IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1996] SGCA 57

CA 45/1996

Between

Kok Lee Kuen
another

… *Appellant*

And

Choon Fook Realty Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Agency — Classes of agents; Contract — Mistake; Land — Sale of land

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.

Kok Lee Kuen and Another v Choon Fook Realty Pte Ltd and Others

[1996] SGCA 57

CA 45/1996
Chao Hick Tin J; Lai Kew Chai J; Yong Pung How CJ
01 October 1996

1 Cur Adv Vult

2 This appeal arises from a decision of the High Court [reported at [1996] 2 SLR 572] in two related originating summonses. Both summonses concerned the sale of a property which was described in the option as `Nos 3, 3A, 3B, 3C, 3D and 3E Balmoral Crescent`, which option was duly exercised.

3 In the first originating summons (OS 129/95), the first plaintiff Kok Lee Kuen (Kok) was the person in whose favour the option was granted. The second plaintiff, TG Development Pte Ltd, was the company which exercised the option, pursuant to the `and/or nominee` clause therein. The first defendant was Choon Fook Realty Pte Ltd, which company granted the option to Kok. The second to sixth defendants were and are the shareholders and directors of Choon Fook Realty and they are all members of the same family, the second and third defendants being husband and wife and the other three defendants being their children. In the second originating summons (OS 242/95), TG Development sought, inter alia, a declaration that the 21-day notice to complete given by the solicitors for Choon Fook Realty was bad in law and was ineffectual to annul

the agreement for sale. Both originating summonses were consolidated to be heard together.

4 **Title of the property**

5 At the outset it is necessary for us to give a brief account of the development affecting the title of the property in question, as well as the dealings concerning it.

6 In 1979, the land known as lot 14-35 TS 26 had an area of 2,145.1 sq m (equivalent approximately to 23,090 sq ft), hereinafter called the `parent lot`. It was then owned by the second and third defendants and another person by the name of Kan Sok Yee. In January 1980, the parent lot was brought under the Land Titles Act. In January 1981, on the application of the owners, the competent authority granted approval to them to develop seven units (subsequently amended to six) of two-storey townhouses on the parent lot subject to the condition, inter alia, that a narrow strip of the land fronting the road was to be surrendered gratis to the State when it was required for road-widening. In August 1982, the parent lot was transferred by the then owners to the second to sixth defendants as tenants-in-common, with the second and third defendants taking a 2/7 share each and their three children taking a 1/7 share each.

7 In October 1989 on the application of the second to sixth defendants a new certificate of title was issued in respect of lot 14-35, less the strip reserved for road-widening, consisting of 22,381 sq ft which was re-numbered as lot 640. At the same time they also applied for six subsidiary strata certificates of title in respect of the six townhouses built on lot 640. The strip reserved for road-

widening, consisting of 709 sq ft, was re-numbered as lot 641. However, no new certificate of title was applied in respect of the strip.

8 The six townhouses became known as Nos 3, 3A, 3B, 3C, 3D and 3E Balmoral Crescent. The owners also gave them a collective name, `Weng Gardens`.

9 In August 1991 the six townhouses were sold and transferred by the second to sixth defendants to one Peh Bee Kok for a consideration of $5,300,000.

10 In March 1993, Choon Fook Realty Pte Ltd, the first defendant, was incorporated by the second to sixth defendants, who became shareholders and directors thereof. In March 1994 the first defendant acquired all the six townhouses from their individual owners for a total consideration of $9,490,000 for the purpose of re-development. Legal completion of the purchase of all the units was effected on 1 July 1994.

11 On 23 May 1994, the first defendant applied for permission to develop the site of the six townhouses (lot 640) into four units of two-storey detached bungalows. On 30 June 1994, provisional permission was granted by the competent authority subject to the condition, inter alia, that lot 641 which was no longer required for road-widening be amalgamated with lot 640 for the development.

12 On 15 August 1994, the Road and Transportation Division of the PWD, in response to a request of the first defendant, confirmed that they had no objection to the amalgamation of lot 641 in the development of lot 640. We

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

ought to state that at that time lot 641 was still under the names of the second to sixth defendants as indeed is the position now.

13 **Negotiations for sale**

14 Sometime in September 1994 an estate agent, one Irene Ang (Ang) of M/s Ming Structures, learned that the six townhouses belonged to the first defendant. From a previous property transaction Ang had come to know the second defendant. She enquired from him whether Weng Gardens was for sale. There is a dispute as to the point in time at which the inquiry was made. She said it was in mid-September 1994, but he said it was on 6 October 1994. Nothing really turns on that. What is not really disputed and was found by the trial judge is that on that inquiry, the second defendant informed Ang of the following:

15 (i) that planning development of the Weng Gardens site into four bungalows had been obtained;

16 (ii) that the land area on which the four bungalows were to be built was 23,090 sq ft.

17 (iii) that the first defendant would be prepared to sell the four bungalows, when built, for $28m.

18 (iv) that the existing six townhouses would be demolished in November 1994.

19 The second defendant also told Ang that the first defendant would sell the land alone without the construction of the four bungalows for $24m. With all that information Ang contacted various people whom she thought might be

interested. Only one, Ong Boon Chuan (Ong), the husband of Kok and the managing director of TG Development, showed interest. Ang met up with Ong towards the end of September 1994 and gave him a copy of a site plan which Ang had in her office and which showed that the six townhouses were known collectively as `Weng Gardens` and the site had an area of 2,145.1 sq m (equivalent to 23,090 sq ft). On his own, and with the site plan, Ong visited the site a few times. In his mind he thought that the site consisting of 23,090 sq ft could perhaps accommodate up to five bungalows though he never communicated this thought to Ang.

20 Ong made an offer of $18m for the site only, without the construction of any bungalows. The second defendant rejected this offer and eventually told Ang that the minimum sale price for the land was $20m. According to Ang, the second defendant even offered her additional incentives if she could sell the land for more than $20m; he also told her that the development guide plans for the area would be released soon and that the purchaser would stand to benefit if more intensive development was allowed. Accordingly, Ong increased his offer to $19m. This was, however, still not accepted by the second defendant.

21 On 13 October 1994, Kok and Ong, together with Ang, visited another property at Holland Road. Thereafter, they went to see the subject site before adjourning to Garden Hotel at Balmoral Road to have coffee. Ang then telephoned the second defendant to convey a revised offer by Ong of $19.8m, saying it was a good figure with the auspicious numeral `8`. The second defendant countered that he could only reduce the price by $20,000 to $19.98m, retaining the same auspicious numeral `8`. That was finally the price both Ong and the second defendant agreed to. In the course of these negotiations between the parties through Ang, Ang mentioned to the second defendant that the purchasers would ask the vendors not to demolish the townhouses as yet

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

because the purchasers would like to keep the buildings a little while longer to collect rent as they needed time to submit development plans of their own. To this the second defendant agreed. Ang also conveyed to the second defendant Ong`s request that the completion period be extended from the normal three months to six months. This was not agreed to at first but eventually the second defendant agreed to four months. Thus, in the option the completion date was stated to be 13 February 1995.

22 That same evening, Ang collected a cheque from Ong in the sum of $199,800, being 1% of the agreed purchase price, which was to be exchanged for the option to be granted by the vendors. Ang then met the fifth defendant at the office of the first defendant. The first defendant`s solicitor, Mr Chan Kok Chye (Chan), came with a typed option with a number of blanks to be filled in. Chan, having spoken to the second defendant over the phone, then filled in the blanks in his own handwriting and the option was signed by the fifth defendant for and on behalf of the first defendant. The property to be sold was described as `Nos 3, 3A, 3B, 3C, 3D & 3E Balmoral Crescent, Singapore.` That had already been typed in by Chan before he brought the option there.

23 **Defendants` version**

24 The defendants disputed a number of the matters enumerated by Ang and Ong. First, it was only on 6 October 1994 that Ang asked the second defendant if Weng Gardens was for sale. He told her that the land area on which the four bungalows would be built was `about 23,000 sq ft.`

25 According to the second defendant, on 10 October 1994 Ang asked him if he was prepared to sell Weng Gardens subject to planning approval for a four-storey block of apartments. He did not agree to this but indicated that he would

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

consider selling Weng Gardens with the plans for four bungalows (but without construction) at $24m, as his architect had estimated that the construction cost of the four bungalows would be about $4m. The second defendant said he did not hear any further from Ang on that offer.

26 Then on 13 October 1994, the second defendant said Ang telephoned him to advise that another prospective buyer, an Indonesian, would like to offer $20m for the six townhouses and that the buyer only wanted to buy them for investment to collect rent from the letting of the townhouses. He was not interested in any development of Weng Gardens. The second defendant asked Ang to arrange a meeting with the Indonesian buyer but was told by Ang that the buyer had a dinner engagement that evening. He then proposed a meeting the next day but was told by Ang that the Indonesian would be leaving Singapore the next day. The second defendant then consulted the fifth defendant. In their oral evidence, both the second and fifth defendants said that in their telephone conversation the second defendant told the fifth defendant that the prospective buyer wished to buy the townhouses to collect rent and that lot 641 would not be included in the sale; in that conversation the fifth defendant also commented that, should the purchaser later wish to develop the property, he would have to buy lot 641 from the defendants. What is significant about this piece of evidence is that it was not set out in their affidavits. The fifth defendant also telephoned her brother, the sixth defendant, who also agreed to the sale at $19.98m. The third defendant and the fourth defendant (who was away) were not involved in the decision on that price.

27 The fifth defendant then telephoned Chan at home to request him to prepare an option for the sale of the six townhouses. Chan took a specimen from his computer and filled in the particulars of the property as we have described. He brought a typed option to see the fifth defendant. While at the office of the

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

first defendant, Chan spoke to the second defendant several times on the particulars of the transaction, the price, the date for exercise of option, the date of completion and an additional clause setting out the agent`s commission. These were all filled in in the handwriting of Chan, as the option shows. Before the option was signed by the fifth defendant for the first defendant, Ang was asked to and did peruse it to verify that everything was in order. We accept the facts as set out in this paragraph.

28 We should at this juncture observe that up to the grant of the option, Ong and the second defendant had not been in direct communication with each other. The negotiations were conducted entirely through Ang. She had been keeping the identity of Ong confidential and did not bring the parties to meet for fear that they might make a deal behind her back and cut her out, thus jeopardizing her commission.

29 **Post option events**

30 We will now set out some of the post option events, which are essentially the correspondence between the parties` solicitors which were highlighted by the plaintiffs both at the trial and before us.

31 On 17 October 1994, the plaintiffs` solicitors wrote to the first defendant`s solicitors stating they were instructed that the first defendant had agreed to give Kok (the grantee of the option) a letter of authority addressed to the URA authorising Kok or her architect to submit redevelopment plans for Weng Gardens. The next day the first defendant`s solicitors replied to say that the vendors would consider Kok`s request after the option had been exercised.

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

32 The option was duly exercised by TG Development, as the nominee of Kok, on 21 October 1994. In forwarding the exercised option, together with the requisite payment, to the first defendant`s solicitors the plaintiffs` solicitors reminded the first defendant`s solicitors of the letter of authority to the URA. On 25 October 1994, the first defendant`s solicitors replied and the pertinent portion of the reply reads:

> *We would refer to your clients` request for a letter of authority to URA for your clients to submit plans for the development of the above properties.*

33 Our clients instruct that they have themselves submitted plans to the Planning Department for the construction of four detached bungalows on the subject site. If the requested letter of authority is issued by our clients, our clients would have to instruct their architects to withdraw the plans presently filed. Should your clients decide not to or are unable to complete the purchase of the above properties as contracted, our clients would have lost valuable time and money in having to resubmit such plans for the relevant authority`s approval.

34 In view of the above, our clients would request that your clients agree to the following additional conditions in consideration for their issuance of the requested letter of authority:

> (1) your clients pay to our clients an additional sum equivalent to 10% of the purchase price as further deposit for the sale of the above properties. Should your clients fail to complete the purchase of the said properties as scheduled, our clients will forfeit the total sum equivalent to 20% of the purchase price paid to our clients as deposit under the option and the further deposit referred to herein without prejudice to our clients` right to claim for any other loss pursuant to the terms of the option;
>
> (2) the completion date for the sale and purchase of the said properties be changed to 13 January 1995.

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

35 On 10 November 1994, in order to facilitate the plaintiffs` submission to URA, the plaintiffs` solicitors asked for the loan of the plans which the first defendant had submitted to the competent authority. The solicitors also indicated that as TG Development were considering appointing the first defendant`s architect to continue with the plans, they requested for the name of the architect.

36 The first indication of a problem, which formed the subject of this action, was in the reply of the first defendant`s solicitors dated 16 November 1994 and it reads:

> *3, 3A, 3B, 3C 3D and 3E Balmoral Crescent Singapore*
>
> *Our clients instruct that they are unable to accede to your clients` request as the sale relates only to the units set out above without any conditions relating to the re-development of the property, which was not made known to our clients until after our clients had granted the option to Madam Kok Lee Kuen.*

37 On 7 December 1994, the plaintiffs` solicitors replied stating, inter alia, that it was understood that a letter of authority would be given to the plaintiffs to enable them to submit their own development plans to the competent authorities. In that letter the plaintiffs also denied that the first defendant was entitled to impose the two conditions set out in the first defendant`s solicitors` letter of 25 October 1994 for the issue of the letter of authority.

38 On 23 December 1994, the first defendant`s solicitors replied denying that any assurance was given that the first defendant would give a letter of authority to the plaintiffs. The first defendant also denied knowing that the grantee (Kok) had purchased the property for re-development. In any event the option did not provide that the first defendant was required to give such a letter of authority.

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

39 On 5 January 1995, pursuant to a requisition from TG Development`s solicitors, the latter were informed that the approval granted to the first defendant`s proposal for development was on condition that the `proposal for Lot 640 is in conjunction with Lot 641`.

40 On 6 January 1995, pursuant to a request from TG Development`s solicitors, the Road and Transportation Division of PWD furnished a road interpretation plan in respect of the property.

41 By a letter dated 10 January 1995, the plaintiffs` solicitors, after setting out the pertinent circumstances and reasons, enquired if the first defendant would be transferring that strip of land (lot 641) when completion takes place on 13 February 1995 without any further consideration. By a letter dated 24 January 1995 from the first defendant`s solicitors, the first defendant refused to do so, stating, inter alia, that Ang had told the second defendant that the purchaser was purchasing the six townhouses `for the purpose of collecting rent and that the properties must be kept in a good condition when the option was exchanged.`

42 On 10 February 1995, the plaintiffs commenced the first originating summons against all the six defendants. On 13 February 1996, the first defendant`s solicitors served on the plaintiffs` solicitors a 21-day notice to complete the purchase of the six townhouses. The plaintiffs` solicitors objected to the validity of that notice. On 22 February 1995, the first defendant`s solicitors wrote stating that the second to sixth defendants were agreeable to granting an easement in the nature of a right of way over lot 641 in favour of lot 640. A fresh 21-day notice to complete was issued. After a futile exchange, the first plaintiff, TG Development, commenced the second originating summons.

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

43 **Decision of the High Court**

44 The High Court held that a party seeking rectification must establish `his case by strong irrefragable evidence` that there was either a common mistake or a unilateral mistake by one party and the other party, being aware of his mistake, did nothing to draw it to his attention.

45 The learned judge felt that the difficulty confronting the plaintiffs was that of `showing how the first defendant, a company, had indeed intended to convey lot 641,` which the company did not own. She held that Ang was not the agent of the first defendant. In her view Ang was `an independant person seeking to conclude a deal for reward in the Singapore context.` The first defendant could not be bound by any representations made by Ang to Ong or by any knowledge Ang had of the second plaintiff`s re-development plans.

46 In any case the learned judge held that, as Ong did not know of the existence of lot 641 until December 1994, he could not have the intention to acquire both lot 640 and lot 641. Thus, the plaintiffs could not assert that it was their intention, let alone the intention of both parties, to buy and sell lot 640 as well as lot 641. She was of the view that, while it was true that the plaintiffs` intention was to purchase land with an area of 23,090 sq ft, their remedy would lie in an abatement of price rather than rectification.

47 **Appeal**

48 The central issue of this appeal lies in the question whether the learned trial judge was correct, in all the circumstances of the case, to hold that the plaintiffs had not shown that there was a common mistake in the description of the property to be sold.

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

49 We would agree with the learned judge that in the circumstances of our case Ang was really an independant agent trying to close a deal between the two parties so that she could earn a commission from the vendor. The parties had never met or talked to each other before the option was granted. All contacts and negotiations were through Ang. It is, therefore, important to establish what was the information that was communicated from one party to the other through Ang.

50 It is not in dispute that on the enquiry by Ang as to whether Weng Gardens was for sale, the second defendant told her that the owners had obtained the approval of the competent authority to develop the site into four bungalows which they were prepared to sell for $28m (inclusive of the bungalows to be constructed); that the site consisted of 23,090 sq ft; and that the townhouses would be demolished in November 1994. The information was conveyed by Ang to Ong, and to other prospective purchasers whom Ang had contacted. Exhibits P1, P3 and P4 are samples of the information conveyed by Ang to some of her other prospective clients. It is important to note that what was for sale was a development site of 23,090 sq ft, plus four bungalows to be erected. It was a term of URA`s approval that lot 641 be amalgamated with lot 640 for the development. The land area given by the second defendant to Ang coincided exactly with the total area of lot 640 and lot 641. So the intention was to sell both lots as a single development site.

51 Though in Ong`s mind he felt that the 23,090 sq ft was perhaps large enough to be sub-divided into a development for five bungalows (this thought was not communicated to Ang), he nevertheless felt that the asking price of $28m (including the four bungalows) or $24m (excluding the four bungalows) was too high. He offered $18m just for the site, without the bungalows. That was rejected.

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

52 On 10 October 1994 (exh P1) the second defendant reduced his demand to $21m. The next day Ang faxed to Kok telling her of the reduced price of $21m. Later the same day (exh P4) the second defendant told Ang that the minimum he would ask for would be $20m. He even offered Ang incentives if Ang could sell for more than $20m. Ong increased his offer to $19m and that was also rejected.

53 On 13 October 1994 Ang spoke several times to the second defendant. She conveyed a further increased offer by Ong of $19.8m, saying `8` was an auspicious numeral. The second defendant countered with $19.98m, retaining the auspicious numeral `8`. This was accepted by Ong. Thus the deal was concluded leading to the grant of the option.

54 On the evidence it is quite clear that what was intended for sale by the second defendant was the whole development site, including the strip no longer required for road-widening (lot 641) making a total area of 23,090 sq ft.

55 We now turn to consider the evidence of the second defendant. He said that on 13 October 1994 Ang contacted him to inform that she had found another prospective buyer, an Indonesian, who was interested to buy the six townhouses through Singaporean relatives for $20m (later reduced to $19.98m in order to have the auspicious numeral `8`) and this buyer was not interested in re-development. The buyer was contented just to collect rent from the letting of the townhouses. Though this point was strongly canvassed by the defendants to show that what the second defendant had agreed to sell was just the six townhouses and not a development site, the trial judge did not think that it was a crucial issue in the case. Although she did not make a specific finding that she rejected this evidence, she nevertheless said she had `reservations about this particular part of the second defendant`s testimony.` In a sense, the question

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

whether this evidence is true is relevant. If there was no mention by Ang of any Indonesian buyer who wanted the townhouses for renting purposes only, as the learned judge seems to have been inclined to hold, then it clearly follows that what was being discussed and negotiated all the time between the second defendant and Ang on 13 October 1994 was still a development site consisting of 23,090 sq ft. In any case, even if it were true that Ang did mention an Indonesian buyer who wanted to get the property for investment purposes and not for re-development (of course this was not something that came from Ong), we think, having regard to what the learned judge found to be a fact that the question of omitting lot 641 from the sale never crossed the second defendant and the fifth defendant`s minds, it really did not matter. The sale intended was still of the whole site, consisting of both lots 640 and 641. We find that the alleged conversation between the second defendant and the fifth defendant on the omission of lot 641 from the sale was something created (as the trial judge found) to strengthen the defendants` case that there was no mistake on their part.

56 We now turn to another point which, however, was critical to the learned judge`s decision. This is the point where she held that as Ong did not know of the existence of lot 641, the plaintiffs could not have the intention to acquire that lot. With respect, we do not think it matters. We are of the view that knowledge of the designation of the lot is not material. It is what both parties intend to sell and buy that counts. Ong wanted to buy the whole development site for re-development. He was told by the second defendant, through Ang, that the site consisted of an area of 23,090 sq ft, which is the total area of lots 640 and 641. In fact, he did not even know that the Weng Gardens site had been renumbered as lot 640. Could it reasonably be said that Ong did not intend to buy lot 641? The truth is Ong wanted to buy what appeared to him to be 23,090 sq ft of development land with two sides fronting the road, it being a corner site.

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

He, as well as Ang, thought, having regard to the site plan, that reference to the six townhouses would be sufficient to encompass all the 23,090 sq ft of land. In any case, an area of 23,090 sq ft, consisting of the two lots, was also clearly what the second defendant told Ang he intended to sell.

57 **Law**

58 In so far as the law on rectification is concerned, we would quote what was stated by Denning LJ in ***Frederick E Rose (London) Ltd v William H Pim Jnr & Co Ltd*** [1953] 2 QB 450 (at p 461). This is also the passage relied upon by the trial judge:

> *In order to get rectification it is necessary to show that the parties were in complete agreement on the terms of their contract, but by an error wrote them down wrongly; and in this regard, in order to ascertain the terms of their contract, you do not look into the inner minds of the parties - into their intention - anymore than you do in the formation of any other contract. You look at their outward acts, that is, at what they said or wrote to one another in coming to their agreement, and then compare it with the document which they have signed. If you can predicate with certainty what their contract was, and that it is, by common mistake, expressed in the document, then you rectify the document; but nothing less will suffice ...*

59 Denning LJ seemed to think that for there to be rectification there must be a concluded antecedent contract. But there appear to be authorities to the contrary - ***Pukallus v Cameron*** (1982) 43 ALR 243; C ***rane v Hegeman-Harris Co Inc*** [1939] 1 All ER 662 at p 664; ***Joscelyne v Nissen*** [1970] 2 QB 86 at p 98. These cases suggest that all that need be shown is that there was an intention common to both parties at the time of contract to include in their bargain a term which by mutual mistake was omitted. For the purposes of the present case we do not think we need go into that conceptual question as the evidence here quite clearly points to the fact that there was a concluded oral agreement before it was reduced into writing.

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

60 In ***Thomas Bates Ltd v Wyndham`s (Lingerie) Ltd*** [1981] 1 WLR 505 at p 521, Brightman LJ stated:

> *The standard of proof required in an action of rectification to establish the common intention of the parties is, in my view, the civil standard of balance of probability. But as the alleged common intention ex hypothesi contradicts the written instrument, convincing proof is required in order to counteract the cogent evidence of the parties` intention displayed by the instrument itself. It is not, I think, the standard of proof which is high, so differing from the normal civil standard, but the evidential requirement needed to counteract the inherent probability that the written instrument truly represents the parties` intention because it is a document signed by the parties.*

61 In ***Syed Yacob Alkaff v Syed Alwee Alkaff & Ors*** [1993] 1 SLR 34, this court ruled that the degree of probability required was that of `convincing proof`.

62 At the end of the day the court must be satisfied that in granting rectification it is not making a new contract for the parties, but affirming a contract which the parties made.

63 **Our decision**

64 Applying the test of `convincing proof` we are satisfied for the reasons indicated above that it has been proven by the plaintiffs that what the defendants intended to sell was a development site consisting of 23,090 sq ft and what the plaintiffs intended to buy was also that same site, though to Ong`s mind then he thought that Weng Gardens sat on the entire 23,090 sq ft. Ong did not intend to buy a landlocked site which did not even have an access to the main road. That was not what he saw. Neither did the second defendant intend to sell a landlocked site.

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

65 Twenty-eight million dollars for the entire development site consisting of lots 640 and 641 (with four bungalows) was what the defendants asked for. There is no evidence that any of the defendants had not agreed to sell the whole development site. The fact that later through a process of negotiation the price was reduced to $19.98m (without the four bungalows and the plans) cannot alter the incontrovertible fact that the defendants intended to sell the whole development site, with a total area of 23,090 sq ft. The fact that the plaintiffs did not know their new lot numbers is wholly immaterial.

66 The description of the property which was the subject of the option was typed in by Chan while he was still at home. He was not specifically told that lot 641 would be excluded from the sale. His mind was not focused on the existence of the two separate lots, 640 and 641.

67 It is pertinent to note that the learned judge also found that the fact that the title to lot 641 was still in the names of the second to sixth defendants had slipped their minds when the option was granted. We think this explains why the option was granted solely by the first defendant. It cannot be denied that the main plot is lot 640 and that lot 641 is very subsidiary, though in the context important to a buyer.

68 The defendants alleged that they had deliberately decided to keep lot 641, thus there was no mistake. We would emphasise that what runs through that long strip (lot 641) is a public drain. The second defendant admitted that, on its own, lot 641 is of no commercial value and can have no development potential. It is of no use to the defendants. What sensible reason was there for the defendants wanting to keep that strip, which the competent authority (URA) required should be amalgamated with lot 640, now that the strip was no longer required for road-widening? In the circumstances it was a strip which was

inseparable from the main lot (640). It is wholly absurd to allege that at the material time the defendants consciously decided to keep that long narrow strip.

69 Moreover, even if it were true that the second and fifth defendants did, immediately before the option was granted, discuss and want to retain lot 641, then for the reasons alluded to above, we are of the opinion that they must know, and we find that they knew, that in Ong`s mind he thought he was buying the whole development plot of 23,090 sq ft with two sides fronting the road. This change of intention on the defendants` part was never communicated to Ong. In such a case, rectification could also be ordered (see ***Riverlate Properties Ltd v Paul*** [1975] 1 Ch 133 and ***A Roberts & Co Ltd v Leicestershire County Council*** [1961] Ch 555) and we would so order.

70 In our minds we are convinced that the description of the property was given in that manner because of an oversight. It seems to us that the defendants were contented to sell the whole development site of 23,090 sq ft for $19.98m, having more than doubled their money in six months. Would a buyer, even if he did not have an immediate plan for re-development, pay that kind of money for a landlocked site? Would he similarly pay this without an eye for re-development in the future? Would he buy knowing that sometime in the future he would have to go back begging the sellers to sell him the strip? The defendants are developers - they must know what the answers are. We find that it was only by January 1995, well after the option had been granted, that the thought dawned on the defendants to use the misdescription to their advantage.

71 Before us, counsel for the defendants relied upon the Australian High Court case ***Pukallus v Cameron*** (1982) 43 ALR 243 to contend that the plaintiffs here are not entitled to relief. In ***Pukallus*** the purchasers sought, inter alia, rectification of a contract for the sale of land. The land sold was described

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

as `Subdivision 1 of Portion 1154.` It was common ground that the vendor intended to retain the remainder of Portion 1154 which was situated immediately to the south of Subdivision 1, that the southern boundary of the subdivision was not accurately depicted by the boundary fence in the vicinity and the vendor had agreed to move the fence to the correct boundary line and that the precise location of that line was not known to any of the parties at any material time. Both parties believed that an area containing a bore and some 27 acres of cultivation land lay within the land to be sold which in fact fell within the area retained by the vendor. The error was not discovered until after completion. At first instance, the court held there was a common mistake and allowed rectification. On appeal, the Full Court of the Supreme Court of Queensland set aside the order. On further appeal, the Australian High Court dismissed the appeal. What weighed very heavily on the mind of the High Court was the fact that there was no clear evidence as to where the new boundary line should be. The area of the land to be sold was specified to be 1910 acres 27 perches. We think it sufficient if we cite the following passage of Brennan J (at p 251):

> *Rectification of the contract to include a parcel of land lying outside and to the south of Subdivision 1 could not be decreed merely on proof that the parties mistakenly believed that the bore and the cultivation lay within the boundaries of Subdivision 1. Rectification could be decreed only upon proof that the parties intended that a further parcel of land, precisely identified, was to be included in the sale. In the absence of evidence of such an intention, the claim for rectification was bound to fail. There was no evidence tending to show that Mr Pukallus and Mr Cameron had agreed on a southern boundary corresponding with that fixed by the order of the learned trial judge. The mistake shared by Mr Pukallus and Mr Cameron was not a mistake as to the embodying of their intention in the written contract. The only mistake was a mistake as to what features were within the boundaries of the land sold.*

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

72 It should be apparent that our present case is quite different from that in ***Pukallus*** . The difficulties inherent in making the rectification there are not present here. The land area which the plaintiffs were told they were buying was 23,090 sq ft, the exact total area of lots 640 and 641. Unlike ***Pukallus*** where the purchaser would be getting more land if rectification were to be allowed, here the plaintiffs would be obtaining what they had bargained for if rectification is allowed.

73 We wish to observe that for the purpose of determining whether there was a common mistake in the description of the property for sale we do not find it necessary to rely on any of the events subsequent to the option. We are conscious that subsequent events must be viewed with caution as they may not provide evidence of intention prior to or at the time of contract but may be evidence of a later intention: see ***NSW Medical Defence Union Ltd v Transport Industries Insurance Co Ltd*** (1986) 6 NSWLR 740 at p 752 and ***Anfrank Nom Pty Ltd v Connell*** (1989) 1 ACSR 365 at p 388.

74 **Specific performance of lot 641**

75 In the court below the learned judge felt that, even if she were to hold that rectification should be allowed, there would be difficulties in ordering specific performance of lot 641, as that lot did not belong to Choon Fook Realty, the first defendant. Her main reason was that the first defendant, a company, could not act as the agent of the second to sixth defendants as a company itself could not act in its own person but only through directors. She reasoned:

> *As Cairn LJ stated in* ***Ferguson v Wilson*** *(1866) LR 2 Ch 77 (at p 89):*
>
> *`The company itself cannot act in its own person, for it has no person; it can only act through directors and the case is, as*

> *regards those directors, merely the ordinary case of principal and agent.`*
>
> *Here the directors of the first defendant were the second to the sixth defendants themselves so that in order for the first defendant to act as agent for the second to the sixth defendants, it would have been necessary for it to act through these same five persons!*

76 As we have mentioned before, the evidence quite clearly shows that the defendants intended to sell the whole development site, consisting of lots 640 and 641. The negotiations were carried out by the second defendant. The option was granted by Choon Fook Realty, the first defendant, with the knowledge and authority of all the other defendants. There is no principle of law which precludes a company from acting for and on behalf of an individual or individuals, even though those individuals are the directors of the company. All that the case ***Ferguson v Wilson*** decided was that a company has to act through human agents. But that is not the same as saying that a company may not act as an agent for an individual, even though that individual may be a director of the company.

77 The question is really whether Choon Fook Realty had the authority to act on behalf of the second to sixth defendants to sell lot 641. The second defendant in his evidence said that the decision to sell the whole development site, both lots, together with the four proposed bungalows for $28m was taken by him, his wife and children. The eventual sale price of $19.98m (without the four proposed bungalows) was after discussion with his children. The fifth defendant also said that the decision to sell the whole site was taken by all the members of the family. In the family of five, the others were quite happy to let the second and fifth defendants decide for them on the price. There was no formal resolution of the first defendant to sell Weng Gardens. Everything among the second to sixth defendants was carried out in an informal manner

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

even in respect of matters of the first defendant and understandably so. On the evidence we find that Choon Fook Realty, the first defendant, had the authority to sell the whole site on its own behalf as well as on behalf of the other defendants. The fact that, at the time the option was granted, the different ownership of lot 641 was overlooked, cannot affect the authority given to the first defendant. The intention of the second to sixth defendants was always to sell lot 641 together with lot 640.

78 **Interest**

79 We now turn to the question of payment of interest for late completion. Under cl 8(b) of the Singapore Law Society`s Conditions of Sale 1981, which formed a part of the contractual terms, it is provided that:

> *if the delay in completion is attributable solely to the default of the vendor, he shall pay to the purchaser by way of liquidated damages interest at the rate of 10% per annum on the purchase price of the property from and including the date fixed for completion until the day of actual completion ...*

80 There is a corresponding provision for payment of interest if the delay in completion is attributable solely to the default of the purchaser. Furthermore, under cl 8(c) it is provided that if the delay in completion is attributable to the default of both the vendor and the purchaser, no interest or damages shall be payable.

81 The defendants have alleged that the conduct of the plaintiffs was not reasonable when they refused to complete the purchase of only lot 640 (with the six townhouses) under protest and without prejudice to their right for rectification. We do not see why the plaintiffs should accept that as that was not what they had agreed to buy. Furthermore, even if they were to complete on that partial basis, they would still not be able to proceed with their development,

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

whether it was for four or five bungalows, or if they changed their mind, for a high-rise development. It may perhaps be different if the defendants were prepared to offer to convey both lots to TG Development on condition that lot 641 was so conveyed on a without prejudice basis pending a court`s determination of the rectification question and if the court should rule in the defendants` favour on that question, the plaintiffs would pay a proportional amount for the additional strip of land or a reasonable amount as may be determined by the court.

82 **Orders**

83 In the result, we would allow the appeal and make an order in terms of prayers 4A, 4B, 4C, 4D, 4E, 5, 6 and 6A of amended OS 129/95. We would alsomake an order in terms of prayers 1 and 2 of OS 242/95. The plaintiffs shall have the costs of this appeal and of the trial below. The security for costs shall be refunded to the plaintiffs.

84 ***Appeal allowed.***

Chao Hick Tin J
Lai Kew Chai J
Yong Pung How CJ

Michael Khoo, Josephine Low (Michael Khoo & Partners) and CP Lee (CP Lee & Co) for the appellants

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

Kok Lee Kuen and Another v Choon Fook Realty Pte Ltd and Others[1996] SGCA 57

Tan Hin Tat, Sean Lim and Lim Kwang Min (Sim Hill & Tan) for the respondents

---