IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1989] SGHC 5

OS 1151/1988

Between

Societe Generale

… *Plaintiff*

And

Good Property Land
Development Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Land — Caveats; Land — Caveats

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

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Societe Generale v Good Property Land Development Pte Ltd

[1989] SGHC 5

OS 1151/1988
Chan Sek Keong J
09 January 1989

1 Cur Adv Vult

2 This is an application by the plaintiffs, for an order to remove caveat no CV/72118A lodged by the defendants against the land comprised in Lots 399 and 403 of TS 19 and held under Certificate of Title in Vol 326 Fol. Standing on the land is a hotel known as Le Meridien Singapore which is managed by a French company called Meridien Straits Pte Ltd under the terms of a management agreement which expires on 31 December 1994.

3 The defendants are the registered proprietors of the said property and the plaintiffs are the equitable mortgagees thereof by virtue of an assignment of a building agreement dated 3 May 1983 made by the defendants in favour of the plaintiffs to secure the repayment of all moneys covenanted to be paid by the defendants under a loan agreement dated 3 May 1983 and a supplemental agreement dated 12 August 1987 (hereinafter collectively called the loan agreement). The plaintiffs acted in two capacities under the loan agreement, one as agent for the syndicate of banks as named therein and the other as a member of the syndicate in providing a multi-currency loan facility of up to

US$40,000,000 to the defendants to purchase the said property from the Urban Redevelopment Authority (URA) and to erect the said hotel.

4 The URA has currently a first charge on the land as security for the unpaid land premium of about $34m. The plaintiffs` security ranks after that of URA.

5 On 18 December 1987, the plaintiffs, acting as agent of the syndicate banks, (1) notified the defendants that the defendants had defaulted in the payment of amounts due and payable in accordance with the loan agreement, including instalments of principal, the unpaid amounts referred to in the supplemental agreement and accrued interest referred to in the plaintiffs` earlier letters dated 2 October 1987, 22 October 1987 and 12 November 1987, and (2) declared the loan to be immediately due and payable pursuant to cl 15.1 of the principal loan agreement. The amounts set out in this declaration of default were US$60,299,207.69 and SWF$5,065,421.65 for principal and accrued interest and SWF$1,354,542.46 for default interest.

6 The defendants have not disputed their default but they have disputed the amount of principal and interest due and payable to the lenders.

7 On 25 March 1988, the plaintiffs also appointed receivers and managers to the undertaking and all assets of the defendants pursuant to the terms of a debenture issued by the defendants in favour of the plaintiffs as part of the security arrangements for the loan facility. From May to September 1988, the plaintiffs began to receive and collect inquiries and price indications for the said property from interested purchasers. According to the third affidavit of Charles Pierron, the deputy general manager of the plaintiffs, the highest price indications received up to September 1988 were around S$140m and it was also

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in that month that the plaintiffs and/or the receivers and managers commenced serious negotiations with prospective purchasers.

8 The same affidavit also disclosed the following:

> (a) the receivers and managers had obtained two valuations of the property, the first for $113,700,000 on 11 April 1988 and the second for $147,600,000 on 12 October 1988;
>
> (b) in September and October 1988, the plaintiffs had many discussions with prospective purchasers who were prepared to negotiate a private treaty sale but not to bid at a public tender;
>
> (c) negotiations were conducted with the following parties:
>
> (i) party A who agreed to buy the said property with the management agreement at $184m but who failed to show its creditworthiness and to provide the requisite deposit;
>
> (ii) party B who indicated a price of $70m and who asked for the draft contract;
>
> (iii) party C who indicated a price of about $180m but eventually was only willing to offer about $173.5m;
>
> (iv) Forbin who before 4 November 1988 indicated a price of $150m but after that date indicated a best price of $180m without the management contract on 11 November 1988;
>
> (v) HPL who had initially indicated a price of $140m and just before 4 November 1988 $168m and an offer of about $173m on 7 November 1988. The property was sold to them with the management contract on 12 November 1988 at $180.2m.

9 The defendants have alleged that the plaintiffs had never kept them informed about these negotiations or that they were about to sell the property. However, on or about 3 October 1988, the defendants received a letter from the plaintiffs the material portions of which read:

> *We refer to the mortgage of the property in our favour … we would inform you that we have decided to exercise our mortgagee`s right and power of sale in respect of the property, by way of tender. In this connection, if you are aware of any bona fide party which may be interested in making a tender to purchase the*

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> *property (excluding units already sold as at the date hereof and subject to the rights of tenants under tenancy agreements existing as at the date hereof), please let us have their names, addresses and contact numbers, to reach our address stated above not later than seven days from the date of this letter, so that we may also invite them to tender for the property (as so excluded and so subject).*

10 Subject to our right at any time to change the date the tender will open, we would inform you that we expect that the tender will open around 10 October 1988.

11 Please also be notified and directed on completion of the tender sale, to deliver possession of the property (as so excluded and so subject) to the purchaser thereof (as to whose identity we will notify you again when the purchaser`s tender has been accepted), on terms that if such possession is not so delivered we may exercise all or any of our rights in relation thereto, including (without limitation) our rights to take possession and deliver the same accordingly.

12 A week later on 10 October 1988, the plaintiffs again wrote to the defendants as follows:

> *We refer to our previous letter to you dated 3 October 1988 ... informing you of our intention to exercise our right and power of sale of the property by way of tender. At the time of writing this letter, we have not received from you any names of potential purchasers. In any case, in view of the fact that we have just received from a party an indication of a purchase price that party is prepared to offer (which is so far the highest price indicated to us), we are proceeding with negotiations with and seriously considering effecting the sale to, that party by way of private treaty.*
>
> *Without prejudice to:*
>
> (a) the notices we have given you in relation to payment by you of all amounts (including principal and interest) due from you to the banks in connection with the loan agreement dated 3 May 1983 ...

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> (b) our rights at any time to enforce against you or exercise any power, rights, title or interest in connection with the said loan agreement and security documents as therein defined,
>
> *we would ask you to let us have the highest amount of the purchase price any bona fide party of which you are aware is prepared to offer for the property as well as their respective names, addresses and contact numbers not later than close of business in Singapore on Wednesday, 12 October 1988. Please also be informed that we are hoping to finalize an appropriate sale contract with an appropriate party prepared to pay a deposit equal to 10% of the purchase price, within seven days from Wednesday, 12 October 1988 ...*

13 On 18 October 1988, an article appeared in ***The Straits Times*** which reported the receivers and managers as having said that they were negotiating with certain parties for the sale of the property and that the price was about $180m. This statement, according to the article, contradicted a statement from HPL which was reported in ***The Business Times*** that HPL was close to signing a sale and purchase agreement. The article also reported the receivers and managers to have stated that they had not gone out for any bids and tenders and (the reporter understood) that the syndicate banks might fall back on a closed tender should negotiations fall through. The Far East Organization was also named as an interested party in the article.

14 On 18 October 1988, the defendants replied to the plaintiffs` letter of 10 October 1988 as follows:

> *Your letter of 10 October 1988 gives us extremely short notice to arrange for potential bona fide buyers and we certainly therefore must reserve our rights on any actions or decisions at your end done in haste and which adversely affects our interest.*

15 We place on record that unless our prior written consent is obtained, we do not agree to any sale. We reserve all our rights.

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16 On 20 October 1988 the plaintiffs again wrote to the defendants as follows:

> *We refer to your letter dated 18 October 1988.*

17 In spite of our previous communications with you, including our letters to you dated 3 and 10 October 1988, you have not responded with any of the relevant information. Accordingly, we are proceeding, as we are legally entitled to, with the exercise of our rights and power of sale, without necessarily any further reference to you.

18 On 7 November 1988, the defendants wrote to the receivers and managers a letter which I shall quote in full as it showed that the defendants were fully aware of the attempts by the plaintiffs and/or the receivers and managers to sell the property. The said letter reads:

> *We refer to your appointment as receivers and managers which is not admitted. Since the date of appointment, there have been several reports in newspapers on offers to purchase the hotel, all of which have not been accepted by you. We need hardly remind you of the duties you owe to us in law to act with reasonable care in realizing the property and at the highest price, Without prejudice to any remedies we may have against you, we seek from you information with regard to:*
>
> (a) the various offers received by you up to date;
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> (b) the value of the property that you are placing on the property; and
>
> (c) whether you intend to proceed with open tender.
>
> *The information sought is to enable us to obtain offers ourselves from parties who may be interested in purchasing the property so that we may exercise our rights, amongst others, under s 19 of the Conveyancing and Law of Property Act and in equity.*

19 The defendants on 9 November 1988 lodged a caveat against the said property prohibiting the registration of any instrument affecting the property

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without the consent of the defendants. (I interpose here to add that the escrow mortgage delivered as part of the security documents was dated 12 October 1988 and provisionally registered with the Registry of Titles as No 1/35373E on 18 November 1988, final registration has been held up by the defendants` caveat.)

20 On or about 4 November 1988, the plaintiffs` agents, Arthur Anderson & Associate Pte (AAAP) put up the property for tender by clients of selected real estate brokers, investment houses, hotel owners and operators in Singapore and Hong Kong. The tender document containing the terms and conditions of the sale of the property were sent to 43 of them. One of the terms of the tender allowed the plaintiffs to withdraw the tender on or before 24 November 1988 unconditionally.

21 At the same time that the property was being offered for sale by closed tender, the plaintiffs and/or their agents were also negotiating with two parties, viz HPL and Richard Ellis Pte Ltd on behalf of Forbin Ltd, a Hong Kong subsidiary of the Far East Organization Group. This eventually resulted in a sale to HPL at the price of $180.2m.

22 There is no documentary evidence that the plaintiffs immediately or shortly thereafter informed the defendants of the sale to HPL. The defendants have alleged they only became aware the property had been sold when they read an announcement made by HPL dated 14 November 1988 to such effect.

23 On 15 November 1988, the plaintiffs discovered the defendants` caveat. After trying unsuccessfully to persuade the defendants to remove the caveat, the plaintiffs, on 23 November 1988, commenced these proceedings (1) to remove the defendants` caveat; (2) to restrain the defendants from lodging another

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caveat against the property; (3) damages to be assessed against the defendants; and (4) costs.

24 **Onus of proof**

25 A procedural point arose as to which party had the onus of satisfying the court that the defendants` caveat ought to remain on or be removed from the land register, as the case may be. Counsel for the defendants submitted that the onus was on the plaintiffs. He referred to the Privy Council decision of ***Eng Mee Yong & Ors v Letchumanani*** [1979] 2 MLJ 212 where Lord Diplock said at p 215:

> *In their Lordships` view, a distinction must be drawn between cases where the applicant is the registered proprietor of the land (ie the caveatee) and cases where the applicant is some other person who claims a right to an interest in it. In the former case the caveatee can rely upon his registered title as prima facie evidence of his unfettered right to deal with the land as he pleases; it is for the caveator to satisfy the court that there are sufficient grounds in fact and law for continuing in force a caveat which prevents him from doing so.*

26 In my view, and I so held, the principle laid down by the Privy Council had no application to the present case. Here, the plaintiffs were the lawful assignees of the defendants` right, title and interest in the said property, subject to the defendants` equity of redemption. The defendants no longer had an unfettered right to deal with the property except in accordance with the terms of the security or to redeem the mortgage. Upon any default by the defendants, the plaintiffs as mortgagees would have a superior right to that of the defendants` as mortgagors to deal with the property. The defendants were in default.

27 They lodged their caveat with a view to preventing the plaintiffs from exercising their power of sale which they alleged had not arisen in spite of the default. In these circumstances, the defendants must satisfy the court that the

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power of sale has not arisen and that therefore they were justified in lodging their caveat.

28 In relation to the nature of the onus that lies upon the defendants in this case, I can do no better than to refer to the following passages on the judgment of Lord Diplock in ***Eng Mee Yong***

29 `s case at p 215:

> *So far their Lordships have deliberately refrained from speaking of `onus of proof`. It is an expression which, if it is used in relation to proceedings which are interlocutory in their legal character, is liable to lead to confusion. Their Lordships have already noted the analogy between the effect of a caveat and that of an interlocutory injunction obtained by the plaintiff in an action for specific performance of a contract for the sale of land restraining the vendor in whom the legal title is vested from entering into any disposition of the land pending the trial of the action. The court`s power to grant an interlocutory injunction in such an action is discretionary. It may be granted in all cases in which it appears to the court to be just and convenient to do so. Similarly in s 327 it is provided that `the court ... may make such order on the application as it may think just`. The guiding principle in granting an interlocutory injunction is the balance of convenience: there is no requirement that before an interlocutory injunction is granted that the plaintiff should satisfy the court that there is a `probability`, a `prima facie case` or a `strong prima facie case` that if the action goes to trial he will succeed; but before any question of balance of convenience arise the party seeking the injunction must satisfy the court that his claim is neither frivolous nor vexatious; in other words that the evidence before the court discloses that there is a serious question to be tried:* ***American Cyanamid v Ethicon Ltd*** *[1975] AC 396. Although the approach laid down by the Privy Council was in reference to s 327 of the Malaysian Land Code, I am of the view it is equally applicable to s 111(1) of the Land Titles Act which also provides that `... the court may make search orders in the premises ... as seems just`. Accordingly, the defendants must therefore satisfy the court: (1) that the claim on which their caveat is based does raise a serious question to be tried; and (2) on the balance of convenience, it would be better to allow the caveat to remain until the trial of the action.*

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30 I now turn to the claim on which the defendants` caveat is based. The grounds of claim as set out in the caveat refer to four grounds relied upon by the defendants to prohibit the registration of any instrument against the property, ie (1) the sale of the property required the consent of the defendants, which has not been given; (2) likewise, it required an order of court which had not been obtained; (3) the receivers and managers` appointment was invalid and any consent by them to any sale would also be invalid and in any case, they had not acted in the best interests of the defendants; and (4) the plaintiffs` power of sale had not arisen. In these proceedings, the defendants have only relied on the last ground. They have also introduced an additional ground which could not have been in the caveat as it arose only in connection with the manner in which the plaintiffs had exercised their power of sale. Whether or not this is a ground on which the defendants may rely on in these proceedings will be considered later. The other grounds stated in the caveat were plainly insupportable.

31 I will now consider the substantive issues.

32 **Caveatable interest**

33 The first is whether the defendants have a caveatable interest to enable them to lodge their caveat. Section 104(1) of the Land Titles Act (Cap 157, 1985 Ed) (`the LTA`) provides that `any person claiming an interest in land ... may lodge ... a caveat in the prescribed form`. It was contended by counsel for the plaintiffs that where the caveator is the registered proprietor, the words `interest in land` refer to his interest distinct from that as registered proprietor. Counsel relied on the decision of ***Re an Application by Haupiri Courts (No 2)*** [1969] NZLR 353 where Richmond J held that where the registered proprietor alleges a series of invalid acts by a registered mortgagee which may result in the registered proprietor being deprived of his existing interest in the land, he is

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claiming the land adversely to the mortgagee but is so doing by virtue of his existing ownership and not by some new or distinct interest in the land brought into existence by the acts of the mortgagee and that, in those circumstances, the registered proprietor is not entitled to lodge a caveat to prevent the mortgagee from so proceeding.

34 In ***Haupiri,*** s 137(a) of the Land Transfer Act (LTA) allowed a claimant to lodge a caveat where he claims an interest in land `by virtue of any unregistered agreement or other instrument or transmission, or of any trust express or implied, or otherwise howsoever`. Section 104(1) of the LTA contains no such words of restriction. A more relevant decision is that of ***Barry v Heider*** (1914) 19 CLR 197 where the High Court of Australia held that a proprietor entitled to lodge a caveat against his own land (no objection being taken on this point) by virtue of s 72 of the Real Property Act 1900 (NSW) which provided that any person claiming any estate or interest `in land under the Act under any unregistered instrument` could by caveat forbid the registration of any interest affecting such land, estate or interest.

35 In my view, s 104(1) of the LTA is substantially the same in effect as the Australian provision. It is apt to confer a right on a registered proprietor to lodge a caveat against his own land. Even if he is a mortgagor, he still has an equity of redemption which entitles him to lodge a caveat to prevent that equity from being improperly destroyed by any act of the mortgagee.

36 **Power of sale**

37 The next issue is whether the plaintiffs` power of sale under the security documents has arisen.

38 The defendants contended that the plaintiffs` power of sale has not arisen at the date of the sale of the property to HPL as the plaintiffs` declaration of default dated 18 December 1987 did not comply with the requirements of cl 5(q) of the plaintiffs` Memorandum of Mortgage Read MM/152 which formed part of the mortgage of the property. Clause 5(q) provides as follows:

> *For the purpose of the power of sale and other powers implied by the Conveyancing and Law of Property Act the whole of the moneys convenanted to be paid and secured shall be deemed to have become due immediately after the execution of the mortgage and the said power of sale shall be exercisable after fourteen (14) days` previous notice requiring payment in lieu of and in substitution for the three (3) months` notice required by the Conveyancing and Law of Property Act and such notice requiring payment shall be in writing and the provisions of para (a) hereof shall apply thereto.*

39 Counsel for the defendants contended that although s 25(a) of the Conveyancing and Law of Property Act (the CLPA) enables the plaintiffs to exercise their power of sale after the defendants have defaulted in payment for three months after service of the notice requiring payment, cl 5(q) has been substituted in lieu of s 25(a) and that that clause requires the plaintiffs to give not less than 14 days prior written notice to the defendants to make payment before the plaintiffs may exercise their power of sale. As the declaration of default fails to give such prior notice, the power of sale did not arise. It was further contended that if there was any ambiguity in cl 5(q), the contra proferentem rule should be applied against the plaintiffs. It is certainly arguable that cl 5(q) did not merely, as contended by counsel for the plaintiffs, substitute 14 days for three months in s 25(a). At least, cl 5(q) uses more words than would be necessary to substitute `14 days` for `three months`. However, although this point may raise a triable issue, it does not assist the defendants in this application proceeding as the power of sale did arise by virtue of s 25(b) of the CLPA.

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40 Section 25(b) provides that the power of sale is not exercisable unless some interest under the mortgage is in arrears and unpaid for one month after becoming due. The defendants are unable to dispute that some interest was in arrears for longer than one month prior to the plaintiffs exercising their power of sale on 12 November 1988. Further, I find no merit in the arguments of counsel for the defendants that (1) the interest should not be treated as being in arrears as the defendants have a counterclaim of $32 million against the plaintiffs for breach of duty in relation to the plaintiffs` failure to swap certain currencies at the request of the defendants, and (2) section 25 of the CLPA has no application on the ground that the deed of assignment is not a deed in that it had not been executed by the plaintiffs.

41 In my view therefore, although the defendants have an interest in the property for the purpose of lodging a caveat, they have not established a valid ground for lodging or maintaining it against the plaintiffs. Accordingly, the caveat ought to be removed. In the course of his submission counsel for the defendants contended that if the court found that the grounds of claim did not support the caveat, then the court should amend it to include the ground that the plaintiffs had failed to exercise the power of sale properly. However, no formal application was made nor was a form of the amendment produced to the court.

42 In any event, I do not think that the continuance of the caveat will resolve the most important issue in this matter, ie whether the sale to HPL was improper and if so whether its completion ought to be restrained until trial.

43 On the second day of hearing of this application, the defendants had filed a counterclaim by way of summons-in-chambers for the following reliefs: (1) the dismissal of the plaintiffs` application; (2) a declaration that the sale by the plaintiffs to HPL was not a proper bona fide exercise of the mortgagee`s power

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of sale and that the sale be set aside; (3) an injunction restraining the plaintiffs from completing the sale; (4) such other relief as the court deems fit. However, having filed the counterclaim, counsel made no application for interlocutory injunction; he sought what was in effect a final declaration and a permanent injunction. In these circumstances, I did not think that it would be desirable for the court to consider the allegations raised by counsel for the defendants on whether the power of sale was properly exercised by the plaintiffs which were many. Because of the way these allegations were made the plaintiffs were required to meet them at short notice.

44 In my view of the nature of these allegations and also the serious consequences to the plaintiffs as well as HPL of the court granting an injunction in the form sought by the defendants, I did not think this was a satisfactory basis on which the court should proceed. Accordingly, I have decided that all these procedural irregularities should be put right first before the application could be entertained.

45 For the reasons given above, I allowed the plaintiffs` application in terms of prayers (1) and (2) without prejudice to the defendants` right to apply for an interlocutory injunction either under the counterclaim filed in this application or in a fresh action. The defendants elected to commence a fresh action and accordingly the counterclaim was deemed to have been discontinued. The defendants will pay the costs of this application except the getting-up fee on the issue as to whether the defendants are entitled to an interlocutory injunction. The costs in relation to this issue would be dealt with as part of the fresh proceedings.

46 Application allowed.

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Chan Sek Keong J

Molly Lim (Wong Yoong Tan & Molly Lim) for the plaintiffs
Manjit Singh (Manjit Darshan & Partners) for the defendants

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