IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1995] SGCA 49

CA 67/1994

Between

Loh Wee Tin
Another

… *Appellant*

And

Transvic Investment Pte Ltd
Another

… *Respondent*

GROUNDS OF DECISION

Land — Sale of land — Conditions of sale; Land — Sale of land — Conditions of sale

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Loh Wee Tin and Another v Transvic Investment Pte Ltd and Another

[1995] SGCA 49

CA 67/1994
Karthigesu JA; L P Thean JA; Yong Pung How CJ
23 May 1995

1 Cur Adv Vult

2 ***The facts***

3 The appellants were joint owners of the land known as lot 161-40 of mukim XXIV on which stand two shophouses, one known as No 471 Geylang Road and the other as Nos 469 and 469A Geylang Road. Lot 161-40 was at the material time, and still is, unregistered land held under what in conveyancing terms is called a `common law` title. On 19 March 1992, a sale and purchase agreement (the sale agreement) was concluded between the appellants and the second respondents, Amva Investment Pte Ltd (Amva), whereby the appellants agreed to sell to Amva the premises Nos 469 and 469A, Geylang Road (the property) for $1m. Approximately seven months later, on 7 October 1992, Amva entered into a sub-sale agreement with the first respondents, Transvic Investment Pte Ltd, (Transvic) whereby Amva agreed to sell the property to Transvic for the same price and on the same terms. The two agreements (the agreements) contained identical terms and conditions in all material respects. Both the appellants and Amva engaged the same solicitors, M/s Rayney Wong

& Co, in the sale and purchase of the property; the same solicitors also acted for Amva in the sub-sale of the property to Transvic.

4 The material terms of the agreements which have given rise to the present litigation are cll 5 and 13 which are identical in both the agreements, and they are as follows:

> *Clause 5*
>
> *The purchase shall be completed at the office of the vendor`s solicitors, M/s Rayney Wong & Co of No 95 South Bridge Road, 06-04, Pidemco Centre, Singapore, 0105 within twelve (12) weeks from the date of the issue of separate certificate of title to the property [469 and 469A Geylang Road] by the Registry of Titles. On payment of the full purchase price at the time and place as aforesaid, the vendors shall make and execute to the purchaser or to such person/s as the purchasers shall direct a proper assurance of the property such assurance to be prepared by and [at] the expense of the purchaser.*
>
> *Clause 13*
>
> *The sale and purchase is subject to approval of the vendors` application to the competent authority for subdivision and issue of a separate certificate of title to the above property. In the event that such approval to the vendors` application is not granted, this option shall become null and void and of no further effect and all monies paid forthwith shall be refunded to the purchaser without interest and neither party shall have any claim against the other for costs damages or compensation whatsoever, each party to pay their own legal costs thereof.*

5 Presumably sometime after the execution of the sale agreement the appellants applied to the competent authority under the Planning Act (Cap 232, 1990 Ed) for approval for subdivision of lot 161-40 into two subdivided lots: one lot for No 471 and the other for Nos 469 and 469A, Geylang Road. There was no evidence as to when the application was made. However, as can be gleaned from the letters written by M/s Rayney Wong & Co, approval for subdivision was obtained sometime in early 1993, and certainly by early April 1993.

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6 As subdivision approval had been obtained, the appellants for the purpose of dealing with the property were required under the then s 16 of the Land Titles Act (Cap 157) (the Act) to produce to the Registrar of Titles (the registrar) all the title deeds necessary to deduce a good title to lot 161-40. Accordingly, on 16 April 1993, M/s Rayney Wong & Co on behalf of the appellants wrote to the registrar forwarding all the title deeds to lot 161-40 and seeking `direction under s 16` of the Act. By a letter dated 21 April 1993 the registrar replied stating, inter alia, the following:

> *I refer to your letter of 16 April 1993 forwarding title-deeds and other enclosures mentioned therein for our inspection pursuant to s 16 of the Land Titles Act.*
>
> *2 I hereby direct pursuant to s 16(2)(c) of the Land Titles Act that the abovementioned land be continued to be dealt with under the provisions of the Registration of Deeds Act.*

7 After this date, no action appeared to have been taken by the appellants or their solicitors with a view to completing the transaction or otherwise for a period of well over a month. On 3 June 1993, the appellants apparently on the advice of M/s Rayney Wong & Co wrote to the latter referring to the registrar`s letter and requesting M/s Rayney Wong & Co `to abort the sale of the property`. It should be remembered that at that stage, M/s Rayney Wong & Co were acting for both the appellants and Amva in the sale and purchase under the sale agreement and also for Amva in the sub-sale to Transvic. Accordingly, on 5 June 1993, the solicitors wrote to M/s Ng Thin Wah & Partners, the then solicitors for Transvic, stating: (i) that they had written to the registrar seeking direction under s 16 of the Act; (ii) that the registrar replied on 21 April 1993 stating that the property should continue to be dealt with under the provisions of the Registration of Deeds Act, and (iii) that in view of what had transpired and pursuant to cl 13 of the sub-sale agreement `the sale and purchase be aborted`. M/s Ng Thin Wah & Partners replied on 14 June stating that they

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disagreed with `the notice to resile from the contract` and reserving Transvic`s rights.

8 About two months later, M/s Rayney Wong & Co wrote to the registrar making representations and requesting the registrar to reconsider and allow the property to be brought under the Act. By a letter dated 25 August 1993, M/s Rayney Wong & Co also informed M/s Ng Thin Wah & Partners that they had appealed to the registrar for reconsideration, and expressed their view that if the appeal was unsuccessful, the sub-sale agreement would be rendered null and void. By the same letter, they also said that approval for subdivision had been obtained. M/s Ng Thin Wah & Partners replied on 31 August 1993, once again recording their disagreement; they also went further and asserted that cl 13 was meant solely for the benefit of Transvic and that the vendors could not rely on it to annul the sale. The appeal to the registrar was unsuccessful; the registrar wrote to M/s Rayney Wong & Co on 8 September 1993 stating that she was unable to bring the property under the Act, as there was a potential defect in the title owing to the conveyance dated 4 June 1981 of lot 161-40. A further exchange of correspondence took place between the two firms of solicitors. On 7 October 1993, M/s Ng Thin Wah & Partners requested for an early completion of the sub-sale. They said, inter alia, as follows:

> *As approval for the subdivision has been obtained, our clients insist that the sale and purchase be completed soonest possible.*

9 We hereby give you notice to complete the matter in accordance with the terms of the agreement failing which we are compelled to apply to court for a declaration.

10 Unfortunately the parties did not move forward to complete the transactions.

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11 Transvic subsequently appointed M/s Drew & Napier in place of M/s Ng Thin Wah & Partners, and on 25 October 1993 their solicitors` wrote to M/s Rayney Wong & Co reserving their rights to waive the condition as to the issue of separate certificate of title under cl 13, and querying why the appellants had not made an alternative application to obtain a certificate of title by way of conversion under the then s 13 of the Act. Following this, preliminary attempts were then made by the appellants to rectify the alleged defect in the title occasioned by the 1981 conveyance as pointed out by the registrar, but without success. M/s Rayney Wong & Co wrote to M/s Boswell, Hsieh & Lim, the solicitors who were involved in that conveyance but their efforts were fruitless, as M/s Boswell, Hsieh & Lim could not locate the files relating to the transaction. Transvic`s solicitors then took the position that the appellants were obliged to make an application to court for appropriate orders to rectify the alleged defects in the title. The appellant`s solicitors presumably disagreed, and no such application was made.

12 On 2 December 1993, Transvic took out an originating summons claiming against Amva and the appellants for, inter alia, an order of specific performance of the agreements. Alternatively, Transvic claimed that the appellants should be ordered to make an application to the court for an order approving the 1981 conveyance.

13 **Proceedings below**

14 The matter was heard before Lim Teong Qwee JC. Before him, Transvic contended that the condition in cl 13 in so far as it relates to the `issue of a separate certificate of title` was intended solely for their benefit and they were at liberty to waive the requirement for its fulfilment and were prepared to take

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the property without the certificate of title being issued. On the other hand, the appellants` contention was that the agreements would be annulled upon non-fulfilment of that part of cl 13 and that cl 13 was for the benefit of both the vendors and the purchasers, and alternatively, they maintained that it was inextricably linked to the rest of the agreement such that it could not be severed and unilaterally waived by Transvic. Amva took a neutral stand and their counsel made no submission on their behalf and said that if specific performance was ordered against them, they asked for a similar order against the appellants. The learned judicial commissioner upheld Transvic`s submissions and ordered that the agreements for sale and sub-sale be specifically performed. [See [1995] 1 SLR 120 .]

15 Prior to the hearing, the judicial commissioner also dealt with an application filed by the appellants to strike out their names in the proceedings on the grounds that the claim against them disclosed no reasonable cause of action or was frivolous or vexatious or otherwise was an abuse of the process of the court. That application was dismissed and no appeal has been brought against the order of dismissal.

16 **The appeal**

17 Before us the parties renewed the submissions that were canvassed before the learned judicial commissioner. For reasons which will be apparent shortly, it is not necessary for us to rehearse and deal with these submissions.

18 The appeal really turns on the true construction of cl 13 of the agreements. It is common ground that cl 13 operates as a condition subsequent to the agreements. The existence of such a provision as cl 13 must be looked at

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in the context of the relevant statutory requirements governing the transactions. In essence, the condition is in two parts: the sale and purchase is subject to (i) approval of the vendors` application to the competent authority for subdivision, and (ii) issue of a separate certificate of title to the property. It is plain to us that this condition was dictated, first, by the fact that the property was part of lot 161-40, and, secondly, by the nature of the title under which the property was then held (and is still being held). To sell and to complete the sale of a part of a resurveyed lot, such as the property, it is necessary for the owner to apply to the competent authority under the Planning Act for approval for subdivision of the resurveyed lot into two subdivided lots, one comprising the property to be sold and the other comprising the remaining part. Without such subdivision approval, it would not be possible to complete the sale, as any assurance of the property executed by the owner on completion will not be registrable under the Registration of Deeds Act (Cap 269, 1989 Ed). This is the effect of the combined operation of s 13 of the Registration of Deeds Act and s 34 of the Land Surveyors Act (Cap 156, 1992 Ed). But, having obtained the subdivision approval, the owner would still be unable to proceed forthwith to complete the sale, because s 16 (now s 23) of the Land Titles Act requires the owner to produce to the registrar all the title deeds relating to the property for deducing a good title. Upon examination of the title deeds, the registrar may do one of three things: (i) direct the owner to surrender to the State his title to the land for reissue of a new title, (ii) bring the land under the provisions of the Act by the issue of a certificate of title, or (iii) issue to the owner a certificate to the effect that s 16 does not apply with the consequence that the land continues to be dealt with subject to the Registration of Deeds Act. It repays to set out hereunder, in so far as relevant, the provisions of s 16 of the Act, which are as follows:

> *(1) Where permission has been granted under the Planning Act ... to develop or* ***subdivide*** *unregistered land, the proprietor*

> *thereof,* ***for the purpose of dealing with the unregistered land,*** ***or any part thereof****, shall be required to produce to the Registrar all the title deeds necessary for deducing a good title to the land.*
>
> (2) The Registrar on receipt of the title deeds may:
>
> (a) direct, in writing, the proprietor to surrender the title to that land to the President free from encumbrances, and where the land has been surrendered the President, if satisfied with the title of the proprietor and on payment by the proprietor of all costs and expenses of, or consequent on, the surrender, shall issue a new title in lieu thereof;
>
> (b) bring the land under the provisions of this Act by issuing a qualified certificate of title …, and shall deliver the duplicate certificate of title and the title deeds to the proprietor …, or
>
> (c) issue to the proprietor ***a certificate*** to the effect that this section does not apply to the title held by the proprietor, and, on production of such a certificate to the Registrar of Deeds, the proprietor may present for registration an assurance of the whole or any part of his unregistered land ***to be dealt with subject to the provisions of the Registration of Deeds Act*** . [Emphasis added.]

19 Section 16 by sub-s (8) further enjoins that unless sub-s (2) is complied with and a certificate is issued under para (c) thereof, ***no assurance*** of the land or any part thereof, for which subdivision approval has been granted, is capable of registration. The terms of sub-s (8) are as follows:

> *(8) Subject to subsections (2) (c) and (7) -*
>
> (a) no assurance of any unregistered land, or part thereof, to which subsection (1) applies, is capable of being registered under the provisions of the Registration of Deeds Act; and
>
> (b) upon receipt from the competent authority under the Planning Act of a notice in writing or of an approved plan relating to the granting of permission to develop or subdivide any unregistered land or building, the whole or part of which is dealt with under any assurance, the Registrar of Deeds has the power to refuse to register that assurance when presented for registration.

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20 Having regard to these statutory requirements, it is understandable why cl 13 was inserted in the sale agreements in this case. It was crafted, albeit not crafted very clearly, to meet these requirements. The first part of the condition in cl 13 contemplates the requirement for subdivision approval and the second part contemplates the requirement of s 16 of the Act. These are the necessary steps which the appellants as the vendors must take and comply with in order to carry the sale forward to completion. Aside from these requirements, there was no reason why the appellants should take upon themselves the burden of obtaining the issue of a separate certificate of title to the property and have it available to the purchasers on completion. So far as can be seen or inferred from the terms of the agreement, the appellants had no intention of converting the title of the property to a registered one under s 13 of the Act; on this section more will be said shortly. The issue of the separate certificate of title to the property under cl 13 was to enable the parties to complete the transactions.

21 It is clear that if approval for subdivision of lot 161-40 is refused by the competent authority, the sale and purchase will have to be aborted and the parties cannot proceed further, and the agreements will be at an end. Hence, cl 13 after stating the condition went on further to provide that if `such approval`, ie approval for subdivision, is not granted, the agreements will become null and void and of no further effect and all moneys paid will be refunded. On this point, we are in agreement with the view expressed by the learned judicial commissioner that the agreements will become null and void on the failure of only the first part of the condition. The consequence of the agreements becoming null and void as provided in cl 13 has nothing to do with the non-issue of the certificate of title by the registrar.

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22 As approval for subdivision of lot 161-40 had been obtained, the vendors, ie the appellants, could move forward to the next stage, namely, complying with s 16 of the Act. This they did. The registrar in response opted for the third course under s 16(2) and issued the certificate under para (c) of s 16(2). Now, so far as the appellants are concerned, that would be sufficient for the purpose of the agreements: they would be able to complete the transaction by executing an assurance which is then registrable under the Registration of Deeds Act. That they should have done, which, however, they did not. In this respect, we find that M/s Ng Thin Wah & Partners were justified in demanding on 7 October 1993 that the sale and purchase be completed, and in not completing the transactions, the appellants and Amva were in breach of the agreements respectively.

23 In view of the certificate issued by the registrar, the appellants were not obliged to go further, eg appealing to the registrar to reconsider the matter. Nor were the appellants required to proceed under s 13 of the Act to apply to the registrar to bring the property under the Act, as requested by M/s Drew & Napier in their letter of 25 October 1993. That request, with respect, seems to be most impractical. It was made without any understanding of the purpose of ss 13 and 16 of the Act. Section 13 may be invoked, if an owner of unregistered land wishes to convert the title of his land to one governed by the Act; in such a case he does so on his own volition and there is no compulsion on him to do so. Section 16, on the other hand, serves an entirely different purpose. As its terms dictate, if the owner has obtained permission under the Planning Act to develop or subdivide his land, then ***for the purpose of dealing with his land*** , he must act under s 16. In this case, as the registrar has refused under s 16 to bring the property under the Act because of a potential defect in the title, there can be no valid reason for her to act otherwise on an application under s 13.

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24 As for the defect in the title pointed out by the registrar, Transvic may certainly raise an objection as to such defect. That, however, is an entirely different matter; and that matter is governed by cl 4 of the agreements which provided that the title to the property was to be properly deduced. If the appellants could not rectify this defect but Transvic insisted on its rectification, the appellants could invoke condition 5 of The Singapore Law Society Conditions of Sale 1981, which was incorporated into the agreements by cl 2 thereof. Condition 5 provides:

> *If the purchaser shall make and insist on any objection or requisition either as to title, conveyance or any matter appearing on the Particulars, Sale plans, conditions or otherwise, which the vendors shall be unable, or on the ground of difficulty, delay or expense or on any other reasonable ground, be unwilling to remove or comply with, the vendors shall, notwithstanding any previous negotiation or litigation, be at liberty, on giving to the purchaser or his solicitor not less than ten days` notice in writing to annul the sale, in which case, unless, the objection or requisition shall have been in the meantime withdrawn, the sale shall at the expiration of the notice be annulled, the purchaser being in that event entitled to the return of the deposit but without interest, costs or compensation.*

25 In this case, in purporting to rescind or annul the agreements the appellants and Amva did not act under condition 5. In any case, the circumstances contemplated in that condition did not arise.

26 On our analysis of cl 13, the condition there is not intended for the exclusive benefit of either of the parties. The first part of the condition must be fulfilled, otherwise the parties cannot carry the transaction forward. Once the first part is fulfilled the second part becomes relevant; it contemplates the requirements of s 16(1) of the Act which must also be fulfilled, otherwise the parties also cannot carry the transaction forward. The issue of the certificate of title was to enable the parties to proceed further and complete the transaction.

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That document, however, the registrar did not issue or refused to issue, but in lieu thereof she issued a certificate under s 16(2)(c) and that would equally be effectual for the purpose. The fact that the certificate of title to the property was not issued by the registrar does not entitle either the vendors or the purchasers to rescind or annul the agreements.

27 It was said that the second part of the condition as to the issue of certificate of title was exclusively for the benefit of the purchaser, and the reason for this is that a certificate of title upon issue would have conferred on the proprietor, and in this case, the appellants, a paramount estate free from all encumbrances, liens, estate and interest except those registered or notified in the land register subject to the exceptions under s 38 of the Act. Hence, on completion the whole of the estate of the appellants would have been transferred to Transvic. That was the view taken by the learned judicial commissioner. With respect, we do not think that that is wholly correct. The certificate of title the registrar issues under s 16 is normally a qualified one with a caution endorsed on it to the effect that the land comprised in the certificate of title is subject to any interest affecting it as at the date of the issue. Indeed, it seems that this is almost invariably the practice. A fortiori, the certificate of title in this case, if it had been issued, would have been a qualified one. Hence, the issue of the certificate of title in this case would not have given to the appellants any better title than what they had as at the date of issue. At any rate, it seems to us clear that the insertion of the second part of the condition was not exclusively for the benefit of the purchasers; as we have said, it was to meet the requirements of s 16 of the Act.

28 In view of what we have held, it is unnecessary for us to consider the arguments by both counsel as to whether the second part of the condition could

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be waived by Transvic as the purchaser. Put simply, the question of waiver does not arise. Nor is it necessary for us to consider the submission made on behalf of the appellants that Transvic had not waived that condition.

29 In the result, the appeal is dismissed.

30 We now come to the question of costs. Much time has been taken up in the arguments on the question whether the second part of the condition in cl 13 was for the exclusive benefit of the purchasers and whether it could be waived. These arguments were of course first raised by Transvic in seeking specific performance in the court below and as they had been raised, it was incumbent on the appellants to meet them with countervailing arguments. A considerable amount of costs had been thrown away by such arguments and counter arguments. At the hearing of the appeal, our attention was directed to these arguments. On reflection, all the arguments advanced on behalf of both parties are irrelevant and did not really assist in the resolution of the matter in dispute.

31 As the appeal is dismissed, costs must follow the event and we have no reason to disallow costs to Transvic. But, on taxation Transvic should be disallowed all costs incurred in raising these arguments and meeting counter arguments. We order accordingly. Further, we also order that no costs should be awarded to Amva as they have not appeared in these proceedings.

32 As for the costs below, we vary the order as follows: that there will be only one set of costs to be paid by the appellants to Transvic, such costs to include the costs of the unsuccessful application by the appellants to strike out their names in the proceedings, and no order as to costs be made against Amva.

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In consequence, the order that the appellants indemnify Amva in respect of the costs payable by Amva to Transvic should be discharged.

33 There will be the usual consequential order for payment to Transvic of the deposit in court as security for costs.

34 ***Appeal dismissed.***

Karthigesu JA
L P Thean JA
Yong Pung How CJ

Ng Yuen (Shook Lin & Bok) for the appellants
Davinder Singh and Bonnie Lo (Drew & Napier) for the first respondents

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