IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 201

Originating Summons No 1022 of 1991

Between

Tat Lee Finance Ltd
Tat Lee Bank Ltd

… *Plaintiff*

And

How Chen Development (S)
Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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Tat Lee Finance Ltd and Another v How Chen Development (S) Pte Ltd

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Originating Summons No 1022 of 1991
Amarjeet Singh JC
27 July 1992

1 **Judgment:**

2 Coram: Amarjeet Singh JC

3 **GROUNDS OF DECISION**

4 This action was initiated in October 1991 by the First and Second Plaintiffs which are related companies for quia timet relief against the Defendants who are developers in respect of a Banker's Guarantee ('the Guarantee') issued by the Second Plaintiffs to the Controller of Housing for the observance of certain conditions by the Defendants in respect of a proposed development. The First Plaintiffs who had provided finance for the Defendants' development project, indemnified the Second Plaintiffs against loss in respect of the issue of the Guarantee.

5 The Defendants approached the First Plaintiffs towards the end of 1989 to obtain a loan and facilities to purchase a piece of land at Dunearn Road (Lot

3349 Mukim 17) for the purpose of developing thereon a three storey block of residential apartments.

6 The First Plaintiffs agreed to grant a loan of $3,200,000/- and facilities to the Defendants as contained in their Letter of Offer dated 25th September 1989. The relevant terms of the offer may be briefly summised as follows:

7 i) $1,700,000/- to finance the purchase price of the land; ii) $900,000/- to finance construction costs; iii) $600,000/- provision for issue of the Guarantee. iv) Security for the loan and facilities by a First Legal

8 Mortgage of the land and an Assignment of the Defendants' rights, title and benefits in the Sale Agreement entered or to be entered by the Defendants with the purchaser of each and all units in the development;

9 v) Covenant of indemnity against any or all losses, claims and demands arising, suffered or incurred by the First Plaintiffs arising from the offer.

10 The above offer was accepted by the Defendants, but subsequently, by letter dated 27th October 1989, the loan was increased by $188,000/- to $3,388,000/-. The amount in respect of the provision of the Guarantee was correspondingly increased to $788,000/-, with the First Plaintiffs requiring additionally a fixed deposit of $800,000/- as security, in view of the fact that the First Plaintiffs would be indemnifying the Second Plaintiffs on the Guarantee they would be required to issue as the First Plaintiffs were not licenced to operate as a Bank. The other terms and conditions of the loan remained unchanged. The revised offer was also duly accepted by the Defendants.

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11 Provision was made in respect of the Guarantee in anticipation of one being required by the Controller of Housing from whom the Defendants would be required to seek permission to purchase the land for residential development as the Defendants were not a Singapore company and for the observance or performance of conditions attached to the permission, breach of which conditions could result in a call being made on the Guarantee by the Controller.

12 Accordingly by letter dated 18th October 1989 approval was given by the Controller of Housing for the issue of a Qualifying Certificate to the Defendants as required under s 31 of the Residential Property Act 1976 to purchase the land and develop the residential apartments subject to certain documents being submitted and subject to a written Undertaking to be given which the Defendants gave on 24th October 1989 the pertinent clauses of which are:

13 2 (1) That the Company shall within 24 months from the date of issue of the Qualifying Certificate (QC) or within such extended period as may be allowed by the Controller in writing:- (b) obtain building plan approval from the Building Authority, (c) construct building to reach second storey level, and (d) obtain Temporary Occupation Permit for the housing development; (2)That the Company shall not prior to the issue of the Temporary Occupation Licence sell or dispose of the land without the prior written approval of the Controller (emphasis added) and (3)That the Company shall provide security for compliance by the Company with all the foregoing conditions/stipulations by a Bank Guarantee where-under the Bank will pay the Government of the Republic of Singapore on demand the stipulated sum/s of money in the event of the Company default. (sic)

14 The First Plaintiffs made arrangements with the Second Plaintiffs to issue the Guarantee in the sum of $787,500/- as required and requested by the Defendants and as set out in clause 3 of the Deed dated 31st October 1989 being one of several instruments executed between the First Plaintiffs and the Defendants in respect of the loan and facilities granted by the First Plaintiffs. The Guarantee was issued by the Second Plaintiffs on 2nd November 1989 renewable annually. By letter dated 23rd July 1991 the validity of the Guarantee was extended to 31st October 1991. By that letter it was expressed that a claim under the Guarantee had to be made within three months from the date of its expiry.

15 Under the Guarantee the Bank undertook to pay the Government on demand if there was a breach of the following matters:

16 (a) to pay the Government $112,500/- (5% of the purchase price of land) if Defendants failed to obtain planning approval within the prescribed time. (b) to pay the Government $225,000/- (10% of purchase price of land) if the Defendants did not construct up to the second storey level within the prescribed period. (c) to pay the Government $450,000/- (20% of purchase price of land) if the Defendants failed to obtain Temporary Occupation Permit for the housing development within the prescribed period. (d) to pay $787,500/- (35% of purchase price of the land and the maximum amount payable) or the remaining undischarged sum of paragraphs (a) to (c) above, whichever is the lesser, if the Defendants prior to the issue of the Temporary Occupation Permit sold or disposed of the land without the prior written approval of the Controller. (emphasis added)

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17 Provisions (a), (b) and (c) of the Guarantee as set out above contemplated and expressed partial release of the amounts (and the percentages set out against them) if the respective stage of completion had been reached as expressed in each of those paragraphs.

18 The "prescribed period" was defined to be 24 months from the date of the issue of the Qualifying Certificate or within such extended period as may be allowed.

19 All the loans were disbursed upon execution of the relevant documents which consisted of:

20 (a) Deed dated 31st October 1989 (b) Indenture of Mortgage dated 10th November 1989 (c) Assignment dated 10th November 1989 (d) Power of Attorney dated 10th November 1989 and (e) Deed of Indemnity dated 2nd November 1989 (between First and Second Plaintiffs).

21 The Deed dated 31st October 1989 required the Defendants to place the deposit of $800,000/- with the First Plaintiffs as security for the indemnity being furnished by the First Plaintiffs to the Second Plaintiffs in connection with the issue by the latter of the Guarantee and created, inter alia, a first fixed charge on the said deposit. However, under the Deed the First Plaintiffs reserved a discretion to release the said sum to the Defendants towards payment of the purchase price of the land at Dunearn Road.

22 This sum as events transpired was in fact released by the First Plaintiffs to the Defendants in two instalments of $600,000/- and $200,000/-, the former sum as part payment for the purchase price of the land on the Defendants obtaining a Qualifying Certificate and on their being in a position to complete

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purchase of the land. The latter sum was paid out much later on or about 29th April 1991 to enable the Defendants to buy an adjoining strip of land to the one purchased by them. The result was that the First Plaintiffs relinguished their monetary security for the indemnity furnished by them to the Second Plaintiffs in respect of the issue of the Guarantee.

23 On 23rd April 1991 the Defendants by their solicitors gave notice of redemption to the First Plaintiffs' solicitors who by letter dated 6th May 1991 furnished a statement of the amount to be repayed on redemption.

24 The redemption took place on 17th July 1991 and in exchange of the redemption monies the following documents were executed and delivered to the Defendants' solicitors:-

25 (a) Withdrawal of Caveat (Land Title Act) (b) Withdrawal/Removal of Caveat (Registration of Deeds Act) (c) Deed of Reassignment (d) Indenture of Conveyance

26 At the time of the redemption the First Plaintiffs' solicitors through an oversight failed to require from the Defendants the retrieval and surrender of the Guarantee furnished by the Second Plaintiffs (emphasis added).

27 However, between two to three weeks after redemption by letter dated 6th August 1991 the First Plaintiffs' solicitors requested the Defendants' solicitors to return the Guarantee in question for cancellation but the Defendants' solicitors did not respond nor did they respond to a subsequent demand made on 14th September 1991 that the Defendants furnish alternative security to the First Plaintiffs.

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28 The First Plaintiffs being left without cover and realising that they were open to a potential loss in respect of a claim being made under the Guarantee by the Government in case the conditions undertaken by the Defendants had been or were breached, instituted proceedings jointly with the Second Plaintiffs for the following relief:-

29 (a) an order that the Defendants do effect payment of the sum of $787,500/- to the Government of the Republic of Singapore. (b) alternatively, an order that the Defendants do furnish security in such form and manner acceptable to the First and Second Plaintiffs to the value of $787,500/-; (c) alternatively, an order that the Defendants do indemnify and keep fully indemnified the First and Second Plaintiffs for all payments, loss, damage and expense which are payable, sustained or incurred by the First and Second Plaintiffs as a result of the Defendants sale and/or disposal of the land at Lot 3349 Mukim 17, No. 394 Dunearn Road, Singapore in breach of the conditions imposed by the Controller of Housing; (d) a declaration that the First and Second Plaintiffs are entitled to be discharged and exornerated from all liability under the Deed of Indemnity dated 2nd November 1989 and the banker's guarantee dated 2nd November 1989 respectively. (e) costs of these proceedings be taxed and paid by the Defendants to the First and Second Plaintiffs. (f) such further or other relief.

30 The reason for the Defendants' silence to the letters of the solicitors of the First Plaintiffs came to light not long after the proceedings were instituted. On 20th December 1991 the Controller of Housing wrote a brief letter to the Second Plaintiffs as follows: "Dear Sir,

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31 Banker's Guarantee 370/89 I refer to the above Banker's Guarantee. 2. Your clients have breached para.2 of their written undertaking dated 24th October 1989 by selling the land at Lot 3349 Mukim 17, Dunearn Road without prior written approval from me. The sale of the land was completed on 17th July 1991. 3. Pursuant to para.(d) of the Schedule in the above Guarantee, please forward a crossed cheque for $787,500/- in favour of the Public Works Dept. within 14 days from the date of this letter. (emphasis added)

32 Yours faithfully Sgd. Joseph Yee Controller of Housing Singapore "

33 The Second Plaintiffs honoured their obligation and undercover of their letter dated 2nd day of January 1992 they made the full payment as demanded which payment was thereafter reimbursed by the First Plaintiffs to the Second Plaintiffs.

34 In the Affidavits filed on their behalf and at the hearing the Defendants' Counsel maintained that the Defendants were not liable for the loss of $787,500/- that was occasioned either to the First Plaintiffs or the Second Plaintiffs. For convenience Counsel's arguments against being made liable to the Second Plaintiffs will be dealt with first and the matter disposed.

35 Defendants' Counsel's contention was that the Second Plaintiffs' recourse as issuer of the Guarantee was against the First Plaintiffs for an indemnity pursuant to the indemnity given by the First Plaintiffs to the Second Plaintiffs under a Deed of Indemnity dated 2nd November 1989 and not against the Defendants; that the Second Plaintiffs had no locus standi as there was an absence of nexus between the Defendants and the Second Plaintiffs. As such the Second Plaintiffs had to look for payment to the First Plaintiffs and not the

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Defendants. Counsel's further contention was that as the Counsel for both Plaintiffs had confirmed that the First Plaintiffs had since reimbursed the Second Plaintiffs, the Second Plaintiffs were estopped from making a claim from the Defendants.

36 Counsel for the First and Second Plaintiffs took heed of the arguments and not only promptly abandoned any relief that he was seeking on behalf of the Second Plaintiffs but also abandoned in respect of the First Plaintiffs those prayers or references to them where supervening events made the relief applied for inapplicable. Consequently I indicated that the Second Plaintiffs' claim would, in the circumstances, be dismissed at the conclusion of the hearing.

37 Consequently, Counsel sought relief against the Defendants only in respect of the First Plaintiffs and only under prayers (c)(e) and (f) of the Originating Summons which have been set out earlier.

38 As to who can invoke the right of indemnity, it is settled law that a surety as well as the surety of a surety (in this case the First Plaintiffs) is entitled to come to equity to compel the principal debtor (in this case the Defendants) to exonerate and or indemnify the surety, or the surety of a surety; in Standard Brands Ltd et al v Fox < 1972 > 29 D.L.R. 3(d) 167 at 186; Modern Contract of Guarantees: Donovan 444 at 450.

39 Further, it is not necessary that there should be an immediate probability that a creditor (in this case the Controller of Housing) will press the principal debtor for payment within the forseeable future and the surety in question need not wait until the creditor calls on the Guarantee or institutes proceedings against the principal debtor on the reasoning that "a surety was entitled to

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remove the cloud hanging over his head": Nisbet v Smith, 2 Bro.C.C.582; Ascherson v Tredegar Dry Dock & Wharf Co Ltd < 1909 > 2 Ch. 401; Watt v Mortlock < 1964 > 1 Ch.84; Thomas v Nottingham Incorporated Football < 1972 > 1 Ch.596.

40 On the question of mixed law and facts, the essence of the argument of Counsel for the First Plaintiffs in respect of their claim was:

41 i) that the Defendants had clearly breached paragraph 2(2) of the Undertaking dated 24th October 1989 in that the Defendants had prior to the issue of the Temporary Occupation Permit sold the land without the prior written approval of the Controller. ii) that the Second Plaintiffs had consequently become liable in respect of the Defendants' breach to pay and had paid the sum of $787,500/- under the Guarantee on 2nd January 1992 to the Controller of Housing. iii) that the First Plaintiffs had indemnified the Second Plaintiffs against the said loss and had been liable to reimburse and had since reimbursed the said sum to them and as a surety of a surety who bore the eventual burden to discharge the liability of the Defendants, as principal debtors, the First Plaintiffs are entitled to reimbursement pursuant to the covenant contained in clause 13 of the Deed dated 31st October 1989 and the earlier offer documents and correspondingly under common law rights of indemnity as well as under the doctrine of subrogation.

42 Paragraph 13 of the abovementioned Deed provided as follows:

43 "The Mortgagor shall indemnify and at all times keep the Finance Company fully and completely indemnified against all claims, demands, actions, proceedings, losses and expenses including legal costs as between

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solicitor and own client and all other liabilities of whatsoever nature or description and howsoever arising which may be made, taken, incurred or suffered by the Finance Company in connection with or in any manner arising out of the Finance Company's indemnity to the Bank against all damages, losses, claims, demands, actions and expenses suffered, incurred or brought against the Bank under arising from in connection with or in pursuance of the Banker's Guarantee."

44 The First Plaintiffs further relied on clause 3 of the said Deed namely that the arrangements made by the First Plaintiffs requiring the Second Plaintiffs to issue the Guarantee, amongst other things, was an act which was performed at the "request" of the Defendants and hence the Defendants were liable to indemnify and reimburse the First Plaintiffs the loss occasioned by their breach of the Undertaking. (emphasis added)

45 The Defendants' Counsel in denying liability raised several arguments which were countered by the Plaintiffs' Counsel all of which may conveniently be summarised and dealt with together but each at a time.

46 Defendants' Counsel's principal argument which raised a question of law as to the efficacy of the Deed dated 31.10.89 was that the First Plaintiffs could not rely on the said Deed to establish their claim as the first charge on the fixed deposit of $800,000/- was discharged as soon as the deposit was completely paid out to the Defendants or on their behalf for their land purchases. Counsel argued that in effect the Plaintiffs' solicitors had, by their redemption statement contained in their letter dated 29.4.91 referred to the discharge when they wrote "We confirm that the first fixed charge on $800,000/- Fixed Deposit was discharged on 29.4.91". It was further contended that as the charge was

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discharged and the security released by the First Plaintiffs they could not rely on the convenant contained in clause 13 of the Deed read with clause 3 (the 'request' clause) which latter clause merely left it to the First Plaintiffs to process and package the loan and facilities. As such the First Plaintiffs had to seek protection of the Indenture of Mortgage providing parallel protection but that Mortgage had also been discharged in consequence of redemption (together with execution of the Indenture of Reassignment) resulting in the release of the Defendants of all liabilities.

47 The First Plaintiffs' Counsel's argument, on the other hand, was that the Deed dated the 31st of October 1989 was a further security and was independent of the mortgage and other instruments. The discharge of the mortgage per se did not discharge the Deed of the 31st October 1989. Further, the First Plaintiffs' solicitors' letter dated 17th July 1991 did nothing more than to confirm "that the First Fixed Charge on $800,000/- Fixed Deposit was discharged on 29th April 1991". It did not state nor did it amount to a discharge of the Deed. The Deed apart from creating a fixed charge over the $800,000/- contained important covenants or conditions which continued to protect the First Plaintiffs. The parties had not executed any Deed of Discharge and as such the Deed dated 31.10.89 remained valid and binding and the First Plaintiffs were entitled to rely on clauses 13 and 3 of the said Deed.

48 I considered these arguments. At first blush the argument of the Defendants' Counsel appeared to be attractive but it did not persuade me as on examining it, I found that it could not be rooted. I therefore agreed with the First Plaintiffs' Counsel's submissions. In my opinion, the letter of the 17th July 1991 merely confirmed what it said, that "the First Fixed charge on $800,000/- Fixed Deposit was discharged on 29th April 1991". It did not discharge nor did it

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amount to a discharge of the Deed. All that transpired was that the First Plaintiffs by paying out the $800,000/- for the use of the Defendants put themselves in the position and the peril of being an unsecured surety of the Second Plaintiffs in view of the other covenants contained in the Deed. The word 'Discharge' has different meanings in different contexts. Jowitts Dictionary of English Law at pg.619 (2nd Edn.) explains the word amongst other things, as follows:

49 "To discharge a right or obligation is to deprive it of its binding force, and to discharge a person is to release him from an obligation; thus payment discharges a debt, and in the case of a guarantee, an alteration of the contract, without the consent of the surety, will in general discharge him. Discharge is a generic term; its principal species are recission, release, accord and satisfaction, performance, judgment compostion, bankruptcy, merger (q.v.)".

50 In view of the covenant contained in clause 13 of the Deed dated 31st October 1989 the Defendants continued to remain liable and are liable to the First Plaintiffs for all claims and losses arising out of the First Plaintiffs' indemnity to the Bank. The Defendants by breaching their contractual obligation in causing a loss to the First Plaintiffs, cannot deny that the First Plaintiffs are fully entitled to rely on the said enabling and related convenants for the indemnity provided therein against the Defendants for all claims and losses so long as the Deed is not absolutely discharged by another Deed or the obligation created by the Deed is not varied or put to an end by a simple contract. Clause 13 of the Deed is part of the bargain between the parties. The true test of liability is dependent on the intention of the parties as indicated by their mutual agreement. The rights of the First Plaintiffs or the obligation of the Defendants as such could hardly be said to have come to an end because the sum of

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$800,000/- had been released by the First Plaintiffs. Thus, whilst clause 2 of the Deed creates the First Fixed Charge in the sum of $800,000/- as a continuing security for the Defendants' liabilities the covenant in clause 13 independantly creates the obligation that the Defendants were at all times to keep the First Plaintiffs fully and completely indemnified against all claims, demands and losses. The Deed did not contemplate that the Defendants could receive a discharge of the security provided under clause 2 by paying out the $800,000/- security they held in view of the fact that the Deed as arranged between the parties did give discretion to the First Plaintiffs to pay towards the price of the Defendants' land from the security held. This was because there were other provisions in the Deed protecting the First Plaintiffs. The First Plaintiffs were therefore well within their rights to rely on clause 13 of the Deed to enforce their rights to recover their losses in respect of the Guarantee after they released their security. Clause 3 further underscores the circumstances under which the First Plaintiffs assumed the burdenship of the indemnity. As the First Plaintiffs made arrangements to provide the Guarantee at the express 'request' of the Defendants, the First Plaintiffs are entitled to be indemnified. It was a pretense for the Defendants to say that clause 3 merely left it to the First Plaintiffs to process and package the loan and facilities.

51 Again, under common law, whilst there may be a discharge of an obligation by performance it must be by exact performance: Halsbury Vol.9 para.472. The Deed could only properly be discharged if no liability accrued to the First Plaintiffs as a result of the Defendants performing their obligations as undertaken to the Controller of Housing and/or by returning the Guarantee for cancellation. As events turned out there was no performance or exact performance by the Defendants of their obligations as required and expected of them. They breached the undertaking they gave resulting in a call on the

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Guarantee. The Defendants therefore cannot now attempt to abdicate from their liability to the First Plaintiffs on the grounds they have advanced.

52 The Defendants' Counsel's second and third arguments were disingenuous. The second argument was that whilst the Defendants admitted that the Defendants sold the land without approval of the Controller of Housing during the life of the Guarantee, it was the First Plaintiffs' duty to ascertain whether the Defendants had the necessary approval from the Controller of Housing before redemption; by the First Plaintiffs not enquiring or demanding of the Defendants to obtain the necessary approval before redemption of the mortgage "the Defendants were led to think that the First Plaintiffs do not need the approval from the Controller of Housing as far as the loan facility was concerned, and as a result the Defendants appropriated the funds for other purposes to their detriment" (Affidavit dated 8th Feb 1992 of Paul Lawrence, Defendants' Director). Counsel's third argument was that it was inequitable, in the circumstances, for the Defendants to indemnify the First Plaintiffs for the loss as it was suffered by the First Plaintiffs' own negligence or that of their agents and ordering the Defendants to make good the loss would amount to resurrection of the mortgage to the detriment of the Defendants who had relied on the redemption statements of the First Plaintiffs as to the conditions they would have to satisfy prior to the mortgage being discharged. The Defendants had thus been led to believe that the property was restored to them free from the mortgagees' security and the First Plaintiffs were estopped or waived their rights to the Guarantee.

53 Counsel for the First Plaintiffs answered that the onus of obtaining the approval was on the Defendants and they were primarily liable under the Undertaking they gave. There was no basis upon which the Defendants could

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have been led to believe that the approval was no longer required. The Plaintiffs were not in any position to waive the requirement/condition imposed by the Controller of Housing. It was the Defendants who were guilty of negligence in not obtaining the prior approval of the Controller before they sold the land. The Plaintiffs had nothing to do with the performance of that obligation.

54 The Defendants' Counsel's second and third arguments were disingenuous. The Undertaking not to sell the land without the prior approval of the Controller of Housing was given by the Defendants to the Controller. The Defendants admittedly sold the land in breach of the Undertaking and it is meaningless for them to claim that because the First Plaintiffs did not recall the Guarantee at the time of redemption they were led to believe that the approval was not required and that the land was restored to the Defendants free from any security. The argument that the First Plaintiffs were thus estopped from claiming otherwise or had waived their rights to the Guarantee cannot be right. The burden of obtaining the approval was all along on the Defendants. I find that the First Plaintiffs in proceeding with the redemption were rightly entitled to assume that the Defendants had if they had sold the property obtained the necessary approval as required from the Controller of Housing. The First Plaintiffs no doubt would have to retrieve the Guarantee from the Defendants in order to put the whole transaction behind them but failure to do so by oversight which fact is not disputed and which I so find, is not fatal or sufficient at all to extinguish the Defendants' liability to keep the Defendants indemnified or reimbursed against any impending loss. By analogy, it may be pointed out that even after a mortgage is properly discharged upon redemption and if it is subsequently found that a mortgagee has been overpaid the Mortgagor is entitled to recover the overpayment received by the mortgagee to his use or alternatively of monies paid by mistake or by tracing. Similarly if the

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redemption amount has been understated the Mortgagee is entitled to claim on the deficiency unless there is some real issue raised as to estoppel: Fisher and Lightwood - Law of Mortgages 10th edn. pg.563 and 564 and the authorities there cited under f.n.(i) (j) (k) and (l).

55 In respect of the issues concerning estoppel and waiver raised in the third argument the Defendants had contended that the issues created issues of fact which could not be tried summarily on affidavits and the Originating Summons ought to be converted into a Writ action under O.28 r 8(c) or other rules of the R.S.C. and the matter to proceed to trial. This submission is disposed of by stating that in my view there was very little dispute on the facts. The questions raised related substantially to law. There was no reason to order that the proceedings continue as if the matter was begun by Writ.

56 The Defendants' final submission was that if, at all, the Controller of Housing was only entitled to call on a sum of $675,000/- and not $787,500/- as the Defendants had earned a partial release of 5% amounting to $112,500/- under clauses (a) and (e) of the Guarantee as the Defendants had obtained building plan approval for the development on 19.9.91.

57 I found however, that the Defendants' argument was misconceived. The Defendants were not entitled to a partial release of 5% or $112,500/- making them liable to only $675,000/- as the Defendants had, on their own admission, obtained a belated approval on 19th September 1991 for the development. They had sold the land before that date namely on or about 17th July 1991 a fact which the Defendants did not dispute at the hearing.

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58 The First Plaintiffs as surety of the Second Plaintiffs had honoured their indemnity to the Second Plaintiffs and accordingly paid them by way of reimbursement the sum of $787,500/- before the hearing. As the principal debt had been satisfied by the First Plaintiffs as a secondary surety they had the right to be subrogated to the rights of the Controller of Housing, the creditor. Within the surety-ship context subrogation is a method of adjusting the rights of the parties in the interests of justice.

59 In the premises, the Defendants having in the end result obtained the benefit of the discharge of their liability to the Controller of Housing from the First Plaintiffs in respect of the actual accrued debt, they were in turn liable to them for the reasons given and I therefore made the following orders against them:

60 1) That the Defendants do indemnify and keep fully indemnified the First Plaintiffs for all payments, losses and expenses paid, sustained or incurred by the First Plaintiffs as a result of the Defendants' sale of the land at Lot 3349 Mukim 17 No. 394 Dunearn Road Singapore in breach of the conditions imposed by the Controller of Housing and contained in the Defendants' undertaking to the Controller dated 24.10.89 in failing to obtain the written approval of the Controller of Housing before sale of the aforesaid land.

61 2) That the Defendants effect payment to the First Plaintiffs of the sum of $787,500/- together with interest thereon from 2nd January 1992 until judgment at 6%.

62 3) That the Defendants pay the taxed costs of the First Plaintiffs herein.

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63 At the conclusion of the hearing, I dismissed the Suit of the Second Plaintiffs as indicated during the hearing, with fixed costs in the sum of $2,000/- to be paid by the Second Plaintiffs to the Defendants on the grounds raised by the Defendants' Counsel and as conceded by the Second Plaintiffs' Counsel that their claim had to be dismissed.

Amarjeet Singh JC

Lawrence Wong (Tang & Tan) for the plaintiffs
Tok Boon Leong (R C H Lim & Co) for the defendants

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