circumstances the time limited by the notice was sufficient.*

26 On these facts the House of Lords held that there had been unnecessary delay in completion for which the defendants were responsible, and that in the circumstances the time limited by the notice was sufficient.

27 This originating summons is taken out by the plaintiffs (purchasers) against the defendants (vendors) for the return of the deposit and other relief based, in my view, not upon the mere failure by the defendants (vendors) to observe the stipulation as to the date of completion but really upon the failure of the defendants to fulfil the condition of giving vacant possession to the plaintiffs (purchasers) of the property at completion. In the instant case the situation is that the vendors for their part cannot bring an action for specific performance of the sale agreement against the purchasers for the reason that they were themselves not able ready and willing to complete. There are still tenants on the property, two of whom are protected tenants under the Control of Rent Act (affidavit of Freddie Chong, exh FCI and the evidence of Chay Kwok Kee, DW2), and none of these tenants are in contractual relationship with the defendants (vendors), who in reality are not legal owners of the property, but are merely speculative purchasers who have no means at their disposal to get rid of the occupants. As to when Peaksville will be able to evict their tenants

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

from the property is a highly speculative proposition and in view of this it would in my judgment be inequitable to ask the plaintiffs, who are property developers, and who, to the knowledge of the defendants bought the property for development on plans to be approved by the Competent Authority and which plans are normally subject to a time performance, to wait indefinitely for vacant possession in the hope that Peaksville would one day be able to rid the property of its tenants either by agreement or through process of law.

28 In my view, in the circumstances of this case, the defendants are in no position either in law or in equity to resist the claim of the plaintiffs for a return of the deposit. There will therefore be an order in terms on prayers 1, 2 and 4. On prayer 2 interest is to run from 9 December 1982 to date of judgment at 8%.

29 On prayer 3 by consent the sum is fixed at $20,000.

30 On prayer 5 the plaintiffs are not proceeding with it.

31 ***Order accordingly***

A P Rajah J

Shriniwas Rai and Anna Png (Hin, Rai & Tan) for the plaintiffs
Kirpal Singh (Kirpal Singh & Co) for the defendants

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