IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 80

Originating Summons No 722 of 1990

Between

Tan Han Yong

… Plaintiff

And

The Kwangtung Provincial Bank

… Defendant

GROUNDS OF DECISION

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

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Tan Han Yong v The Kwangtung Provincial Bank

[1992] SGHC 80

Originating Summons No 722 of 1990
Goh Joon Seng J
03 April 1992

1 **Judgment:**

2 **GROUNDS OF DECISION**

3 The defendant is a company with limited liability incorporated in the People's Republic of China and carrying on the business of banking in Singapore at No 60 Cecil Street, Singapore 0106.

4 On 23 February 1990 the defendant in exercise of its powers of sale as mortgagee granted an option ('the option') to the plaintiff to purchase the property being Lot 2915 Mukim 24, Kallang, with the building thereon known as No 2 Kampong Ampat, Singapore ('the property') at the price of $4,880,000.00.

5 Condition (1) of the option states: " The title shall be in order and free from encumbrances and shall be for a leasehold estate of the unexpired term of 99 years commencing from 1st July 1963."

6 On 2 March 1990 the plaintiff exercised the option. Completion date was 4 months from date of exercise of the option i.e. 2 July 1990.

7 At the time of the grant and exercise of the option, the property was comprised in Certificate of Title vol 37 folio 161 of the Land Register. The said Certificate of Title states that 'New Art Printing Company Ltd ... . is the proprietor of a leasehold estate for the unexpired portion of a term of 99 years commencing from the 1st day of July 1963 ... ... subject also to any subsisting exceptions, reservations, covenants and conditions contained or implied in the lease from the Republic ... ...". The lease referred to is Lease No 10169 dated 27 July 1968 ('the Lease') issued by the President of the Republic of Singapore.

8 Clause 1(v) of the Lease reads: "Not at any time during the said term without the previous consent in writing of the Landlord to make any alteration or addition to any building now standing upon the said land and not without the same consent to erect or put up any building or erection whatsoever in addition to the building now standing upon the land." Clause 1(vi) of the Lease reads: "Not to demise or assign the said land in whole or in part without first obtaining the

9 approval of the Landlord in writing which approval shall not be unreasonably refused after completion of the development ... ..."

10 On or about 15 March 1990 the defendant's solicitors wrote to the plaintiff's solicitors enclosing a copy of the letter dated 8 March 1990 from the lessors the Housing & Development Board ('HDB') to the defendant's solicitors. Paragraph 2 of HDB's letter referred to the approved use of the property under the Lease:

11 " I wish to inform you that under the terms of the Indenture date (sic) 26 Oct 65 it was stated that the land was for 'the construction of a factory building and attendant office, for the purpose of commercial printing and photo mechanical colour printing' ... ..."

12 Thereafter from requisitions to the relevant authorities, the plaintiff's solicitors found out that before the grant and exercise of the option the lessee New Art Printing Co Pte Ltd ('New Art Printing') had made additions/alterations and change of use sometime on 9 January 1965, 6 January 1975, 24 November 1987 and 12 February 1990. The plaintiff's solicitors thereupon called on the defendant's solicitors to produce the written consent of HDB to these additions/alterations and change of use.

13 The defendant's solicitors wrote to HDB for the requisite information. By letter of 8 June 1990 HDB replied as follows:

14 "The HDB had consented to the additions/ alterations and changes approved by the Competent Authority referred to in the notice/approval dated 9 Jan 65, 6 Jan 75 and 2 Sep 77. The HDB had consented to the change of use referred to in approval dated 24 Nov 87 and 22 Dec 88 subject to the execution by the lessee of a Supplemental Deed to vary clause 1(vi) of the original lease which the lessee agreed. However, the lessee subsequently did not complete the execution of the Supplemental Deed after it has been vetted and approved by the Commissioner of Lands ... ... The HDB is not aware of the application for change of use of the canteen on the 2nd storey to light industrial factory, for printing purpose approved by the Competent Authority in (sic) 12 Feb 90. The HDB is however prepared to give its consent to the proposed alterations/additions and change of use subject to: (a) execution of the

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

Supplemental Deed by the lessee/new purchaser; (b) payment of an administrative fee of $500."

15 The plaintiff as the intending lessee refused to execute the Supplemental Deed. Thereupon the defendant called upon its mortgagor, New Art Printing to execute the Supplemental Deed. By clause 2 of the Supplemental Deed clause 1(vi) of the Lease quoted above was deleted and replaced by the following:

16 "1(vi)(a) Not to mortgage, lease, let, licence, sublet the said land in whole or in part or do anything in the like manner without first obtaining the consent of the Landlord in writing and which consent the Landlord may give on any terms and conditions as it in its entire and unfettered discretion deems fit and which terms and conditions shall include the levy of a fee; 1(vi)(b) Not to demise, transfer, assign or part with the possession of the said land or any part thereof in whatsoever manner and not to effect any form of reconstruction howsoever brought about including any form of amalgamation ... ... without first obtaining the consent of the Landlord in writing and such consent shall be given on such terms and conditions as the Landlord may in its entire and unfettered discretion deem fit to impose and shall include either the payment of an administrative fee of $500 or the payment of a fee amounting to 10% based on either:

17 (i) consideration payable or paid by the assignee for the land and buildings thereon; or (ii) the market value of the land and buildings thereon as determined by the Landlord and whose decision shall be final and binding on the tenant; or (iii) the difference between the resale price and the purchase price paid by the existing tenant (whichever is the lowest)."

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

18 The defendant then required the plaintiff to complete the sale and purchase subject to the terms and conditions of the Supplemental Deed executed by New Art Printing on 18 June 1990. The plaintiff refused to complete.

19 On 28 June 1990, the plaintiff filed this Originating Summons seeking inter alia:

20 (1) ... ... a declaration that on a true construction of the option dated the 23rd day of February 1990 granted by the defendant and duly exercised by the plaintiff on the 2nd day of March 1990 ... ... and in the events that have occurred the plaintiff is not bound by the said option to complete the purchase of the property ... ... on the terms and conditions that include the covenants and conditions stipulated in an undated Supplemental Deed entered into or purportedly to have been entered into between the Housing & Development Board ... ... and New Art Printing Co Pte Ltd ... ... without the plaintiff being given an abatement of 10% of the purchase price or such other abatement as the court may deem just and fit."

21 On 29 June 1990 the plaintiff by ex-parte application in Summons-in-Chambers Entered No 3543 of 1990 obtained an interim injunction granted by M Karthigesu JC, as he then was, restraining the defendant from (i) serving a notice to complete under condition 29 of the Singapore Law Society's Conditions of Sale 1981 and (ii) from selling or disposing the property until further order.

22 On the same day, the defendant by ex-parte application in Summons-in-Chambers Entered No 3575 obtained an order granted by M Karthigesu JC staying the interim injunction granted to the plaintiff.

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

23 On being served with the order staying the interim injunction, the plaintiff applied by Summons- in-Chambers Entered No 3667 of 1990 on 5 July 1990 for inter alia: (i) an order that the order staying the interim injunction be set aside; (ii) an order that the interim injunction be continued until further order; and (iii) the 21-day notices dated 2 July 1990 and 4 July 1990 to complete served by the defendant's solicitors on the plaintiff's solicitors be declared null and void.

24 On the hearing of the plaintiff's application in Summons-in-Chambers Entered No 3667 of 1990 on 12 July 1990, by consent the learned Judicial Commissioner granted inter alia the following orders: '(i) the interim injunction be dissolved;

25 (ii) the date of completion of the purchase be extended to 15 August 1990; (iii) subject to the purchase being completed by 15 August 1990 'the claim for abatement of 10% of the purchase price or such other abatement as the court sees fit to be preserved and to be disposed of in these proceedings.'

26 Subsequent to the order of court of 12 July 1990, the sale and purchase was completed in the name of the plaintiff's nominee Fu Loong Lithographer Pte Ltd.

27 The Originating Summons then came up for hearing before me on the 25 July 1991. Counsel for the plaintiff addressed the court:

28 " We have completed the purchase. The question of defective title is no longer an issue except possibly as to costs. We are now only claiming for damages for defendants' breach of fiduciary duty in allowing the Supplemental Deed to be entered."

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

29 This is a vendor and purchaser summons intituled under section 4 of the Conveyancing and Law of

30 Property Act (Cap 61). Section 4 reads:

31 "(1) A vendor or purchaser of land, or their representatives respectively, may at any time or times, and from time to time, apply in a summary way to the court by summons intituled in the matter of this Act and in the matter of the contract of sale, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract not being a question affecting the existence or validity of the contract. (2) The court shall make such order upon the application as seems just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid."

32 Section 4 is in pari materia with section 49 of the Law of Property Act 1925. Halsbury's Laws of England 4th Edn para 230 on the scope of section 49 of the Law of Property Act 1925 states:

33 "Scope of jurisdiction. An application under the statutory provision puts the parties in the same position in Chambers in which they would have been and with all the rights which they would have had under a judgment for specific performance. Hence, whatever could be done in chambers upon a reference as to title under such a judgment, where the contract has been established, can be done on a vendor and purchaser summons. The procedure was not, however, intended to enable the court to try summarily disputed questions of fact and a vendor and purchaser summons cannot be treated as if it were an action for specific performance, or for rescission, or for any other purpose. It enables either party to the contract to obtain a decision upon some isolated point, or

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

points, without having recourse to an action for specific performance such as whether a requisition has been sufficiently answered, or whether a requisition is precluded by the condtiions, or any short point of law or construction arising on the abstract, contract or requisitions." On the court's power to give consequential relief, see para 231 of Halsbury's Laws of England 4th

34 Edition: "The jurisdiction to make such order as appears just enables the judge to give relief which is the ordinary consequence of the decision of the point submitted to him. Thus when the decision of the point raised necessarily involves a determination that the vendor has not made a good title, an order may be made for the return of the deposit with interest and payment by the vendor of the purchaser's costs of investigating title ... ... An order for payment of unliquidated damages as compensation for a vendor's delay, or any sum which entails an enquiry and is not merely a matter of compensation or taxation cannot however be made on a vendor and purchaser summons, such an application cannot be treated as an action for damages." (Emphasis added).

35 Thus in Re Wilsons & Stevens' Contract (1894) 3 Ch 546 the delay in completing the sale of the land occasioned by the vendor having omitted to take steps to procure certain admission to copy holds, was held to arise from the wilful default of the vendors. It was held that the damages sustained by the purchaser by reason of such delay was not recoverable as compensation by summons under the Vendor and Purchase Act. Per North J at 552:

36 "The purchaser also claims compensation for the delay in completion; and she was no doubt put to considerable inconvenience and loss thereby owing to the unreasonable conduct of the vendors. But what is sought to be recovered under this head is not compensation properly so-called ... ... it is really unliquidated damages arising out of non-delivery of possession. ... ... Even

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

assuming (a very strong assumption as to parts of the claim) that the purchaser could have recovered such damages in an action for damages, I am of the opinion that she cannot do so on a summons under the Vendor And Purchaser Act. In re Hargreaves and Thomspon's Contract when a purchase went off for want of title, the court did give the purchaser interest on the deposit and costs of investigating the title, which certainly do savour of damages; but some difficulty was felt even in going to that extent; and it was pointed out that there is not (sic) jurisdiction under the Act to give such damages as I am asked for here." (Emphasis added)

37 It is the plaintiff's claim herein that pending completion, the defendant had a fiduciary duty towards the plaintiff. It is contended that by procuring the execution by the mortgagor of the Supplemental Deed, the defendant had further encumbered the property by the additional covenants and restrictions in the Supplemental Deed. Hence the claim for abatement of the purchase price due to the diminution in value. This therefore is a claim for damages for breach of fiduciary duty.

38 Per Browne-Wilkinson J in Prosper Homes Ltd v Hambros Bank Executor and Trustee Co Ltd (1979) Property and Compensation Reports 395 at 399-400 :

39 "... ... between contract and completion a vendor is in a position akin to that of trustee and must look after the property sold properly ... ... If any damage has occurred in the interim the vendor would have to make good in damages ... ..."

40 Therefore this court has no powers to make any order in favour of the plaintiff for damages by an abatement of the purchase price especially when it

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

calls for an enquiry as to the amount, if any, of the diminution in value of the property, unless there could be and there is a waiver arising under the consent order of court dated 12 July 1990. By this order the claim for abatement was reserved 'and to be disposed of in these proceedings.' In my view the defendant by agreeing to have the claim for abatement reserved 'and to be disposed of in these proceedings' did not waive its right to contend in these proceedings that such a claim is outside the scope of section 4 of Cap 61. Accordingly I dismissed the plaintiff's application.

41 At the request of the plaintiffs I agreed to hear further arguments. The parties subsequently appeared before me. At this subsequent hearing, counsel for the plaintiff relied on In re Belcham and Gawley's Contract (1930) 1 Ch 56 as authority that damages could be claimed in addition to specific performance under a vendor and purchaser summons. In that case, at an auction sale the purchaser bought freehold property sold subject to certain Special Conditions and the General Conditions of Sale 1925. The particulars and conditions of sale did not disclose the fact that two sewers, vested in the local authority and known by the vendors to exist ran along the east side of the premises and along the yard at the back. The purchaser applied by vendor and purchaser summons for a declaration that the property was substantially different from that agreed to be sold and for rescission or alternatively a declaration that he was entitled for compensation. The issue was on whether Condition 35(2) or 35(4) of the General Conditions of Sale should apply. Condition 35(2) read:

42 "Subject as aforesaid, any error, omission, or misstatement in the contract, which may be discovered before completion, though materially affecting the description of the property, shall not annul the sale, or entitle a purchaser to be discharged from his purchase, but if pointed out before

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

completion and not otherwise, compensation shall be made to or by a purchaser as the case may require."

43 Condition 35(4) read:

44 "Nothing in these conditions shall - (a) enable the vendor or the purchaser to compel the purchaser or the vendor with or without compensation, to accept or convey property which differs substantially, whether in quantity, quality, tenure, or otherwise, from the property agreed to be purchased or sold; (b) affect the right of the purchaser to rescind or repudiate where compensation for a claim attributable to material error, omission, or misstatement cannot be assessed."

45 Per Maugham J at page 60:

46 "The question is whether the omission (to disclose the sewers) in the contract is one which comes within condition 35(2) of the General Conditions of Sale 1925 with the result that it does not annul the sale but enables the purchaser to obtain compensation or whether it comes within Condition 35(4) ... ..."

47 In re Belcham and Gawley's Contract therefore is no assistance to the plaintiff.

48 Accordingly, after hearing from further arguments, I affirmed my order made on 25 July 1991.

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

Goh Joon Seng J

Cheong Yuen Hee (with Andrew Chua) for the plaintiff
V K Rajah (with Raymond Clement) for the defendant

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