IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 133

OS 61/1991

Between

Lau Lay Hong
Another

… *Plaintiff*

And

Hexapillar Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Contract — Contractual terms — Express terms; Land — Conveyance; Land — Sale of land — Contract

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

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Lau Lay Hong and Another v Hexapillar Pte Ltd

[1993] SGHC 133

OS 61/1991
Warren Khoo L H J
17 June 1993

1 Cur Adv Vult

2 By a sale and purchase agreement dated 4 February 1983 (`the agreement`), Yeap Leong Aun (`the deceased`) contracted to purchase from the defendants the property known as unit #05-01 in a condominium known as Angullia Mansions, No 18 Angullia Park, Singapore (`the property`) at the price of $850,000. The defendants were the developers of the condominium. It was then in the course of construction.

3 The agreement was in the form prescribed by the Housing Developers Rules 1976 (as amended) made under the Housing Developers (Control and Licensing) Act (Cap 130). Clause 1 incorporated the Singapore Law Society`s Conditions of Sale 1981 (`the general conditions`) insofar as the latter were `applicable to a sale by private treaty and [were] not varied by or inconsistent with the special conditions` stated in the agreement.

4 Clause 3 provided for the payments of instalments of the purchase price pegged to the completion of the various stages of the works.

5 Clause 4 provided that time should be of the essence of the contract as regards payment of the instalments of the purchase price. Clause 5 provided for interest to be paid at 2% above the average prime rate of the four major local banks if any of the instalments mentioned in cl 3 was not paid within the time for payment stipulated in that clause.

6 Clause 5(3) provided that if any such unpaid instalment and interest remained unpaid for a period in excess of 14 days after the due date for payment, the vendor should be entitled, on giving 14 days` written notice, to treat the agreement as having been repudiated by the purchaser, and, unless the unpaid instalment and interest were paid in the meanwhile, the agreement should be treated as annulled.

7 Clause 11 provided that within 14 days after the issue of the temporary occupation licence by the authorities, the vendor must give a notice to take possession and the purchaser has the right to take possession. Correspondingly, by cl 3(1)(h) the purchaser had to pay a progress payment of 10% of the purchase price within 14 days after receipt of the notice to take possession. Presumably in accordance with these provisions, possession was taken on 31 December 1983.

8 By cl 14 of the agreement, legal completion was required 14 days after the receipt by the purchaser of a notice to complete, such notice to be given on or before 30 June 1989. It had to be accompanied by the architect`s certificate that subdivision had been approved.

9 Clause 3(2)(b), which applied to the case in the event that happened, required that upon completion the purchaser must pay the balance of 20% of the purchase price.

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10 Notice to complete was given on 5 May 1986, within the time specified in cl 14. Unfortunately, before this, on 23 October 1985, the deceased had died in a kidnap attempt in Penang.

11 On 7 May 1986, the solicitors who had been acting for the deceased informed the defendants` solicitors of the deceased`s death, and that letters of administration were being applied for. These were eventually granted, by the High Court in Penang, on 14 September 1988 and issued on 14 November 1988. Application was subsequently made for the grant to be resealed in Singapore to enable the estate of the deceased in Singapore to be administered. On 16 June 1990, the plaintiffs` solicitors informed the defendants` solicitors that the resealing had been done.

12 Meanwhile, on receipt of the duplicate certificate of title with the notice to complete, the solicitors for the estate had discovered that the area of the unit shown on the certificate was some 76 sq ft short of the area shown in the agreement. On 9 May 1986, they put the defendants` solicitors on notice of this shortfall and claimed that the defendants were obliged to pay compensation of $24,294.75. This the defendants refused to do. Completion was then left in abeyance pending the resealing of the grant. The subject of the area shortfall was raised again in 1990 after the resealing of the grant, but the defendants maintained their earlier stand.

13 On 21 December 1990, the defendants` solicitors gave the plaintiffs a further notice to complete within 14 days. They made time of the essence of the contract. By the same letter, the defendants also claimed interest for late payment of the 20% progress payment due on completion under cl 3(2)(b). The plaintiffs said they were not liable to pay interest because the delay in completion was not due to any default on the part of the purchaser. They relied

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on condition 8(c) of the general conditions (see below). They also reiterated that the deceased`s estate had a right to compensation for the shortfall in area. However, they indicated that they would nevertheless proceed with completion while reserving the two questions for determination by the court.

14 Completion took place on 2 January 1991 on a without prejudice basis. The plaintiffs paid the balance of the purchase price together with interest for late completion, the latter amounting to $66,788.33. On 21 January 1991, the plaintiffs took out this originating summons seeking the following orders:

> (1) A declaration that the plaintiffs were not liable to pay interest for the delay in completion.
>
> (2) Refund of the sum of $66,788.33 with interest thereon at such rate as the court deems fit.
>
> (3) A declaration that the plaintiffs were entitled to compensation for the shortfall in the area of the property, the amount of the compensation to be assessed.

15 Before I deal with the submissions of counsel, I had better set out the provisions of condition 8. They are as follows:

> (8) If the sale shall not have been completed on or before the date fixed for completion, then -
>
> (a) If the delay in completion is attributable solely to the default of the purchaser, he shall pay interest on the amount of the purchase price (less the deposit and any sum paid to account) at the rate of 10% per annum from and including the date fixed for completion until the day of actual completion of the sale.
>
> (b) If the delay in completion is attributable solely to the default of the vendor, he shall pay to the purchaser by way of liquidated damages interest at the rate of 10% per annum on the purchase price of the property from and including the date fixed for completion until the day of actual completion: provided that if possession of the property sold has been delivered by the vendor to the purchaser before the date of actual completion then such damages shall be abated by a sum equal to the rent received by

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> the purchaser or in case the property is delivered with vacant possession by the equivalent of a rent calculated on the annual value of the property fixed under the Property Tax Act.
>
> (c) If the delay in completion is attributable to some cause other than the default of the vendor or the purchaser or to the default of both the vendor and the purchaser, no interest or damages shall be payable.

16 **The plaintiffs` contentions**

17 The plaintiffs` counsel`s submissions may be summarized as follows. Firstly, he submits that cl 5 of the agreement and condition 8 of the general conditions are not inconsistent; they are complementary. Clause 5 he says, provides for the payment of interest for late payment of the instalments of the purchase price, and condition 8 deals with payment of interest when completion is delayed. In this case, he says, condition 8(c) is applicable. The death of the purchaser was an event beyond anyone`s control; there was no default.

18 Secondly, the plaintiffs` counsel submits that since there was a right to abatement of the price on the ground of the area shortfall, the defendants were not entitled to give notice to complete without making an offer to abate. Since the defendants did not agree to abate, they were not entitled to require completion. There is, therefore, no question of any delay in completion so as to attract the payment of interest.

19 Counsel cited ***Yeo Brothers Co (Pte) Ltd v Atlas Properties (Pte) Ltd*** , for the proposition that where there is a misdescription that is not substantial, completion has to be accompanied with an abatement in price. He also referred to the following passage in ***Emmet on Title*** (18th Ed) para 4.022:

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> (1) If the misdescription is substantial, the vendor will be unable to enforce the contract, even with an abatement of the price …
>
> (2) If the misdescription is not substantial, then, provided that the misdescription was made innocently, the vendor will be able to enforce the contract, although subject to an abatement of the price by way of compensation for the insubstantial deficiency (***Jacobs v Revell*** [1900] 2 Ch 858) …

20 Thirdly, counsel submits that by reason of this wrongful refusal to grant an abatement, the defendants, rather than the plaintiffs, were guilty of default. The plaintiffs should not have to pay interest.

21 **The defendants` contentions**

22 Counsel for the defendants submits, firstly, that condition 8 is inconsistent with cl 5. Whereas liability for interest under condition 8 is based on the presence of default, this is not a factor in cl 5. Counsel says that condition 8 only deals with delay in completion whereas cl 5 deals with both delays in making progress payments and with delay in completion. The two clauses also provide different interest rates. By virtue of cl 1, therefore, cl 5 prevails over condition 8.

23 Secondly, counsel submits that the death of the deceased did not suspend the performance of the purchaser`s obligations under the agreement. The purchaser`s rights and obligations devolved on the personal representatives. This was made clear in the definition of `purchaser` in cl 23.

24 Counsel refers to 42 ***Halsbury`s Laws of England*** (4th Ed) para 208, which states:

> *A valid and enforceable contract for the sale of land is not avoided by the death of either or both parties before completion,*

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> *but remains enforceable both at law and in equity by and against the personal representatives ...*

25 She also relies on the following passage in ***Voumard on the Sale of Land in Victoria*** (4th Ed) p 132:

> *Upon the death of a purchaser pending completion his equitable interest in the land will form part of his real estate, and on the grant of probate or letters of administration, will vest in his personal representative.*

26 The death of the purchaser does not impose on the vendor an obligation to await performance of the contract beyond the stipulated time for performance.

27 Counsel submits that the estate of the deceased continued to be responsible for the payment of progress payments even before the grant of the letters of administration. Failure to pay attracted liability to interest or even rescission of the contract under cl 5(3).

28 Thirdly, counsel submits that even if condition 8 applies, it is for the plaintiffs to show that they came within it, to show that the delay in completion was not due to default on their part. She submits that they have not shown that the application for the grant of letters of administration and the subsequent application for resealing had been made within a reasonable time and proceeded with with due diligence. Counsel also makes the point that the plaintiffs could have made a separate application for a grant in Singapore, but no explanation has been given why this was not done.

29 As for the shortfall in area, counsel points out that there was only a shortfall of 2.83% in area, equivalent to $24,292.39 in monetary terms. She

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relies on condition 11 of the general conditions, and Lai Kew Chai J`s judgment in ***Yeo Brothers Co (Pte) Ltd v Atlas Properties (Pte) Ltd*** .

30 Condition 11 states:

> *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 out-goings 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. (Emphasis added.)*

31 In the ***Yeo Brothers*** case,1 Lai Kew Chai J said:

> *Clauses drafted with the tenor and along the lines as the provisions of [condition] 11 have been in use for many years. Their evident purposes were principally (a) to take away the right of a purchaser to annul on the slightest and most trifling misdescription; and (b) to take away the right to compensation in equity (as [condition] 11 here was designed to do) in situations where the misdescription was `not of a serious or vital nature nor considerably affecting the value of the property`.*

32 Counsel points out that in the form of agreement prescribed by the 1985 Housing Developments Rules (revoking the 1976 rules), there is an explicit provision in cl 20 for payment of compensation where the difference between the government resurvey area and the contractual area is in excess of 3%. She argued that this is an indication that anything less than 3% is not considered to be compensable.

33 **My views**

34 I start with the question whether the death of the deceased had any effect on the performance of the purchaser`s obligations under the agreement. In this

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respect, it is well settled that, except in the case of contracts based on personal considerations, the death of a party to a contract does not affect the enforceability of the contract. I accept as correct, indeed well settled, the propositions of law in the works referred to by counsel for the defendants concerning the effect of the death of the purchaser in a contract for sale of land.

35 It is not necessary for me to consider how the obligations of the deceased under the agreement could be performed before the grant of the letters of administration. It is also not necessary for me to consider how the sale and purchase could have been completed before the grant. I see in s 32 of the Land Titles Act (Cap 157) a provision enabling an instrument to be registered in the name of a party who dies before registration. As nothing has been said by counsel about this matter, it need not detain me. The sole question before me is whether when the obligations were finally performed on completion in January 1991, the defendants as vendors were entitled to charge interest for the late payment of the instalment due on completion.

36 Reliance has been placed on the provisions of condition 8(c) of the general conditions. I have to consider whether and to what extent this part of the condition is applicable having regard to the various provisions in the agreement governing the rights and obligations of the parties.

37 The agreement in the form prescribed by the Housing Developers Rules is specially designed for the sale and purchase of properties in the course of construction. The provisions for the payment of instalments of the purchase price as the works progress, are designed to enable the cost of the building project to be partially financed from these receipts from purchasers as the building project progresses. Under the current Housing Developers Rules, the instalment moneys are paid into a project account protected by the Act, but the

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developer is still allowed by the rules to withdraw sums necessary to meet the cost of construction of the project.

38 The agreement makes the payment of the instalments at the times specified a strict obligation on the part of the purchaser. The strictness can be seen in the provision in cl 5(3), which enables the developer to treat failure to pay within 14 days after due date as repudiatory breach and serve a notice annulling the contract. If the agreement is annulled, the consequences, including the amount of the damages (fixed at 20% of the purchase price) are also provided for. Clause 4 says that time shall be of the essence of the contract in relation to all the provisions of the agreement relating to the payment of the instalments. I think this is merely a short-hand restatement of the provision for annulment in cl 5(3).

39 Under the agreement, upon payment of instalments equivalent to 70% of the purchase, the purchaser is given the right to take possession. He is then entitled to treat the property effectively as his own, bar the final legal completion which is to take place on approval of subdivision and issue of a separate title. He is entitled to receive rents and profits from the date of taking possession.

40 The position regarding completion under the agreement is this. The purchaser has to pay the appropriate percentage of the purchase price within the time stated in cl 3. In the event that he fails to pay this instalment, on a fair reading of cl 5(3), he is liable to pay interest and, if the default persists, to have the agreement annulled by the vendor. In this respect, there is no reason to treat a failure to pay this final instalment of the purchase price and a failure to pay any of the previous instalments required by the agreement differently in terms of their consequences, ie payment of interest and liability to having the agreement annulled.

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41 On the other hand, the developer has a correspondingly strict obligation under the agreement to proceed diligently with the works and eventually get the subdivision approved and to issue a notice to complete under cl 14 within the time specified in the agreement. The Controller of Housing has a discretion to extend the time, but no extension can exceed six months beyond the stipulated date. Failure to give notice to complete within the time stipulated entails the payment of liquidated damages at the rate specified, even though the delay may not be due to the developer`s own fault. See ***Lee Kay Guan & Anor v Phoenix Heights Estate (Pte) Ltd*** , a case decided on an earlier version of the form of agreement.

42 The agreement thus has its own regime of dealing with payments towards the purchase price and completion of the sale and purchase and the consequences of delays in the performance of these and other obligations both on the part of the vendor and on the part of the purchaser.

43 In the instant case, given that the agreement remained enforceable despite the death of the deceased, it must follow that any delay in the payment of any instalment due under the agreement, including the final instalment payable on completion, would attract the interest liability and other consequences provided in the agreement. I am therefore constrained to reject the argument that the case comes under condition 8(c) on the basis that there was no default on the part of the purchaser.

44 Counsel for the plaintiffs argued that defendants were not entitled to give notice of completion since they did not agree to an abatement. I am unable to accept this argument. I do not think that a difference of opinion on the question of abatement prevents the giving of an effective notice to complete. There is nothing in the ***Yeo Brothers*** case1 which counsel cites which supports this

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argument. An effective notice to complete in my view can be given, but the purchaser can refer the matter of entitlement to abatement to the court for determination, as was done in this case.

45 I am therefore of the view that interest was properly chargeable for the delay in the payment of the last 20% of the purchase price due on completion. Notice to complete having been served on 5 May 1986, the 20% due should have been paid within 14 days after receipt. Interest was properly charged from 20 May 1986 to 2 January 1990, the date of actual completion. I therefore make no order on prayers 1 and 2 of the originating summons.

46 On the question of the area shortfall, I can dispose of the question very shortly as follows. I do not think that the shortfall was so substantial as to enable a purchaser to rescind the contract. However, it does appear to me to be substantial enough to be a subject of compensation. I do not think it is caught by condition 11.

47 As to the amount of abatement, I would follow Chan Sek Keong J`s approach in ***Chong Ah Kwee & Anor v Viva Realty Pte Ltd*** , and award the plaintiffs, on a straight-line apportionment basis, the sum of $24,294.85, with interest from 2 January 1990 at the rate of 6%pa. I order accordingly.

48 As for costs, the plaintiffs have succeeded on one of the two issues raised. I would award them half the costs of these proceedings.

49 Plaintiffs` claim allowed in part

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Warren Khoo L H J

Tan Bar Tien (BT Tan & Co) for the plaintiffs
Margaret Neo (Joseph Hoo Morris & Kumar) for the defendants

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