IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 147

OS 817/1994

Between

Lee Hin Realty Pte Ltd

… *Plaintiff*

And

Lee Tah Wee David

… *Defendant*

GROUNDS OF DECISION

Land — Sale of land — Completion; Land — Sale of land — Completion

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

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Lee Hin Realty Pte Ltd v Lee Tah Wee David

[1995] SGHC 147

OS 817/1994
Lim Teong Qwee JC
22 June 1995

1 This is a claim for a declaration that the defendant has wrongfully repudiated an agreement for sale of the land at lot 235-2 mukim 17 by the defendant to the plaintiff and consequential reliefs. At the conclusion of the hearing I dismissed the claim with costs. These are my grounds.

2 On 17 March 1994 Realworth Development Pte Ltd the proprietor of the land gave a written option to the defendant to purchase it for $11m which the defendant exercised on 31 March 1994 by signing the portion marked `Acceptance Copy` in accordance with its terms. Clause 12 of the terms of sale provides:

> *This option and the acceptance signed by you ... shall constitute a binding contract ... for the sale and purchase of the property ... upon the terms of sale herein contained ... .*

3 Clause 8 provides:

> *The sale and purchase shall be completed at the office of our solicitors within ten (10) weeks from the date of exercise of this option.*

4 As the option was exercised on 31 March 1994 the last day for completion was 9 June 1994. Clause 2 provides:

> *The sale is subject to `The Singapore Law Society`s Conditions of Sale 1981` in so far as the same are applicable to a sale by private treaty and are not varied by or inconsistent with the special conditions herein contained.*

5 On 17 March 1994 ie the same day that the defendant acquired the option to purchase the land he gave a written option to the plaintiff to purchase it for $11.6m. Clause 1 of the terms of sale provides:

> *The sale of the above property is subject to the terms and conditions contained in the option dated 17 March 1994 from the registered owner, M/s Realworth Development Pte Ltd, to the vendor.*

6 And cl 9 provides:

> *The sale and purchase shall be completed at the office of our solicitors on or before 8 June 1994.*

7 All the terms of sale in both options are in every other respect identical except as to the price, the names of the parties and their solicitors and a provision as to payment of a commission that is not material for the purpose of this case. As to cl 1 of this option I should say that nothing turns on its provisions but I would observe that the plaintiff was aware that the proprietor of the land or the `registered owner` was Realworth Development and the proprietor had given an option to the defendant to purchase it. On 26 March 1994 the plaintiff`s then solicitors wrote to the defendant`s solicitors:

> *As per telephone conversation between your Mr Trinel C and our Mr Sam at 11.30am today, we confirm the following as agreed:*
>
> *(a) upon the exercise of the option on 28 March 1994, a cheque for $1,044,000 in favour of M/s Gopal & Tan; and*
>
> (b) an undertaking from your firm that you shall issue your cheque for $990,000 in favour of M/s William Lai & Alan Wong to enable your client Mr Lee Tah Wee David and/or nominee to

> exercise the option given by Realworth Development Pte Ltd dated 17 March 1994 and that the sum of $54,000 shall only be released to your client by you after the option to purchase from Realworth Development Pte Ltd has been duly exercised.

8 This was confirmed by the defendant`s solicitors on 28 March 1994 and later that day the plaintiff exercised its option to purchase. Three days later the defendant exercised his option to purchase. On 9 June 1994 Realworth Development`s solicitors wrote to the defendant`s solicitors:

> *Our clients have executed the transfer and we are ready to complete.*

9 The same day the defendant`s solicitors wrote to the plaintiff`s solicitors:

> *Re: Sale of lot 235-2 Mukim 27 13A Kim Keat Rd Singapore*
>
> *We refer to the above matter.*

10 Please be informed that our client is ready and able to complete the above sale today. Kindly let us know whether your clients are able to do so.

11 Nothing was heard from the plaintiff`s solicitors and at about 9.30am on 10 June 1994 Realworth Development`s solicitors advised that their clients were ready able and willing to complete and gave the defendant written notice to complete. Shortly after 10am the same morning the defendant`s solicitors in a letter again under the heading `Re: Sale of lot 235-2 mukim 27 13A Kim Keat Road Singapore` also advised that their client was ready able and willing to complete and gave the plaintiff notice to complete. The notice is in these terms:

> *... we are instructed by our client to hereby give your clients twenty-one (21) days from the date hereof within which to complete the matter.*

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12 Take notice that if the completion moneys together with all interest due thereon are not paid to us or our client and the matter completed latest by l July 1994, our client shall treat the said contract as having been repudiated by your clients and shall proceed to exercise their [sic] rights under the terms of the said contract without further reference to your clients.

13 It is in the same terms as the notice received from Realworth Development`s solicitors. On 24 June 1994 the plaintiff`s solicitors wrote:

> *We are instructed by our clients to request from your clients an extension period of six (6) weeks from 30 June 1994. In consideration of the six (6) weeks extension, our clients are prepared to pay a lump sum of $100,000 as ex-gratia payment to the vendors.*

14 `Vendors` in this context may have been a reference to Realworth Development but in any case the letter was referred to Realworth Development`s solicitors who advised that their clients would not grant the extension of time and would act strictly in accordance with the notice of 10 June 1994. On 28 June 1994 this was duly communicated to the plaintiff`s solicitors who were advised that in the circumstances the defendant also would not grant the extension of time. The same day the defendant`s solicitors gave a new completion account to provide for interest for late completion and on 30 June 1994 they wrote:

> *We shall be most grateful if you could kindly let us know at what time you would want completion to take place tomorrow (1 July 1994), as we need to coordinate the same with our client`s vendors` solicitors.*

15 On 1 July 1994 the plaintiff`s solicitors wrote:

> *We refer to your fax letter of 30 June 1994.*

16 There cannot be completion today as our clients have never contracted to purchase the property known as lot 235-2 mukim 27 as stated in your notice to complete dated 10 June 1994.

17 The property that the plaintiff had agreed to purchase was Lot 235-2 Mukim ***17*** and not Mukim ***27*** .

18 The sale was not completed and on 5 July 1994 the defendant commenced proceedings by originating summons for certain reliefs arising out of the sale not having been completed and on 25 August 1994 the plaintiff instead of making a counterclaim in the defendant`s action as it might have done under O 28 r 7 brought a separate action by these proceedings. Four points were taken in the affidavit of a director of the plaintiff filed in support of the originating summons.

19 **(1) The notice to complete was invalid because in its title it referred to lot 235-2 mukim 27**

20 Mr Ramakrishnan made no submission on this. Clearly it is a bad point. The title with the mistaken reference to mukim 27 was first used by the plaintiff`s solicitors in their letter of 24 May 1994. `13A Kim Keat Road` was frequently mentioned in the title in their letters and this address was stated in the title in the notice. Their file reference was given in the notice and the same file reference was consistently given in letters from the solicitors of both parties. The plaintiff`s solicitors requested an extension of time but not from the contractual completion date which was 8 June 1994 or from the date of their request which was 24 June 1994 but from 30 June 1994. Finally they were in no doubt as to the contract in respect of which the notice was given. They did not

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respond to it in any manner consistent with any doubt they might have had. On the contrary the reply carried the correct description in the title.

21 **(2) The notice to complete was invalid because it was not received until 11 June 1994**

22 Mr Ramakrishnan conceded that the notice was received on 10 June 1994.

23 **(3) The notice to complete was one day short of 21 days**

24 Condition 29 of the Law Society`s Conditions of Sale 1981 provides:

> *(2) 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.*
>
> (3) Upon service of an effective notice pursuant to the preceding clause it shall be an express term of the contract that the party to whom the notice is given shall complete the transaction within twenty-one days after the day of service of the notice (excluding the day of service) and in respect of such period time shall be of the essence of the contract but without prejudice to any intermediate right of rescission by either party.

25 The notice to complete that was in fact given was in a sense in two parts. The solicitors first said that they were instructed to give `21 days from the date hereof within which to complete.` The `date hereof` was the date of the notice which was 10 June 1994. Mr Ramakrishnan`s written argument was that the period of 21 days from 10 June 1994 ended with 30 June 1994 and this was inconsistent with the second part of the notice requiring the plaintiff to complete

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`latest by l July 1994.` It was submitted that the notice was accordingly bad. I do not agree. Twenty-one days from 10 June 1994 (a Friday) ended not on Thursday 30 June 1994 but on Friday 1 July 1994. There was no inconsistency with the latter part of the notice requiring completion `latest by l July 1994.` The plaintiff was given 21 days from the date of the notice and the last day was 1 July 1994. I would observe however that what condition 29 provides is that where written notice to complete is to be given so as to bring about the consequences set out in paras (3) to (6) of this condition it has to be given `in accordance with this condition.` No period of time is required to be stated at all. (See para (2) of the condition.) Upon service of such a notice it becomes an express term of the contract time being of the essence that the party to whom the notice is given must complete within 21 days after the day of service. (See para (3) of the condition.) It would be sufficient if the notice calls for completion and states that it is given in accordance with condition 29. Any reference to a period of time should follow the terms of para (3) of the condition.

26 Mr Ramakrishnan referred to1 but clearly that case does not assist him. There the purchaser was required by the notice to complete within 21 days `from the date hereof` and the notice was dated 23 June 1972 (a Friday) but received not earlier than Saturday 24 June 1972. The relevant condition (which is materially different from condition 29) required the vendor to give to the purchaser at least 21 days` notice. Walton J said at p 78:

> *The notice of 23 June 1972 limited a period of `within 21 days from the date hereof.` If, making the assumption most favourable to the defendant, it was in fact delivered on 24 June, the length of the same period, reckoned from 24 June could only have been 20 days. Hence the notice was, on any footing, too short by at least one day.*

27 But see to which my attention was drawn by Mr Rajah. There the vendors gave a notice to complete `within 28 days from the date hereof.` The

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notice was dated 10 November 1981 and served on the following day. The relevant condition was similar in material respects to condition 29 but the period within which the party to whom the notice is given is required to complete the contract is 28 days. Having come to the conclusion that the notice was given pursuant to that condition the court held that `the date hereof` was as apt to refer to the date of service as the date on which it was expressed to be sent and in the circumstances of that case the notice was a valid notice. This question is not entirely free from doubt and not having heard arguments on it I refrain from expressing any views. In the present case the question of the effect of limiting a shorter period or a period of 21 days reckoned `from the date hereof` did not arise as the notice was served on the day of its date and the period limited was the period stated in what became an express term.

28 **(4) The defendant was not `ready able and willing` to complete at the time of giving the notice**

29 Paragraph (2) of condition 29 provides that the notice to complete is only effective if the party giving it (in this case the defendant) is at the time the notice is sent either ready able and willing to complete or is not so by reason of the other party`s default or omission. The plaintiff`s case is that the defendant was not at the time the notice to complete was sent ie on 10 June 1994 `ready able and willing` to complete. Mr Ramakrishnan submitted that on that day the defendant was not the proprietor of the land and all that he had was an option to purchase. He referred to where Punch Coomaraswamy J said at p 284:

> *The defendant had no capacity to sell. All she could do was to assign to [the plaintiff] her rights under the option.*

30 In that case the court found that the defendant had an option to purchase given by the vendor who was not a party to the proceedings and the plaintiff had

purchased this option from the defendant and had himself exercised it. His claim was for the return of the price of the option and the claim was dismissed. That case is clearly distinguishable. In the case before me the defendant did not have an option to purchase when the notice to complete was sent. That option had been exercised by him some ten weeks previously. It was part of the bargain between the parties as confirmed by the plaintiff`s solicitors` letter of 26 March 1994 and the defendant`s solicitors` letter of 28 March 1994 which I have referred to that he should do so. The defendant was already the purchaser under a contract made between Realworth Development and himself and the contract was at that time a subsisting and enforceable contract and remained so until the expiry of the notice to complete.

31 Mr Ramakrishnan also referred to (this point was not considered on appeal) where the headnote said:

> *As the defendant only had an equitable interest in the land, and no legal title to it, as he only had the option to purchase the property, and as such, was not in a position to pass title to the plaintiffs on the completion date, there was an `unsatisfactory reply` in respect of `title` under cl 3 of the agreement constituting a breach that went to the root of the contract ... .*

32 With respect this represents an erroneous view of the facts in the case as found by the court. The defendant did have an option to purchase but it was the plaintiffs who exercised it thereby entering into a contract with the owner of the land who was not a party to the proceedings. At the same or about the same time the plaintiffs also entered into a contract with the defendant by which the defendant agreed to sell the same land to the plaintiffs for a higher price. Whether the contract was signed before the option was exercised or the option was exercised before the contract was signed (as to which the report does not show if the court came to any conclusion) there can be no doubt that immediately after the option was exercised by the plaintiffs the defendant no

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longer had any interest in the land equitable or otherwise. It was a most remarkable transaction and according to the report both the plaintiffs and the defendant were represented by the same solicitor. I cannot see how this case can assist the plaintiff.

33 Mr Ramakrishnan also referred to other cases which I think I need not discuss without doing him any injustice and finally he referred to where GP Selvam JC (as he then was) said at p 598:

> *It is established law that except where the contract otherwise provides, a purchaser who can show that the vendor will be in no position to pass title on the date fixed for completion can rescind the contract the moment he can establish that fact.*

34 In that case the defendant was the purchaser of a flat under a contract made with a housing developer. The flat was to be comprised in a Subsidiary (Strata) Certificate of Title (SSCT). It was a term of the contract with the housing developer that it had to give notice to complete (and to transfer its interest in the SSCT) on or before 31 December 1990. In July 1990 the defendant entered into a contract to sell the flat to the plaintiffs by the grant of an option to purchase which the plaintiffs exercised. The completion date of the sub-sale was 1 October 1990. The sub-sale was not completed and on 3 October 1990 the plaintiffs rescinded the contract and commenced proceedings to recover the deposit paid. From the serial number of the action it would appear that proceedings were commenced before 1 January 1991. The SSCT to the flat had not been issued before the proceedings were commenced. Unfortunately the report does not disclose the real subject matter of the sub-sale and in particular whether it was a sale of the defendant`s rights under the contract with the housing developer but there is a reference to `my property` meaning the defendant`s property. See where the terms of the sub-sale provided that title would be properly deduced and on completion `a proper conveyance/transfer of

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the property to the purchaser` would be executed. The actual decision in was that the plaintiffs were entitled to rescind the contract in accordance with a condition as to requisitions for an unsatisfactory answer to a requisition sent to the Chief Planner who had said that planning permission for development had been refused for non-compliance with planning conditions. The statement in the passage cited was made obiter and with respect I do not think that His Honour intended it to be of general application , was referred to. In that case the plaintiff agreed on 8 November 1979 to sell its lease of certain premises for 21 years from April 1974. The completion date was 3 December 1979. The contract was not completed. In March 1980 the plaintiff commenced proceedings against the defendant for specific performance and damages. The defendant gave notice that she accepted the plaintiff`s repudiation and treated the contract as rescinded. The fact was that the lessors had forfeited the plaintiff`s lease before the agreement for sale was concluded. More than a month earlier the lessors had served on the plaintiff a writ claiming forfeiture, arrears of rent and mesne profits and on 28 November 1979 had obtained judgment for possession and the sums claimed. In January 1980 the plaintiff issued a summons claiming relief against forfeiture but the summons had not been heard. Megarry VC said at p 424:

> *... I would, despite some hesitation, in view of the state of the authorities, hold that upon discovering that a vendor has no title or power to convey what he has contracted to convey, the purchaser may thereupon treat the contract as at an end, both at law and in equity.*

35 And later at p 425:

> *A vendor whose contract is supported by an enforceable right to compel a third party to convey the land has a right in support of his contract; ... .*

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36 Although the legal estate in the land was not vested in the defendant he had a right under a subsisting and enforceable contract to compel Realworth Development to transfer the land and he was in the circumstances able to complete for the purpose of condition 29.

37 The plaintiff has not made out its case that the defendant was not ready able and willing to complete when the notice to complete was sent but for completeness there is a further matter which I think ought to be considered. Condition 4 provides:

> *The purchaser shall ... within fourteen (14) days of the receipt of the documents of title from the vendors` solicitors (sic) ... deliver to the vendor`s solicitor a statement in writing of his objections or requisitions, if any, in respect of the title, particulars, sale plan and these conditions, and every objection or requisition not so stated shall be considered as waived. For the purpose of this condition, time shall be deemed of the essence of the contract.*

38 The documents of title were delivered to the plaintiff`s solicitors on 26 April 1994 and it would have been apparent that Realworth Development was the proprietor and the land was subject to a mortgage in favour of Singapore Finance Ltd. There is no evidence before me of any objection or requisition in respect of title or of any other matter whether within the 14-day period or at any time at all before the expiry of the notice to complete. The defendant had an option to purchase from Realworth Development and the plaintiff had obtained an undertaking from his solicitors as to the exercise of his option. The contract arising from the exercise of the option was due for completion `within ten (10) weeks` and the last day was 9 June 1994. The terms and conditions of that sale were referred to in the contract between the defendant and the plaintiff. The completion date in the sub-sale was 8 June 1994 or earlier. On 24 May 1994 the plaintiff`s solicitors tendered a draft transfer for approval. The form chosen was the one appropriate for a transfer through an intermediate purchaser as in this

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case and Realworth Development and the defendant were described as the transferor and the original purchaser respectively and the plaintiff was described as the transferee. The draft was approved by the solicitors for the transferor and the defendant and having been so advised the plaintiff`s solicitors tendered the engrossed transfer on 3 June 1994 for execution by the transferor and the defendant. The same day the defendant`s solicitors gave the completion account showing $10,418,585.51 payable and requested separate bank orders for sums payable to Singapore Finance Ltd and Realworth Development and other sums payable to Realworth Development`s solicitors and the defendant`s solicitors and there was no objection to this mode of payment.

39 A vendor or a purchaser is `ready` and `willing` to complete if he is also able to complete. He cannot be said to be ready or willing if he lacks the capacity. See per Lord Abinger CB at p 827. I do not think that in condition 29 anything more is intended of the party giving the notice other than that he should be ready and willing to complete and that he should be `able` in the sense that he should have the capacity to do so. In my judgment at the time that the notice to complete was sent the defendant did have the capacity to complete and he was `ready able and willing` to do so and the notice to complete was effective for the purpose of condition 29. See which was referred to by Mr Rajah. At pp 674-675 the court (Barwick CJ, Mason J and Jacobs J) said:

> *With reference to want of a good title as a defence to a vendor`s suit for specific performance* ***Fry on Specific Performance*** *(1921, 6th Ed), p 410, says:*
>
> *`Where the vendor of land sues the purchaser for a specific performance of the contract, the defendant is entitled to have the action dismissed, if it appears that the plaintiff cannot make out a good title to the land.`*
>
> *The learned author goes on to say:*

> *`The title which the vendor must show must be a title in himself, or in those whom he has a legal or equitable right to require to join in the conveyance ... .`*
>
> *... [I]n the absence of special agreement to the contrary, the vendor shows a good title by showing a good equitable title and a power to get in the legal estate, or as it is sometimes put, by showing that he can compel the assurance of all necessary interests in the subject matter of the sale.*

40 I respectfully agree. As I have stated earlier there was a subsisting and enforceable contract between the defendant and Realworth Development and this remained so throughout the entire period commencing with the sending of the notice to complete and its expiry. The defendant would have been entitled to compel Realworth Development to discharge the mortgage in favour of Singapore Finance Ltd and to transfer the land to him or as he might direct and if he could not it was only because the plaintiff had failed to tender the completion money. The defendant was `ready able and willing to complete` or was `not so ready able and willing by reason of the default or omission` of the plaintiff. In the result it was the plaintiff which had wrongfully repudiated the contract in not complying with the terms of the notice to complete within the time limited time being of the essence of the contract.

41 ***Plaintiff`s application dismissed.***

Lim Teong Qwee JC

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V Ramakrishnan (V Ramakrishnan & Co) for the plaintiff
VK Rajah (Rajah & Tann), Gopal Perumal and C Trinel (Gopal & Tan) for the defendant

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