IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 61

OS 573/1992

Between

Gold Pine Land Development Pte Ltd

… *Applicant*

And

Lee Poi Sam

… *Respondent*

GROUNDS OF DECISION

Land — Sale of land — Remedies under uncompleted contract

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Gold Pine Land Development Pte Ltd v Lee Poi Sam

[1993] SGHC 61

OS 573/1992
Lim Teong Qwee JC
17 March 1993

1 This application by originating summons raises a short point of construction of a standard form of agreement for sale by a licensed housing developer of a housing unit intended to be comprised in a strata title plan. This is the form to be used under the since repealed Housing Developers Rules 1976. The relevant provisions of this form and those in the standard form under the current rules are different in material respects and the point raised in this application may not arise again. However, counsel have asked that I give my reasons in writing and I think it is right that I do so.

2 The applicant is the vendor and the respondent is the purchaser and the agreement is dated 16 July 1983. On 9 July 1985 the purchaser received the vendor`s notice to take possession. At this time the purchaser was already in default in payment of some instalments of the price. In fact he had only paid the first four instalments (including the deposit) making a total of 40% of the price. He did not make any further payment and he did not take possession. Clause 16 of the agreement provides:

> *The purchaser shall from the date of taking vacant possession or on the expiration of fourteen (14) days after the receipt by the purchaser or his solicitors of the notice to take vacant possession*

> *under cl 13, whichever is earlier, be liable for all property tax and other outgoings in respect of the said unit and shall on demand reimburse the vendor for such property tax and other outgoings as may have been paid by the vendor.*

3 Clause 28 provides:

> *... The aforesaid maintenance and service charges shall be payable by the purchaser from the date of taking of vacant possession or on the expiration of fourteen (14) days after receipt by the purchaser or his solicitor of the notice to take vacant possession under cl 13, whichever is earlier. ...*

4 The purchaser did not pay any property tax or other outgoings or any maintenance or service charges and he did not reimburse the vendor for any property tax or other outgoings the vendor may have paid.

5 Clause 6(3) provides:

> *If any of such unpaid instalment and interest remains unpaid for any period in excess of forty (40) days after its due date, the vendor shall be entitled at his option on giving to the purchaser or his solicitors not less than thirty (30) days` notice in writing to treat this agreement as having been repudiated by the purchaser and (unless in the meanwhile such unpaid instalment and interest shall have been paid) this agreement shall at the expiration of the said notice (and in this respect time shall be of the essence) be annulled and in such an event -*
>
> (a) the vendor shall be entitled to deal with or otherwise dispose of the said unit in such manner as the vendor shall see fit as if this agreement had not been entered into;
>
> (b) the instalments previously paid by the purchaser to the vendor excluding any interest paid shall be dealt with and disposed of as follows:
>
> (i) firstly, all interest calculated in accordance with paragraph (1) hereof owing and unpaid shall be paid to the vendor;
>
> (ii) secondly, a sum equivalent to twenty-five (25) per cent of the balance thereof shall be paid and forfeited to the vendor; and
>
> (iii) lastly, the residue thereof shall be refunded to the purchaser;

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> (c) neither party hereto shall have any further claims against the other for costs, damages, compensation or otherwise hereunder; and
>
> (d) each party hereto shall pay its own costs in the matter.

6 All the overdue instalments and part of the interest were unpaid for well in excess of 40 days after due date and on 16 March 1989 the purchaser received the vendor`s 30-day notice to treat the agreement as having been repudiated by the purchaser and `to exercise [its] rights under cl 6(3)`. In fact he was given 40 days. Nearly four years have elapsed since the notice to take possession but nothing turns on this on the facts. The purchaser did not pay any of the unpaid instalments or interest in the 40 days allowed and the agreement was treated as annulled under cl 6(3) on 30 April 1989. The vendor now claims a declaration that it is entitled to be reimbursed for property tax under cl 16 and to maintenance and service charges under cl 28.

7 Mr Yong submits that the purchaser`s liability under cll 16 and 28 arose before the agreement was annulled and unless the agreement provides to the contrary the annulment under cl 6(3) does not deprive the vendor of its accrued rights. He submits that nothing in the agreement or in cl 6(3) has any such effect on the vendor`s accrued rights. Mr Netto drew my attention to the consequences of annulment and in particular to cl 6(3)(b). All overdue interest has to be paid. This is already due under cl 6(1) and yet is expressly provided for under cl 6(3)(b) but not instalments due and unpaid. He submits that this suggests that upon annulment under cl 6(3) rights under the agreement are not saved unless expressly referred to. Further, 25% of the instalments paid is forfeited to the vendor and the balance (after deducting the interest) is to be refunded to the purchaser. He submits this is a provision for damages intended to compensate the vendor for all loss and expense. Finally cl 6(3)(c) bars any further claims for

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`costs, damages, compensation or otherwise hereunder` which would include claims under cll 16 and 28.

8 I agree with Mr Netto. Under cl 6(3) the agreement is ***annulled*** . It is not terminated by breach. It does say that the vendor may treat the agreement as ***repudiated*** by the purchaser`s breach but cl 6(3) goes on to say that the effect is to ***annul*** the agreement and it goes on to say further what the consequences are `in such an event`. The consequences are as expressly stated in paras (a) to (d) of cl 6(3). In my opinion the provisions of these four paragraphs exhaustively set out the rights and obligations of the parties without any saving of accrued rights if any. There is another way of putting it. The vendor`s rights arise under cll 16 and 28 of the agreement. The agreement has been annulled. It has lost its rights unless these are preserved under some saving provision and there is none. By contrast the standard form of agreement under the 1985 Rules in the clause equivalent to cl 6(3) contains the words `without prejudice to any other rights available to [the vendor] at law or in equity` and para (c) of cl 6(3) of the old form has been omitted. I expressly refrain from stating any view on the new standard form or on the effect of these changes and will confine myself to the case before me which is on the old form. By reason of the agreement having been annulled by notice given by the vendor under cl 6(3), the purchaser is not liable to the vendor in respect of property tax and other outgoings under cl 16 or for maintenance or service charge under cl 28 and there will be a declaration accordingly.

9 **Outcome:**

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Lim Teong Qwee JC

Yong Kwet Leong (Yong & Partners) for the applicant
Leslie Netto (Netto & Netto) for the respondent

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