

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1991] SGHC 128

Originating Summons No 377 of 1991

Between

Elle Holdings Pte Ltd

... Plaintiff

And

Mabel Lim
Quek Hiong How

... Defendant

GROUND OF DECISION

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Elle Holdings Pte Ltd v Mabel Lim and Another

[1991] SGHC 128

Originating Summons No 377 of 1991
S Rajendran J
16 September 1991

1 **Judgment:**

2 Coram: S Rajendran, J.

3 **GROUND OF JUDGMENT**

4 There were two issues for determination in this case. The first was whether as a result of an exchange of letters between the solicitors for the parties there was a valid and enforceable contract concluded between the

5 Plaintiffs and the 1st Defendant for the sale of a property known as 19 Fifth Avenue, Singapore. The second issue was whether a Deed of Assignment made between the 1st Defendant and 2nd Defendant was valid.

6 On 6.12.1990 the solicitors of the 1st Defendant wrote to the solicitors of the Plaintiffs as follows:-

7 " Dear Sirs,

8 RE: 19 FIFTH AVENUE SINGAPORE

9 We act for an interested purchaser (subject to contract) of the above property, Mdm Mabel Lim, Singapore Citizen, NRIC 0750582/E.

10 We are instructed that the purchase price of the property is \$55 per sq.ft. without vacant possession.

11 We understand you act for the owners of the said property and shall be glad if you will let us have the draft Option for the purchase if you are similarly instructed in the sale and purchase.

12 Yours faithfully "

13 The same day the solicitors for the Plaintiffs sent a letter to the solicitors for the 1st Defendant. The letter stated:-

14 " BY HAND SUBJECT TO CONTRACT Dear Sirs

15 RE: 19 FIFTH AVENUE SINGAPORE

16 We act for Elle Holdings Pte Ltd and we refer to the telephone conversation on 6 December 1990 between your Mr Tan Kay Bin and our Ranvir Kumar Singh during which we were informed that you are acting for the intending purchaser, Ms Mabel Lim.

17 At your request, we enclose a copy of the draft Sale and Purchase Agreement and shall be obliged to know whether it is in order for engrossment.

18 Yours faithfully "

19 It is to be noted that both these letters are stated to be "subject to contract", refer to an "intending" purchaser and refer to "draft" agreements.

20 The third letter dated 17.12.1990 is from the solicitors of the 1st Defendant in which they returned the draft Sale and Purchase Agreement. The letter reads as follows:- " BY HAND

21 URGENT Dear Sirs

22 RE: 19 FIFTH AVENUE SINGAPORE

23 We refer to the draft sale and purchase agreement forwarded to us and return herewith a copy with our amendments thereon.

24 Please let us have the engrossed sale and purchase agreement (in duplicate) duly signed by your clients in exchange for a cheque for the 10% deposit by prior arrangement on the telephone.

25 After our client has signed the contract, a copy will be returned to you for your clients' retention.

26 Yours faithfully "

27 Amongst the amendments made to the draft were the following:-

28 1. Clause 1 of the draft had been amended to provide that the 10% deposit was to be held by the solicitors for the vendors as stakeholders. 2. Clause 2 had been amended by extending the completion date by 2 weeks

29 3. Clause 13 of the draft had been modified by providing for transfer to be effected in the name of a nominee of the Purchaser.

30 There was no immediate response from the solicitors for the Plaintiffs and on 18.1.1991 the solicitors for the 1st Defendant wrote to them enquiring whether their clients were proceeding with the sale of the property. To this the response of the solicitors for the Plaintiffs by letter dated 23.1.1991 was that their clients were not proceeding further with the proposed sale. There was no communication thereafter until 10.4.1991 when the solicitors for the 2nd Defendant wrote as follows to the solicitors for the Plaintiffs:- " URGENT

31 BY HAND Dear Sirs

32 RE: 19 FIFTH AVENUE SINGAPORE

33 We refer to the above property.

34 We act for Quek Hiong How, the Assignee under a Deed of Assignment dated 8th April 1991 from Mabel for whom we had also acted for in her purchase of the above property.

35 Take notice that pursuant to the said Deed of Assignment Mabel Lim has assigned unto Quek Hiong How all her right title and interest in the property and in an agreement for sale and purchase of the property evidenced by the exchange of letters between ourselves from 6th December 1990 to 23rd January 1991, alternatively by part performance thereof.

36 Our client, Quek Hiong How, has lodged Caveat against the property protecting his interest. A copy of the Caveat is enclosed herewith by way of service. Please acknowledge receipt.

37 Yours faithfully "

38 It was submitted on behalf of the 1st and 2nd Defendants that a contract comes into existence when all the major terms had been agreed. It was submitted that the amendments proposed by the 1st Defendant were minor ones and did not detract from the existence of an enforceable contract; that since the letter from the solicitors of the 1st Defendant dated 17.12.1990 accepted all major terms of the draft Sale and Purchase Agreement the words "subject to contract" were of no effect and that a contract had come into existence.

39 I rejected the submissions of the Defendants. It seemed to me, on a perusal of the first three letters, that the parties were engaged in negotiating the terms of the proposed sale and purchase of the property and that the purpose of the words "subject to contract" in the first and second letters was to make this clear. Where such is the intention of the parties, the offer is only made when either party signs and delivers the formal contract to the other. The law on this matter is clearly stated in Halsbury's Laws of England (4th Edition) Vol. 9 at para 232:-

40 " Where there are negotiations in respect of a sale of an interest in land, the usual expectation of the parties is that there will be no contract prior to the formal exchange of contracts; and it is customary to show this by expressly making any prior agreement "subject to contract". Where such is the intention of the parties, the offer is made when the first party to do so signs and delivers the formal contract to the other. "

41 There would, in my view, have been no contract concluded between the parties even if the draft Sale and Purchase Agreement forwarded to the solicitors for the 1st Defendant had been accepted by the 1st Defendant without any

modifications. Support for this view can be found in the decisions of the Court of Appeal in *Quek Choon Huat v. R.M. Seow & Anor* (1981) 2 MLJ 3, *Tai Tong Realty Co (Pte) Ltd v. Galstaun & Anor* (1973) 2 MLJ 95 and in the case of *Ong Chong Soo v. Tan Eng Tai & Anor* (1982) 1 MLJ 307.

42 There being no enforceable contract between the Plaintiffs and the 1st Defendant, the Deed of Assignment made between the 1st Defendant and the 2nd Defendant was of no effect. Accordingly, I ordered that the Caveat lodged by the 2nd Defendant against the said property be withdrawn and that an enquiry be held as to the damages, if any, sustained by the Plaintiffs consequent upon the lodging of the Caveat by the 2nd Defendant against the said property.

S Rajendran J

Ranvir Kumar Singh (Chia Tang Kumar & Loh) for the plaintiffs
Tan Kay Bin (Tan Kay Bin & Co) for the defendants
