IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 312

OS 886/1993

Between

Kim Beng Lee Pte Ltd

… *Plaintiff*

And

Kosion Enterprise (S) Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Land — Sale of land — Conditions of sale

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

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Kim Beng Lee Pte Ltd v Kosion Enterprise (S) Pte Ltd

[1993] SGHC 312

OS 886/1993
G P Selvam JC
31 December 1993

1 Cur Adv Vult

2 This case concerns a contractual right to rescind a contract for the sale and purchase of a leasehold factory property.

3 The defendants were the owners of the leasehold which was situate at and known as 23-E Sungei Kadut St 1 (`the property`). The area of the property was stated as `2,255 sq m, more or less, subject to survey`.

4 On 28 May 1993, the defendants granted an option to the plaintiffs for the purchase of the property. The consideration was $13,500 and the purchase price was $1,350,000. On 11 June 1993, the plaintiffs exercised the option and paid the balance 10% of the price ($121,500). Thus, they paid a total of $135,000 to the defendants. The option was, therefore, converted into a contract for sale.

5 Clause 7 of the `terms and conditions of sale and purchase` provided, inter alia, as follows :

> *The purchaser shall be deemed to have inspected the property and be satisfied as to its condition and the purchaser shall not make any objection or requisition in respect thereof.*

6 Clause 9 provided as follows :

> *The said property is sold subject to satisfactory replies to legal requisitions to the various government departments and the MRT Corporation and satisfactory road and drainage interpretation plans to be obtained by the purchaser`s solicitors. If any of the aforesaid replies or said interpretation plans are unsatisfactory as hereinafter set out, then this contract may be rescinded at the purchaser`s option in which event it shall become null and void and of no further effect whatsoever, provided that the vendor shall thereupon refund to the purchaser the deposit paid but without any interest compensation or deductions whatsoever. Each party hereto shall bear their own solicitors` costs in the matter and neither party hereto shall have any claims or demands against the other party for damages, costs or otherwise whatsoever in the matter. For the purpose of this clause, unsatisfactory replies shall include the following:*
>
> (d) any road reserve affecting the property which does not exceed 10% of the total land area shall not be construed as unsatisfactory; and
>
> (e) any reply from the MRT Corporation disclosing that the said property is adversely affected by any notice served or government ***Gazette*** notification published under ss 35 or 36 of the Mass Rapid Transit Corporation Act (Cap 172).

7 Because of this special provision, the principle caveat exemptor has no application in relation to what the MRTC proposed to do.

8 On 29 June 1993, the Mass Rapid Transit Corporation (`the MRTC`) wrote stating that the property was affected by three notices. Notice No WL 0027/92 dated 23 April 1992 from MRTC read as follows :

> *Notice is hereby given pursuant to s 35 of the Mass Rapid Transit Corporation Act 1988 that the corporation intends to enter upon the land described in the Schedule hereto being land within/adjoining the railway area for the purpose of laying and constructing the railway in or over the said land and doing all things necessary for the laying and construction of the railway.*

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> *In this regard, the corporation proposes to construct the railway on the land which will include works such as:*
>
> (a) filling, levelling and excavation of the existing ground;
>
> (b) piling and building works for the erection of the MRT viaducts;
>
> (c) drainage, turfing, landscaping, fencing, etc;
>
> (d) laying of services, lightning conductor, etc; and
>
> (e) temporary hoarding.
>
> *The corporation intends to occupy the land from* ***1 September 1992****until approximately* ***30 April 1996****.*

9 Any person entitled to payment of any compensation under the Mass Rapid Transit Corporation Act 1988 may serve a written claim on the corporation.

10 **The Schedule**

11 TG/Mukim 11, lot 1192pt in the district of - containing an area of approximately 157 sq m and depicted in the attached sketch plan drawing No PD/601/WS/010.

12 In effect, therefore, the owner had to live with the partial occupation of the property by the MRTC for three years and a half. They could not have uninterrupted and full enjoyment of the property. In addition, upon completion of the works, the MRT viaduct would intrude into the airspace of the property and would restrict the use and enjoyment of the property.

13 On the basis of the above, the plaintiffs gave notice of rescission and sought the return of the $135,000 they had paid to the defendants but the defendants refused. The defendants said that the facts did not come within cl 9

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and, accordingly, there was wrongful repudiation of the contract which entitled them to retain the deposit and resell the property. They did, in fact, go ahead with the sale at a price higher than $1,350,000.

14 For the plaintiffs` right to rescind to take effect, it must be shown that the property was `adversely affected` by the MRTC notice. In effect, they must show that they would suffer loss and damage by reason of what MRTC proposed to do.

15 Clause 7 and the fact that the affected land area might be minimal are irrelevant matters. So are the cases decided on loss of land which was dealt with by a special clause in the contract. Clause 9(d) provided that `any road reserve affecting the property which does not exceed 10% of the total land area shall not be construed as unsatisfactory`. A property may, of course, be adversely affected by a variety of causes other than by a road widening scheme.

16 It would be apt to mention here that ownership of land is not limited to the possession and enjoyment of the soil and everything which is part of it. This ancient version is part of our law: ***cujus est solum, ejus est usque ad coelum et ad infers*** (ownership of land extends up to the sky and down to the centre of the earth). In practice this right is limited to such right as may be reasonably necessary for the enjoyment of it. See ***Bernstein of Leigh (Baron) v Skyviews & General Ltd*** . And it has been held that when the airspace of a landowner is invaded by a tree, a crane or wires, it is trespass. It may be removed by injunction. See ***Anchor Brewhouse Developments Ltd v Berkley House (Docklands) Developments Ltd*** , and ***Kelsen v Imperial Tobacco Co (of Great Britain and Ireland) Ltd*** . In the case at hand, the permanent intrusion of the MRTC viaduct into the airspace of the property would, without doubt, adversely affect the property.

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17 Next, the occupation of part of the property for a period of three and a half years would also adversely affect the property for the simple reason that it deprives its owner of his full and uninterrupted use and enjoyment of the property.

18 I, therefore, came to the conclusion that the property was adversely affected by the MRTC notice and, therefore, unsatisfactory. Accordingly, the purchasers were entitled to rescind the contract and have the deposit returned to them. They were, in addition, entitled to interest for they were not paid in prompt time.

19 Plaintiffs` claim allowed.

G P Selvam JC

Wong Kah Chiew (Harpal Wong & M Seow) for the plaintiffs
Cheong Kok Tim (Hoh & Pnrs) for the defendants

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