IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1995] SGCA 53

CA 119/1994

Between

Alrich Development Pte Ltd

… *Appellant*

And

Rafiq Jumabhoy (No 2)

… *Respondent*

GROUNDS OF DECISION

Contract — Misrepresentation — Materiality; Land — Sale of land; Land — Sale of land — Conditions of sale; Statutory Interpretation — Definitions; Words and Phrases

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Alrich Development Pte Ltd v Rafiq Jumabhoy (No 2)

[1995] SGCA 53

CA 119/1994
Goh Joon Seng J; Rajendran S J; L P Thean JA
25 May 1995

1 Cur Adv Vult

2 ***The facts***

3 The appellants, Alrich Development Pte Ltd (Alrich), are a property development company incorporated in 1980. The original shareholders were Lim Chong Siong (Lim) and Eddie Chong Keng Wee, each holding 100,000 shares of $1 each. They were also then the directors of the company. At that time, Lim was a permanent resident in Singapore; he became a citizen only in March 1993. On 16 October 1987, Alrich, pursuant to their application, received clearance from the Controller of Residential Property permitting them to acquire and retain residential property, and they were required by the Controller to amend their memorandum and articles of association so that only Singaporeans could be shareholders and directors of the company. Prior to that date, however, in anticipation of the clearance, Lim and Eddie Chong transferred 195,000 shares in the company to one Seetoh Oi Ling (Seetoh) and 5,000 shares to one Peter Wan Siew Teck (Wan). Both Seetoh and Wan did not pay anything for the shares. Seetoh has been very close to Lim; they have been living as man and

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wife since 1984 and arising from their cohabitation they have a child. Wan has been associated with Alrich from the beginning. Both Seetoh and Wan became directors of Alrich on 1 September 1987. As from that date or thereabouts Lim ceased to be a director and assumed the office of the general manager of Alrich. He had previously stood as guarantor to the bank for Alrich`s debts and liabilities and continued to do so after he had ceased to be a shareholder and director of the company.

4 The respondent, Rafiq Jumabhoy (RJ), was the owner of 36 Ewe Boon Road, Singapore (36 EBR), the subject matter of the present dispute. 36 EBR was at all material times a residential property where RJ and his family lived. Sometime in February or March 1990, RJ approached one David Lawrence, the managing director of Richard Ellis, an international firm of estate agents and valuers, to sell the property. By then, RJ and his wife had decided to move elsewhere as they realized that the area surrounding their house would be subject to redevelopment. Lawrence assigned one Donald Han (Han), a marketing executive, to attend to it. At that time, Han knew that Alrich owned three plots of land around the neighbourhood and were trying to sell them. He suggested to Wan that Alrich should consider incorporating 36 EBR with the three plots and sell them as one big parcel. Wan showed some interest and Han thereupon negotiated with Wan and Mrs Jumabhoy on the price. Finally, Wan agreed (on behalf of Alrich) to purchase the property for the sum of $2.7m and requested for a six-month period for completion. A draft contract was prepared and forwarded to Alrich for approval; Alrich, however, subsequently withdrew from the purchase. When told of this by Han, Mrs Jumabhoy intimated to Han that they would not sell the property to Alrich and that Han should look for other buyers. RJ also was very disappointed and he told David Lawrence that he would not sell the property to Alrich except for the sum of $2.7m.

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5 In May 1990, other real estate agents or brokers came onto the scene, namely, SL Tan (SL) and Mdm YL Tan (YL). SL and YL are not brokers working together in the same firm; they work separately and independently, and are merely broker-friends. On 19 May 1990, SL and his wife viewed the property 11 Keng Chin Road, which YL told him was available for sale. He took the opportunity of looking round the vicinity, and 36 EBR attracted his attention. Through his wife, who got in touch with Mrs Jumabhoy on the telephone, an appointment was made for SL to see the property on 23 May 1990 at about 3pm. SL alone went to 36 EBR at the appointed date and time. He met Mrs Jumabhoy and the latter quoted him a minimum price of $2.5m. No other conditions were mentioned by her. According to Mrs Jumabhoy, she asked SL whether the buyer was a `private buyer` to which SL replied in the affirmative, and she even asked him if the buyer was Alrich and SL replied in the negative. He informed her that he would bring his client to see the property later.

6 After viewing the property, SL informed his broker-friend YL that 36 EBR was available for sale. YL in turn got in touch with Wan who said that the price of $2.5m was too high. However, upon receipt of the information, Wan passed it on to Lim who instructed Wan to negotiate for the purchase of the property at the price of $2m. YL had not known Wan for long. She first met Wan in February 1990 when she placed an advertisement in the newspaper for the sale of some properties, including those at Yarwood and Holland Road areas. Lim came with Wan and saw her, but no transaction was entered into.

7 On 28 May 1990 YL told SL that she had a potential buyer and asked SL to fix an appointment for the buyer to view the property. Accordingly, SL got in touch with Mrs Jumabhoy and an appointment was arranged. SL and YL both went and saw the property on 29 May or 1 June 1990 - 29 May, according to YL but 1 June, according to Mrs Jumabhoy. YL told Mrs Jumabhoy that she

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represented the buyer who wanted to remain anonymous. According to YL, she and SL were shown round the house, and Mrs Jumabhoy enquired if the buyer was buying it for own occupation to which YL replied that she did not know but it might be so. However, Mrs Jumabhoy said that YL told her that the buyer was an elderly lady who was buying it for her own occupation. YL made some enquiries and did some calculations and there and then offered a price of $2m for the property but no agreement was reached with Mrs Jumabhoy at that stage.

8 Sometime towards the end of May 1990, Mrs Jumabhoy contacted another property agent, KC Ting (Ting), and asked him to sell 36 EBR at a price of $2.2m or thereabouts. Accordingly, on the 2, 3 and 5 June 1990 Ting inserted an advertisement in ***The Straits Times*** for the sale of 36 EBR. He got only two responses, one of which was from Wan, who first mentioned $1.9m and then increased the price to $2m.

9 On 4 June 1990, Ting called Mrs Jumabhoy saying that the buyer would offer $2m, and Mrs Jumabhoy said that she would revert. She then called SL and asked him to obtain a better price from YL`s client. SL later reverted with the offer of $2.025m with an option for eight weeks and a payment of 2% of the purchase price as option fee. Mrs Jumabhoy was not too happy with the increased offer and asked SL to obtain a better price: she even offered him an incentive of $1,000 for every $25,000 above $2.025m. On 4 or 5 June 1990, SL responded saying that YL`s client was not prepared to increase the offer. Shortly thereafter, Ting called Mrs Jumabhoy saying that his buyer would like to see the house; however, later he telephoned again and this time he said that his buyer would not be coming and that the price of $2m was firm.

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10 Throughout this period, RJ was in the United States of America and was not involved in any of these discussions or negotiations with any of the brokers. But Mrs Jumabhoy had kept him informed of the development.

11 On the morning of 5 June 1990, Mrs Jumabhoy told SL that RJ would like to speak to him and she obtained SL`s telephone number for her husband. On the evening of 5 June, Mrs Jumabhoy spoke to her husband and confirmed that the buyer was an elderly lady not connected with Alrich and gave the reason for the eight-week option. A little later, RJ telephoned SL from the United States and spoke to SL briefly. According to RJ, SL confirmed to him what Mrs Jumabhoy had earlier told him. On that basis, he asked Mrs Jumabhoy to proceed with the sale. On the morning of 6 June 1990, Mrs Jumabhoy called SL and gave him the name of her solicitor, Ms Lyn Wee of M/s Allen & Gledhill.

12 Ms Wee also gave evidence on behalf of RJ. She said that SL spoke to her on 5 June 1990 and she got instructions from her client later that day. Subsequently, there were requests from SL to expedite the preparation of the option which was prepared and faxed to YL on 6 June 1990. Later on the same day, she faxed another draft of the option to YL incorporating a clause relating to payment of the commission on the sale. On 7 June, she received an amended version of the draft from the solicitor acting for the purchaser, Ho Poh Lin (Ho), and the amendments contained, inter alia, a nominee clause. She cleared the amendments with RJ`s brother, Iqbal Jumabhoy. The option was subsequently signed by another brother of RJ, Asad Jumabhoy, on 8 June 1990 acting under a power of attorney given by RJ.

13 Between 5 and 30 July 1990, RJ made three offers through his solicitors, M/s Allen & Gledhill, to Ho offering compensation for the cancellation of the option. The initial offer was $25,000 which was subsequently increased to

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$100,000 but the offer was not accepted. On 6 August 1990, RJ revoked the option granted to Ho. The revocation was rejected. A nomination form in favour of Alrich was executed on the same day by Lim on behalf of Ho acting under a power of attorney. Alrich, as a nominee, then exercised the option by executing the acceptance form pursuant to the terms of the option. This acceptance was rejected by RJ.

14 Alrich then commenced this action against RJ claiming specific performance of the contract, damages in lieu of or in addition to specific performance and other consequential reliefs. They also lodged a caveat on the property. The claim was resisted by RJ and he raised four defences, namely:

> (a) that the option was rescinded or revoked by RJ in view of the misrepresentations by SL on behalf of Ho and/or Alrich that the purchaser was an elderly lady purchasing 36 EBR for her own occupation and that Alrich was not involved in the purchase of the property;
>
> (b) that the option had been rescinded or revoked prior to acceptance and therefore it was incapable of acceptance, and that Alrich, not being a party to the option, had no right to sue on that option;
>
> (c) that there was no sufficient note or memorandum of agreement signed by RJ or his authorized agent under s 4 of the Statute of Frauds 1677; and
>
> (d) that Lim was at all material times a director of Alrich and in consequence Alrich was a `foreign person` within the meaning of s 2(1) of the Residential Property Act (Cap 274) and was prohibited by ss 3, 25 and 36 of the Act from acquiring 36 EBR or any interest therein and in the circumstances the contract made was null and void.

15 RJ also counterclaimed for removal of the caveat and damages. Both parties thereafter made extensive amendments to their pleadings. The case eventually came on for trial before Chao Hick Tin J.

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16 **Decision below**

17 In a reserved judgment [see [1994] 3 SLR 1], the learned judge dismissed the claim of Alrich, ordered the removal of the caveat and granted an injunction restraining Alrich from filing further or subsequent caveat. In dismissing the claim the learned judge made a determination on only two issues, namely, (i) misrepresentations, and (ii) contravention by Alrich of the Residential Property Act, and did not consider the other two defences raised. On the first issue, the learned judge found that SL made misrepresentations to Mrs Jumabhoy on 23 May 1990 and subsequently `in the telephone conversations` up to 5 June 1990; that there was a telephone conversation between RJ and SL on 5 June 1990 and SL confirmed those matters which he had earlier told Mrs Jumabhoy. The learned judge also found that YL represented to Mrs Jumabhoy that she represented a buyer who was an elderly lady and who intended to buy the property for her own occupation. The learned judge held that looking at the matter in its totality everything surrounding the purchase of 36 EBR from RJ `was orchestrated by Wan with Lim giving general instructions at the rear`. He held that both Lim and Wan knew that the Jumabhoys would not sell 36 EBR to Alrich at $2.025m and this `web of misrepresentations` was created to achieve their objective and their misrepresentations induced RJ to sell the property to Ho for $2.025m. Accordingly, RJ was entitled to rescind the option granted to Ho and, if an agreement was nevertheless constituted by the acceptance of Alrich as a nominee of Ho, to rescind that agreement.

18 On the second issue pertaining to the Residential Property Act, the learned judge held that Lim was at all material times a de facto director of Alrich and that Wan took instructions from Lim. Lim was effectively the man controlling Alrich and not Wan or Seetoh. Lim, therefore, was a director falling

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within the definition of a director under the Companies Act (Cap 50, 1994 Ed). In view of this, Alrich was at the material time `a foreign person` within the meaning of s 2(1) of the Act and was prohibited from acquiring 36 EBR or any interest therein. It follows that the alleged purchase by Alrich was null and void. It makes no difference that Alrich had obtained clearance from the Controller of Residential Property, as it was subject to all the shareholders and directors being Singapore citizens.

19 **The appeal**

20 Before us, Alrich challenged the decision of the learned judge on the two issues. However, RJ in his case, apart from rebutting the case of Alrich, raised two additional grounds on which the decision of the learned judge should be affirmed, namely: (i) that the option having been revoked was not capable of acceptance and Alrich not being a party to the option was not entitled to institute this action; and (ii) that there was no sufficient memorandum of agreement under the Statute of Frauds and the contract was unenforceable. In effect, the same four issues are now before us as were before the learned judge. We now turn to deal with each of them seriatim in the order as raised below.

21 **Misrepresentations**

22 On this issue, it is necessary to ascertain precisely the findings of fact made by the learned judge. These findings are not being challenged; however, the effect of such findings and the inferences to be drawn from these findings are very much in issue.

23 First, the learned judge found that Ho was not a genuine buyer but a nominee of Alrich. Ho is a Singapore citizen. She first knew Lim in 1973 and

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soon thereafter was very close to him. They lived as man and wife for sometime until 1981 or thereabouts, and out of their cohabitation, two boys, a pair of twins, were born in 1975. In 1981, Ho went to Montreal and has since become a hotelier. In 1983 she gave a power of attorney to Lim, and the latter used it to buy and sell properties on her behalf in Singapore. She made no payment for such properties and everything was left to Lim. In 1989, she returned to Singapore and Wan took her to see the property in Ewe Boon Road area. However, when the option was granted and when it was exercised she was in Canada and the nomination in the option was signed by Lim on her behalf acting under a power of attorney. The learned judge held that Lim was making use of her name to engage in investment of residential properties which Lim could not himself do at the relevant time; everything relating to purchase and sale was arranged by Lim and full powers were given to him.

24 Next, we turn to the actual misrepresentations as found by the learned judge. The learned judge found that SL made misrepresentations to Mrs Jumabhoy on 23 May 1990 and subsequently `in the telephone conversations` up to 5 May 1990 that the buyer of 36 EBR was an elderly lady and that Alrich was not involved in the purchase. He found that RJ did telephone SL from New Jersey, United States of America, and SL confirmed to RJ what he had previously told Mrs Jumabhoy. As for YL, the learned judge found that YL on 29 May or 1 June 1990 - the precise date was irrelevant - when she first saw the house represented to Mrs Jumabhoy that she represented a buyer who was an elderly lady who intended to buy the property for her own occupation. The learned judge said:

> *Looking at the matter in its totality, I have very little hesitation in coming to the conclusion that everything surrounding the purchase of No 36 EBR from RJ was orchestrated by Wan, with LCS [Lim] giving general instructions at the rear.*

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25 ... I find that Wan knew very well that if he should appear at the appointment on 29 May or 1 June he would be recognized. He knew that the RJs were upset with him when Alrich backed out of the deal at the last minute at the end of March 1990. He knew that if he should appear he could probably only obtain the property at $2.7m or at somewhere near that. So he worked through YL and KC Ting to get No 36 EBR at the best possible price, hopefully very much below $2.7m. The only way to achieve that was to use a name which the RJs did not know, HPL. He knew that by using HPL the RJs would not suspect. I have little doubt that if the RJs had known that it was Alrich who were buying, they would certainly not have sold the property to Alrich at $2.025m. Wan and LCS knew that. This web of misrepresentations was created to achieve their objective. The misrepresentations induced RJ to sell to HPL at $2.025m.

26 Before us it is submitted that on the basis of the findings made by the learned judge the representations made both by SL and YL did not originate from Alrich. We turn first to the misrepresentations made by SL. As the evidence has unfolded, SL found out that 36 EBR was for sale on his own initiative. He and his wife first looked at the property from the outside on 19 May 1990. Subsequently, through his wife an appointment was made for him to see the property. He went alone to see the property and met Mrs Jumabhoy. That was on 23 May 1990. The learned judge found that on that occasion SL represented to Mrs Jumabhoy that the buyer was `a private buyer` and was not Alrich. It seems to us that at that stage even if there were misrepresentations made by SL, they were not made by him on behalf of Alrich. Nor can it be said that the misrepresentations originated from Wan or anyone on behalf of Alrich. At that time, negotiations for the disputed sale and purchase of 36 EBR had not even begun. Indeed, that was a very preliminary stage and SL did not even have a definite buyer in view. There was no evidence that SL at that time knew or

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was acquainted with Lim or Wan. As an estate agent it is his business to look for properties for sale or purchase and make enquiries and conduct discussions with potential buyers or sellers of properties. Nothing SL said at that time could be said to be a misrepresentation to Mrs Jumabhoy for the purpose of the disputed sale and purchase.

27 Next, the learned judge found that in subsequent telephone conversations up to 5 June 1990 SL repeated, in substance, the misrepresentations made to her earlier. On this, it is best to set out verbatim the evidence of Mrs Jumabhoy as found by the learned judge which he recited as follows:

> *Mrs RJ said that it was in late May 1990 that she asked Ting to sell 36 EBR for $2.2m. She told him that the buyer should not be Alrich otherwise the price would have to be $2.7m. She could not recall if she also said the same to SL.*

28 On 4 June, Ting called to offer $2m. Mrs RJ said she would consider and get back. Then she spoke to SL with a view to getting YL`s client to improve on her offer. Later that day SL reverted to Mrs RJ to say that the buyer would offer $2.025m with an eight-week option and 2% option fee. On her query why was the buyer asking for such a long option period, she was told that the buyer had her money in `ACU saving bonds`, with a maturity date yet to come. ...

29 On the morning of 5 June 1990, Mrs RJ told SL that her husband would like to speak to him. ... She went back to SL and asked for his telephone number so that she could pass it to her husband. That evening on 5 June 1990 Mrs RJ paged for SL. He responded and told her that he was on his way to get some medicine for his child who was sick. He asked Mrs RJ to call half an hour later. Mrs RJ got back to her husband who gave her the precise matters on which he wanted answers from SL: to confirm that the buyer was an elderly lady not

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connected with Alrich and the reason for the eight-week option. A little later Mrs RJ called SL at home and told him what information her husband wanted from him and that he should wait for his call. A short while later her husband called to say that he had spoken to SL briefly and was comfortable with what he was told by SL. He instructed her to proceed with the sale.

30 It will be noted from this account that all that Mrs Jumabhoy in effect said was that SL on 4 May 1990 represented to her on the telephone that the buyer was an elderly lady who had her money tied up in `ACU bonds` and would require a long period of eight weeks for the option; but there was no representation that she was not connected with Alrich and that Alrich was not involved in the sale. A perusal of the verbatim notes of evidence confirms that the learned judge has recited accurately, in so far as material, the evidence of Mrs Jumabhoy.

31 Finally, on the misrepresentations made by SL to RJ, the learned judge found that there was that telephone conversation made by RJ to SL and that SL confirmed to him that the buyer was an elderly lady and was not connected with Alrich. This finding was not in dispute. The learned judge in his conclusion said:

> *In the light of the law on misrepresentation as I have outlined above and on the facts which I have found, the misrepresentations which Wan had so cleverly conveyed through YL and SL to Mrs RJ and RJ, had induced RJ to sell the property to HPL. I am satisfied that RJ would not have sold the property to HPL and consequently to Alrich at the price of $2.025m but for the misrepresentations made.*

32 The point is made that as SL did not even know Alrich or Wan, how could he be the agent of Alrich? For the present purposes I do not think it matters so long as the misrepresentations originated from Wan, who knew that through YL and some others it would reach the ears of Mrs RJ and eventually RJ the

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owner. The target of the misrepresentations was clearly RJ. It does not matter that the misrepresentations were not made directly by Wan to RJ.

33 The learned judge`s conclusion was based essentially on inferences he drew, and such conclusion was challenged before us. It is clear on the evidence that SL was not Alrich`s agent; in fact, if at all, he was the agent for the Jumabhoys. There was no evidence that since he came to know that 36 EBR was for sale he had met Wan or Lim or had been in touch with either of them. As the evidence has shown, he did not even know Alrich. As for his representation that it was an elderly lady who was buying the property for her own occupation, a fair and reasonable inference to be drawn is that he got this information from YL at the time when he and YL was at 36 EBR on 29 May or 1 June 1990 and YL represented to Mrs Jumabhoy that she, YL, represented the buyer who was an elderly lady who intended to buy the property for her own occupation. In our judgment, it would be a quantum leap from the evidence adduced below to hold that the representations made by SL originated from Wan and that Wan made use of YL and SL as a conduit to transmit the misrepresentations to Mrs Jumabhoy and through her to RJ.

34 We now turn to the representations made by YL. Again, as the evidence has unfolded, YL saw the property with SL on 29 May or 1 June 1990. That was the first and only occasion YL met and spoke with Mrs Jumabhoy. She told Mrs Jumabhoy that she represented the buyer who was an elderly lady intending to purchase the property for her own occupation. It cannot be argued that YL`s representation did not originate from Alrich, as YL represented Alrich in inspecting the property. However, she did not represent to Mrs Jumabhoy that the elderly lady had no connection with Alrich or that Alrich was not involved in the intended purchase. The representation that was made by YL cannot be material for inducing Mrs Jumabhoy and, through her, RJ to grant the option.

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YL had already informed Mrs Jumabhoy that the buyer wished to remain anonymous. If this anonymous buyer really intrigued Mrs Jumabhoy, there was no reason why she could not or should not make further enquiry with YL as to the identity of this secret buyer. It could not possibly be material to RJ or Mrs Jumabhoy whether it was an elderly or young lady or an elderly or young man who intended to buy the property, whether for her or his own occupation or for investment. What was material to the Jumabhoys was and must be that Alrich was not involved in the purchase. That YL had never said so. The learned judge accepted this. He said:

> *Similarly I find that YL did on 29 May or 1 June 1990 represent to Mrs RJ that she represented a buyer who was an elderly lady and who intended to buy the property for her own occupation.*

35 However, the learned judge went further. He said:

> *In view of this representation it would be completely out of place for Mrs RJ to ask YL if Alrich was involved as that would mean Mrs RJ did not believe what YL was saying, that she represented a private buyer. It would be insulting and as a seller you do not go round doing that.*

36 With the utmost respect, we do not share such views as expressed by the learned judge. Surely it would not have been out of place for Mrs Jumabhoy to probe further and ascertain from YL that Alrich was not connected with the purchaser or was not involved in the purchase, since, on her own evidence, both she and her husband were paranoid about selling the property to Alrich. Nor do we think that it would be insulting for her to do so. After all, as between YL and Mrs Jumabhoy this was essentially a business transaction. What they were engaged in at the time was not small talk or an exchange of pleasantries between friends or acquaintances. It would be very naive, if not gullible, for an owner of a property to believe or accept whatever a broker or agent says in the course of negotiations, whether in respect of the personality of the potential buyer or

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otherwise. In our respectful view, YL`s representation at that meeting - and that was the only meeting with Mrs Jumabhoy - was insufficient to sustain the claim of RJ for rescission of the contract.

37 In this connection, it is also important to bear in mind the effect of the nominee clause in the option, which is as follows:

> *You [Ho] will have the right to nominate another party who is either a Singapore citizen or a Singapore company within the meaning of the Residential Property Act (Cap 274) to execute this option provided that you sign and return the nomination form attached to this option.*

38 True, it is that there was a dispute as to whether a nominee clause was suggested by SL to Mrs Jumabhoy and she agreed to it before she left for the United States of America. The learned judge found that SL did not suggest such a clause to Mrs Jumabhoy before she left. This finding, in our view, cannot be challenged and was not challenged. However, the learned judge went further and drew the inference that Wan and YL knew that Mrs Jumabhoy would be leaving Singapore on the morning of 7 June 1990 and only after she had left did Wan instruct his solicitor Gill to suggest to Ms Lyn Wee the insertion of the nominee clause. With great respect, that inference, on the evidence, is difficult to sustain. First, there was no evidence that YL or Wan on 5 or 6 June 1990 knew that Mrs Jumabhoy would be leaving Singapore on 7 June 1990. Secondly, there was a very tight time frame in which the option was prepared, approved and executed. According to Mrs Jumabhoy, she gave instructions to Ms Lyn Wee on 6 June 1990, and the latter`s evidence was that the option was prepared and faxed to YL on 6 June and that was followed on the same day by an amendment which was also faxed to YL. Ho`s solicitors responded to the draft on 7 June with suggested amendments, including the incorporation of the nominee clause. It is true that that was the first time Ms Lyn Wee saw the

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nominee clause, but the documentation in respect of the option only started the day before, and the terms were finally agreed and settled on the following day. It is also true that Mrs Jumabhoy and RJ were not around when the nomination clause was agreed to, and that it was agreed to on behalf of RJ by his brother, Iqbal and the option (containing that clause) was signed by his other brother, Asad, on his behalf, on 8 June 1990. However, whatever might have been the circumstances in which the nominee clause was inserted in the option, it was agreed to and was contained in the option, and RJ must be taken to have agreed to it and was bound by it.

39 After the option was executed and issued, RJ must have seen and read it. It is significant that there was not a word of complaint that SL and/or YL slipped that clause into the option without RJ`s or Mrs Jumabhoy`s approval and that RJ had never agreed to it. It was never suggested, and it was not RJ`s case, that if he had known of the clause he would never have agreed to it at that time. Nor was there any evidence that after the option was issued, RJ was totally dissatisfied with the presence of the nominee clause or questioned SL for slipping in the nominee clause and had sought a rectification of the option or of that clause. The inference is therefore that RJ was happy with the option which contained, inter alia, the nominee clause. It seems to us that surely the presence of such a clause in the option would have eliminated or wiped out the materiality, if any, of the representations made by YL to Mrs Jumabhoy, and it can hardly be argued that RJ was induced to give the option by the representations made by YL that the buyer of the property was an elderly lady who was buying it for her own occupation.

40 Looking at the matter objectively and from a practical point of view, the clear inference is that RJ knew that 36 EBR had been the subject of interest to developers and had development potential, and this factor naturally affected the

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price at which the property could command at the time. Even if the purchaser were an elderly lady who intended to buy the property for her own occupation, she would still have to match the price that would at that time be offered by developers. It seems to us that whether it was a developer or an elderly lady purchasing 36 EBR made no difference whatsoever to the Jumabhoys. Indeed, looking at the surrounding circumstances in which the option was given, it seems to us that the Jumabhoys were in some haste to dispose of the property at $2.025m to the buyer of YL whether such buyer be an elderly lady or a developer.

41 We are reinforced in our view by the fact that at the end of May 1990, Mrs Jumabhoy instructed Ting to sell 36 EBR and Ting inserted an advertisement for the sale of the property for three days, namely, 2, 3 and 5 June 1990. The reasonable inference from this is that the Jumabhoys were prepared to sell the property to all and sundry at a price acceptable to them - whether the buyer be man or woman, young or elderly, or even a developer with the probable exception of Alrich. It was only after Ting had informed Mrs Jumabhoy in the afternoon of 4 or 5 June 1990 that his buyer did not wish to inspect the property and was firm on the price of $2m that the Jumabhoys decided to accept the offer from YL`s buyer.

42 Finally, throughout the greater part of the month of July 1990, RJ was making serious overtures for the revocation of the option. He made no less than three offers to Ho, all of which were not accepted. Then, on 6 August 1990, rightly or wrongly, he revoked the option. Fortuitously, he found, what must have been to his pleasant surprise, that he could avail himself of the representations made by SL and YL, which the court below held entitled him to rescind the option.

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43 For the reasons we have given, we take a different view of the representations made by SL and YL. First, the representations made by SL to Mrs Jumabhoy and RJ did not originate from Alrich. Secondly, the representations made by YL to Mrs Jumabhoy were not material and did not induce RJ to grant the option. In coming to this conclusion, we are alive to the following facts: that Alrich withdrew from the agreement in principle made in March 1990 to buy 36 EBR at $2.7m; that the Jumabhoys were very disappointed and upset over Alrich`s withdrawal, as the price of $2.7m for the property then was probably extremely attractive; that if the Jumabhoys knew that it was Alrich who was buying the property in early June 1990 they would in all probability not be prepared to sell it to Alrich at $2.025m and that Wan knew this fully well. But withdrawal from a sale or purchase (agreed to in principle) by a vendor or purchaser is not an uncommon occurrence; equally it is not uncommon for a vendor or purchaser who has withdrawn from such sale or purchase to renegotiate the transaction with the same party on different or fresh terms and for a higher or lower price depending on market conditions. It is also our inference that Wan must have instructed YL to keep Alrich`s name out of the negotiations and not to reveal the identity of Alrich as the buyer. But it does not follow that Alrich is then bound by whatever their broker or other brokers might or might not have represented to the Jumabhoys in their negotiations. It is all too common that brokers are only too prone to make various statements or representations to a buyer and/or seller with a view to inducing them to conclude the transaction in question. They are, of course, very much interested in the transaction, as on completion thereof they would receive their commission. Obviously they have their own reasons for saying what they say to the buyer and/or seller, and it would be wrong to assume or infer that what they say emanated or originated from the buyer or seller concerned. Again, all too common is the fact that buyers of properties, especially developers and

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wealthy buyers, for obvious reasons, would not reveal their identity and make use of brokers and others to purchase properties as nominees without revealing their identity. There is nothing sinister in their so doing. It will be going too far to hold that in such circumstances the developers or buyers have made misrepresentations to the vendors inducing them to sell the properties to their nominees.

44 None of the cases relied upon are of any assistance. We need to mention briefly three cases. The first is . There, Archer, before he signed the contract for the purchase of the house, was asked specifically by the vendor whether he was purchasing it for one Smith, to which he replied in the negative. He was in fact buying for Smith to whom the vendor was not willing to sell and this was known to Archer. It was held that that statement by Archer amounted to a misrepresentation and accordingly the contract could not be specifically enforced.

45 Next, we come to the case of . There, the option to purchase the property was obtained by one Cavanagh, a real estate agent, acting on instructions of one Steed, a solicitor, and another person, Dr Bissig, who was the director of Development Finance Corp Ltd. This corporation was acting for a consortium consisting of various corporations. Cavanagh was asked specifically as to the identity of the purchaser to which he replied that the purchaser was a `doctor`, giving the impression that he was a doctor of medicine. Cavanagh in requesting for an option stated that the `doctor` was overseas. Just before the signing of the option, Cavanagh was specifically asked as to the identity of the grantee of the option and he told the vendors expressly that it was a nominee company and that another company would be formed to exercise the option, when the `doctor` returned. Cavanagh also said that the doctor was `probably a Pitt Street farmer`. It was held by the Court of Appeal of New South Wales that these statements

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were misrepresentations and that the granting of the option had been induced by the misrepresentations of the purchaser`s agent.

46 The third case is , where the owner, prior to granting the option, expressed her sadness that the house might be pulled down, and thereupon representation was made by the buyer that he did not intend to demolish the house and that the house was ideal for his family. The owner subsequently found that the buyer was a developer and was buying the property for development. It was held that there was misrepresentation made by the buyer and that was one of the factor that induced the owner to grant the option, and the buyer`s claim for specific performance was dismissed.

47 All these three cases were clearly distinguishable from the present case in one material respect. In all the three cases, the misrepresentations were made either by the buyers or their agents; they originated from the owners. In the case at hand, the misrepresentations made by SL did not originate from Alrich. The representation made by YL to Mrs Jumabhoy was made by the former as the agent for Alrich, but that, as we have held, in the circumstances of this case, was not material and did not induce RJ to grant the option.

48 In our judgment, the defence of RJ that he was induced by the representations of SL and YL to grant the option must fail.

49 **Revocation of the option**

50 It was submitted on behalf of RJ that Alrich have no locus standi to maintain this action. The arguments ran along this line. The option was addressed to Ho who was the only one who provided consideration for it, and according to the doctrine of privity of contract, Ho was the only one who could

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sue on it. RJ had revoked the option before Alrich purported to exercise it. As Alrich were not a party to the option, it is not open for Alrich to complain about the revocation. The proper party to sue is Ho.

51 In our view, the argument is fallacious. What Alrich were seeking to enforce is not the option, but the sale and purchase agreement. If Ho had wanted to avail herself of the benefit of the option after RJ had revoked it, all she had to do was to exercise the option and RJ would be bound. If she then sued for specific performance, she sued on the sale and purchase agreement. The option and the sale and purchase agreement are one. In our opinion, there is no question of Ho suing on the option, and similarly there is no question of Alrich suing on the option either.

52 An option is an unilateral contract along the lines of . In , at p 83, Diplock LJ said:

> *Under contracts which are only unilateral - which I have elsewhere described as `if` contracts - one party, whom I will call `the promisor,` undertakes to do or to refrain from doing something on his part if another party, `the promisee,` does or refrains from doing something, but the promisee does not himself undertake to do or to refrain from doing that thing. The commonest contracts of this kind in English law are options for good consideration to buy or to sell or to grant or take a lease, competitions for prizes, and such contracts as that discussed in* ***Carlill v Carbolic Smoke Ball Co****.*

53 It is not strictly correct to say that an option is a contract to keep open an offer or an `irrevocable offer`. It is true that Lord Denning MR in said, at p 81:

> *... In point of legal analysis, the grant of an option in such cases, is an irrevocable offer (being supported by consideration so that it cannot be revoked). In order to be turned into a binding contract, the offer must be accepted in exact compliance with its terms. The acceptance must correspond with the offer.*

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54 But in at p 523, Diplock LJ said:

> *... The grant of the option itself creates no obligation on the part of the grantee - only a right to demand performance of his obligation by the grantor. In the absence of such demand he assumes no obligation, conditional or otherwise. An enforceable option to subscribe for new shares in a company is thus of a different juristic character from a mere offer to issue new shares. A mere offer creates no obligations or rights on the part of either the offeror or the offeree. ... To speak of an enforceable option as an `irrevocable offer` is juristically a contradiction in terms, for the adjective `irrevocable` connotes the existence of an obligation on the part of the offeror, while the noun `offer` connotes the absence of any obligation until the offer has been accepted.*

55 An option for the purchase of land has been described as a contract for the sale of land contingent on the exercise of the option. This was the approach adopted in , at p 482; and . In , at p 225, Jenkins LJ said:

> *An option in gross for the purchase of land is a conditional contract for such purchase by the grantee of the option from the grantor, which the grantee is entitled to convert into a concluded contract of purchase, and to have carried to completion by the grantor, upon giving the prescribed notice and otherwise complying with the conditions upon which the option is made exercisable in any particular case.*

56 In , Hoffmann J said, at p 543:

> *Here the underlying principles are clear enough. The granting of the option imposes no obligation on the purchaser and an obligation on the vendor which is contingent on the exercise of the option. When the option is exercised, vendor and purchaser come under obligations to perform as if they had concluded an ordinary contract of sale. And the analogy of an irrevocable offer is, as I have said, a useful way of describing the position of the purchaser between the grant and exercise of the option. ...*

57 ... But the irrevocable offer metaphor has much less explanatory power in relation to the position of the vendor. The effect of the `offer` which the vendor has made is, from his point of view, so different from that of an offer in its primary sense that the metaphor is of little assistance.

58 Later, the learned judge said, at p 544:

> *... An option is not strictly speaking either an offer or a conditional contract. It does not have all the incidents of the standard form of either of these concepts. To that extent it is a relationship sui generis. But there are ways in which it resembles each of them. Each analogy is in the proper context a valid way of characterising the situation created by an option. The question in this case is not whether one analogy is true and the other false, but which is appropriate to be used in the construction of s 2 of the Law of Property (Miscellaneous Provisions) Act 1989.*

59 In our opinion, the option here is a contract, and the revocation of the option by RJ was a unilateral repudiation of that contract. Such a repudiation, unless it is accepted is of no effect and is a thing `writ in water`. In , at p 361 Viscount Simon LC succinctly said:

> *... But repudiation by one party standing alone does not terminate the contract. It takes two to end it, by repudiation, on the one side, and acceptance of the repudiation, on the other.*

60 In this case, the repudiation by RJ was not accepted and therefore the option survived, exercisable in accordance with its terms. It was exercised by Alrich and thus there arose a contract which Alrich are now claiming.

61 **Sufficiency of memorandum**

62 The third defence of RJ to the claim was that there was no sufficient memorandum in writing evidencing the sale and purchase agreement. The exercise form was executed only by Alrich and not by RJ. The argument was that for the requirement of the Statute of Frauds, now embodied in s 6A of the Civil Law Act (Cap 43), to be satisfied, RJ must sign the last of the documents that were said to constitute the memorandum in writing. The last document signed by RJ was the option and that did not contain the name of Alrich. Counsel

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cited a number of authorities below and now repeats the same argument. It is unnecessary to traverse them.

63 The short answer is that the exercise form signed on behalf of Alrich was contained in and formed part of the option, as was the nomination form which was signed by Lim on behalf of Ho. Both documents were stipulated in the option as part and parcel of the mechanism by which a person may be nominated by Ho and by which the option may be exercised. In these circumstances, it is sufficient if the option was signed by or on behalf of RJ. In at p 133, Romer LJ said:

> *... A defendant cannot be bound by a document which he has not signed unless he had in effect incorporated it in the document which he has signed, in which case he would be regarded as having notionally signed both documents.*

64 The nomination form signed by Lim on behalf of Ho and the acceptance signed on behalf of Alrich had been incorporated in the option which was signed by the authorised agent of RJ.

65 A similar question arose in in relation to s 2 of the United Kingdom Law of Property (Miscellaneous Provisions) Act 1989, which, so far as relevant, is as follows:

> *(1) A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each.*
>
> (2) The terms may be incorporated in a document either by being set out in it or by reference to some other document.
>
> (3) The document incorporating the terms or, where contracts are exchanged, one of the documents incorporating them (but not necessarily the same one) must be signed by or on behalf of each party to the contract.

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66 In that case, by an agreement in writing, the vendor granted to the purchaser an option to purchase the property in question and the option was exercisable on the same day. The agreement was executed in two exchanged parts, each of which incorporated the same terms and was signed on behalf of each party respectively. The option was duly exercised. However, subsequently the purchaser failed to complete the transaction. The vendor instituted proceedings against the purchaser and its guarantor and obtained judgment in default of defence against the purchaser. On the vendor`s summons for judgment against the guarantor and the purchaser`s summons to set aside the judgment, a question arose as to whether the agreement had satisfied the requirements of s 2 of the Act. Hoffman J held that an option was a contract for the sale of land contingent on the purchaser`s exercise of the option and that the option on due exercise satisfied the requirements of that section. Hoffmann J said at p 541:

> *Apart from authority, it seems to me plain enough that s 2 was intended to apply to the agreement which created the option and not to the notice by which it was exercised. Section 2, which replaced s 40 of the Law of Property Act 1925, was intended to prevent disputes over whether the parties had entered into a binding agreement or over what terms they had agreed. It prescribes the formalities for recording their mutual consent. But only the grant of the option depends upon consent [of the grantor]. The exercise of the option is a unilateral act. It would destroy the very purpose of the option if the purchaser had to obtain the vendor`s countersignature to the notice by which it was exercised. The only way in which the concept of an option to buy land could survive s 2 would be if the purchaser ensured that the vendor not only signed the agreement by which the option was granted but also at the same time provided him with a countersigned form to use if he decided to exercise it. There seems no conceivable reason why the legislature should have required this additional formality.*

67 The relevant memorandum in writing may consist of two or more interconnected documents, and it is clearly erroneous to say, as contended on behalf of RJ, that a document or documents subsequent to one signed by the

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party to be charged cannot be relied upon where, as here, the signed document envisages the creation of the subsequent document or documents. More particularly in this case, the subsequent documents, ie the nomination form and the acceptance, did no more than what the earlier signed document, ie the option, has prescribed. If this were not to be the position, then the Statute of Frauds would destroy the very purpose of an option and no exercise of an option could ever be enforced. In our judgment, such an argument as advanced on behalf of RJ has no substance whatsoever.

68 **The Residential Property Act**

69 The learned judge held that on the facts he was satisfied that Lim was a de facto director of Alrich. Although Wan was a director, he took his instructions from Lim, and Seetoh hardly attended to the business of Alrich. Lim`s sole signature was sufficient to operate Alrich`s bank account. The transfers of the shares in Alrich to Seetoh and Wan were merely to satisfy the requirements of the Residential Property Act (Cap 274) (the RPA). This finding of fact is not disputed by Alrich before us. The only point raised on behalf of Alrich was that Lim had ceased to be a director and was not a director of the company, and that, under the RPA, a director does not include a de facto director. Hence, the only issue before us is whether, for the purpose of the RPA, a director includes a de facto director.

70 The RPA does not define who is a `director`. The learned judge held that the word `director` bears the meaning ascribed to it by the Companies Act (Cap 50, 1994 Ed). Section 4(1) of the Companies Act defines a `director` as including `any person occupying the position of a director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act

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and an alternate or substitute director.` On this definition, clearly, Lim was a director of Alrich, and the learned judge has so held. In coming to this decision, the learned judge relied on the dictum of Lord Shaw in at p 711:

> *In the absence of any context indicating a contrary intention, it may be presumed that the legislature intended to attach the same meaning to the same words when used in a subsequent statute in a similar connection.*

71 and held that there was nothing in the RPA to suggest that a contrary intention was intended.

72 Whether it is permissible in the interpretation of the RPA to refer to the Companies Act for the purpose of ascertaining the meaning of the word `director` depends on whether the word `director` is used in the same sense in the two statutes. In this connection, it is true that the two statutes are dealing with different subject matters: the RPA is designed to prevent foreigners from dealing and speculating in certain residential property in Singapore, and the Companies Act is largely concerned with the constitution, administration and regulation of companies. However, where the sections of the RPA refer to a director, those sections are dealing with persons in control of a company, and such matter is properly within the ambit of the Companies Act. In our opinion, the word `director` in the RPA and the Companies Act is used in the same sense and the word `director` in the RPA has the same meaning as that given to it in s 4(1) of the Companies Act, and consequently Lim was at the material time a director of Alrich.

73 Counsel for Alrich argued that where there are penal provisions, the words of a statute should be construed strictly. He cited cases such as and to show that there are instances where the court has declined to apply the wider Companies Act meaning of `director` to another statute where there are penal

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provisions. Similarly, the RPA contains penal provisions and the strict meaning of `director` should be applied. Furthermore, he said, in (which was a decision of the Court of Criminal Appeal of New South Wales), the court declined to use the definition of `director` in the Companies Act when construing a penal provision in the Companies Act itself. That decision was reversed on appeal, by special leave, by the High Court of Australia: sub nom . In our opinion, the penal provisions in the RPA are designed to bolster the operation of the Act and it would be wrong to allow a consideration that the penal provisions must be construed strictly to defeat the very purpose of the statute these provisions are meant to support.

74 We now turn to the specific provisions of the RPA which govern the issue. Section 2(1) of the Act defines a `foreign company` as including:

> *(b) a company formed or incorporated in Singapore, some or all of whose members or directors are not citizens, or in the case of a member being another company, where some or all of the members or directors of such other company are not citizens ...*

75 and defines `Singapore company` as follows:

> *`Singapore company` means a company formed or incorporated in Singapore, all of whose members and directors are citizens, or in the case of a member being another company, where all the members and directors of such other company are citizens.*

76 Section 2(1) also defines a foreign person as including a foreign company. Section 3(1)(a), so far as relevant, provides that no person shall transfer any residential property or any estate or interest therein to any foreign person, and no foreign person shall purchase or acquire any residential property or any estate or interest therein; and s 3(2) provides that any such transfer or any such purchase or acquisition shall be null and void. Further, s 36(1) provides that anyone who contravenes or fails to comply with any provisions of the RPA

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shall be guilty of an offence. As Lim was a director of Alrich and at the material time was not a Singapore citizen, Alrich was not a Singapore company under the RPA, and also as a `foreign company` it had not obtained any approval for the purchase of 36 EBR. Accordingly, the contract between Alrich and RJ, which was made by the exercise of the option by Alrich, was an illegal contract and was void and Alrich cannot enforce it against RJ. The twin maximus ***ex turpi causa non oritur actio*** and ***in pari delicto potior est conditio defendentis*** applies: see and .

77 Alrich relied on the certificate obtained by them from the Controller of Residential Property pursuant to s 10(3) of the RPA which enables Alrich to acquire and retain residential property. On this, the learned judge held:

> *... But I think it is vitally important to bear in mind the precise scope of the clearance [ie the certificate] given in the instant case. It reads:*
>
> *`The abovenamed company is given clearance to acquire and retain residential property so long as*
>
> *...*
>
> (4) all directors of the said company are and remain as Singapore citizens.`
>
> *If, as I have found, LCS [Lim] had been acting all along as a director of Alrich and he was at the relevant times not a Singapore citizen, the clearance granted to Alrich must be deemed to have ceased to have effect or to have been invalidated. To suggest that on the facts before me, the clearance nevertheless stands until formally withdrawn by the Controller and the court ought to enforce the contract of purchase entered into by Alrich, would be to encourage wrongdoing or deceit and to reward those whose aim is to flout the law. I will not countenance that.*

78 We are in agreement with the conclusion arrived at by the learned judge. However, it seems to us that the observation of the learned judge that the clearance obtained by Alrich must be deemed to have ceased to have effect or

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have been invalidated was made with reference to Alrich only. Alrich themselves, who have contravened the provisions of RPA and failed to comply with the terms or conditions of the certificate, cannot rely on the certificate to enforce a contract for the purchase of a residential property against the vendor. As a `Singapore company` their right or entitlement to purchase or acquire and retain a residential property does not depend on the issue and continued existence of the certificate of the Controller under s 10(3) but on their compliance with the RPA. This is evident from s 13 of the RPA. Under that section, the Registrar of Title/Registrar of Deeds may refuse to register an instrument of transfer of an estate or interest in any residential property in favour of a Singapore company, if he is not satisfied that the company has complied with s 10(1) and the requirements of a Singapore company as prescribed by the RPA. So long as the Singapore company complies with and continues to comply with these requirements, it may acquire and retain any residential property. The certificate issued by the Controller under s 10(3) is intended for the benefit of outside parties, such as purchasers or vendors, dealing with a Singapore company. In our view, it undoubtedly constitutes prima facie evidence that the Singapore company (described therein) has complied with the Act and remains as such and thus the certificate may be relied upon by such parties dealing bona fide with that company and without notice of any breach by that company of the provisions of the RPA.

79 It was submitted on behalf of Alrich that if one is permitted to go behind the certificate of the Controller, then every purchaser of a residential property from a Singapore company would run the risk of his purchase being declared null and void on the ground that the vendor company has at the material time a de facto director who is not a Singapore citizen. We think that this risk is more exaggerated than real. As we see it, the position is really this. First, any purchase

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of a residential property by a purchaser, who is a Singapore citizen or Singapore company or a person who has obtained approval for such purchase (purchaser) is not void. Section 21 of the RPA makes it quite clear that a foreign person who owns a residential property can transfer that property to such a purchaser. Further, s 3 of the RPA is directed at the purchase or acquisition of a residential property or any estate or interest therein ***by*** a foreign person and not by such a purchaser. Hence, if a Singapore company has acquired a residential property lawfully, but thereafter it becomes a foreign company on the ground, say, that one of its directors is a foreigner, a purchaser of such property from that company would acquire a good title. Secondly, it seems to us that even if a company purporting to be a Singapore company has acquired illegally a residential property, as for instance, one of its director or shareholder was, at the material time, not a Singapore citizen, such acquisition may not void and a subsequent purchaser of that property from that company may well acquire a good title. This is the necessary implication from s 14(2) of the RPA, which provides:

> *Notwithstanding any approval given by the Minister or the issue of a certificate by the Controller, the Controller may, if he subsequently discovers that the company owns any residential property in respect of which the Minister has not granted any approval under section 25 or 26 for the company to purchase, acquire or retain the property or that the company had made a misrepresentation to the Controller, as the case may be, obtain the Minister`s direction to* ***require the company to dispose of the residential property*** *and section 9(6) to (12) shall apply, mutatis mutandis, to the manner of* ***disposal of the residential property*** *and the rights of a mortgagee or chargee (if any) of the residential property. [Emphasis added.]*

80 On the basis of this provision, it seems to us that a conveyance or transfer of a residential property to a non-Singapore company in the situation contemplated in s 14(2) would not be null and void with the consequence that

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no title passes to that company, for if this is not so, then there is nothing for the Minister to direct that company to dispose of.

81 There is yet a further safeguard to a purchaser of a residential property from a purportedly Singapore company, if the title of that residential property is one which is governed by the Land Titles Act (Cap 157, 1994 Ed) (LTA). Under the scheme of the Act, there is authority for the proposition that a registered proprietor of a property has a good title to the property even if the transfer thereof to him was illegal or void. The basis for this is that, first, under s 45 of the LTA, upon registration of an instrument the estate or interest therein passes to the transferee, subject to such covenants and conditions contained in the instrument, and by s 46, a proprietor of the registered land has, subject to certain exceptions (which are not relevant here), an indefeasible title to the property. Secondly, by s 154, a registered proprietor, subject to only five exceptions, is immune from any claims or attack. Baalman in ***The Singapore Torrens System*** at p 254 said:

> *If by some transcendental statute, the person in possession were made immune from ejectment, then the statute would have given that person an indefeasible title. With five specified exceptions this section [s 154] confers that immunity on proprietors of registered land, whether they are in actual possession or not. In doing so it is merely repeating, in a negative way, the positive enactment of s [46], of which it might be described as the corollary.*

82 Further, by s 36, the land register maintained in the Land Registry is conclusive evidence that the person named as proprietor therein or in any memorial therein is or was at the relevant time entitled to the estate or interest in the land therein specified and described. Lastly, by s 47, except in the case of fraud, a person dealing with a registered proprietor is, among other things, not required or is not concerned in any manner `to inquire or ascertain the circumstances in or the consideration for which the current proprietor or any

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previous proprietor is or was registered`, nor is he affected by notice (actual or constructive) of any bankruptcy proceedings, trust or other unregistered interest whatsoever.

83 In , the Privy Council had occasion to consider various provisions of the New Zealand Land Transfer Act 1952 which provided a similar Torrens system for dealings in land. Lord Wilberforce, in delivering the judgment of the Board, made the following observations on ss 62 and 63 of that Act (which are somewhat similar to ss 46 and 154 of the LTA) at p 580:

> *Those sections which provide protection to the registered proprietor against claims and proceedings. These are ss 62 and 63. Without attempting any comprehensive or exhaustive description of what these sections achieve, it may be said that while s 62 secures that a registered proprietor, and consequently anyone who deals with him, shall hold his estate or interest absolutely free from encumbrances, with three specified exceptions, s 63 protects him against any action for possession or recovery of land, with five specified exceptions. ...*

84 It is these sections which, together with those next referred to, confer upon the registered proprietor what has come to be called `indefeasibility of title`. The expression, not used in the Act itself, is a convenient description of the immunity from attack by adverse claim to the land or interest in respect of which he is registered, which a registered proprietor enjoys. This conception is central in the system of registration.

85 Later, his Lordship said at p 585:

> *... their Lordships have accepted the general principle that registration under the Land Transfer Act 1952, confers upon a registered proprietor a title to the interest in respect of which he is registered which is (under ss 62 and 63) immune from adverse claims, other than those specifically excepted. ...*

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86 In , which was a decision of the High Court of Australia, a transfer which was void under the Stamps Act 1894 to 1968 of Queensland was nonetheless registered and it was held by the High Court of Australia that upon registration of the transfer the title passed and was vested in the transferee and a subsequent purchaser from him obtained a good title. Barwick CJ said, at pp 385-386:

> *The Torrens system of registered title of which the Act is a form is not a system of registration of title but a . That which the certificate of title describes is not the title which the registered proprietor formerly had, or which but for registration would have had. The title it certifies is not historical or derivative. It is the . Consequently, . It matters not what the cause or reason for which the instrument is void. The affirmation by the Privy Council in of the decision of the Supreme Court of New Zealand in , now places that conclusion beyond question. Thus the effect of the upon the memorandum of transfer in this case is irrelevant to the question whether the certificate of title is conclusive of its particulars. [Emphasis added.]*

87 On the basis of these authorities, it seems to us that if a company purporting to be a Singapore company has illegally purchased a residential property, the title to which is governed by the LTA, then upon registration of the transfer in its favour, it becomes a registered proprietor, and as such it can thereafter pass the title of the property to a subsequent purchaser.

88 For the reasons we have given, RJ`s defence under the RPA succeeds. Accordingly, the appeal fails and is dismissed.

89 We now come to the question of costs. Four major issues have been raised before us and RJ has succeeded only on the last issue. In these circumstances, it would be unfair that he should have the entire costs of the appeal. Further, having regard to the conduct of RJ and Lim, we think that a fair order as to costs should be that Alrich should bear and pay only 20% of the costs of the appeal. We so order. We have also considered whether this appeal merits the issue of a certificate of two solicitors under O 57 r 19. Bearing in mind what

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we have said, we have decided not to make such an order. There will be the usual consequential order for payment to RJ or his solicitors the deposit in court as security for costs.

90 ***Appeal dismissed.***

Goh Joon Seng J
Rajendran S J
L P Thean JA

Arthur Leolin Price QC, Cheong Yuen Hee and Patrick Wee (Chua, Hay & Wee) for the appellant
Michael Hwang, K Shanmugam, Francis Xavier and Tan Chuan Thye (Allen & Gledhill) for the respondent

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