IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 247

S620/1989

Between

GROUNDS OF DECISION

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

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ALLAN CLINIC FOR WOMEN PTE LTD v MOUNT ELIZABETH HOSPITAL LTD

[1993] SGHC 247

S620/1989
Warren Khoo L H J
13 October 1993

1 **Judgment:**

2 Coram: Warren L H Khoo J

3 CAV

4 Further Judgment

5 In my judgment dated 16 September, I reserved for further consideration certain matters indicated in it. I have since heard counsel, and I now determine those matters, as follows.

6 Occupation rent or interest

7 The first matter concerns the liability of the plaintiffs to pay rent for the occupation of the units or interest for the delay (albeit due to the defendants', not the plaintiffs', breach) in the payment of instalments of the purchase price. I have found that Type A, approved by the Controller in July 1986, would have

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been the appropriate form to use for the sale of the units, at least the closest to the appropriate form. That form provided for the payment of 20% of the purchase price on signing of the agreement, 72% within 14 days after receipt of the vendors' notice to take possession, and the balance 8% on completion.

8 Under other provisions of Type A, a notice to take possession had to be accompanied by a copy of the certificate of fitness for occupation and the architects' certificate certifying the completion of the building works in accordance with the building plans and completion of services and utilities.

9 It is clear that the defendants were at all times after the settlement agreement in a position to give such a notice to take possession and require the payment of the 72%. I accept that if the defendants had been more co-operative than they were in implementing the settlement agreement reached in May 1987, they would have produced Type A in June 1987. As Dr Ng had secured the necessary financing facilities and was anxious to proceed with the purchase, I think that for present purposes, a reasonable time-table for the instalment payments would have been as follows:

10 By 30 June 1987: Exercise of option by the plaintiff, and payment of 20% of the purchase price. By 31 July 1987: Payment of the second instalment of 72%.

11 The scheme of Type A is that upon taking possession, when the purchaser will have paid 92% of the purchase price, the premises are effectively the purchaser's. From then on, he does not have to pay any rent to the vendor for the occupation of the premises.

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12 In the present case, on the time-table postulated above, the plaintiffs would not have had to pay any rent to the defendants from August 1987 onwards. On the other hand, they would have had to pay a total of 92% of the purchase price by 31 July, 1987. Since they in fact have not paid the 92% (albeit because of the defendants' breach) and on the other hand have been in occupation, it seems to me that they will have to pay interest on this unpaid sum. This is so that they would not unduly profit from the defendants' breach by having the monies in their hands and at the same time occupying the premises free of charge. The plaintiffs should pay interest on the 20% from 1 July 1987 to completion, and on the 72% from 1 August 1987 to completion. The rate should be as provided for in Type A for delayed payments of instalments, i.e. 2% above the average of the prevailing prime rates of the four major banks in Singapore (DBS, OCBC, OUB, UOB).

13 The plaintiffs should be charged for rent up to 31 July 1987 only, at the rate of $12,018.90 (inclusive of the service charge) per month as provided for in the settlement agreement. Since they in fact paid rent up to the end of March 1988, the rent paid by them from August 1987 to March 1988 should go back to the plaintiffs by way of a set-off against the interest to be paid in accordance with the preceding paragraph.

14 Liquidated damages

15 Plaintiffs' counsel submitted that I should award liquidated damages provided for in Type A for the delay in the issue of separate title. Under clause 15(2), notice to complete had to be given by a date (to be inserted) or on the expiry of 10 years from issue of the temporary occupation licence ("TOL"), whichever was earlier. The TOL was issued on 24 October 1979, so the notice

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to complete should have been given on 23 October 1989. Counsel submitted that the plaintiffs are entitled to liquidated damages in accordance with the provisions of cl 15(2) calculated from 24 October 1989.

16 I decline to accept counsel's submission, for the following reasons. I have awarded the plaintiffs compensation in the sum of $751,500 on the basis of the compensation agreement which the defendants negotiated with the purchasers of units arising from the implementation of the hospital extension programme. The compensation agreement provided for the date for the giving of notice to complete to be extended to 4 years after 5 January 1989, the "consent date" (on which the defendants received all the consents from purchasers and mortgagees to the extension programme). Under the compensation agreement notice to complete thus need not be given before 5 January 1993. If any liquidated damages were to be paid, they would run from that date to the date of completion.

17 However, the liquidated damages provided in cl 15(2) of Type A are calculated on the basis of 10% per annum on the total sum of all instalments of the purchase price that have actually been paid. The liability to pay liquidated damages is predicated on the 92% having been paid.

18 If any liquidated damages were to be paid by the defendants, they would have to be set off against the interest cost to the plaintiffs of the 20% and 72% instalments, arguably from the dates on which these respective amounts should have been paid. This could well result in a negative figure, i.e. the plaintiffs might end up paying a sum to the defendants instead. I do not think that this would be a fair result, if only because it is the defendants' breach that has given

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rise to the question of liquidated damages in the first place. So I do not award liquidated damages.

19 Completion of the purchase

20 The plaintiffs, while anxious to complete the purchase, are concerned about the prospect of wasting costs and expenses (e.g. stamp duty) in connection with the conveyance of the property, in the event of an appeal succeeding. To meet this legitimate concern, I would order that completion shall take place at the expiry of two months from the date of this present judgment, provided that no notice of appeal whose outcome would affect the order for specific performance is given in the meantime. In the event that such a notice is given, completion should take place within two months after the resolution of the appeal or otherwise as the Court of Appeal might order. Interest on the instalments of the purchase price which I have ordered runs until completion in any event.

21 Interest on $751,500

22 I am of the view that interest should be paid on the amount which the plaintiffs would have received as compensation in respect of the units in return for their consent to the hospital extensions. The parties have agreed that the compensation would have been paid in three tranches as follows:

23 (a) $69,948.63 on 18 October 1989

24 (b) $618,242.04 on 27 February 1990

25 (c) $76,500.00 on 20 July 1993

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26 I would award interest at the rate of 6% per annum on each of these sums from the day following each of the respective dates stated above until the date of this judgment. Thereafter, the provisions for statutory interest apply as a matter of course.

27 The rental deposit

28 Reference was made in my judgment to the claim for the refund of the rental deposit of $24,052.10 with some deductibles. Counsel tell me that this can be worked out between the parties, and I need not trouble myself with it.

29 Other reliefs

30 The plaintiffs claim declarations that the operative sale and purchase agreement should be Type A and for declarations as to how the blanks in the Form (concerning the date for giving vacant possession and for giving notice to complete the purchase) should be filled in. Having regard to my judgment on these matters, I do not think it is necessary for me to make any such declarations.

31 Parties have liberty to apply.

Warren Khoo L H J

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