IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 66

COURT OF APPEAL -- CIVIL APPEAL NO 149 OF 1994

Between

GROUNDS OF DECISION

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

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Pacific Rim Investments Pte Ltd v Lam Seng Tiong & anor

[1995] SGHC 66

COURT OF APPEAL -- CIVIL APPEAL NO 149 OF 1994
Yong Pung How CJ; Karthigesu JA; L P Thean JA
08 March 1995

1 **Judgment:**

2 YONG PUNG HOW CJ, M KARTHIGESU AND L P THEAN JJA

3 Pursuant to a sale and purchase agreement modelled on the form as prescribed by the rules under the Housing Developers (Control and Licensing) Act, the appellant vendors agreed to sell to the respondent purchasers a property for $1,000,000. The agreement provided for payment of the purchase price by instalments. By cl 3, each instalment was to be paid within 14 days after the receipt of a notice from the vendors that a particular stage of development has been completed. Interest was payable on the late payment of any of the instalments of the purchase price. Further, cl 5(1) provided that if the instalment and interest were unpaid for any period in excess of 14 days after the expiry of the period stated in the notice, the vendors were able to give the purchasers a further notice of their intention to treat the agreement as having been repudiated by the purchasers and upon the expiry of the said notice, the agreement would be annulled, unless such unpaid instalment and interest had been paid within the period stated. By cl 11, the vendors were required to deliver vacant possession

to the purchasers on or before 30 September 1993. In the event of a delay, liquidated damages were payable by the vendors.

4 The vendors were late in giving vacant possession. On 10 December 1993, they served a notice under cl 3(1)(h) to the purchasers to take possession of the property and to pay to the vendors 20% of the purchase price, being a sum of $200,000, by 24 December 1993. The purchasers failed to pay on time. On 5 January 1993, the vendors gave a notice under cl 3(1)(i) requiring the purchasers to complete the purchase and to pay the last 10% of the purchase price by 19 January 1993. On 8 January 1994, the purchasers paid to the vendors $100,000 being part payment of the 20% of the purchase price under the cl 3(1)(h) notice. On 10 January 1994, the vendors served a notice under cl 5(1), the expiry date of which was 25 January 1994, demanding that the instalment payment pursuant to the cl 3(1)(h) notice and interest for late payment be paid. On 12 January 1994, the purchasers paid the remaining $100,000. On 18 January 1994, they wrote to inform the vendors that they had decided to set-off the interest of about $900 against the liquidated damages for which the vendors were liable. The vendors resisted the exercise of set-off on the ground that the liquidated damages, later agreed at $13,616.38, should only be deducted from the instalment payment due on completion under cl 3(1)(b)(ii).

5 Completion did not take place on 19 January 1994. On 25 January 1994, the vendors wrote to the purchasers informing them that the agreement had been terminated or annulled on the expiry of the cl 5(1) notice. Proceedings were brought by the purchasers for specific performance of the agreement. The trial judge found that the purchasers were entitled to set-off the claim for late payment interest against liquidated damages on 18 January 1994. It was the vendors who had wrongfully repudiated the agreement by their letter on 25 January 1994. Specific performance was ordered. The vendors appealed.

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

6 Three grounds of appeal were advanced. First, the purchasers had failed to complete the purchase on 19 January 1994. As of that date, the amount payable by the purchasers to the vendors exceeded the liquidated damages payable by the vendors to the purchasers. Secondly, set-off is a procedural right and not a substantive defence to which the purchasers could have recourse as a form of self-help remedy. Thirdly, if the vendors succeeded on either of the two grounds, the court could not grant relief against forfeiture of the purchasers' interest in the land.

7 Held, dismissing the appeal:

8 (1) The fact that the purchasers did not complete the purchase on 19 January 1994 had no bearing on the alleged repudiation of the agreement by the purchasers relied upon by the vendors. The purported termination was based on the cl 5(1) notice in respect of the purchasers' failure to pay the interest on the late payment of the instalment due under cl 3(1)(h), not on the failure to complete the purchase. The vendors were not entitled to treat the agreement as having been repudiated by the purchasers' failure to pay the amount due on completion.

9 (2) Equitable set-off is a substantive defence and is exercisable as a form of self-help remedy. The person with the right is not obliged to await legal proceedings to be brought against him to deduct his cross-claim and the other party is prevented from exercising extra-judicial rights and remedies for default. The right of equitable set-off arises where there are good equitable grounds for directly impeaching the title to the legal demand which the creditor is seeking to enforce. It is only a cross-claim that arises out of the same transaction or is closely connected with it such that it would be manifestly unjust to allow the

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

creditor to enforce payment without taking into account the cross-claim which can be deducted.

10 (3) In the instant case, the purchasers were able to avail themselves of the equitable set-off as a form of self-help. The agreement did not exclude the right of set-off. As at 18 January 1994, the claim for liquidated damages by the purchasers far exceeded the claim for late payment interest by the vendors. These two claims arose from the same transaction and were closely linked. There was an equity which directly impeached the vendors' legal right to the demand for payment of interest.

11 (4) The courts have jurisdiction to grant relief against forfeiture of an interest in land where there is a breach of a contractual provision as to payment, in respect of which time is of the essence. But the courts would not ordinarily countenance a departure from contractual rights and obligations. To invoke successfully the courts' jurisdiction, the circumstances of the case must be exceptional and must also reveal elements of unconscionability and injustice. On all the facts of the present case, relief would be granted to the purchasers if the vendors were held entitled to issue the notice to terminate or annul the agreement.

12 L P Thean JA (delivering the grounds of judgment)

13 Reported by Hoo Sheau Peng JLC

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

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