IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 30

Suit 1860/1992

Between

Tan Soo Leng David

… Plaintiff

And

Wee, Satku & Kumar Pte Ltd
Another

… Defendant

GROUNDS OF DECISION

Land — Sale of land; Civil Procedure — Summary judgment; Words and Phrases

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

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Tan Soo Leng David v Wee, Satku & Kumar Pte Ltd and Another

[1993] SGHC 30

Suit 1860/1992
G P Selvam JC
11 February 1993

1 Cur Adv Vult

2 ***The facts***

3 The underlying subject matter of this case is a clause in a contract for sale of a commercial leasehold property. It concerns a building known as Mount Elizabeth Medical Centre. It is owned by Mount Elizabeth Hospital Ltd, the second defendants.

4 By an agreement dated 24 January 1992 the second defendants sold to Wee, Satku & Kumar Pte Ltd, the first defendants, the residue of a leasehold of 99 years commencing from 1 October 1976 in respect of the 11th storey of the building (`the property`). The sale price was S$910,000.44. The lease contains a restrictive covenant in respect of user of the premises - that the property shall be used for the purposes of medical practice. There was, in addition, the following restriction on the assignment of the lease:

> *The purchaser [the first defendants] shall not let or sublet, sell or assign or transfer (otherwise than by way of security) the same*

> *without the prior written consent of the vendor [the second defendants] which consent shall not be unreasonably withheld if the intended letting or sub-letting, sale or assignment or transfer is to a medical practitioner (which expression shall include a body corporate) engaged in the practice of specialist medicine.*

5 On 2 July 1992 the first defendants in consideration of $10,000 gave the plaintiff, an ophthalmologist, an option to purchase the property at the price of $1,212,000 (`the agreement`). The plaintiff paid the option fee of $10,000. The offer contained in the option to purchase remained open for acceptance until 15 July 1992. The agreement by cl 6 further provided in substance as follows :

> *The sale shall also be subject to consent of [the second defendants]. In the event such consent is refused or not received by the completion date (20 September 1992), the sale and purchase shall be deemed rescinded forthwith whereupon all moneys paid hereunder shall be refunded to you [the plaintiff] free of interest and no effect and neither party shall have any claim or demand against the other for damages, costs, compensation or otherwise.*

6 The first defendants on 1 July 1992 sought the consent of the second defendants for the assignment of the lease to the plaintiff. They did this one day before the agreement was signed because originally the option was intended to be given on 1 July 1992 but was delayed by one day by consent of the parties.

7 On 14 July 1992 the second defendants stated that they were withholding their consent to the assignment of the lease. This was communicated to the plaintiff who was also informed that the option fee of $10,000 would be returned to him.

8 **The action and applications**

9 Notwithstanding the fact that the second defendants withheld their consent to the assignment and the $10,000 would be refunded, the plaintiff

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insisted on exercising his option and going on with the purchase. He tendered the ten percent deposit which was refused by the first defendants. On 11 September 1992 the plaintiff issued a writ against the first defendants claiming a declaration that their failure or refusal to proceed with the completion of the sale and purchase of the property was unreasonable and that they were entitled to proceed with the sale. Note that the allegation is `unreasonable` and not `unlawful`. He also sought an injunction restraining the first defendants from dealing with the property in a manner inconsistent with their obligations under the agreement. And finally, he claimed specific performance of the agreement and damages. Alternatively, he sought a declaration that the first defendants were entitled to proceed with the completion of the sale and purchase. His claim against the second defendants was for a declaration that their refusal of consent was unreasonable. He also asked for damages for the wrongful withholding of consent.

10 The plaintiff then filed an application seeking summary judgment against both defendants. By way of reflexive opposition both defendants filed an application each for dismissal of the plaintiff`s action on the grounds that it disclosed no reasonable cause of action, and/or it was frivolous or vexatious, and/or it was otherwise an abuse of the process of the court. All three applications were heard together and this decision will dispose of all three applications.

11 **The law**

12 The obligation of a vendor lessee who agrees to assign his lease subject to the owner`s consent as required under the lease depends on the terms of the agreement between him and the purchaser. It is essentially a question of construction of the agreement. Where the agreement provides that it is subject

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to the owner`s consent without more the lessee need only seek the consent of the owner. If the consent is refused even without valid ground the lessee is entitled to rescind the agreement. Under such an agreement the lessee is not required to remonstrate with the owner over the refusal or to take upon himself the expense and risk of litigation to force the owner to consent. See **Lehmann v McArthur,** [1868] LR 3 Ch App 496 **Barrow v Isaacs & Son** [1891] 1 QB 417 and **Eastern Telegraph Co Ltd v Dent & Ors.** [1899] 1 QB 835

13 In ***Lehmann v McArthur*** 1 a lease contained the restriction that the lessee would not assign the lease without the previous consent in writing of the owner, which consent should not be withheld unreasonably or vexatiously. The lessee agreed to sell the lease to a purchaser subject to the owner`s approval. It was assumed by both that the owner`s consent would not be refused. There was no express right to rescind the agreement. The owner subsequently refused his consent whereupon the lessee sought to rescind the agreement to assign the lease and transferred the lease for the benefit of the owner. The purchaser brought an action against the lessee seeking specific performance and against the owner seeking a decree to compel him to concur in the assignment and damages. It was argued for the purchaser that he was the equitable owner of the lease and that the property was subject to his rights. It was further argued that his rights could be defeated only if the owner showed reasonable cause for objecting. The Court of Appeal decided against the purchaser and held that the lessee was entitled to consider the agreement at an end as the lessee had sought the owner`s consent and it was refused. The lessee was not obliged under the agreement to take legal proceedings against the owner. The court declined to decide whether the refusal of consent by the owner was unreasonable as it was not necessary to do so. The refusal of consent by the owner, therefore, was not a justiciable matter at the instance of the purchaser.

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14 In ***Lipmans Wallpaper Ltd v Mason & Hodghton Ltd*** 4 the agreement in substance provided that the sale was subject to the owners` consent and `if the consent cannot be obtained the vendor may rescind the contract on the same terms as if the purchaser had persisted in an objection to the title which the vendor was unable to remove`. Another provision in the agreement stated that `if the purchaser shall be unable or unwilling to remove any objection to the title the vendor may by notice, and notwithstanding any intermediate negotiation or litigation, rescind the agreement`. Upon such rescission the vendor was obliged to return the deposit without interest. The owners refused consent and the vendor gave notice of rescission. The purchaser claimed specific performance of the agreement against the vendor and a declaration against the owners that the lease vested in the purchasers. Goff J dismissed the claims against the vendor and the owners. He said that the vendor was entitled to rescind if he applied to get the owners` consent and it was refused. On the facts he found that it had been applied for and that it was refused. The vendor`s obligation was only to try to get the consent and he was not obliged to go into the question whether the owner`s refusal was reasonable or unreasonable even if the refusal was obviously unreasonable which on the facts it was not. The vendor upon true construction of the agreement had an immediate right to rescind when the owners` consent was refused. Finally when the right to rescind arose it was subject to the return of the deposit.

15 In ***Bickel & Ors v Courtenay Investments (Nominees) Ltd*** 5 a lease prohibited assignment without the landlord`s consent which `shall not be unreasonably withheld in the case of a respectable and responsible tenant`. The lessees were required to use their best endeavours to obtain the consent. The agreement incorporated the National Conditions of Sale which give the vendors an express right to rescind the agreement if they were unsuccessful in procuring

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the consent. The vendors in this case sought to rescind the contract as the owners refused consent. The purchasers brought an action against the vendors and the owners seeking specific performance and damages and took out a summons for summary judgment under the English Rules of the Supreme Court. The application for summary judgment was dismissed. The vendors in the meantime issued an originating summons against the purchasers seeking a declaration that on the true construction of the agreement and on the facts of the case they were entitled to rescind the contract. Warner J decided the case against the purchasers. He held that all that was required of the vendors was to use their best endeavours which on the facts they had done. The endeavours were unsuccessful. He further held that the court would not order specific performance of the agreement as there was a doubt as to whether owner`s consent was being withheld reasonably. Applying the ***Lipmans*** case4 he said that the purpose of the best endeavours clause could not be to generate litigation.

16 **The legal position of the parties**

17 On the true construction of cl 6 of the agreement in the present case I hold that it is a resolute condition - that is, it provides for the automatic termination of the agreement if the consent is refused or not received. The difference between refusal and non-receipt is the time factor - refusal is a positive act of the owners which occurs before the date of completion whereas non-receipt must wait until the date of completion. In either case there will be an automatic rescission by agreement. The only obligation of the vendor in respect of the consent is to seek it in good faith and good time. He is not obliged to argue, or let the purchaser argue, against the owner that the refusal of consent or failure to respond is unreasonable or unlawful. In view of the time limit for the completion of the agreement the vendor cannot be expected to embark on an argument with the owner or prolong it indefinitely. The virtue of the

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automatic rescission clause in the agreement is that it affords the vendor a quick and placid solution without having to litigate with anyone. The issue whether a refusal of consent or failure to respond by the owner is unreasonable is, therefore, not a justiciable matter at the instance of the purchaser as it is not within the context of the agreement. Finally, the agreement does not provide for the vendors to act reasonably or give reasons for their decision.

18 The plaintiff, in view of the authorities and the construction I have put on cl 6 of the agreement, does not have a case against the defendants because the consent was sought and refused. And the plaintiff is not entitled to specific performance of the agreement. It is therefore unnecessary to consider the validity of the owner`s refusal of consent. The action is obviously unsustainable.

19 **Equitable interest**

20 The plaintiff sought to justify his action on the ground that the option to purchase gave him an equitable interest which entitled him to bring the lessee and the landlord to court and argue that the landlord`s refusal of consent was unreasonable. That an agreement for the sale of property and an option to purchase create an equitable interest in the property in question is settled law: see **Mountford & Anor v Scott.** [1975] Ch 258 The principle was stated by Jessel MR in **London and South Western Railway Co v Gomm** [1881] 20 Ch D 562 at p 581:

> *The right to call for a conveyance of the land is an equitable interest or equitable estate. In the ordinary case of a contract for purchase there is no doubt about this, and an option for repurchase is not different in its nature. A person exercising the option has to do two things, he has to give notice of his intention to purchase, and to pay the purchase money; but as far as the man who is liable to convey is concerned, his estate or interest is taken away from him without his consent, and the right to take*

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> *away being vested in another, the covenant giving the option must give that other an interest in the land.*

21 The right to call for a conveyance in this context means an entitlement to specific performance. The content of an equitable interest of this kind is that it is binding on the whole world save a bona fide purchaser of the legal estate for value without notice of such a right. See **Tulk v Moxhay** [] 41 ER 1143 and **Wright v Dean.** [1948] WN 271 Wynn-Parry J in **Wright v Dean** [1948] WN 271 said that the option clause created an interest in land - **London & South Western Ry Co v Gomm;** [1881] 20 Ch D 562 **Worthing Corporation v Heather** [1906] 2 Ch 532 - and that before 1926 equity would have enforced it by a decree of specific performance against the defendant or any transferee other than a purchaser for value without notice. As I have held that the plaintiff is not entitled to specific performance he has no equitable interest that will run with the property.

22 **Legal action by vendor**

23 [lt]6[gt]Vienit Ltd v W Williams & Son (Bread Street) Ltd11 on which the plaintiff relied is distinguishable from the present case. The plaintiffs in that case were tenants of the defendants under a lease which contained a covenant not to assign, part with possession or underlet the demised premises `without the previous consent in writing of the lessors or their superior lessors which consent shall not be unreasonably withheld in the case of a respectable and responsible assignee or underlessee ...`. The plaintiffs were desirous of assigning the remainder of their term to a company of whom the uncontradicted evidence was that they were respectable and responsible assignees. The defendants stated that they were prepared to grant their consent provided that the superior lessors also consented; the superior lessors, however, were only willing to give their consent on conditions which were plainly unacceptable to

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the plaintiffs. On an application of the plaintiffs, against the immediate lessors it was held that on the true construction of the lease, and in the events which had happened, (a) the refusal of the defendants to consent to grant a licence to the plaintiffs to assign the said lease was unreasonable; and (b) that, as the refusal of the superior landlords was unreasonable, the continued refusal of the defendants to give their consent was in itself unreasonable. This enabled the assignment of the lease. In the Vienit Ltd case11 the application was made by the lessor in possession under a lease under which a reason had to be given for a refusal. Not so in the present case. Further, unlike the present case there was no provision for an automatic rescission in the Vienit Ltd case.11

24 **Legal action by purchaser as assignee**

25 Theodorou v Bloom12 was another case relied on for the plaintiff. The lease in that case contained a covenant by the lessee not to assign or underlet without the written consent of the landlord, such consent not to be withheld in favour of a respectable and responsible person. The lessee applied to the landlord for his consent to an assignment of the lease to the plaintiff, sending with the application references showing that the plaintiff was respectable and responsible as required by the covenant. No reply having been received from the landlord after three weeks, the lessee went ahead with the assignment of the lease to the plaintiff. The plaintiff issued a writ against the landlord claiming a declaration that the assignor was entitled to assign the lease to him without the written consent of the landlord.

26 On the questions whether the plaintiff was the proper person to apply for the declaration and whether the assignor should be a party to the action it was held that on the evidence the lease was properly assigned without consent. The assignee was and had been ever since the assignment the lessee and was entitled

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to have resolved the dispute between him and the landlord. Accordingly to put the plaintiff`s title beyond dispute as between him and the landlord a declaration was made that the assignment to the plaintiff was not invalidated by reason of it being made without the written consent of the landlord.

27 The application in that case was made by the assignee and not the assignor (lessee) because there was an actual assignment which placed the assignee in the shoes of the assignor. In this case there was no actual assignment. And in any event the first defendant had no option in the matter as there was an automatic rescission. ***Theodorou v Bloom*** ,12 therefore, does not assist the plaintiff.

28 **Dismissal of action**

29 The court has the power to dismiss an action in summary procedure if it is plain and obvious that the action will not lie. And `the court should order a statement of claim to be struck out if it is satisfied that the action is not maintainable even if there is no express decision of the court or a superior court to that effect.` See 36 ***Halsbury`s Laws of England*** (4th Ed) paras 73 and 74.

30 The plaintiff`s claim is plainly and obviously unsustainable because he does not have a justiciable issue to take with the defendants. The decided cases are abundantly clear on the point. The following statement of Fletcher Moulton LJ in ***Dyson v Attorney General*** 13 at p 418 clearly applies to this case:

> *To permit the action to go through its ordinary stages up to trial would be to allow the defendant to be vexed under the form of legal process when there could not at any stage be any doubt that the action was baseless.*

31 I therefore dismiss the plaintiff`s application for summary judgment with costs. The plaintiff`s action is also dismissed with costs on the applications of the defendants. ***Plaintiff`s application dismissed.***

G P Selvam JC

Wong Meng Meng and Sim Mei Ling (Wong Meng Meng & Partners) for the plaintiffs
K Shanmugam and Maria Ho (Allen & Gledhill) for the first defendants
Chua Lee Ming (Lee & Lee) for the second defendants

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