IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1995] SGCA 71

CA 21/1995

Between

See Hup Seng Tin Factory Pte Ltd

… *Appellant*

And

Mercury M-Power Industrial Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Land — Conveyance

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

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See Hup Seng Tin Factory Pte Ltd v Mercury M-Power Industrial Pte Ltd

[1995] SGCA 71

CA 21/1995
Karthigesu JA; L P Thean JA; Yong Pung How CJ
14 September 1995

1 Cur Adv Vult

2 The appellants, See Hup Seng Tin Factory Pte Ltd, to whom we shall refer hereafter as `the vendors` appeal against the orders of the High Court made on 6 February 1995. The orders are:

> (i) a declaration that the vendors` notice to complete dated 1 October 1993 giving the respondents, Mercury M-Power Industrial Pte Ltd (the purchasers) 21 days to complete the purchase of the property comprised in lot 2088 of mukim 6 and known as 60 Kian Teck Road, Singapore (the property) is invalid or ineffective;
>
> (ii) a declaration that the contract of sale of the property (the contract of sale) made on 1 April 1993 between the vendors and the purchasers is still binding as between them and that the vendors complete the contract of sale by way of a deed of assignment from the vendors to the purchasers as assignor and assignee respectively for the total consideration of $1,450,000; and
>
> (iii) an order that the vendors pay the purchasers interest for late completion of the contract of sale from 21 October 1993 till the date of actual completion as provided under the Singapore Law Society`s Conditions of Sale 1981 (the 1981 Conditions of Sale).

3 The facts and circumstances which give rise to the making of the above orders are not materially in dispute.

4 The vendors are lessees of the property from the Jurong Town Corp (JTC). On 18 March 1993 the vendors granted an option (the option) to the purchasers to purchase the property free from encumbrances, for $1,450,000 in consideration of the payment of $14,500, being a sum equivalent to 1% of the total purchase price. The option was subject, inter alia, to the approval of JTC (cl 4) and to satisfactory replies to all requisitions being received by the purchasers` solicitors (cl 9). These clauses are now set out in full:

> *Clause 4*
>
> *The sale and purchase herein is subject to approval being granted by Jurong Town Corp (hereinafter referred to as `JTC`) for the vendor to sell and the purchaser to buy the said property on the terms and conditions herein contained as well as to any change of use of the said property of which both parties shall expeditiously and separately apply for approval within fourteen (14) days from the exercising of this option. A copy each of the vendors` and purchasers` applications and all subsequent correspondence between each of them and the JTC shall be extended to each other`s solicitors.*
>
> *Clause 9:*
>
> *The sale and purchase herein is subject to the purchaser`s solicitors receiving satisfactory replies to all legal requisition sent to the relevant government departments including the MRT authority. In the event of such replies are found to be unsatisfactory, the purchaser shall have the option to rescind this agreement and neither party hereto shall have any claim whatsoever against the other arising therefrom save that all moneys paid hereunder shall be refunded forthwith to the purchaser without any interest or deductions whatsoever and each party to pay its own legal costs in respect of the abortive sale and purchase.*

5 Clause 13 of the option provided that the purchase was to be completed within 12 weeks from the date of acceptance of the option or within four weeks

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of the vendors` receipt of JTC`s approval or consent, whichever was the later. The purchasers duly exercised the option on 1 April 1993 and paid the required balance of 10% of the purchase price. The option then became the contract of sale. Accordingly, the contractual date for the completion of the purchase was 24 June 1993 ***or four weeks of the vendors` receipt of JTC`s approval or consent, whichever was the later.***

6 The vendors, through their solicitors, as required by cl 4 of the contract of sale applied to JTC for approval of the contract of sale. They received JTC`s letter of approval dated 30 April 1993 on 4 May 1993. JTC`s letter said that they had `no objection in-principle` to the transfer of the property to the purchasers subject to a number of terms and conditions. It is only necessary to refer to one of the conditions, namely, para (m) which reads as follows:

> *(m) Your clients shall remove the unauthorized mobile open sheds (as shown in the sketch attached). The zinc sheet fencing at the front of the premises is to be replaced and the big oven within the premises is also to be removed. The whole of para (m) must be done before the completion of transfer.*

7 It is pertinent to note that as JTC`s approval was conditional, the later date for contractual completion, if it applied, would be four weeks from the date of JTC`s confirmation that para (m) above referred to had been complied by the vendors.

8 It is a fact which is not denied by the vendors that they were served with a demolition order by the Building Control Division (BCD) on 22 October 1992 under s 13 of the Building Control Act (Cap 29, 1990 Ed). The purchasers learnt of the non-compliance with it from the reply to their requisition to the BCD. The purchasers` solicitors then wrote to the vendors` solicitors on 28 May 1993 stating that the BCD`s demolition order had not been complied with by the

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vendors and sought information as to the outcome of the demolition order. In the same letter the purchasers` solicitors requested for the completion date `to be deferred to 5 August 1993, interest-free.` It will be remembered that the earlier of the two contractual completion dates was 24 June 1993.

9 The vendors` solicitors replied on 14 June 1993 agreeing to the completion date being deferred to 5 August 1993, free of interest. As for the purchasers` solicitors` inquiry as to the status of the demolition order, the vendors` solicitors simply referred the purchasers` solicitors to JTC`s letter of 30 April 1993, para (m). This was no reply at all as reference to JTC`s letter of 30 April 1993 para (m) would not enlighten the purchasers any more than knowing that as at 30 April 1993 the property still had the unauthorized mobile open sheds and also had a zinc sheet fencing and a big oven within the premises which the JTC wanted removed before completion could take place.

10 However, without any further communication between the vendors` and purchasers` solicitors, the vendors` solicitors on 27 July 1993 forwarded to the purchasers` solicitors a completion statement made up to 5 August 1993 presumably because the purchasers had requested that completion be deferred to 5 August 1993 and the vendors had agreed. Completion did not, however, take place on 5 August 1993 and the date passed without incident. There was no indication from the vendors` solicitors that the vendors had complied with JTC`s para (m) of the letter of 30 April 1993 and had thus obtained JTC`s approval under cl 4 of the contract of sale.

11 The vendors through their solicitors must have represented to JTC that the `unauthorized structures` had been removed from the property. It is not clear from the affidavit evidence and the correspondence exhibited in the affidavits

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of both sides when this was but we have a letter from the JTC addressed to both the vendors` and purchasers` solicitors dated 25 August 1993 where JTC noted that from an inspection of the property on 24 August 1993 `the unauthorized structures` are `still intact`. It was only on 11 September 1993 that JTC confirmed to both the vendors` and purchasers` solicitors that `the unauthorized structures` had been removed but the zinc sheet fencing in front of the premises was still there. JTC further noted that `as such, we would not be releasing the draft deed of assignment`. Obviously JTC was withholding approval as para (m) of their letter of 30 April 1993 had not been fully complied with.

12 Subsequently JTC agreed with the vendors that the zinc sheet fencing could be retained if the purchasers agreed. The purchasers agreed on 21 September 1993. Thus, in so far as JTC`s approval under cl 4 of the contract of sale was concerned, such approval was effectively obtained on 21 September 1993. On the same date, that is to say 21 September 1993, the purchasers through their solicitors called for the completion account as at 24 September 1993 and the purchasers` solicitors responded immediately. However, completion did not take place on 24 September 1993 as on that date the purchasers were required by their mortgagees to get confirmation from the vendors that the BCD`s demolition order had been complied with. The vendors` reply made on 24 September 1993 was that the BCD`s demolition order and the JTC`s para (m) of their letter of 30 April 1993 related to the same `unauthorized mobile open sheds` and as JTC had confirmed on 11 September 1993 that `the unauthorized mobile open sheds` had been removed, `no further confirmation is required`.

13 The vendors contend that 24 September 1993 was an agreed contractual date of completion because the purchasers asked for a completion account as at

24 September 1993 and the vendors complied. Therefore the vendors submit there was an agreement to complete the purchase on 24 September 1993. With respect to learned counsel for the vendors, we do not agree. In our judgment a request for a completion account as at a certain date is not an offer to complete on that date such that a compliance with that request constitutes an agreement to complete on that date. The function of a completion account is simply to inform the purchaser, and when requested for by the purchaser with which the vendor complies, for the purchaser to be informed, the amount due on completion. It serves no other purpose: see at p 279, first column at letters D-E and at p 460, first column at letters D-E. Furthermore, the evidence does not disclose any express agreement that 24 September 1993 would be the rescheduled date of completion. Indeed, if the parties had agreed that completion would take place on 24 September 1993, it is surprising that this date is not reflected in the correspondence. Still further, the conduct of the vendors after 24 September 1993 had passed without completion is not entirely consistent with their stand taken before the High Court and now before us. On 25 September 1993, the purchasers` solicitors informed the vendors` solicitors that they had written to the BCD to get confirmation whether the demolition order had been complied with. If indeed it had been agreed that completion would take place on 24 September 1993 one would have expected an immediate and strong response from the vendors` solicitors that the purchasers had defaulted in proceeding to complete.

14 Accordingly, in our judgment, 24 September 1993 was not an agreed contractual date of completion. In so far as the learned judicial commissioner may have accepted that 24 September 1993 was the agreed completion date, he was, with respect, in error. The significance of the vendors contending for 24 September 1993 as an agreed contractual date of completion is to justify their

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notice to complete dated 1 October 1993 issued under condition 29(2) of the 1981 Conditions of Sale for which a failure to complete on or before the date fixed for completion must be shown. In any event the date fixed for completion is to be determined by reference to cl 13 of the contract of sale. This, as it will be remembered, provided for completion on or before the expiry of 12 weeks from the date of acceptance (1 April 1993) or within four weeks of the vendors` receipt of JTC`s approval under cl 4 of the contract of sale (21 September 1993) whichever is the later: in the event the dates were 24 June 1993 or 19 October 1993 and since 24 June 1993 had passed without completion, the contractual date of completion was 19 October 1993.

15 Although, as we have said above, the purchasers` solicitors wrote to BCD on 25 September 1993 to get confirmation whether the vendors had complied with the demolition order, it was not considered a proper requisition. So, on 28 September 1993, the requisition was made on the prescribed form addressed to BCD requesting information on the status of the demolition order. BCD`s reply was made on 19 October 1993 but received by the purchasers` solicitors on 21 October 1993 confirming the vendors` compliance with the demolition order.

16 We have already referred to the vendors` notice to complete dated 1 October 1993 served on the purchasers pursuant to condition 29(2) of the 1981 Conditions of Sale. The notice to complete reads:

> *We refer to the above and regret that your clients had failed to complete the purchase herein.*

17 In accordance with condition 29 of The Law Society`s Conditions of Sale 1981, we are now instructed to and we do hereby give your clients notice that unless your clients complete the purchase of the above property within

twenty-one (21) days from the date hereof, our clients will treat the sale and purchase herein as having been repudiated by your clients and in which event, the 10% deposit paid by your clients will be forfeited by ours and thereafter our clients will be at liberty to resell the said property.

18 Meanwhile, interest at $357.53 per day is chargeable from 1 October 1993 to the day of actual completion.

19 And condition 29(2) of the 1981 Conditions of Sale reads:

> *If the sale shall not be completed on the date fixed for completion either party may on that date or at any time thereafter (unless the contract shall first have been rescinded or become void) give to the other party notice in writing to complete the transaction in accordance with this condition but such notice shall only be effective if the party giving the same at the time the notice is sent is either ready, able and willing to complete or is not so ready, able and willing by reason of the default or omission of the other party to the contract.*

20 The purchasers` solicitors received the vendors` notice to complete dated 1 October 1993 on 4 October. On 5 October the purchasers` solicitors wrote to the vendors` solicitors challenging the validity of the notice to complete. They contended that the vendors were not ready, able and willing to complete the sale of the property on 24 September 1993. They said, `there was still one outstanding matter which was left unresolved and we have on 25 September 1993 written to the Building Control Division for their confirmation that the demolition order has been complied with.`

21 The vendors` solicitors did not respond to this letter. What happened was that, as we have noted above, the purchasers` solicitors received confirmation from the BCD on 21 October that the demolition order had been complied with and they, immediately on 21 October itself, wrote to the vendors`

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solicitors requesting that completion be rescheduled to 27 October 1993 as five clear working days were required for release of the funds. The vendors` solicitors refused to accede to the purchasers` solicitors` request whereupon the purchasers` solicitors reiterated their stand that the notice to complete dated 1 October 1993 was ineffective and further pointed out that the last completion account received from the vendors` solicitors was incorrect. A fresh completion account was requested.

22 The vendors` solicitors` reaction to all this as contained in their letter of 25 October 1993 was that since JTC had confirmed the removal of `the unauthorized structures` on 11 September 1993 there was no further need for confirmation from BCD. If the purchasers still wanted confirmation from BCD then they ought to have pursued their inquiries with BCD and obtained BCD`s confirmation before the scheduled date of completion which they maintained was 24 September 1993. Their position was that as of 24 September 1993 the vendors were ready, able and willing to complete. The purchasers had failed to complete on 24 September 1993 and therefore the notice to complete dated 1 October 1993 was fully effective and valid and time became of the essence. Since 21 days had passed and the purchasers had not completed, the vendors were entitled to enforce their rights against the purchasers. Accordingly the vendors` solicitors demanded the return of the title deeds and the withdrawal of the caveat the purchasers had lodged against the property within five days.

23 The purchasers` solicitors yet again on 26 October 1993 reiterated that the notice to complete dated 1 October 1993 was ineffective for all the reasons previously given by them. They said that the purchasers were still prepared to complete `on 28 October 1993 free of interest on either side`. The vendors, however, refused and on 12 January 1994 the originating summons herein was

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filed by the purchasers claiming the reliefs in respect of which the orders we have set out at the beginning of this judgment were made.

24 We have already dealt with the question of whether 24 September 1993 was a scheduled or an agreed contractual date of completion. In the view we have taken that it was not, the first requirement of condition 29(2) of the 1981 Conditions of Sale, namely, that there was a failure to complete `on the date fixed for completion`, was not met. Accordingly, on this alone the notice to complete dated 1 October 1993 was not properly issued by the vendors. Furthermore, as we have noted above, JTC`s approval under cl 4 of the contract of sale was effectively obtained by the vendors on 21 September 1993 and accordingly the contractual date of completion as computed under cl 13 of the contract of sale was 19 October 1993 and this date became `the date fixed for completion` within the meaning of condition 29(2) of the 1981 Conditions of Sale. Hence, the notice to complete dated 1 October 1993 served on the purchasers before 19 October 1993 was premature and invalid and for this reason also was not a proper notice under the first requirement of condition 29(2) of the 1981 Conditions of Sale.

25 Both counsel addressed us extensively on the question of whether the vendors were ready, able and willing to complete on 21 September 1993. However, the real issue in this appeal is whether the vendors were entitled to give the notice to complete under condition 29(2) of the 1981 Conditions of Sale before 19 October 1993 and not whether the vendors were ready, able and willing to complete on 21 September 1993. Having decided that the vendors were not entitled to give the notice to complete before 19 October 1993 we deem it unnecessary to deal with the latter question and refrain from doing so.

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26 For these reasons the two declarations made by the High Court on 6 February 1995, namely, that the vendors` notice to complete dated 1 October 1993 was invalid or ineffective and that the contract of sale was still binding and that the vendors complete the sale of the property to the purchasers for the total consideration of $1,450,000 were correctly made.

27 However, the High Court also ordered that the vendors pay the purchasers interest for late completion from 21 October 1993 till the date of actual completion. From our narration of the facts and circumstances it will be seen readily that both the vendors and the purchasers were being unnecessarily tardy. The vendors, by not complying with the demolition order before entering into the contract of sale or at least soon after 28 May 1993 when the purchasers` solicitors wrote to the vendors` solicitors drawing attention to the demolition order and inquiring as to the outcome. Had they done so it could reasonably be said that the sale and purchase of the property would have been completed on the earlier date for completion under cl 13 of the contract of sale, namely, 24 June 1993. On the other hand there was no reason for the purchasers to have delayed for nearly four months after they had confirmation from the BCD that the demolition order had been complied with to initiate these proceedings. They could and should have acted earlier. In these circumstances the order that the vendors pay interest for late completion should not have been made.

28 In the result we dismiss this appeal and vary the order of the High Court made on 6 February 1995 by deleting the order numbered 3. This has been a case of six of one and half a dozen of the other and, accordingly, we order that the appellants pay half the taxed costs of the appeal to the respondents. There will be the usual order that the security deposit for costs paid into court be paid out to the respondents or their solicitors to account of their costs.

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29 ***Order accordingly.***

Karthigesu JA
L P Thean JA
Yong Pung How CJ

K Shanmugam and Edwin Tong (Allen & Gledhill) for the appellants
William Jansen (Jansen Menon & Partners) and Hannah Goh (Gn & Pnrs) for the respondents

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