

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 299

Suit 1423/1991, Suit 1426/1991, Suit 1443/1991

Between

Grace Development Pte Ltd

... Plaintiff

And

Kassim Syed Ali
Lian Sheng (S) Brothers
Enterprise Co Pte Ltd
Hardie Leong (formerly known
as Leong Keng Weng)

... Defendant

GROUND S OF DECISION

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Grace Development Pte Ltd v Kassim Syed Ali and Others

[1992] SGHC 299

Suit 1423/1991, Suit 1426/1991, Suit 1443/1991
Lai Siu Chiu JC
30 November 1992

1 **Judgment:**

2 **Cur Adv Vult**

3 The plaintiffs appealed against the decision of the learned senior assistant registrar ordering that the plaintiffs' writ/statement of claim in all three suits be struck out with costs to the defendants under O 18 r 19 of the Rules of the Supreme Court (the RSC) and/or under the inherent jurisdiction of the Court on the grounds:

4 1. that it discloses no reasonable cause of action,
2. it is scandalous, frivolous or vexatious,
3. it may prejudice, embarrass or delay the fair trial of the action and
4. it is an abuse of the process of the court; and that the plaintiffs' action be dismissed with liberty to the defendants to enter judgment for costs against the plaintiffs.

5 The facts and issues in all three suits are similar and as with the hearing before the senior assistant registrar where the parties agreed that the court's

6 The claim

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to run on the day after the expiration of such period and shall be payable by the purchaser until:

- (a) such time as the unpaid instalment is paid; or
- (b) the expiration of the notice to repudiate this agreement given by the vendor pursuant to para (3) hereof, whichever is the earlier.

(2) The interest payable under para (1) of the agreement shall be calculated from day to day at the rate of twelve (12) per cent per annum.

14(1) The sale and purchase of the said unit shall be completed at the office of the vendor's solicitors... fourteen (14) days after the receipt by the purchaser or his solicitors of the notice to complete from the vendor or the vendor's solicitors such notice to be accompanied by the certificate of the vendor's architect that the Temporary Occupation Licence or Certificate of Fitness for Occupation has been obtained for the said unit, and subject to cl 2 hereof after receipt by the purchaser or his solicitors of the notice from the vendor's solicitor that the Subsidiary Strata Certificate of Title has been issued for the said unit...

(2) The said notice shall be given by the vendor on or before the 31 December 1990...

7 The plaintiffs alleged that pursuant to cl 4(2)(a) of the agreements their solicitors had forwarded to the defendants' solicitors certified true copies of the Certificate of Fitness (COF) now known as the Certificate of Statutory Completion (CSC) issued on 15 December 1989 and requested for payment of 5% of the purchase price. Further, pursuant to cl 14 notices to complete were served on the defendants' solicitors. The plaintiffs further alleged that despite their requests, the defendants wrongfully failed to pay the various sums (and interest) due and owing under cll 4 and 6 and to complete their purchase notwithstanding the fact that the defendants had taken possession and enjoyed the use of the units since February 1990.

8 Upon the defendants' solicitors entering an appearance to the suit, the plaintiffs applied for specific performance under O 81 of the RSC. The defendants then filed their application to strike out the claim. The learned senior assistant registrar in granting the defendants' application dismissed the plaintiffs' application for summary judgment.

9 Both parties filed the same affidavits in support of their respective applications in all three suits. For the defendants (initially to oppose the plaintiffs' application) it was contended:

1. Before they bought the units they obtained a sales brochure from the developers Adelphi Developments Pte Ltd (the vendor) which stated that the building would include a multi-storey hotel which description induced the defendants to purchase. In the agreements the building was described as a hotel cum building complex.

2. Barely 2 weeks after they had signed the agreements they were informed by the vendor that the Controller of Housing had agreed to the inclusion of 2 new clauses in the agreement (cll 32 and 33) which gave the vendor liberty to convert the hotel premises into office units subject to approval by the relevant authorities. Together with other unit owners the defendants rejected cll 32 and 33.

3. By a notice of assignment dated 5 July 1985 the defendants were informed that by a deed of assignment dated 9 May 1985 the vendor had assigned to the United Overseas Bank all its right, title and interest under the agreements and the defendants were directed to pay all amounts falling due under the sale agreements direct to United Overseas Bank. The defendants were next informed by a letter dated 24 October 1988 that the vendor had sold the building to the plaintiffs and that the vendor had assigned to the plaintiffs all its rights title interest and estate under the agreements.

4. On 5 December 1988 the plaintiffs wrote to the defendants for the latter's consent to the proposed conversion of the building to an office cum shopping complex; the defendants did not agree.

5. By another notice of assignment dated 20 May 1989 the plaintiffs informed the defendants that they had assigned all their right, title and interest under the agreements to DBSL Building Pte Ltd (DBSL).

6. The plaintiffs were in breach of the agreements and of all warranties in converting the hotel portion of the building into office space without the defendants' consent.

7. The plaintiffs failed to complete by 31 December 1990 according to cl 14 of the agreement and the defendants were not entitled to specific performance without offering compensation to the defendants for late completion.

10 The plaintiffs in their response to the defendants' affidavit:

1. denied the defendants' allegations of misrepresentation;
2. pointed out that there was a re-assignment of United Overseas Bank's assignment which was notified to the defendants by the vendor's solicitors on 1 November 1988;

3. pointed out that their completion account to the defendants made provision for and deduction of liquidated damages for late completion calculated from 31 December 1990;

4. stated that they had sold the building to DBSL by an agreement dated 19 October 1988 and it was DBSL which required the plaintiffs to convert the hotel premises to office units;

5. the restrictive covenants applicable to shop unit owners like the defendants made no mention of restricting part of the building to a hotel.

11 Further affidavits were filed by both parties. At the hearing below, it was agreed that the outcome of the defendants' application would decide the

plaintiffs' application. New points not canvassed in either party's affidavits were also raised by counsel for the defendants namely that the assignment from the plaintiffs to DBSL was absolute and the plaintiffs had no cause of action; the assignment was also not pleaded in the statement of claim. He referred to the deed of assignment with DBSL dated 18 May 1989 (the assignment) and cited *Hughes v Pump House Hotel* < 1902 > 2KB 190 and the Malaysian Federal Court decision of *Nouvau Mont Dor (M) Sdn Bhd v Faber Development Sdn Bhd* < 1984 > 2 MLJ 268. The notice to complete (and to pay the balance purchase price) was sent by the plaintiffs and not by DBSL and it was therefore ineffectual; no amendment could cure the defect. Further, terms for completion were not complied with in that the proper architect's certificate had not been sent to the defendants in accordance with the agreement. These were conditions precedent to the plaintiffs' right to receive payment.

12 Counsel for the plaintiffs argued that the assignment was not absolute and was by way of a charge only. She conceded there was an error in the pleadings and applied for leave to amend the statement of claim. The defendants had previously complied with and had not challenged notices issued by the plaintiffs for payment and for taking possession. By such conduct the defendants were precluded/estopped from disputing the plaintiffs' entitlement to maintain this action.

13 In her written submissions, counsel for the plaintiffs pointed out that it is the practice in Singapore for both developers and purchasers alike to maintain legal actions in their own names notwithstanding that they have executed assignments in the same or similar form as the assignment to financial institutions as security.

14 The senior assistant registrar upheld the preliminary objection in the defendants' favour and ruled that the assignment was an absolute assignment not purporting to be by way of a charge only. The cause of action if at all vested in DBSL and there could be no substitution for the plaintiffs by DBSL.

15 After the plaintiffs' notice of appeal had been filed, their director (Loke Pak Chee) filed an affidavit on 13 February 1992 exhibiting a copy of Form 34 filed with the registrar of companies evidencing that the assignment was by way of a charge only and further, a letter of authority from DBSL to the plaintiffs dated 12 February 1992 confirming DBSL's consent to the plaintiffs maintaining these proceedings provided that all monies recovered are held in trust by the plaintiffs and deposited into the project account.

16 **The** **appeal**
The plaintiffs' case

A. At the appeal, counsel for the plaintiffs put forward the following issues:-

1. Is it so plainly and patently obvious that the plaintiffs because of the assignment cannot sue in their own name?
2. If the plaintiffs are not entitled to sue, would the court not allow a joinder of DBSL as co-plaintiffs?
3. Is it so plainly and patently obvious that the architect's certificate is bad that it cannot be cured?

17 **The** **cases**

Lornho Plc v Fayed (No.2) < 1991 > 4 All ER 961, Eng Khiam v Ultra Realty Pte Ltd (Suit 1729 of 1990 - unreported) and Oh Thevesa v Sia Hock Chia < 1992 > 1 MLJ 215 show that it is only in plain and obvious cases where a claim is clearly unsustainable that recourse should be had to the summary process under O 18 r 19(a) and (b) of the RSC -- the mere fact that a case is weak or

may not be likely to succeed at the trial is not sufficient ground for striking out a statement of claim as disclosing no reasonable cause of action. *Times Publishing v S Sivadas* < 1986 > 1 MLJ 372 and *Dyson v Attorney-General* < 1910 > 1 KB 310 support the proposition that where there are difficult issues of law involved or where questions of general importance are raised, the court is reluctant to strike out actions on the ground that they are frivolous and vexatious. It was not only arguable but highly arguable that the plaintiffs are entitled to sue for the following reasons:-

1. Under cl 2 of the assignment the only thing effectively assigned at law was and is the debt from DBSL to the plaintiffs constituted by the project account in cl 2(v).

Clause 2 of the assignment reads: The Borrower < the plaintiffs > as beneficial owner and as a continuing security for the payment and discharge of the Total Indebtedness and for the observance and performance by the Borrower of its obligations under the Loan Agreement and Security Documents to which it is a party, hereby assigns and agrees to assign absolutely to the Lender, < DBSL > free from all liens, charges and other incumbrances all the Borrower's present and future rights, title and interest in and to, and all benefits accrued and to accrue to the Borrower under:

- (i) the Adelphi Assignment;
- (ii) the Existing Agreements;
- (iii) the Performance Bond;
- (iv) the proceeds of any payments which may at any time be received by or payable to the Borrower under or in connection with the Adelphi Assignment, the Existing Agreements and the Performance Bond whether on account of any claims, awards and judgments made or given under or in connection with the Adelphi Assignment, Existing Agreements and the Performance Bond or otherwise however;

(v) all moneys now or hereafter from time to time standing to the credit of the Project Account; and

(vi) all other income or revenue arising from the Property. It is noted that 'Existing Agreements' is interpreted in the assignment as having the meaning defined in the loan agreement and 'shall also include each fresh agreement for sale and purchase from time to time issued in substitution of any of the Existing Agreements'. The loan agreement itself was not exhibited in any of the affidavits filed by both parties.

2. Counsel submitted that the court is not bound by looking at the document to say that it was an assignment, it can look at the substance and surrounding circumstances to see the nature and extent of the security rather than what it is called (see *Re Lin Securities* < 1988 > 2 MLJ 137).

3. There are two types of assignments (a) legal and (b) equitable.

a. For a legal assignment under s 4(6) of the Civil Law Act the plaintiffs' entire interest must be transferred to DBSL who must have complete control of the assigned chose and put it out of the plaintiffs' control; DBSL must look to the assigned fund to settle the debt in question.

b. (i) The ingredients of an equitable assignment as stated by Lingard's Bank Security Documents < 1985 > at page 207 para 16.32 are that the debt must be paid out of a fund and 'made over', not merely an agreement to apply the fund towards the debt rather than for some other purpose.

(ii) The assignment does not satisfy the ingredients of an equitable assignment because under cl 2(v) thereof the project account (the account) is that of the plaintiffs, a cheque is drawn in favour of the account by a purchaser, the plaintiffs deposit the cheque into the account and from the account DBSL obtains satisfaction. In normal cases the assignor asks the purchaser to pay the assignee but here the assignor asks for payment to itself. Therefore, counsel contended, the essential ingredient of an assignment is missing as, until the

purchaser's cheque is deposited into the account, it is under the plaintiffs' control, it is not endorsed in favour of DBSL (see *Bell v The London & North Western Railway Co* 15 Beav 651). It is clear from the assignment that the only fund DBSL can look to is monies in the account. If anything goes wrong the plaintiffs would sue, obtain judgment, the money is deposited into the account which is then assigned. He submitted that if one asks the following questions:-

- a. Has the purchaser's cheque been made over to DBSL?
- b. Is the cheque by itself meant to settle the debt?
- c. Is there transfer of title to the cheque?
- d. Can DBSL look to the cheque itself to settle its loan? and if the answer is 'no' or arguably 'no' then it cannot be said that the defendants have a clear case and that the plaintiffs have sued wrongly.

4. A bank account is described as a loan by the customer to the bank (see Lingard at para 18.21 p.237 and Cresswell's Encyclopaedia of Banking Law); in line with that definition and for a debt to be due from Development Bank of Singapore to the plaintiffs there cannot already have been an assignment of the monies in the account to DBSL; only the account itself is assigned not the progress payments. It follows therefore arguably that the plaintiffs have a right to sue the defendants for outstanding progress payments.

18 B. In any event the plaintiffs' suit being for specific performance, is it an action that is assignable? Counsel contended that it is only assignable if it is a right and not a burden. Completion is described as an obligation not a right and therefore it is not assignable at law (see Megarry & Wade 5 ed.p.616 para 5 and Gibson's Conveyancing 21 ed. ch.14 p.273). Another aspect of completion which cannot be assigned is the vendor's lien (see Halsbury's Laws of England 4 ed. p.226 para 512). If the defendants' suggestion that DBSL should sue is accepted then what happens to the vendor's lien? Further under cl 32 of the

agreement 'vendor' and 'purchaser' are defined to include 'their successors-in-title and assigns'-- the word 'assigns' here does not mean 'assignment' but 'novation' as is apparent from the words in the agreement itself an example being cl 4. Otherwise if DBSL is read as the 'assigns' then DBSL must appoint the architect which cannot be the case. There is no magic to the word 'assigns', one must look at the context in which it is used (*Doe v Lewis* 9 M & W 280; *St. Martins Property Corp. Ltd v Sir Robert McAlphine & Sons Ltd* < 1992 > 8 Const. L.J.180).

19 C. 1. The plaintiffs' solicitors gave notice to the defendants' solicitors by letter dated 27 December 1989 (which date was after the assignment) that the Temporary Occupation Permit (TOP) had been obtained. The defendants' solicitors not only did not object to the notice but relied on it, paid thereon and took possession. On the defendants' contention that the notice was bad as the architect's certificate attached therewith did not comply with the agreement because:

a. the property was not specified (it was merely described as lot 21 TS 10 at North Bridge Road), and

b. it was not addressed to the right party (it was addressed to the plaintiffs) counsel replied:

a. no certificate was required at law;

b. even if it was required it was sufficient under the circumstances;

c. if not sufficient, the defendants are estopped from challenging it by their own conduct.

2. By the time actual completion took place or was scheduled to take place, a COF no longer existed as it was replaced by a CSC which is another creature altogether; regulation 21 of the 1979 Building Control Regulations (S169/79) was repealed and substituted by the 1990 regulations under which there are

different requirements < reg 104(1)(a) > . The two regulations are as follows:
Regulation 21. The Building Authority may grant a certificate of fitness for occupation of a building or part thereof or endorse on the approved plan or plans of any building works or a temporary building that the building works are completed or the construction of the temporary building is completed when --
(a) every certificate and progress report in respect of the building or part thereof or the building works or temporary building have been submitted to the Building Authority pursuant to the provisions of paras (c) and (d) of reg 14;
Regulation 104(1) On completion of any building works, the person for whom the building works were carried out shall apply to the Building Authority for --
(a) a temporary certificate of statutory completion; or
(b) a temporary occupation permit. 3. There should be no obligation on the architect to certify that a COF has been issued, under cl 13 of the agreement when no COF is obtained or can ever be obtained bearing in mind that the agreement is a contract prescribed by statute for which the ordinary rules of construction cannot apply (*Orchard Twelve Investments Pte Ltd v Golden Bay Realty Pte Ltd* < 1986 > 2 MLJ 356).
4. Besides the legal impossibility another reason why the certificate is not necessary is because you can get a certificate for a whole building but not for a unit. Even if this contention is wrong it remains a question of fact whether the certificate issued by the plaintiffs sufficed there being no fixed rules as to what constitutes a valid certificate so long as the same is clear and unambiguous on the face of it (*Hudson's Building and Engineering Contracts* 9 ed. p.480). The case cited by the defendants *Token Construction Co Ltd v Charlton Estates Limited* < 1973 > 1 BLR 48 can be distinguished as in that case the architect had failed to adjudicate upon the contractor's applications for extension of time before he certified for delay. Here there has never been a set form of a certificate nor was there a complaint that the certificates of the architect took a different

The defendants' case

21 B. Dealing first with the architect's certificate, counsel argued that even
if the parties wished to do so, it is not open to them to dispense with the statutory

requirement without first obtaining the permission of the Controller of Housing -- (see the decision of Chao JC < as he then was > in *Golden Bay Realty Pte Ltd v Orchard Twelve Investments Pte Ltd* < 1989 > 2 MLJ 70 at p.75). In respect of the architect's certificate for CSC there is no room for the argument that a similar certificate was sent earlier by the plaintiffs' solicitor the reason being that the last progress payment is the most substantial. If the plaintiffs' argument that a CSC can only be issued for a whole building and not individual units is accepted, then all the more reason the CSC should be certified to include the defendants' units. Although the 1979 Sale of Commercial Properties Regulations were revoked by the 1985 regulations, reg 11(2) of the 1985 regulations extended to cover options which were granted by developers before the commencement of the latter.

22 C. 1. There was no question of the defendants being estopped from resisting the plaintiffs' claim since each instalment payment is a separate cause of action; each progress payment becomes due only when it is due and payable. 2. The payment obligation under cl 14 of the agreement is only triggered off by a notice to complete accompanied by an architect's certificate. As was held by the Privy Council in *Phoenix Heights Estate (Pte) Ltd v Lee Kay Guan* < 1982 > 2 MLJ 86, for a valid notice to complete there must be an architect's certificate. Here the alleged certificate did not refer to the defendants' or any specific units nor did it state it was a certificate. Further the document actually sent to the defendants' solicitors by the plaintiffs' solicitors on 15 April 1991 as evidence of issue of the CSC was the architect's letter dated 4 February 1991 addressed to OCK Construction Pte Ltd a party unknown to the defendants and it merely stated 'we are finally able to obtain CSC for your retention and action.' Such a letter cannot in form or substance amount to a certificate and there is no doubt that the mandatory requirement has not been satisfied by the plaintiffs; the law

on certificates is very clear, it must comply with the terms of the contract and must be clear and unambiguous (see *Lojan Properties Pte Ltd v Tropicon Contractors Pte Ltd* < 1991 > 2 MLJ 70 and *Token Construction Co Ltd*, (supra). 3. *Pyrok Industries Ltd v Chee Tat Engineering Co Ltd* 41 BLR 124 made it clear that it is inadmissible to admit as evidence correspondence with the architect to prove that the architect intended his certificate to operate. Such evidence is admissible to assist the court in the construction of a document which is unclear or ambiguous, if limited to evidence of the surrounding circumstances (or as it is now often called, the factual matrix). It is not admissible as evidence of the actual intention of the maker of the document. 4. As for the plaintiffs' argument that a certified copy of the CSC was furnished to the defendants' solicitors under cover of the plaintiffs' solicitors' letter dated 5 February 1991, that letter was a request for payment under cl 4(2)(a) of the agreement -- at that stage the question of non compliance with the requirements of cl 14(1) had not yet arisen. There was no acceptance at all of the plaintiffs' notice to complete as the defendants' solicitors' letter dated 20 February 1991 (see exh OHC 10 of Ong Han Cheong's affidavit filed 16 September 1991) clearly questioned the plaintiffs' authority to issue the notice. There was therefore no question of estoppel against the defendants. Further, it was not disputed that a CSC can be issued for a building or part of a building or a phase thereof. The authorities cited by counsel for the plaintiffs *Chua Sock Chen v Lau Wai Ming* < 1990 > 1 MLJ 332 and *Toh Teck Sun v Mandarin Gardens* < 1988 > 2 MLJ 276 have no relevance as they do not concern statutory contracts under the Sale of Commercial Properties Act nor mandatory requirements.

23 D. As to whether the plaintiffs' assignment to DBSL was an absolute or equitable assignment, counsel for the defendants repeated the arguments he advanced at the hearing below namely: 1. the authorities can only look at the

four corners of the deed to decide as a matter of construction whether the assignment is absolute in particular cll 1, 2 and 3 as well as the notice of assignment; 2. the definition of 'Assigned Properties' in cl 1 of the assignment read with cl 2 makes it clear that it is not only the monies in the account that are assigned. Otherwise it would render the other purported assignments ineffective and superfluous. The account is only a payment mechanism. 3. according to *Hughes v Pump House Hotel* (supra) a power of attorney such as that found in cl 11 of the assignment meant that the assignment is absolute; 4. accepting the plaintiffs' arguments meant that all parties so far have been misled by the effect of the assignment namely the plaintiffs, DBSL, purchasers and the lawyers; 5. the authorities cited by counsel for the plaintiffs can either be distinguished or are irrelevant. 6. the plaintiffs' stand unlike that of the defendants' is inconsistent -- the plaintiffs desire the court to adopt a generous interpretation of the requirement of an architect's certificate and at the same time to adopt a narrow interpretation of what was assigned under the deed.

24 **The decision**

25 A. I am allowing the plaintiffs' appeal on the assignment issue as I am of the view that the second issue relating to the architect's certificate concerns the plaintiffs' entitlement to sue for the completion monies which goes to the merits of their application for summary judgment.

26 B. 1. I agree with the submissions of counsel for the plaintiffs that they have more than an arguable case to maintain the actions. In the light of Form 34 filed by DBSL the assignment can only be a charge and not absolute as contended by the defendants. This is also apparent from the words used in cl 2 of the assignment -- 'the plaintiffs as beneficial owner and as a continuing security < emphasis added > ... hereby assigns and agrees to assign absolutely

to DBSL'... The assignment clearly does not come within s 4(6) of the Civil Law Act. This is reinforced by the fact that title to the property is in the plaintiffs' name. 2. a. If I am wrong and the assignment is said to be absolute, I take the view that the obligation to complete under cl 14 of the agreement is in any event an obligation personal to the plaintiffs and only performance by them will suffice. An assignee cannot succeed in an action for specific performance if under the contract in question there remain unperformed obligations on the part of the assignor which are personal in the appropriate sense and the performance of which cannot be sufficiently secured. An obligation is said to be personal in this sense if as a matter of construction it is intended that it can be sufficiently performed only by the assignor himself. b. A case in point is *Tolhurst v The Associated Portland Cement Manufacturers Ltd* < 1902 > 2 KB 660 where the owner of land (Tolhurst) contracted with a company to supply the company with at least 750 tons of chalk per week for 50 years. The company went into voluntary liquidation and transferred all its business and property and purported to assign the contract to the defendant company. The defendants claimed to be entitled to the benefit of the contract between Tolhurst and the company and that Tolhurst was obliged to continue to supply chalk to the defendants at the contract price. The Court of Appeal held that the defendants could not maintain an action on the contract in their own right as assignees of the company with whom the contract was made, the contract was a subsisting one between the original parties to it. Collins MR had this to say (at p 669) There is, however, another class of contracts, where there are mutual obligations still to be enforced and where it is impossible to say that the whole consideration has been executed. Contracts of this class cannot be assigned at all in the sense of discharging the original contractee and creating privity or quasi privity with a substituted person...To suits on these contracts, therefore, the original contractee must be a party, whatever his rights as between him and his assignee. He cannot enforce

the contract without shewing ability on his part to perform the conditions performable by him under the contract. This is the reason why contracts involving special personal qualifications in the contractor are said, perhaps somewhat loosely, not to be assignable. What is meant is, not that contracts involving obligations not special and personal can be assigned in the full sense of shifting the burden of the obligation on to a substituted contractor any more than where it is special and personal, but that in the first case the assignor may rely upon the act of another as performance by himself, whereas in the second case he cannot. He cannot vouch the capacity of another to perform that which the other party to the contract might, however unreasonably, insist was what he undertook to pay for -- namely, work to be executed by the party himself. 3. The situation would be the same if it were the defendants who sued for specific performance of the agreements instead of the plaintiffs. Even if the defendants had executed the same or similar assignments as the assignment here to secure loans from banks to finance their purchase of the units, they and not the latter, would be entitled to sue should the plaintiffs fail to comply with cl 14 or any other clause of the agreement which calls for personal performance by either party. 4. Counsel for the defendants did not address the question posed by counsel for the plaintiffs -- even if the assignment is absolute, can the obligation to complete under cl 14 of the agreement be assigned if it is a burden and not a benefit? Again it is arguable that the clause is a burden and if it is a burden, it cannot be assigned by the plaintiffs to DBSL. C. It is more than arguable that the plaintiffs are entitled to maintain the proceedings in their name and at worst, that they must join DBSL as co-plaintiffs to the actions. Order 18 r 19 of the RSC empowers the court by a summary process to stay or dismiss an action or enter judgment against the defendant, where the pleading discloses no reasonable cause of action or defence. Order 18 r 19(2) disallows affidavit evidence on an application alleging that the pleading discloses no reasonable

cause of action; this was one of the defendants' contentions at the hearing below. The approach of the court is to ask itself on the pleadings as far as they have gone, without reading any affidavit whatsoever, whether there is a triable issue (per Chua J in *Sea Breeze Navigation Co S A v Owners of ship 'Hsing An'* < 1974 > 1 MLJ 45 and per Millet J in *Lornho Plc v Fayed* (No 2) supra at p 965). Based on Chua J's test, I think it is quite impossible to say that the plaintiffs' statement of claim discloses no reasonable cause of action against the defendants.

27 D. For the foregoing reasons I am allowing the plaintiffs' appeal. The order of the senior assistant registrar is rescinded, the defendants shall pay the costs below as well as the costs of this appeal, both costs to be taxed unless otherwise agreed. I was given to understand by counsel for the plaintiffs that apart from the defendants, proceedings have also been instituted against purchasers of other units and that my decision has a bearing on these other actions. In the event that the defendants intend to appeal against my decision, I hereby certify that I do not wish to hear further arguments.

Lai Siu Chiu JC

Pauline Tan, Davinder Singh & Rosalind Lazer (P Tan & Co) for the
plaintiffs
V K Rajah & Raymond Clement (Rajah & Tann) for the defendants
