

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1991] SGHC 167

Originating Summons No 856 of 1991

Between

Sin Tong Lee Company
(Private) Limited

... Applicant

And

Grace Development Pte Ltd

... Respondent

GROUND'S OF DECISION

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**Sin Tong Lee Company (Private) Limited v Grace
Development Pte Ltd**

[1991] SGHC 167

Originating Summons No 856 of 1991
Goh Joon Seng J
16 November 1991

1 Judgment:

2 (1) By an Agreement of Sale and Purchase ('the Agreement') dated the
30th September 1983 and made between Adelphi Development Pte Ltd ('the
Developers') of the one part and Sin Tong Lee Company (Pte) Ltd ('the
Applicants') of the other part the Developers agreed to sell and the Applicants
agreed to purchase the shop unit known as Unit LG43 now known as Unit #B1-
31 ('the Shop') in the building known as "The Adelphi" at the price of
\$363,048.00 'which is calculated at the rate of Dollars eight hundred (\$800) per
square foot' vide clause 3 of the Agreement for an estimated area of 42.16 square
metres or 453.81 square feet ('the estimated area').

3 (2) In October 1988, the Developers assigned all their right title and
interest in the development of The Adelphi to Grace Development Pte Ltd ('the
Respondents').

4 (3) On or about the 13th April 1991 the Subsidiary Strata Certificate for
the shop was issued. The actual area of the shop as shown therein is 38 square

metres. There is thus a shortfall of 4.16 sq. metres or 9.86% in the actual area of the shop as compared with the estimated area.

5 (4) On the 18th May 1991 the sale and purchase was completed with an abatement on the purchase price based on 4.86% shortfall without prejudice to the right of the Applicants to claim for the total shortfall.

6 (5) On the 3rd September 1991 the Applicants filed this originating summons praying in effect for a declaration that under clause 26 of the Agreement the Applicants are entitled to compensation based on the full shortfall of 9.86%.

7 (6) Clause 26 of the Agreement reads:

8 "The area of the said unit as mentioned in the Schedule hereto is only an estimate. In the event of any difference in the area on completion of Government Resurvey of the said unit, the purchase price shall be adjusted insofar as the area upon survey is more or less than the estimated area by 5%. The actual area on resurvey is to follow the surveyed area shown on certified plans approved by the Chief Surveyor." (Emphasis is added).

9 (7) Clause 30 of the Agreement reads: "The said unit is sold subject to the terms and conditions contained in this Agreement and to the General Conditions of Sale known as 'the < Revised > Singapore Conditions of Sale' so far as they are not varied by or are inconsistent with the said terms and conditions of this Agreement."

10 (8) The < Revised > Singapore Conditions of Sale ('the Revised Conditions of Sale') are thus incorporated. Condition 11 of the Revised Conditions of Sale reads:

11 "The property is believed and shall be taken to be correctly described as to quantity and otherwise and is sold subject to all chief, quit and other rents and outgoings and to all incidents of tenure, rights of way and other rights and easements (if any) affecting the same and if any error, mis- statement, or omission (not of a serious or vital nature nor considerably affecting the value of the property) shall be discovered in the Particulars Special Conditions or Contract the same shall not annul the sale nor shall any compensation be allowed by or to either party in respect thereof."

12 (9) But as the Applicants have not 'annulled' the Agreement and in the light of clause 26 which applies in the event of any difference in the areas it is not necessary for me to decide if a shortage of 9.86% is or is not 'of a serious or vital nature nor considerably affecting the value of the property'. Suffice it to say that if it

13 is necessary for me to so decide, I am of the view that it is both of a serious nature and considerably affecting the value of the property, as a shortfall of 7.5% of undeveloped land in 1930 the area of which was described as approximate was held to be of a serious or vital nature and considerably affecting its value within condition 11. See *Re Harry Elphick v Gaw Khek Khiam* < 1930 > SSLR 199.

14 (10) Since the Applicants have not 'annulled' the Agreement their rights to compensation or adjustment are governed by the Agreement and clause 26 provides for such adjustment.

15 (11) This clause is identical to that construed by the Court of Appeal in *United Overseas Bank Ltd v Yauw Enterprise Pte Ltd* being Civil Appeal No 26 of 1988. In that case the Plaintiff agreed to purchase certain units including the mezzanine floor in the building being developed by the Defendants. There was a shortfall in the area of the mezzanine floor sold at the price of \$300/- per square foot. In a judgment delivered by Justice L P Thean the Court of Appeal said:

16 "Clause 26 provides that in the event of any difference in the areas on completion of Government Resurvey of Lot 332/U2, the purchase price should be adjusted insofar as the area upon survey is more or less than the estimated area by 5%. Giving full effect to the words 'insofar as the area ... is more or less than the estimated area by 5%' we think that only the excess or the shortfall over 5% of the estimated area should be taken into account in the adjustment of the purchase price. By that clause the parties clearly intended that if the difference between the estimated area and the resurvey area does not exceed 5% there would be no adjustment."

17 (12) Accordingly, the purchase price herein should be adjusted by an abatement on the purchase price by \$800/- per square foot based on the shortfall of 4.86% only. I award costs of this Originating Summons to the Respondents.

18 Dated this the 16th day of November, 1991.

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Goh Joon Seng J

T P B Menon (with Blossom Tan) for the applicants
Pauline Tan for the respondents
