IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 232

OS 138/1994

Between

Lam Seng Tiong
Another

… *Plaintiff*

And

Pacific Rim Investments Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Contract — Remedies — Liquidated damages; Land — Sale of land

Version No 1: 29 Oct 2026 (23:45 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Lam Seng Tiong and Another v Pacific Rim Investments Pte Ltd

[1994] SGHC 232

OS 138/1994
Warren Khoo L H J
08 September 1994

1 Cur Adv Vult

2 On 2 November 1992, the plaintiffs entered into an agreement with the defendants for the purchase of a semi-detached house at the price of $1m. The property was under construction. Although the defendants were not developers subject to control under the Housing Developers (Control and Licensing) Act, the agreement which they adopted for use with the plaintiffs was in the model, but not in the exact terms, of the form of agreement prescribed by rules made under the Act.

3 The agreement provided for the payment by instalments of the purchase price according to the progress of the works. The progress payments we are concerned with in these proceedings are those under cl 3(1)(h) and (i), ie those payable on the purchaser taking possession and on the legal completion of the purchase.

4 On 10 December 1993, the defendants served a notice under cl 3(1)(h) requiring the plaintiffs to take possession. By cl 3(1)(h), on the taking of vacant

possession, the plaintiffs were required to pay 20% of the purchase price, ie $200,000, within 14 days of the receipt of the notice. It is common ground that that means paying $200,000 by 24 December 1993. The plaintiffs were late in payment of this amount. They paid only on 8 January, and then only $100,000, leaving a balance of $100,000, which they did not pay until 12 January after the defendants served a peremptory notice under cl 5.1 (of which more later).

5 In the meantime, the certificate of title to the property had been issued by the Registrar of Titles, and the defendants were entitled to give notice to the plaintiffs to complete the purchase. The defendants gave notice to complete on 5 January 1994. Under cl 3(1)(i), read with cl 14, of the contract, the plaintiffs were required within 14 days from receipt of the notice to pay the remaining 10% of the purchase price to complete the purchase. It is agreed that the last date for completion and for the payment of this amount was 19 January 1994. The 10% was to be paid as follows: 2% to be paid to the defendants outright, and 8% to be paid to the plaintiffs` solicitors to hold as stakeholders pending the issue of a certificate of statutory completion by the building authorities under the Building Control Act. In the notice to complete, the defendants demanded the payment of $21,650, a sum which apparently included $1,650 for survey fees as well as the 2% of the purchase price required.

6 **Liquidated damages v late payment interest**

7 Under cl 11 of the contract, the defendants were required to deliver vacant possession to the plaintiffs on or before 30 September 1993, failing which the defendants were required to pay liquidated damages at the rate of 10% pa on the total amount of the instalments of the purchase price which the plaintiffs had paid, from the date possession ought to have been given to the date it was actually given. In the event, as stated above, the notice to take

Version No 1: 29 Oct 2026 (23:45 hrs)

possession not having been given until 10 December, there was a delay which prima facie attracted a liability for liquidated damages.

8 On 10 January 1994, when the plaintiffs failed to pay the balance of $100,000 due under cl 3(1)(h), the defendants issued a notice under cl 5(1) requiring the plaintiffs to pay the `outstanding progress payment ... together with interest thereon` within 14 days from the receipt of the notice, failing which the defendants would treat the agreement as having been repudiated by the plaintiffs and the defendants would avail themselves of their rights under the clause. Clause 5 provides as follows:

> *(1) If after demand, any of the instalments referred to in cl 3 above shall be unpaid by the purchaser at the expiration of the said period stated therein, interest on such unpaid instalment/s or any part thereof shall run immediately thereafter and be payable by the purchaser until such time as the unpaid instalment/s is paid, at the rate of ten (10) per cent per annum and to be calculated from day to day* ***provided always*** *that if any of such unpaid instalment/s and interest remain unpaid for any period in excess of fourteen (14) days after its due date, the vendor shall be entitled at its option on giving to the purchaser or his solicitors not less than fourteen (14) days notice in writing to treat this agreement as having been repudiated by the purchaser and (unless in the meanwhile, such unpaid instalment/s and interest shall have been paid) this agreement shall at the expiration of the said notice (in this respect time shall be of the essence) be annulled and in such event, without prejudice to any other rights available to him at law or in equity, the vendor shall be entitled:*
>
> (a) to resell or otherwise dispose of the property as the vendor shall see fit as if this agreement had not been entered into;
>
> (b) to recover from the instalments (excluding interests) previously paid by the purchaser all interest calculated in accordance with para (1) of this clause owing and unpaid; and
>
> (c) to forfeit and retain for its own benefit a sum equal to twenty per cent (20%) of the purchase price from the instalments (excluding interest) previously paid by the purchaser.

Version No 1: 29 Oct 2026 (23:45 hrs)

9 It is not disputed that the notice under this clause was validly issued. As stated above, the plaintiffs paid up the remaining $100,000 on 12 January, within the time stated in the notice of 10 January. However, they did not pay interest due to the late payment of this sum or of the other $100,000 which they had also paid late on 8 January, as stated above. But they had not forgotten it. On 18 January their solicitors wrote to the defendants` solicitors admitting that interest was payable to the defendants. They arrived at the figure of $931.50. However, they said that the defendants, on the other hand, owed them liquidated damages in the sum of $21,095.89 due to the late handing over of possession. They required that at the completion of the purchase the defendants should pay them the difference of $20,164.39.

10 On 20 January, the defendants` solicitors replied. They said that the defendants `are not agreeable to your clients` claim for liquidated damages for the period 30 September 1993 to 18 January 1994 amounting to $21,095.89.` They did not explain whether it was the arithmetics or the principle of it with which they did not agree. They also did not explain whether it was the proposal to set off the liquidated damages against the late payment interest with which they did not agree.

11 On 22 January the plaintiffs informed the defendants that the plaintiffs were not prepared to complete unless the defendants settled their claim for liquidated damages at completion. They told the defendants that they had computed the liquidated damages according to cl 11 of the agreement, but invited the defendants to let them know if the defendants did not agree with the figure arrived at.

12 By letter dated 24 January, the defendants told the plaintiffs that the liquidated damages should be for the period 1 October to 10 December, and that

Version No 1: 29 Oct 2026 (23:45 hrs)

the correct figure should be $13,616.38. They also indicated for the first time that they did not agree to setting off the liquidated damages against the late payment interest. Instead, they said, the liquidated damages should be set off against the 8% due at completion and payable to the plaintiffs` own solicitors as stakeholders. They also said that the interest due for the late payment was $958.90 instead of the $931.50 which the plaintiffs had stated in their letter of 18 January.

13 However, on the very next day, 25 January, the defendants` solicitors wrote to the plaintiffs` solicitors and told them that the defendants regarded the contract as having been repudiated by the plaintiffs as the plaintiffs had defaulted in the payment of the late payment interest within 14 days of the 10 January notice.

14 **Issue before the court**

15 The question which I have to decide is whether the defendants were entitled to treat the contract as having been repudiated by the plaintiffs.

16 I start from the premise that the plaintiffs were entitled to liquidated damages for the delay in giving possession required by the contract. By their letter of 24 January, the defendants clearly admitted that a sum of $13,616.38 was due for liquidated damages. But they insisted that it should not be set off against the late payment interest due. They said it should be set off against the 8% which the plaintiffs had to pay their solicitors as stakeholders at completion.

17 That position has been maintained in argument in these proceedings. I can find no basis for it. The defendants concede that the liquidated damages had crystallized. I agree, and I would only add that they must have crystallized by

Version No 1: 29 Oct 2026 (23:45 hrs)

the time possession was given. The contract does not provide when such liquidated damages are payable. In the absence of any express provision to the contrary, it is my opinion that it must be implied that they are payable as soon as the amount is ascertainable, ie when notice to take possession is given. But more about this below.

18 I am clearly of the view that as of the date of the plaintiffs` letter of 18 January, the liquidated damages payable by the defendants were available to them for the purpose of off setting the late payment interest. It was reasonable for them to raise the question with the defendants, and I am of the view that it was the right time for them to raise it. In fact, I think that they could have asked for the payment of the liquidated damages as soon as they received the notice to take possession, because by that time the liquidated damages would have become payable, as the length of the delay had become known. I am satisfied that the plaintiffs were willing able and ready to complete. They only wanted these sums mutually owing between the parties to be agreed and settled as part of the completion account.

19 At this point, I should point out that the correctness of the defendants` computation of the liquidated damages is open to doubt. They treated the date when they gave notice to the plaintiffs to take possession as the end date for the computation. Clause 11 provides as follows:

> *(1) The vendor shall deliver vacant possession of the building to the purchaser on or before 30 September 1993 and the purchaser shall take possession of the building within fourteen (14) days after the issuance of the temporary occupation permit by the assistant director in respect of the building.*
>
> (2) If the vendor fails or is unable to deliver vacant possession of the building to the purchaser on the date specified in para (1) of this clause for any reason whatsoever, the vendor shall pay to the purchaser liquidated damages calculated from day to day at the rate of ten (10) per cent per annum on the total

Version No 1: 29 Oct 2026 (23:45 hrs)

> sum of all the instalments paid by the purchaser towards the purchase price for the period commencing immediately after the date specified in para (1) of this clause and ending on the date vacant possession of the property sold is delivered to the purchaser.
>
> (3) The notice to take possession issued by the vendor or its solicitors shall be accompanied by the certificate of the vendor`s architect that the building and all roads and drainage and sewerage works have been completed and that water and electricity supplies have been duly connected to the building together with a photographic copy of a temporary occupation permit issued by the assistant director and duly certified as a true copy by the vendor`s solicitors in respect of the building.

20 It is clear under the clause that the end date for the computation of the liquidated damages is the date when the possession is delivered. Under cl 3(1)(h), the purchaser has 14 days after receipt of the notice to take possession to pay the instalment due and to take possession. It is no doubt the intention of the contract that the purchaser should have 14 days after the notice in which to arrange for funds to enable him to pay the 20% instalment payable and to take possession. The payment of the 20% and the delivery of possession are concurrent obligations. So the vendor when giving notice to take possession should allow for that period of 14 days. To comply with his obligation to deliver possession under the contract, the vendor should give notice at least 14 days before the date for delivery of possession provided in cl 11(1). In this connection, I am of the view that the second part of cl 11(1), which provides that the purchaser shall take possession within 14 days after the issue of the temporary occupation permit by the assistant director (of the Building Control Division) must be regarded as repugnant to the scheme of these other provisions of the contract so that I would go as far as to say it should be ignored. Clause 11(3) does require that the notice to take possession should be accompanied by a certified true copy of the temporary occupation permit. The commencement date for the purpose of the delivery of possession, however, is the date of the

Version No 1: 29 Oct 2026 (23:45 hrs)

receipt by the purchaser of the notice to take possession and the expiry date of the notice to take possession is 14 days after the receipt of the notice.

21 So it would seem that the defendants were mistaken in taking the date of the notice to take possession as the end date for the computation of liquidated damages. They appear to have erred in their own favour. I say no more about this, since the plaintiffs accept in argument that the defendants` computation, based on the date of the notice to take possession, is correct. But what the analysis I have undertaken illustrates is that, in a matter which involves an examination and consideration of contractual provisions of some complexity such as these, there is an inherent danger of being dogmatic. It also shows how sensible it is for the parties concerned to co-operate with each other to agree and settle the matter so as to enable them to move forward to complete the purchase.

22 Apart from apparently erring in their own favour in the matter of the quantum of the liquidated damages, the defendants, as I have found above, also erred in their own favour in insisting that the liquidated damages should not be set off against the late payment interest, but should be set off against the 8% which was payable at completion, be it noted, to the plaintiffs` own solicitors; they must have the late payment interest clear of any deduction. That is not right in my view. The plaintiffs had the right at any time after receipt of the notice to take possession to be paid the liquidated damages due or to set them off against any sum due to the defendants.

23 On the whole, therefore, I am of the view that the defendants were not justified in giving the notice of 24 January purporting to treat the contract as repudiated by the plaintiffs. They appear to have read the provisions of cl 5(1) too literally and without regard to the other relevant rights and obligations of the parties under the general law.

Version No 1: 29 Oct 2026 (23:45 hrs)

24 On my view of the matter, therefore, it is the defendants, rather than the plaintiffs, who wrongfully repudiated the contract.

25 **Conclusion**

26 In the result, the plaintiffs succeed in their claim for specific performance of the agreement for the sale of the property known as lot 4739 Mukim 23 together with house No 41 Lorong Marzuki. The sale should be completed as soon as possible. Allowance is to be made in the final account for the liquidated damages amounting to $13,616.38. There is no reason why interest should not be allowed on this sum in favour of the plaintiffs. Since under the contract the interest for late payment of instalments to the defendants is 10% pa, the interest allowed in favour of the plaintiffs on the amount of liquidated damages should be at the same rate. It should start from 25 December 1993, being the day after the date when vacant possession should have been delivered pursuant to the notice to take possession.

27 The defendants should have the interest for late payment of the 20% instalment due under cl 3(1)(h) (taking of possession). They should of course have the 2% payable to them under cl 3(1)(i)(aa) on completion. I do not think that they should get any interest on that amount. This is because the delay in completion has been due to their own wrongful termination of the contract. The fact that the plaintiffs have enjoyed possession of the property is no reason for awarding interest on the delayed payment of this amount due on completion. They acquired the right to possession by reason of having paid the instalments payable up to that stage, ie up to the cl 3(1)(h) stage. They have not got the legal title to the property which completion of the sale and purchase alone would give them. The payment of the 2% under cl 3(1)(i)(aa) is in exchange for the legal

Version No 1: 29 Oct 2026 (23:45 hrs)

title. So there is no question of the plaintiffs having enjoyed something which they have not paid for.

28 The plaintiffs shall have the costs of these proceedings. The parties have liberty to apply and I reserve for further consideration any matter of or about the completion account which I have not dealt with.

29 S ***pecific performance ordered.***

Warren Khoo L H J

Michael Hwang, Tan Chuan Thye, Percy Mendis and Leong Wai Nam (Palakrishnan & Pnrs) for the plaintiffs
YH Cheong and Lai Swee Fung (Toh Tan & Pnrs) for the defendants

Version No 1: 29 Oct 2026 (23:45 hrs)