IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 33

OS 39/1994

Between

GROUNDS OF DECISION

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

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

MERCURY M-POWER INDUSTRIAL PTE LTD V. SEE HUP SENG TIN FACTORY PTE LTD

[1995] SGHC 33

OS 39/1994
K S Rajah JC
06 February 1995

1 **Judgment:**

2 Coram: K S Rajah JC

3 J U D G M E N T

4 The plaintiffs' originating summons filed on 22 April 1994 was amended on 18 May 1994 and re-filed on 1 June 1994. The plaintiffs seek the determination of the court on the following questions:-

5 1. A declaration that the defendants' solicitors' notice dated 1 October 1993 received by the plaintiffs' solicitors giving 21 days' notice to the plaintiffs to complete the contract of sale is invalid or ineffective.

6 2. A declaration that the contract of sale is still binding as between the plaintiffs and the defendants and the defendants do complete the contract of sale by way of a deed of assignment from the defendants to the plaintiffs as assignor and assignee respectively for the total consideration of $1,450,000.

7 3. An order that the defendants do pay the plaintiffs interest for late completion of the contract of sale from 21 October 1993 till the date of actual completion as provided under the Law Society's Conditions of Sale 1981.

8 4. The costs of and incidental to this application be the plaintiffs.

9 5. Further or alternatively that the defendants may be ordered to repay to the plaintiffs the sums of $14,500 being the option money and $130,500 being the deposit, together with interest at such rate and for such period as the court shall deem fit.

10 6. Further or alternatively, damages for breach of contract.

11 Background

12 By a contract in writing contained in an option dated 18 March 1993, the defendants in consideration of the payment of $14,500 ("the option money") granted an option to the plaintiffs to purchase the property comprised in Lot 2088 of Mukim 6 and known as No 60 Kian Teck Road Singapore at a price of $1,450,000.

13 The option was subject to, inter alia, clause 9 which provides:-

14 The Sale and Purchase herein is subject to the Purchaser's solicitors receiving satisfactory replies to all legal requisition (s) 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 monies paid hereunder shall be

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

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.

15 The option also provided for completion on or before the expiry of 12 weeks from the date of acceptance of the option or within 4 weeks of the vendors' receipt of Jurong Town Corporation ("JTC")'s approval or consent whichever is the later. The plaintiffs exercised the option on 1 April 1993 and duly paid the balance 10% deposit. The completion date was to be 24 June 1993.

16 On 28 May 1993, the plaintiffs' solicitors wrote to the defendants' solicitors about the replies from the Building Control Division ("BCD") which were unsatisfactory. The letter reads:-

17 We are instructed by our clients to request for the completion date to be deferred to 5th August 1993, interest-free. Please let us know whether your clients are agreeable.

18 We enclose copies of the requisition reply from:-

19 a. Building Control Division - kindly let us know the outcome of the demolition order.

20 b. Property Tax Division - kindly furnish evidence of payment of outstanding tax.

21 The defendants' solicitors replied on 14 June 1993 in the following terms:-

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

22 Without prejudice to our clients' rights under the terms of the agreement for sale and purchase herein, they are prepared to accede to your clients' request for the completion date to be deferred to August 5, 1993, interest free.

23 As regards the demolition order served by the Building Control Division, please refer to item (m) of JTC's letter of April 30, 1993.

24 On 11 September 1993 JTC confirmed the removal of all unauthorised structures except for the zinc sheet fencing. The plaintiffs agreed to the retention of the zinc sheet fencing and on the same day asked for the completion account as at 24 September 1993, the agreed completion date.

25 Confirmation from BCD was requested and there is evidence to suggest that the mortgagees may have pressed for it but it is by no means a finding of fact that I am prepared to make that the plaintiffs' solicitors, who were expected to be vigilant, were not equally concerned that there should be BCD confirmation. The letter sent to BCD on 25 September 1993 seeking confirmation that the demolition order had been complied with was in the wrong form but Mr Lawrence Wong for the defendants did not make an issue of it, but the letter shows that JTC's letters of 11 September 1993 and 18 September 1993 together with the plaintiffs' letter dated 21 September 1993 were sent to BCD seeking confirmation. The prescribed form was then submitted on 28 September 1993.

26 On 1 October 1993, the 21 days' notice to complete was issued by the defendants' solicitors under condition 29 of the Law Society's Conditions of Sale 1981 ("LSCS"). The plaintiffs' solicitors objected to the notice on the ground that it was ineffective because, inter alia, there was no confirmation that

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

the demolition order had been complied with and that the plaintiffs had written to BCD for confirmation on 25 September 1993. Liability for interest was not accepted.

27 BCD's confirmation was received by the plaintiffs' solicitors on 21 October 1993 and on the same day they requested the defendants' solicitors for completion on 27 October 1993 but the defendants did not agree.

28 21 Days' Notice

29 On 26 October 1993, the plaintiffs' solicitors again said that the 21 days' notice was ineffective on the ground that they had obtained the reply from BCD on 21 October 1993 and were thereafter ready to complete. The plaintiffs offered to complete on 28 October 1993 but the defendants refused.

30 The plaintiffs rely on the following grounds:-

31 (1) The notice to complete dated 1 October 1993 was invalid and ineffective because no satisfactory reply had been received from the BCD that the demolition order of 22 October 1992 had been complied with to their satisfaction.

32 (2) Confirmation was received from the BCD only on 21 October 1993.

33 (3) JTC's confirmation that the unauthorised structures had been removed is not relevant as the Government department that could confirm to the satisfaction of the purchasers was the BCD which had issued the order.

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

34 (4) There was a defect in title as the BCD issued their confirmation on 19 October 1993 (received by the plaintiffs on 21 October 1993).

35 The essential facts were not disputed. The defendants' case is that:-

36 (a) the plaintiffs merely asked for the outcome of the demolition order;

37 (b) there was a JTC fax to which no objection had been taken;

38 (c) the mortgagees, not the plaintiffs, required confirmation and that there was no obligation to satisfy the mortgagees;

39 (d) the plaintiffs' solicitors on 22 October 1993 wanted confirmation after the defendants' solicitors had confirmed compliance by letter dated 24 September 1993 and JTC's fax on 11 September 1993;

40 (e) the plaintiffs requested a fresh completion account;

41 (f) the plaintiffs' letter of 21 October 1993 admits demolition had been complied with besides asking for completion on 27 October 1993;

42 (g) the defendants were entitled to refuse completion on 27 October 1993;

43 (h) pursuant to condition 29(4)(b) of LSCS the defendants are entitled to forfeit the deposit;

44 (i) if the plaintiffs regarded BCD's reply of 11 May 1993 as unsatisfactory, the option to rescind the agreement under clause 9 should have been exercised; and

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

45 (j) the plaintiffs cannot seek a refund since the option to rescind the agreement had not been exercised.

46 Findings

47 I do not find any merit in the argument of the defendants set out in (a) to (j) above. The plaintiffs enclosed a copy of the requisition reply from BCD and asked the defendants to let them know the outcome of the demolition order. Reference to item (m) of JTC's letter dated 30 April 1993 was not the way to answer it. Clause 9 of the option provides that the sale and purchase is subject to the plaintiffs' solicitors receiving satisfactory replies to all legal requisitions sent to the relevant Government departments.

48 On 14 May 1993, the plaintiffs were told that a demolition order had been served on the defendants on 22 October 1992. On 28 May 1993 the defendants were asked for the outcome of the demolition order. The defendants did not say that the demolition order had been complied with or that it had not been complied with but responded by asking the plaintiffs to refer to item (m) of JTC's letter to the defendants' solicitors which runs into 6 pages. JTC's letter was written on 30 April 1993 and was in response to defendants' solicitors' letter dated 6 April 1993 sent to JTC on "PROPOSED TRANSFER OF LEASE OF PTE LOT A4437 (TO BE KNOWN AS PTE LOT A13642) AT 60 KIAN TECK ROAD BY SEE HUP SENG TIN FACTORY PTE LTD" and, inter alia, states:-

49 ... We have no objection in-principle to the proposed transfer subject to the following terms and conditions:

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

50 (a) The proposed transfer shall be completed within 3 months from the date of this letter.

51 (b) The proposed transfer shall be subject to the approvals of the relevant Government Authorities. (My emphasis.)

52 .....

53 (h) If there are any outstanding mortgages on the property, your clients shall inform the mortgagees of the proposed transfer and ensure that the mortgages are discharged prior to or on completion and shall let us have a copy each of the discharge documents for our records when submitting a copy of the duly stamped and executed Instrument of Transfer.

54 .....

55 (m) Your clients shall remove the unauthorised 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 paragraph of (m) must be done before the completion of transfer.

56 Item (j) refers to withdrawal of consent by JTC.

57 The letter was copied to the plaintiffs by JTC as it wanted the plaintiffs to accept various terms which did not include item (m).

58 It is not surprising that the plaintiffs' solicitors sent JTC's letters of 11 September 1993 and 18 September 1993 to BCD on 25 September 1993 for confirmation that the demolition order had been complied with. A letter was

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

also written to the defendants stating that the plaintiffs were seeking confirmation.

59 The defendants did not respond to the plaintiffs' letter of 25 September 1993 by saying that there is BCD confirmation. The defendants' response was to serve 21 days' notice from 1 October 1993 to complete. When the plaintiffs wrote to the defendants on 5 October 1993 that the notice was ineffective because there was no BCD confirmation the defendants at no time wrote stating that there was BCD confirmation. The plaintiffs' request for a fresh completion account after receiving BCD confirmation was brushed aside and the defendants chose to rely on the account as at 21 September 1993 and 21 days' notice of 1 October 1993.

60 On 22 October 1993, the plaintiffs again said the notice was ineffective but the defendants did not reply by saying that the BCD confirmation was already in the bag before 21 October 1993.

61 The plaintiffs have taken the position that it is only after the BCD reply was received that they were able and ready to complete the matter. The plaintiffs were prepared to carry out their side of the bargain on 28 October 1993 and asked for a completion account as at 28 October 1993 but the defendants refused to complete. It is not necessary to speculate on the reasons for the defendants' refusal. It is sufficient for me to find that the 21 days' notice was ineffective.

62 Option

63 An option is a contract where there is a term by which the optionholder is empowered to elect within a specified time whether the contract shall operate further. It is an act in the law which is conditional upon the optionholder electing

that it shall become fully and (so far as regards the power of election) unconditionally operative between the parties.

64 A person who has obtained an option has the benefit not of a mere revocable offer but of an irrevocable and binding, though conditional, contract. If therefore A , the owner of Blackacre, agrees with B that in consideration of 1 paid by B, B shall be entitled to purchase Blackacre for 100 if within one month he notifies A of his election to do so. In such a case, A has entered into a conditional contract with B to sell Blackacre to him and the contract ceases to be conditional and becomes absolute as soon as B fulfils the condition of exercising the option in the stipulated manner.

65 The defendants received consideration for their promise to sell and the promise which would otherwise have been honorary became a contract.

66 The option was granted to the plaintiffs not on the formula, "I promise for good consideration hereafter to enter into such and such a contract with you if within a certain time you demand that I do so". The true formula is, "I here and now for good consideration contract with you on such and such terms, subject to the condition that within a certain time you give me notice that you intend to demand fulfilment of my contract". (See Subramanian Chettiar v J C Chang Ltd (1969) 2 MLJ 176 at 178, 179.)

67 In this case, the condition was that there should be satisfactory requisitions and notice that the plaintiffs intend to fulfil the contract. The plaintiffs could not be expected to give notice to demand fulfilment of the contract before there was proper confirmation from the BCD or the defendants' solicitors to the effect that they have BCD's confirmation that the demolition

order had been complied with. The plaintiffs obtained confirmation only on 21 October 1993 and the 21 days' notice dated 1 October 1993 is ineffective. The consideration given by the plaintiffs deprived the defendants not merely of the right to revoke the option lawfully but of their power to revoke it effectively before the lapse of the period of the option.

68 Object & Intent of the Contract

69 The plaintiffs had no intention of entering into any contract without some assurance that the land was not subject to unsatisfactory requisitions. It was for that reason that clause 9 was included in the option so as to give time in which to obtain the necessary information or confirmation from Government departments. For clause 9 to come into operation, the condition precedent was that there should be in the hands of the plaintiffs' solicitors satisfactory requisitions.

70 In Subramanian Chettiar's case, the material clause provided for the option to be automatically extended until such time as the Government finally refused all development plans. The clause also provided for the determination of the option or giving notice.

71 There is no provision for automatic extension in this case and Mr Lawrence Wong for the defendants has argued that the plaintiffs should have rescinded the contract on being told that there was a demolition order. The evidence is that when the plaintiffs asked for the outcome of the action taken on the demolition order, the defendants referred them to item (m) of JTC's letter of 30 April 1993 but item (m) did not answer the question directly. Item (m) refers to work "that must be done". The JTC letter makes reference to approval by

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

Government departments. The plaintiffs were forced to write to BCD enclosing JTC's letters of of 11 September 1993 and 18 September 1993.

72 The defendants at no time told the plaintiffs that if they found the answers unsatisfactory, they should rescind the contract. The plaintiffs were entitled as parties to a contract to seek confirmation from the BCD that the 1992 demolition order had been complied with. The solicitors would have been less than professional if they had not obtained satisfactory answers after being referred to item (m) of JTC's letter of 30 April 1993 when a direct answer could have been given.

73 The Court of Appeal in Huang Ching Hwee v Heng Kay Pay & anor (1993) 1 SLR 100 considered, inter alia, the objection taken to title and whether alterations to property without BCD approval constituted a defect of title.

74 Warren Khoo J in delivering the judgment of the Court of Appeal said (p 108):-

75 Last but not least, we must refer to Carlish v Salt (1906) 1 Ch 335.

76 In this case, a property in Lincoln's Inn Fields in London was contracted to be sold. The property was in a tumble down condition and the party wall with the adjoining property had been condemned by the district surveyor. Before the contract for the sale of the property was concluded, the owners had in fact been served with a notice under the London Building Act by the owner of the adjoining property of his intention to execute works to the party wall. In pursuance of the notice, the surveyors appointed had also made an award requiring the cost of the works to be shared between the owners of the two properties. However, the vendor did not disclose the notice or the award.

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

77 After the conclusion of the contract, in consequence of the condemnation of the premises by the district surveyor, a dangerous structure notice under the Act was served on the vendors, requiring them to take down forthwith certain portions of the property and to shore up the structure immediately. The purchaser was then informed of this notice and the previous party wall notice and award. Thereupon, the purchaser claimed rescission of the contract. It was held by Joyce J that he was entitled to do so. He said:

78 I hold that the party wall notice and the award constituted a material fact affecting the price to be paid, and in so far as they imposed a liability of uncertain amount at some future time on the owner of the premises, I am of opinion that they constituted a latent defect not in the quality of, but in the title to the property, and ought to have been disclosed.

79 Carlish v Salt in application

80 Carlish v Salt is the authority commonly referred to in the cases which have been referred to, but different courts have drawn different conclusions from it. What has probably given rise to these differing conclusions is that while Joyce J in Carlish did decide that the notice and award in that case constituted a title defect, he did not, nor was it necessary for him, to decide whether a potential liability under the London Building Act would do so where no notice had been served or award made.

81 In Vukelic (1976) 13 ACTR 3, Connor J referred to the various provisions of the Building Ordinance and the consequences to the owner arising from the unauthorised garage. He then, using the words Joyce J used in Carlish, held that there was a liability of uncertain amount at some future time and that

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

there was thus a title defect. He did not refer to the notice and award in the Carlish case.

82 Powell J in Maxwell (1979) 46 LGRA 310 recognized the limit of what Joyce J had decided when he said that Carlish showed that it would certainly be a title defect where the authorities had issued a notice. ...

83 McLelland J in Borthwick (19800 1 BPR 9259 followed the decision in Maxwell in arriving at his conclusion that there was a defect of title. He added that any right exercisable against, or restriction affecting, the property or its owner to its or his detriment is a defect of title unless it arises solely by reason of the existence of a law of general application.

84 Henry J in Watkin v Wilson (19850 1 NZLR 666 relied on the Vukelic line of cases for the conclusion he came to, that there was a defect of title.

85 Warren Khoo J said (p 111):-

86 We have to deal with condition 7 of the special terms and conditions of the contract which the appellant relied on. Condition 7, in essence, provided that the sale was subject to satisfactory replies to the purchasers' requisitions to various governmental authorities. There is a proviso to condition 7 which reads:

87 Provided that the answers from the ... Building Control Division shall not be deemed unsatisfactory unless the same disclose that the property is affected by any notice or order which has not been complied with and which is incapable of being complied with by the vendor before completion.

88 The appellant relied on this proviso.

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

89 He produced answers from the Building Control Division showing that no notices had been served under the Building Control Act. He argued that therefore the requisitions to the Building Control Division were not to be deemed unsatisfactory pursuant to the proviso.

90 The learned judge did not in terms deal with this submission. He did, however, say that as no building plans had been submitted in respect of the works complained of, no requisitions to the Building Control Division would have revealed their existence. We assume that he did not think that this proviso was applicable.

91 On the view which we take, it does not matter that the Building Control Division was not aware of the unauthorized works at the time it gave the reply. The result of the view we take is that even if the works were unauthorized, they are not a title defect until a notice or order has been served. (My emphasis.)

92 In this case, a demolition order was served and there was a title defect when the 21 days' notice was given because the defendants were not able to say that the appropriate authority, namely BCD, had confirmed that the order had been complied with. The BCD is the competent authority. The plaintiffs were entitled to obtain confirmation from BCD after being referred to JTC, which letter also makes reference to the approval of Government departments. (See judgment by Chan Sek Keong JC in Wee Ming Choo v Wong Yip Chong (1987) 2 MLJ 665.)

93 There will be judgment for the plaintiffs. There will be:-

94 (1) an order in terms of prayers 1, 2 and 3;

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

95 (2) no orders on prayers 5 and 6; and

96 (3) costs to be taxed and paid by the defendants.

K S Rajah JC

William Jansen (Gn & Partners) for the plaintiffs
Lawrence Wong (Tang & Tan) for the defendants

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