IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 6

S1137/1990

Between

Steven Chin Shoo Cheen
Tong Siew Hoon

… *Plaintiff*

And

Ocean Investments Pte Ltd
Ang Miah Khiang and Lai Wee Ngen, the respective administrator and co-administrator of the estate of Betty Lai Yin Har (deceased)
William Lai Wee Ngen
Alan Wong Hoi Ping
Karen Gan Eng Moi

… *Defendant*

GROUNDS OF DECISION

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Steven Chin Shoo Cheen and Another v Ocean Investments Pte Ltd and Others

[1994] SGHC 6

S1137/1990
Lim Teong Qwee JC
06 January 1994

1 **Judgment:**

2 Coram: Lim Teong Qwee JC

3 GROUNDS OF JUDGMENT

4 This is an appeal against the decision of senior assistant registrar Chan Seng Onn dismissing the application of the second, third, fourth and fifth defendants for an order that paras 10, 11 and 12 and parts of para 13 of the statement of claim relevant to them be struck out on the ground that they are frivolous, vexatious or otherwise an abuse of the process of this court and that as a consequence of the striking out the plaintiffs' claim against them be dismissed. I allowed the appeal.

5 The plaintiffs' claim against the first defendant is for damages for breach of a contract for sale of land and premises at Lot 44 Lengkong Dua which was alleged to have been entered into upon the exercise by the plaintiffs of an option in writing dated 12 October 1988 to purchase the land and premises given by

the first defendant. There is an alternative claim for breach or wrongful revocation of the option. Para 5 of the statement of claim states:

6 "The Option was further varied by the parties through their respective Solicitors to provide for the Plaintiffs' exercise of the Option to purchase Property B on or before 15th September 1989, as required by the lst Defendants and notwithstanding the lst Defendants had yet to obtain the Court's approval for the purchase of the Said Land, but with the added provision for stakeholding by the lst Defendants' Solicitors of the sum of $67,000.00 being the balance of the 10% of the purchase price payable by the Plaintiff when exercising the Option to purchase until the lst Defendants had obtained the Court's approval for the purchase of the Said Land and the registration of the Conveyance executed by the Estate in favour of the lst Defendants. The said variation, as agreed between the parties, was evidenced in writing by the following:-

7 (a) The lst Defendants' Solicitors' letter of 13th September 1989 to the lst Plaintiff's Solicitors;

8 (b) The lst Plaintiffs' Solicitors' letter of 15th September 1989 to the lst Defendants' Solicitors; and

9 (c) The lst Defendants' Solicitors' letter dated 6th October 1989 to the lst Plaintiff's Solicitors."

10 On 13 September 1989 the first defendant's solicitors wrote:

11 "We are instructed by our clients to enclose herewith the Sale and Purchase Agreement (in triplicate) for your clients' execution and return together with their cheque for the sum of S$67,000.00 being 10% of the

purchase price (less the option money of S$10,000.00) on or before 15 September 1989."

12 I pause here to observe that cl 3(1)(a) of the Sale and Purchase Agreement provides for payment of the balance of the 10% deposit to the first defendant. In their reply of 15 September 1989 the plaintiffs' solicitors wrote:

13 "We thank you for your letter of the 13th instant together with enclosures.

14 We also refer to the subsequent telephone conversation between your Miss Betty Lai and our Mr Yeo whereby you have confirmed that the balance of the 10% deposit is to be held by you as stakeholders pending finalised of the above property be conveyed to your clients. (sic)

15 We are now instructed by our clients to enclose herewith the Sale Agreement in triplicate duly signed together with their cheque for the sum of $67,000-00 drawn in your favour being the balance of the 10% deposit to be held by you as stakeholders.

16 Kindly acknowledge receipt of the above and let us have the prior title deeds relating to the above property on the usual undertaking for our inspection and also a copy of the Sale Agreement duly signed and dated as soon as possible."

17 The Sale and Purchase Agreement received from the first defendant's solicitors with their letter of 13 September 1989 was signed without any amendment or qualification. The balance of the 10% deposit was to be paid to the first defendant under the agreement the plaintiffs have signed and it is this

same agreement they are asking the first defendant to sign and date and to return one copy of. Nothing more was heard until 6 October 1989 when the first defendant's solicitors wrote:

18 "Your letter of 15th September 1989 refers. Our clients do not agree that the 10% deposit is to be held by us as stakeholders.

19 In the circumstances, your clients' cheque for $67,000.00 is returned herewith together with our clients' cheque for $10,000.00 being the Option fees paid earlier."

20 The defence of the first defendant raised several grounds of defence including a denial that its solicitors were authorised to agree to the variation alleged in para 5 of the statement of claim and the absence of a memorandum in writing that is sufficient to satisfy s 4 of the Statute of Frauds. It is also alleged that evidence of the alleged oral agreement is inadmissible by reason of ss 93 and 94 of the Evidence Act.

21 By para 10 of the statement of claim the plaintiffs claim against the second, third, fourth and fifth defendants damages for breach of implied warranty of authority and allege that the abovenamed deceased and the third, fourth and fifth defendants were partners of the firm of solicitors acting for the first defendant in the sale of the land and premises.

22 By para 11 it is alleged that:

23 "... the < first defendant's solicitors > reached an agreement with the < plaintiffs' solicitors > whereby the term for the exercise of the Option to

Purchase, was varied to provide for the Plaintiffs to exercise the Option to purchase Property B by 15th September 1989 in the following manner:-

24 (a) the Plaintiffs to sign the Sale and Purchase Agreement put up by the lst Defendants' Solicitors;

25 (b) the Plaintiffs to pay the sum of S$67,000.00 being the balance 10% deposit, to be held by the lst Defendants' Solicitors as stakeholders pending the Defendants obtaining the Court's approval for the purchase of the Said Land and the registration of the Conveyance executed by the Estate in favour of the lst Defendants.

26 The agreement was reached in a telephone conversation between the < deceased > and Mr Yeo Kee Chin of the Plaintiffs' Solicitors and the agreement was duly confirmed and/or evidenced in writing by the lst Defendants' Solicitors' dated 13th September 1989 to the lst Plaintiff's Solicitors, the Plaintiffs' Solicitors' letter of 15th September 1989 to the lst Defendants' Solicitors and the lst Defendants' letter of 6th October 1989 to the lst Defendants' Solicitors."

27 This is the agreement to vary the terms of the option in the manner referred to in para 5 of the statement of claim. The 3 letters are those set out above.

28 Paragraph 12 of the statement of claim alleges the implied warranty of authority to enter into the agreement to vary the terms of the option and para 13 states:

29 "In breach of the said warranty, the < deceased > had no authority from the lst Defendants to make the said agreement for the lst Defendants and the lst Defendants had refused to proceed further with its sale of Property B to the Plaintiffs and the Plaintiffs have thereby suffered loss and damage, particulars whereof are as follows:-

30 (a) loss of bargain;

31 (b) the sum of S$10,000.00 paid by way of Option money to the lst Defendants which money todate is still being held by the lst Defendants;

32 (c) legal fees incurred by the Plaintiffs with their Solicitors, M/s Yeo Kee Chin & Co (the services rendered and disbursements incurred are yet to be billed by M/s Yeo Kee Chin & Co)."

33 No other cause of action against the second, third, fourth and fifth defendants or loss suffered by the plaintiffs is pleaded and Mr Teo did not suggest that an amendment to the statement of claim was or might be contemplated. In particular the loss suffered is alleged to be caused by the first defendant's refusal to proceed further with its sale of the land and premises.

34 In their defence the second, third, fourth and fifth defendants deny the alleged agreement to vary the terms of the option and the alleged warranty of the first defendant's authority. So on the pleadings both the client and its solicitors deny the alleged authority to enter into the agreement to vary the terms of the option as alleged in paras 5 and 11 of the statement of claim. The plaintiffs on the other hand assert the authority in para 5 and its absence in para 13.

35 Application

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36 The thrust of Mr Cheong's submission is that the plaintiffs' case against the second, third, fourth and fifth defendants as pleaded does not disclose that they have suffered any loss arising out of breach of warranty of authority. If the deceased was authorised to enter into the agreement to vary the terms of the option the exercise of it by the plaintiffs in accordance with the varied terms would nevertheless not lead to an agreement for the sale of the land and premises enforceable against the first defendant for want of a memorandum in writing signed by the first defendant or anyone authorised by it to do so. The absence of authority - breach of warranty of authority - has occasioned no loss. I was referred to a passage in The Law of Agency by Powell (1). The option is in writing dated 12 October 1988 and this is admitted and under s 93 of the Evidence Act no evidence may be given in proof of its terms except the document itself. (The terms were subsequently varied as evidenced by a series of correspondence and the correspondence has been admitted and these variations are not material for the purpose of this appeal.) Under s 94 of the Evidence Act no evidence of any oral agreement (such as is alleged in para 5 of the statement of claim) is admissible provided that:

37 "(d) the existence of any distinct subsequent oral agreement, to rescind or modify any such contract, grant or disposition of property, may be proved except in cases in which such contract, grant or disposition of property is by law required to be in writing ...;"

38 The proviso does not apply since the option is "by law required to be in writing" and I was referred to Teo Siew Peng v Guok Sing Ong & Anor (2). The 3 letters do not evidence any agreement to vary the terms of the option.

39 Evidence Act

40 It may be convenient to consider first the point taken under the Evidence Act.

41 In Teo Siew Peng v Guok Sing Ong & Anor the respondents gave an option to purchase certain land and premises which provides that "this offer may be accepted by the Purchaser signing at the bottom of this Option ... and delivering the same duly signed together with 10% of the purchase price to our solicitors". The appellant who was the intending purchaser paid not the full 10% but 10% less $2,000 paid for the option. At the trial she said in evidence "it was agreed that if I exercised the option the $2,000 could be deducted from the purchase price and I understood this to mean that I could deduct it from the 10% deposit". The court below excluded this evidence and on appeal Chua J (delivering the judgment of the court) said at p 134:

42 "It is settled law that an option is a unilateral contract which does not become binding on the grantor of the option until the exact terms of the option are complied with. In the present case the purchaser was required to deliver the Acceptance Copy of the option together with `10% of the purchase price' to the solicitors of the grantor. This condition had not been complied with and as an option to purchase land is a `contract, grant or disposition of property' which is required by law to be in writing the purchaser is precluded by section 92 of the Evidence Act from proving that the parties had orally agreed that the $2,000 she had paid as consideration for the grant of the option could be deducted from the purchase price or from the 10% deposit she was required to pay when exercising the option."

43 (Section 92 of the Evidence Act is now s 94.)

44 Mr Teo did not suggest that Teo Siew Peng's case was distinguishable or otherwise did not apply. The facts on the basis of which the case was decided were not altogether very different. But was the oral agreement subsequent to the grant of the option (on the basis of which the case was decided) or contemporaneous with it (as suggested in the judgment at the foot of p 133) in which case the purchaser might have asked for the option to be "reformed"? See illustration (e) to s 94 where "reformed" has been erroneously rendered "performed". As between the plaintiffs and the first defendant the evidence of the oral agreement alleged would be inadmissible. The variation of the terms of the option alleged in para 5 of the statement of claim would have to be proved only by the option itself and the 3 letters which are alleged to evidence the agreement for its variation.

45 Breach of Warranty of Authority

46 Mr Teo's submission is that the agreement to vary the terms of the option is sufficiently referred to in the 3 letters and that these letters together with the option constitute a sufficient memorandum for the agreement for sale of the land and premises to be enforced against the first defendant but for the absence of authority in the first defendant's solicitors. If there was any doubt I should allow the action to proceed to trial against the second, third, fourth and fifth defendants. His second submission is that an enforceable agreement (but for the absence of authority) is not necessary. The plaintiffs have suffered loss in that they had been led to exercise the option in the wrong way.

47 In The Law of Agency by Powell there is this passage at p 259 para (ii):

48 "In Warr v Jones, it was held that, even though T could set up an act of part performance, he could not sue A for damages. In Fay v Miller, Wilkins & Co an auctioneer who purported to sell without authority was held liable on the warranty because there was a memorandum. It is submitted that these decisions cannot possibly be based on the fact that the main contract was unenforceable against P, because the action is not against P and not on that contract. The decisions may possibly be justified on the ground that T has really suffered no damage because in any case he could not have enforced the main contract against P."

49 I was also referred to The Law of Agency by Fridman (3) where this passage appears at p 224:

50 "... if the contract which the `agent' purported to make is one which needed to be in writing and this is lacking, presumably there will be no liability for breach of warranty of authority - even if an act of part performance can be proved by the third party."

51 In Warr v Jones (4) WJ and others carried on business in partnership. They took a mortgage to secure payment of the price of goods supplied. The mortgage made no reference to the mortgagees being partners and the power of sale was given to all the mortgagees in their names. The mortgagors having made default WJ took possession on behalf of the mortgagees and orally agreed with the plaintiff for the sale of the property to him and let him into possession and the plaintiff alleged that he incurred expenses in carrying out repairs. There was no memorandum in writing of the oral agreement. The mortgagees other than WJ refused to be bound by the agreement and they denied that WJ had any authority from them to sell the property. WJ admitted that he had no such

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authority. The plaintiff sued for specific performance and damages and alternatively for repayment by WJ of all sums expended by him on the property and damages for non-performance of the agreement through the alleged false representations of WJ as to his authority. In their defence the defendants denied that WJ had any authority to sell the property and as between WJ and the plaintiff set up the Statute of Frauds. Having held that the claim for specific performance and damages against the defendants failed for want of authority in WJ Hall VC said at p 696:

52 "Then, can any relief be given either founded on the contract or independently of it? At law there would be no remedy either before the Judicature Act or since that Act came into operation.

53 But the plaintiff says that he would have had a remedy in the Court of Chancery before the passing of the Judicature Act, and that he has the same remedy here now. ... It is said that < WJ > represented himself as agent to sell; the plaintiff might, of course, get damages in an ordinary case at common law for a misrepresentation which had injured him; and if in this case the Statute of Frauds prevents his doing so, that does not entitle him to relief here."

54 The Statute of Frauds was an answer to the claim against WJ for damages for non-performance by the supposed principals of the agreement entered into orally. If WJ had had authority the agreement for sale would still have been unenforceable against the principals. Consequently no loss was suffered for non- performance of the agreement for sale by the absence of authority.

55 In Fay v Miller, Wilkins & Co (5) auctioneers having sold certain property in excess of their authority and having signed a memorandum in writing to evidence the sale were sued for damages for breach of warranty of authority. In the Court of Appeal Sir Wilfrid Greene MR having held that the memorandum was sufficient to satisfy s 40 of the Law of Property Act and that the sale was not binding on the vendor for want of authority said at p 365:

56 "It follows, admittedly, that the auctioneers are liable to the purchaser for damages for breach of an implied warranty of authority ...."

57 and Clauson LJ at the same page said:

58 "It was not disputed before us that, if this objection based on s 40 of the Act must be upheld, the judge was right in dismissing the action as against the auctioneers."

59 If the auctioneers had not exceeded their authority the sale would have been enforceable against the vendor. If there had not been a sufficient memorandum in writing then it would not and the action against the auctioneers would have failed.

60 In British Russian Gazette and Trade Outlook, Ltd v Associated Newspapers, Ltd (6) T who owned a paper transferred it to B Ltd in consideration of the allotment to him of 500 shares. He then transferred 475 shares to P and retained 25 shares. They were the only 2 shareholders and directors of the company. The defendant published an article in its paper which is alleged to be a libel upon T and the company and each of them commenced an action against the defendant for the alleged libel. Eventually T settled both actions but the company had not given T any authority to do so and the actions

proceeded to trial. In T's action the defendant counterclaimed damages for breach of warranty of authority. Scrutton LJ said at p 646:

61 "What have the defendants lost, because owing to the plaintiff < T > having broken his warranty of authority to make a particular contract the defendants have lost the benefit they would have derived from that contract? If the agreement was never enforceable, the defendants have lost nothing."

62 However, Greer LJ said at p 649:

63 "It is clear that even in cases where the contract which the agent warranted he had authority to make would not, if authorized, create any legal obligation by his principals, the agent is none the less liable for damages for breach of warranty of authority."

64 He referred to Starkey v Bank of England (7) and Firbank's Executors v Humphreys & Ors (8).

65 In Firbank's Executors' case a contractor agreed to execute certain works for a company and during the progress of the works an agreement was made between the contractor and the directors of the company for the contractor to accept the company's debenture stock in lieu of cash in payment for the works. The directors then issued to the contractor certificates for the agreed amount of stock. At that time all the debenture stock which the company was entitled to issue had been issued although this fact was not known to the directors. What the contractor received was consequently an over issue and valueless. The company subsequently went into liquidation but valid debenture stock retained its par value. The contractor brought proceedings to recover damages from the directors on the ground that they had represented and warranted to him that the

certificates were good and valid certificates and were issued under the borrowing powers of the company and not in excess thereof and that as directors they had authority to issue the certificates to him on behalf of the company whereas the certificates were not good or valid but were issued in excess of the company's borrowing powers and the directors had no authority to issue them. In the Court of Appeal Lord Esher MR considered Collen v Wright (9) and said at p 60:

66 "The rule to be deduced is, that where a person by asserting that he has the authority of the principal induces another person to enter into any transaction which he would not have entered into but for that assertion, and the assertion turns out to be untrue, to the injury of the person to whom it is made, it must be taken that the person making it undertook that it was true, and he is liable personally for the damage that has occurred."

67 Later at the same page he said:

68 "The damages, under the general rule, are arrived at by considering the difference in the position he would have been in had the representation been true, and the position he is actually in, in consequence of its being untrue."

69 Lindley LJ said at p 62:

70 "Speaking generally an action for damages will not lie against a person who honestly makes a misrepresentation which misleads another. But to this general rule there is at least one well established exception, viz, where an agent assumes an authority which he does not possess, and induces another to deal with him upon the faith that he has the authority which he assumes."

71 In Starkey's case the appellant, a broker, lodged with the respondent a power of attorney conferring authority on him to cause the respondent to transfer certain securities owned by the donor. Unknown to the broker the signature of the donor to the power of attorney was a forgery. In an action by the donor against the respondent in which the broker was brought in as third party the donor recovered equivalent securities and money representing accrued dividends. The respondent claimed an indemnity from the broker. In the House of Lords the Earl of Halsbury LC said at p 117:

72 "It is said that this case is extending the principle of Collen v Wright. I do not think it is. It seems to me as a matter of principle to fall exactly within Collen v Wright."

73 and at p 118:

74 "That which does enforce the liability is this - that under the circumstances of this document being presented to the bank for the purpose of being acted upon, and being acted upon on the representation that the agent had the authority of the principal, which he had not, that does import an obligation - the contract being for good consideration - an undertaking on the part of the agent that the thing which he represented to be genuine was genuine. That contains every element of warranty."

75 In Collen v Wright W, a land agent, signed an agreement for a lease of a farm for 12+ years purporting to do so as agent of G. It was also signed by the plaintiff. The plaintiff entered upon the farm on the strength of the agreement. G refused to sign the lease on the ground that he had conferred on W no authority to agree such a lease. The plaintiff brought an action against G for

specific performance and upon learning of G's ground of defence gave notice to W that unless he received from W notice to the contrary the plaintiff would proceed with the action at W's expense and that in the event of his action being unsuccessful on the ground of absence of authority he would commence an action to recover the costs and other damages by reason of W's want of authority. W replied denying liability but his reply did not contain any admission that he had no authority. The plaintiff proceeded with his action against G and it was dismissed with costs on the ground of absence of authority. On a case stated the questions submitted related to the liability of W to the plaintiff and damages. In the Court of Exchequer Chamber Willes J said at p 657:

76 "I am of opinion that a person, who induces another to contract with him as the agent of a third party by an unqualified assertion of his being authorized to act as such agent, is answerable to the person who so contracts for any damages which he may sustain by reason of the assertion of authority being untrue."

77 and at p 658:

78 "The fact of entering into the transaction with the professed agent, as such, is good consideration for the promise."

79 and later at the same page:

80 "With respect to the amount of damages, I retain the opinion thrown out in the course of the argument, that all the expences sought to be recovered were occasioned by the assertion of authority made at the time of the contract being

continued and persisted in by the defendant's testator and bona fide acted upon by the plaintiff. That assertion was never withdrawn ...."

81 The "contract" continued and persisted in was the warranty of authority the consideration for which was the fact of entering into the transaction with W the professed agent.

82 I am unable to read into the principle in Collen v Wright any qualification that the "transaction" must lead to a contract enforceable against the supposed principal (but for absence of authority) before the plaintiff can bring an action against the professed agent. In Warr v Jones the third party who dealt with the professed agent suffered no loss for non-performance of the agreement for sale. Similarly in Fay v Miller, Wilkins & Co the third party would have suffered no loss if the memorandum was insufficient but it was held to be sufficient. Again in British Russian Gazette and Trade Outlook, Ltd v Associated Newspapers, Ltd the third party would have suffered no loss if the compromise was unenforceable against the company. Greer LJ was careful to point out that an obligation enforceable against the supposed principal (but for absence of authority) is not always necessary. The principle in Collen v Wright is not subject to such a qualification but the third party who enters into the transaction with the professed agent can recover damages sustained by reason of the assertion of authority being untrue. In Firbank's Executors v Humphreys & Ors the contractor received valueless stock which would have been worth par value if authority had been conferred on the directors. In Starkey v Bank of England the bank had to compensate the supposed donor of the power of attorney because his signature to it was a forgery. In each of the last two cases the breach of warranty of authority has caused injury or loss to the third party dealing with the professed agent.

83 I return now to the case pleaded against the second, third, fourth and fifth defendants. Paragraph 10 claims damages. Paragraph 11 alleges the oral agreement. Paragraph 12 alleges the warranty of authority. Paragraph 13 alleges the breach - absence of authority - and the refusal of the first defendant to proceed further with its sale of the property and the loss thereby suffered by the plaintiffs. The case has been pleaded as in Warr v Jones. The loss was allegedly suffered for non- performance of the agreement for sale upon exercise of the option. It is not alleged that the loss was suffered by allowing the option to lapse or by exercising it in the wrong way. Mr Teo submitted that the pleaded case covers this. I do not agree. It is altogether a different case and the issues are different.

84 I come now to Mr Teo's first submission that the agreement for sale would have been enforceable against the first defendant if not for absence of authority.

85 By s 93 of the Evidence Act no evidence shall be given in proof of the terms of the option except the written option itself. By s 94 no evidence of any subsequent oral agreement shall be admitted between the plaintiffs and the first defendant to vary the terms of the option. The subsequent agreement must be proved by the 3 letters. The agreement for sale is forwarded with the first defendant's solicitors' letter of 13 September 1989. The agreement requires payment of the deposit to the first defendant and not to the first defendant's solicitors as stakeholders. This agreement is signed without any amendment or qualification and is returned with the plaintiffs' solicitors' letter of 15 September 1989. It alleges that the first defendant's solicitors have confirmed that they would hold the deposit as stakeholders pending something. What it is is quite unintelligible. For the present purpose I assume that it has the meaning pleaded

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in paras 5 and 11 of the statement of claim. But this is inconsistent with the agreement for sale signed by the plaintiffs. The first defendant's solicitors' reply dated 6 October 1989 refers to the letter of 15 September 1989 and says that the first defendant does not agree. Mr Teo invited me to read it as "I confirm I agreed to the variation. However, my clients do not agree." I declined to do so. It is wholly unjustifiable. The letter of 6 October 1989 clearly denies the making of an agreement. In the context of the other 2 letters it does not admit the existence of an agreement. The existence of an agreement is inconsistent with the agreement for sale signed by the plaintiffs. The 3 letters read together do not constitute or evidence an agreement to vary the terms of the option. The 3 letters read with the option do not constitute a memorandum of the option varied as alleged or of an agreement for sale of the land and premises on varied terms sufficient to satisfy the Statute of Frauds. They do not acknowledge the existence of an option on terms including those alleged to be evidenced by the 3 letters. All that can be proved as between the plaintiffs and the first defendant is an option to be exercised by signing the agreement for sale (which provides for payment of the deposit to the first defendant) which the plaintiffs have done and by paying the deposit to the first defendant which they have not. They would not succeed against the first defendant for refusing "to proceed further with its sale" whether or not the first defendant had given its solicitors authority to enter into the agreement to vary the terms of the option. In my judgment on the case pleaded against the second, third, fourth and fifth defendants the plaintiffs have suffered no loss. Mr Teo submitted that if there was any doubt I should allow the action to proceed to trial against these defendants. He has not satisfied me that there is any doubt in regard to any matter which an investigation of the facts or any evidence to be adduced at the trial can shed any light on. There is no reason why the action should proceed to trial.

86 For these reasons I allowed the appeal and dismissed the plaintiffs' claim against the second, third, fourth and fifth defendants. I would observe that even if the statement of claim had been amended to allege the loss suffered by allowing the option to lapse or exercising it in the wrong way I should have had serious reservations about the plaintiffs being entitled to recover any damages. They acted on the alleged oral agreement to vary the terms of the option on the last day of its validity without having received any written confirmation and in the face of an express term in the agreement for sale signed by them which is contrary to the alleged terms as varied. In that case though the action must proceed to trial.

Lim Teong Qwee JC

Cheong Yuen Hee and Alina Sim for the second, third, fourth and fifth appellants/defendants
Teo Guan Teck and Simon Lee for the respondents/plaintiffs

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