IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 156

OS 225/1996

Between

Seah Kiat Seng

… *Plaintiff*

And

Amtel Exports Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Banking — Cheques — Dishonour; Land — Sale of land

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Seah Kiat Seng v Amtel Exports Pte Ltd

[1996] SGHC 156

OS 225/1996
MPH Rubin J
08 August 1996

1 In this application, the dispute between the parties revolved around an option to purchase a property known as 18 Ewe Boon Road, Block 2, #04-02 Palm Spring, Singapore (the property) granted by the defendants to the plaintiff. The plaintiff`s application was, inter alia, for a declaration that the option granted to him was validly exercised and that there was in existence a binding and enforceable contract for the sale and purchase of the property between the defendants and the plaintiff - despite the fact the cheque issued by the plaintiff, when exercising the option on the last day, was dishonoured upon presentation.

2 **Facts**

3 The facts which gave rise to the action can be summarised as follows. On or about 22 January 1996 the defendants, the owners of the property, in consideration of an option fee of $15,800 paid by the plaintiff granted the latter or his nominees an option to sell to them the defendants` right, title and interest in the property for S$1,580,000 subject to the terms and conditions stated in the option document. The preamble to the option which sets out the time frame and the manner in which the purchaser was to exercise the option reads as follows:

> *The Purchaser may accept* ***this offer*** *by signing the portion of this option marked `Acceptance Copy` and delivering it within two (2) weeks from the date of this option by 4pm (the acceptance date) to the vendor`s solicitors, Messrs Assomull & Partners, together* ***with payment of 10% of the sale price (the deposit)****, less the option fee who shall forthwith release the moneys to the vendor. The option fee will form part of the deposit.*

4 If this offer is not duly accepted by the acceptance date, it ***shall immediately lapse*** whereupon the option fee shall be forfeited by the vendor.

5 Upon the acceptance of this ***offer*** , the terms and conditions of the sale hereinbelow shall forthwith bind the vendor and the purchaser. [Emphasis added.]

6 The plaintiff reportedly accepted the offer contained in the option on the last day, ie 5 February 1996, and caused to be sent to the defendants` solicitors a cheque drawn by him on the Post Office Savings Bank for a sum of S$142,200, which added to the earlier payment of the option fee of $15,800 would have in the normal course of events, constituted the requisite 10% deposit sum stipulated under the option. Contemporaneous with the despatch of the said cheque or so soon thereafter, the plaintiff had also caused a caveat to be lodged against the said property.

7 The cheque thus received was presented for payment by the defendants on 6 February 1996. However, on being advised by their bankers on 7 February 1996 that it had been returned unpaid with the remark: `Effects not cleared`, the defendants` solicitors, at once, on 7 February 1996 itself notified the plaintiff`s solicitors through fax and post in the following terms:

> *... We are instructed by our clients that the cheque for $142,200 forwarded by you in purported exercise of the option had been presented for payment by our clients and the same had been dishonoured.*

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8 In view of the above, our clients are treating the option as having expired without being validly exercised and are forfeiting the option fee paid thereunder.

9 There was, subsequently a proposal by the defendants to grant a fresh option to the plaintiff, at a price to be negotiated but this move came to naught since parties did not wish to yield ground and started to lock horns on whether the option was validly exercised or not. In the result, the defendants proceeded to enter into another agreement with a third party to sell them the property and the plaintiff, on his part, filed the application herein to contest the defendants` declared position.

10 The plaintiff`s averments as contained in his affidavit filed on 8 March 1996, read as follows:

> *... I exercised the option correctly and in accordance with the said option to purchase.*

11 ... On 8 February 1996, M/s Assomull & Partners wrote to my lawyers informing that they were treating the option as having expired without being validly exercised and were forfeiting my $15,800 (option fee paid) because my bank had not cleared my cheque.

12 ... I was most surprised. Not only had I ensured that my then remaining bank balance would have sufficient funds to clear the cheque, I also instructed my wife for a further cheque for $8,000 to cover the contingency of my income tax-Giro payment taking effect at the critical time. The bank had a balance of S$153,221.58 on 6 February 1996. Enclosed ... is a true copy of the bank statement. ***The reason for the non-clearance of the cheque was that the Giro payment for my income tax did take effect and my wife`s cheque which was deposited to act as a cover, did not clear as it was supposed to . These circumstances were not within my control and I fail to see how they can be***

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construed as detracting from my intention to purchase the property. [Emphasis is mine.]

13 ... I was informed of the situation only on 8 February 1996 when my lawyers informed me of the letter they received from the defendants` solicitors that day. I immediately telephoned the bank and arranged to have cashier`s order for the full sum of $142,200 sent to replace my cheque. My cashiers` order was obtained on the same day and it was tendered for payment to the defendants` lawyers. Enclosed please find a copy of my cashiers` order and the letter accompanying the same. My cashiers` order was rejected by the defendants. ...

14 ... I truly believe that I should not be deprived of my right to proceed with the purchase of the said property and I ask for an order that I be allowed to do so immediately.

15 **Arguments**

16 It was common ground between the parties that the cheque presented upon the exercise of the option had been dishonoured with non-payment. Nevertheless, the plaintiff`s hypothesis in the hearing was that a cheque once received ought to be treated as equivalent of cash and even if the said cheque were to be dishonoured, the plaintiff`s relief lay not in treating the option as having expired but to bring an action on the cheque. In this connection, plaintiff`s counsel invited the court to the pronouncements of Lai Kew Chai J in ***Wong Fook Heng v Amixco Asia Pte Ltd*** [1992] 2 SLR 342 at p 345 and the comments by this court in ***Min Hong Auto Supply Pte Ltd v Loh Chun Seng & Anor*** [1993] 3 SLR 498 at p 517A-B. He also relied on another Singapore High Court decision in ***Ng Soo Khim v Heng Teo Bong*** [1993] 1 SLR 407 where Goh Phai Cheng JC appeared to have held that there would, in

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law, be a binding contract of sale between the parties notwithstanding the feature that the cheque forwarded in payment of the purported exercise of an option had been dishonoured. Counsel added that the dishonour in the case herein was entirely unintended and was not within the control of the plaintiff.

17 The contentions of the defendants were extensively set out in their counsel`s written submission. Suffice it if I said that the mainstay of the defence was that the dishonour of the cheque rightly entitled the defendants to treat the option as having lapsed and to forfeit the option fee since time for payment under the option was of the essence. Referring to the plaintiff`s rationalisation in his affidavit that ` ***the reason for [the] non-clearance of the cheque was that the Giro payment for [his] income tax did take effect and his wife`s cheque which was deposited to act as a cover, did not clear as it was supposed to*** `, defendants` counsel submitted that this explanation was in disharmony with an earlier explanation contained in the plaintiff`s solicitors` letter dated 8 February 1996, where it was stated ` ***that the [plaintiff`s] cheque was dishonoured not because he had no intention to pay the said amount but that his bank did not follow his instructions for the transfer of funds from his savings account to his current account*** .`

18 **Decision**

19 Option documents, such as the one the court was asked to adjudicate upon in the present case, are commonplace and well entrenched in real estate transactions in Singapore and Malaysia. The legal nature and effect of such documents were a subject of discussion by the Malaysian Federal Court in ***Subramanian Chettiar & Ors v JC Chang Ltd*** [1969] 2 MLJ 176 at p 178 where the Federal Court held that in law an option is a conditional contract and

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is to be distinguished from an offer. Gill FJ delivering the judgment of the court, said at p 179:

> *An offer is to be distinguished from an option, the latter being a contract or other act in the law containing a term by which one party (who may be called the optionholder) is empowered to elect within a specified time whether the contract or other act in the law shall operate further than by conferring the power of so electing it has already done. In other words, an option 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. ... For example,* ***A****, the owner of Blackacre, may agree with* ***B*** *that in consideration of o1 paid by* ***B****,* ***B*** *shall be entitled to purchase Blackacre for o100 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 this contract ceases to be conditional and becomes absolute so soon as* ***B*** *fulfils the condition of exercising the option in the stipulated manner. The case is not one of a mere revocable offer; on the contrary the seller has received consideration (viz o1) for a promise to sell; and the promise, which would otherwise have been honorary merely, has thereby become a contract. (See pp 132 and 133 of* ***Salmond and Williams****on* ***Contracts*** *(2nd Ed).)*

20 ... The true formula of the grant of an option (for the sake of simplicity taking only the case of an option by way of simple contract) is not: `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, on the contrary: `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 pp 133 and 134 of ***Salmond and Williams on Contracts*** (2nd Ed).)

21 The courts in England however appear to have taken a slightly different approach. They seem to regard options to purchase real or personal property or to renew a lease as no more than irrevocable offers supported by consideration.

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Lord Denning MR in ***United Dominions Trust (Commercial) Ltd v Eagle Aircraft Services, Ltd*** [1968] 1 All ER 104 at p 107, had this to say:

> *... In point of legal analysis, the grant of an option in such cases is an irrevocable offer (being supported by consideration so that it cannot be revoked). In order to be turned into a binding contract, the offer must be accepted in exact compliance with its terms. The acceptance must correspond with the offer.*

22 The foregoing analysis by Lord Denning MR was tacitly approved and applied by the House of Lords in ***United Scientific Holdings Ltd v Burnley Borough Council*** [1978] AC 904 at p 928H.

23 Returning to the document under reference, whichever way one looks at it, be it described as a conditional contract (***Subramanian Chettiar***) or an irrevocable offer (***United Dominions Trust*** case), the plaintiff was required under the express terms of the option to make certain payments within two weeks from the grant of the option, ie on or before 5 February 1996. Unhappily for the plaintiff the cheque which was presented for payment turned out to be worthless. It had bounced.

24 As outlined by me earlier, the principal contention of the plaintiff in this action was that inasmuch as a cheque for the required sum had been forwarded to the vendors, the option holder had fulfilled his obligation under the option and the dishonour of the cheque left the defendants with only an action on the cheque. Counsel argued that courts have held consistently that a cheque is equivalent to cash and that the basic relationship determining the rights of both parties is one of contract and the option did not contain any stipulation that the contract of sale would not come into existence unless the cheque so issued was honoured upon its presentation.

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25 In the context of the foregoing submission, I reviewed the authorities and learning referred to the court.

26 In ***Wong Fook Heng*** (supra), the appellant and three others each owned a unit of office property. On 29 May 1981, the appellant, acting on his own behalf and on behalf of the others, granted the respondents an option to purchase all four properties. The option was to expire at 4pm on 5 June 1981. On 30 May 1981, the respondents drew a cheque for $20,000 in favour of the appellant in payment of the option money. However, on 1 June 1981, the appellant was advised by his bank that the cheque would be dishonoured. On 2 June 1981 he learnt that the respondents had in fact countermanded the payment on the cheque. Consequently, the appellant looked for other potential buyers and granted a second option in respect of the properties to another person on 3 June 1981. On 4 June 1981, the respondents sought to proceed with the purchase of the properties and gave the appellant a fresh cheque for $20,000. The appellant returned the cheque to the respondents. On 5 June 1981, the respondents sent the appellant a cashier`s order for $195,367.63, purporting to exercise the option granted to them on 29 May 1981. That too was rejected by the appellant. Subsequently, the appellant brought an action against the respondents on the dishonoured cheque for the sum of $20,000. The High Court in the first instance decided in favour of the respondents. However the Court of Appeal, finding in favour of the appellant, held:

> (1) A bill of exchange evidences a contract separate and distinct from the original and underlying contract in pursuance of which the bill is executed. It does not depend for its enforcement on the performance of the original contract. A bill of exchange, once given, is to be treated as cash and is to be honoured unless there is some good reason to the contrary.
>
> (2) In accepting the respondents` cheque, the appellant warranted to the respondents that he was authorized to offer to

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> sell the respondents all four properties and to receive the cheque payable to himself as the payee in diminution of the respondents` obligation to pay the full amount of the purchase price upon exercise of the option. That warranty was good consideration for the cheque; and the cheque contract being distinct from the underlying option contract, this warranty was not affected by the subsequent repudiation of the option contract. Consideration need not, in any case, be equal or appropriate to the value of the other promise.

27 It could be gathered from the decision above that the action was founded on the cheque given as consideration for the option and the Court of Appeal dealing with a `cheque contract` held, amongst other things, that a bill of exchange once given, is to be ***treated as cash and is to be honoured unless there is some good reason to the contrary*** . [Emphasis added.]

28 Next, in ***Min Hong Auto*** (supra at pp 516 and 517)the High Court had to deal with an instance where the vendors who gave an option to sell a warehouse were intent on wriggling out of it after accepting two good cheques in relation to the grant of the option and its exercise thereof. The vendor`s argument was that payment by cheques was not a proper mode in exercising an option and the payment must be by way of cash. After reviewing authorities including the Court of Appeal`s decision in ***Wong Fook Heng*** (supra), the court held that cheque payments were indeed valid in the exercise of the option and re-affirmed the principle that a bill of exchange once given, was to be treated as cash and that it was to be honoured unless there was some good reason to the contrary.

29 In arriving at its decision, the High Court adopted the views expressed by the English Court of Appeal in ***Tenax Steamship Co Ltd v The Brimnes (Owners)*** [1975] 1 QB 929 where Cairns LJ, dealing with a clause in a time charterparty which required that the owner of the vessel was to be paid in cash in US currency, observed at p 968:

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> *I think the words simply mean that the currency of payment is to be United States Dollars and that payment must be in a form which does not involve the giving of credit, for example, it must not be by post-dated cheque or by telex message with a `value date` after the due date.*

30 There are two mutually co-extensive segments in all these declarations. First, the cheque issued ought to be ***treated as cash*** and second the cheque ***should be honoured upon presentation*** ; it must not be postdated and its value not postponed. The use of the expressions by the court that `cheques once given should be treated as cash` or `cheques once given are equivalent of cash` are predicated on one fundamental assumption, which is, that the mandate contained in the cheque is underpinned by immediate cash and not value in future.

31 I considered next the decision in ***Ng Soo Khim*** (supra) upon which substantial reliance was placed by counsel for the defendants.

32 The decision in ***Ng Soo Khim*** also revolved around an option document and the effect of the dishonour of a cheque forwarded by the option holder to the vendor when exercising the option. Insofar as material, the relevant clauses contained in the option in that case were in the following terms:

> *In consideration of the sum of ... $5,000 paid by you, I [the defendant and HTM] (hereinafter referred to `the vendor`) hereby give to you [the plaintiff] an option to purchase the property known as No 8 Lorong H, Telok Kurau, Singapore and more fully described aforesaid (hereinafter referred to as `the property`) at the price of ... ($520,000) on the terms and conditions hereinafter set out.*

33 To exercise this option you shall sign the acceptance form at p 4 herein and shall deliver the said form together with a cheque for the sum of ... $47,000 being the balance of the 10% deposit to [the vendor`s] solicitors, Messrs Teo

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Choo Hong & Co, ... The 10% deposit herein shall be held by Messrs Teo Choo Hong & Co, as stakeholder.

34 The evidence presented established that a cheque forwarded to the vendor by the option holder upon the purported exercise of the option was dishonoured upon presentation with non-payment and the two issues considered by the learned judge in that case were:

> (i) whether there was a binding contract of sale when the plaintiff [purportedly] exercised the option … by completing and signing the acceptance form and delivering the said cheque for $47,000; and
>
> (ii) Whether the dishonour of the plaintiff`s said cheque prevented any contract of sale from coming into force.

35 In finding in favour of the plaintiff who had issued the cheque that had bounced, the learned judge held that even where the cheque presented by an option holder in the exercise of the option had been dishonoured upon presentation for payment, there was still a binding contract of sale ***as there was nothing stated in the terms of the option that a contract of sale would not come into existence unless the said cheque was honoured*** (see p 434, supra). He went on to hold that the provision in the option for the payment of a deposit was not a condition precedent to the formation of a contract for the sale of a land. He added that the said provision was a fundamental term, a breach of which entitled the vendor, if he so elected, to treat the contract as at an end and to sue for damages including the amount of the unpaid deposit.

36 The plaintiff`s counsel underscored the foregoing reasoning and urged the court to hold similarly that there was still in existence a binding contract between the parties.

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37 I should say presently that the decision in ***Ng Soo Khim*** centred on an option document which possessed few of the material features present in the option at hand.First, in the option before me, there was an express provision requiring the option holder to make a ` ***payment*** of 10% of the sale price (the deposit) less the option fee`, whereas the option in ***Ng Soo Khim*** merely recitedthe forwarding of a cheque for a certain sum. Second, unlike in ***Ng Soo Khim*** , the option in the present case made it clear that it was in fact an `offer` and that the ` ***Purchaser may accept the offer by signing the portion of the option and delivering it with payment of 10% of the sale price (the deposit) less the option fee*** .` Third, it was expressly provided in the option herein that if the offer was not duly accepted by the acceptance date, it would immediately lapse whereupon the option fee shall be forfeited by the vendor. This express provision was absent in the option in ***Ng Soo Khim*** .

38 Above all, the final paragraph of the preamble to the option in the present case provides that only upon the acceptance of the offer, the terms and conditions of the sale (set out below the said preamble) shall bind the vendor and the purchaser. Such a term could nowhere be found in the option in ***Ng Soo Khim*** .

39 In any event, the defendants, by serving notice on the option holder of the dishonour of the cheque, as well as by intimating their chosen course of action to treat the option as having lapsed (see the plaintiff`s letter dated 7 February 1996), had clearly elected to bring about their contractual link, if any, to an end. In the premises, it appeared to me that the reliance on ***Ng Soo Khim*** by the plaintiff was wholly misplaced and out of context.

40 Having regard to the expressions used in the preamble to the option, the specifications contained therein as to the mode of acceptance and the clearly

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spelt out consequences if those specifications were not complied with, it seemed to me that the legal nature of the document under reference was no more than an `irrevocable offer` as was held by Lord Denning MR in ***United Dominions Trust*** (supra) and in order for it to be turned into a binding contract, the said offer, in my opinion, must be accepted in exact compliance with its terms.

41 Reverting now to the primary question whether the option holder had accepted the offer in exact compliance with its terms, I found that the argument advanced on behalf of the plaintiff that a cheque, once given, was to be treated as cash was inattentive to the true purport of the principles enunciated in ***Wong Fook Heng*** as well as in ***Min Hong Auto*** , both of which underscore the criterion that the cheque issued `was to be honoured unless there was some good reason to the contrary.`

42 I then turned to the aspect whether there could be in law or in equity any relief to an option holder who let his cheque lay numb and lifeless for a few days - in this case three days - and came up with a cashier`s order three days later which was, however, rejected. In this regard, my attention was drawn to the English case of ***Millichamp & Ors v Jones*** [1983] 1 All ER 267, where the dispute was between close relatives. The relevant facts are as follows.

43 In 1969 Mr William Millichamp, the plaintiffs` father, contracted to buy a farm at Silvington in Shropshire called Manor House Farm for a total price of o44,790. On 12 January 1970, he entered into a contract with the plaintiffs to sell the farm to them for o43,100. On the following day the plaintiffs contracted to sell some of the land forming part of the farm to the defendant for o14,575. That land, to be more exact the disputed land, comprised about 481/2 acres. It seemed that the defendant had agreed to help financially with the purchase of the farm and the arrangement was that the plaintiffs should have an option to

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buy the disputed land back from the defendant at the end of ten years. Manor House Farm and in particular the disputed land adjoins the defendant`s own farm which is called Lowe Farm. The contracts were completed together on 28 January 1970 when the defendant took a conveyance of the disputed land direct from Mr William Millichamp`s vendor. On the same day an agreement under seal was entered into between the defendant and the plaintiffs for the grant of the option. In that agreement under seal, the defendant was called the `intending vendor` and the plaintiffs were called the `intending purchasers`. The material parts of the agreement were as follows:

> 1 In consideration of the sum of one pound paid by the intending purchasers to the intending vendor … the intending purchasers shall have the option of purchasing the property described in the First Schedule hereto …
>
> (3) The said option shall be exercisable by the intending purchasers giving to the intending vendor notice in writing such notice to be served in accordance with the provisions of cl 8 hereof …
>
> (5) Upon the exercise of the said option the intending purchasers shall pay to the intending vendor`s solicitors as stakeholders by way of deposit one thousand four hundred and fifty seven pounds ten shillings.
>
> …

44 On 17 April 1980 the plaintiffs gave the defendant notice exercising the option. There is no question that the notice complied in every way with the option agreement. The plaintiffs, however, did not pay the deposit envisaged by cl 5 of that agreement. In the meantime there was an exchange of notes between the parties` advisers, culminating in the variation of the option agreement whereby the date for the completion of the sale was deferred.

45 Surprisingly, due to some reason the required deposit was still not paid and despite the continued contact between the parties the question as to deposit

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was not discussed between them. According to evidence, the defendant did not even think about it as he had left everything to his solicitors. However, when the defendant came to know of it subsequently he instructed his solicitors to treat the contract as discharged on account of the failure to pay the required deposit. The plaintiffs thereupon the next day profferred the deposit but this was returned and hence the plaintiff`s application against the defendant for specific performance.

46 The defendant resisted the application. One of his grounds was based on the plaintiff`s failure to pay the deposit. On this ground the defendant`s case was put in three ways. First it was said that the payment of a deposit was a condition precedent to the formation of the contract, so that no contract came into existence as a result of the purported exercise of the option. Alternatively, it was said that the payment of a deposit was a condition subsequent, the failure to perform which automatically discharged the contract. In the further alternative, it was said that the requirement of a deposit was a fundamental term of the contract, the breach of which entitled the defendant to treat it as discharged, and that his right so to treat it was exercised by his solicitors in the letter.

47 Warner J, after analysing a number of authorities and deciding in favour of the plaintiffs commented at pp 116 and 117:

> *The next question is whether cl 5 of the option agreement in the present case is, in accordance with the general rule, to be regarded as a fundamental term of that agreement or whether, on the contrary, there is something which, as a matter of construction of that agreement, in the light of the surrounding circumstances, takes it out of the general rule. At first sight, it seems repugnant to hold that a term of the agreement which neither the plaintiffs nor the defendant, nor, obviously, their solicitors, gave any thought to at the time when the option came to be exercised, was a fundamental term of it. I do not think, however, that the state of mind of the parties or their advisers at*

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> *that time is the test. The question has to be answered, I think, by reference to the terms of the document itself, considered in the light of the circumstances as they were when it was executed. By that test, I see nothing to take this case out of the general rule.*

48 What happened in 1980 suggests, however, another question, which is: what conduct on the part of the plaintiffs would constitute a breach of that fundamental term? ... ***Here, there was mere oversight and the question is whether that, by itself, constituted a sufficient breach of the term to entitle the defendant to treat the contract as discharged. I do not think it did. There are no doubt cases of contracts where the mere failure to pay on time a sum due under the contract is sufficient to entitle the party to whom the payment should have been made to treat the contract as repudiated. But I think that it would be unnecessarily harsh to hold that that was so in a case of the present kind*** . ... In my judgment, in the present case it was incumbent on the defendant, before he could treat the plaintiffs` failure to pay the deposit as a repudiation of the contract, to tell them that he was minded so to do and to give them an opportunity of complying with their obligation. Only if they then showed in some way that they were unwilling or unable to comply with it, would he become entitled to consider their conduct a sufficiently clear breach of the contract to entitle him to treat it as discharged.

49 Apart from the recognition by Warner J in ***Millichamp*** that there are no doubt contracts where a mere failure to pay on time the sum due under the contract is sufficient to entitle the party to whom the payment should have been made, to treat the contract as repudiated, I should add that the facts in ***Millichamp*** are not analogous to the facts of the case at hand. First, the contract in ***Millichamp*** did not have any stipulation such as the one at hand requiring the deposit to be paid before a prescribed period. Second, the ***Millichamp*** contract did not have a lapsing or forfeiture clause as was present in the present

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case. More particularly, in ***Millichamp*** the conduct and dealings between the parties were such as to warrant the court to hold that there was an obligation on the part of the defendant therein to give the plaintiffs notice to comply with their part of the obligation.

50 Returning to the averment of the plaintiff in the present case that the dishonour of the cheque was beyond his control since a cheque deposited to act as cover did not clear as it was supposed to, this assertion contradicted his solicitors` earlier instructions that the plaintiff`s bank failed to follow his instructions to transfer funds from his savings to his current account. The plaintiff in the circumstances failed to satisfy the court with credible evidence that the non-payment of the cheque was beyond his control.

51 As I said earlier, it cannot be doubted that the principle of law enunciated by courts that a cheque once given is to be treated as cash presupposes the eventuality that the cheque so presented would be honoured upon presentation. Neither ***Wong Fook Heng*** nor ***Min Hong Auto*** is an authority for the proposition that mere tendering of a worthless cheque would be equated with payment. It is clear from the language of the option that payment should be forthcoming on or before the prescribed day. In my view, once the cheque given by the plaintiff in fulfilment of the payment obligation had been dishonoured, he could not, in law, be said to have accepted the offer in accordance with the terms of the said offer.

52 In the context of the express language used in the option document, I was unable to hold that there could be any binding contract between the parties when there had been a failure to comply with an agreed essential term of the option by the option holder within the stipulated time. The irrevocable offer made by the vendor lapsed by the failure of the option holder to underpin the

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cheque issued with the required funds. In my judgment, time for the performance of the payment obligation is of the essence and having regard to the very nature of the document, the time allowed could not be extended by reference to any equitable principle. This conclusion is in conformity with the principles approved by the Privy Council, as being manifestly reasonable and as warranted by authority, in ***Aberfoyle Plantations Ltd v Khaw Bian Cheng*** [1960] MLJ 47 at p 49D-F (left column) in relation to completion dates stipulated in conditional contracts.

53 For the reasons I have stated, I dismissed the plaintiff`s application with costs.

54 ***Application dismissed.***

MPH Rubin J

Godwin Campos (Rodyk & Davidson) for the plaintiff
Madam Assomull (Assomull & Partners) for the defendant

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