IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 190

OS 1078/1995

Between

Fernhill City Investments Pte Ltd

… Plaintiff

And

Lee Keng Huat
Galleria Management Pte Ltd
Joylore Pte Ltd

… Defendant

GROUNDS OF DECISION

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

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Fernhill City Investments Pte Ltd v Lee Keng Huat and Others

[1996] SGHC 190

OS 1078/1995
Lai Siu Chiu J
31 August 1996

1 **Judgment:**

2 **GROUNDS OF DECISION**

3 The appeal

4 1. The plaintiffs applied for the following reliefs in their originating summons (OS):

5 a. a declaration that they have lawfully treated the sale and purchase agreement backdated to 12 September 1994 (the agreement) made between themselves and the first defendant Lee Keng Huat (Lee) for the purchase of Plot 1 of No 82, Fernhill Road, Singapore (the property), as repudiated by Lee on 25 August 1995, Lee having failed to comply with the plaintiffs' notice to complete on 24 July 1995 under cl 5(3) of the agreement;

6 b. a declaration that as from 25 August 1995, pursuant to cl 5(3)(c) of the agreement, they were entitled to forfeit and retain for their own benefit the sum of $230,000 previously paid by Lee;

7 c. an order that Lee pay them the sum of $230,000 (with interest) being the instalment of the purchase price payable by Lee upon the execution of the agreement;

8 d. an order that contractual interest on the said $230,000 at the rate of 10% per annum from 22 April 1995 to 25 August 1995 be paid to them by Lee under cl 5 of the agreement;

9 e. a declaration that as of 25 August 1995 Lee, the second and third defendants no longer owned any interest in the property that was caveatable;

10 f. that Lee, the second and third defendants withdraw their respective caveats filed against the property and that the three defendants pay damages (with interest) to the plaintiffs for refusing and or failing to remove the caveats;

11 g. costs.

12 2. The OS came up for hearing before me together with the plaintiffs' application vide SIC 1659/96 (the second application) to vacate the hearing date. I dismissed the second application, proceeded with the hearing of the OS and ordered the plaintiffs to specifically perform the agreement. The plaintiffs have appealed against my dismissal of the OS as well as against my refusal on 22 April 1996 to grant them a stay of execution on my orders (for specific performance) pending the outcome of their intended application to court on the issue of illegality of the agreement.

13 The facts 3. The plaintiffs are/were property developers. In 1994 the plaintiffs constructed some semi-detached houses at Fernhill Road. In or about August 1994 a Madam Tan Poh Swan (Madam Tan) approached the plaintiffs

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through an intermediary to buy one of the units (which is the property) for $2.3m. As the plaintiffs' building plans had not yet been finalised then, the plaintiffs could not enter into a sale and purchase agreement with Madam Tan. Nevertheless Madam Tan paid 10% amounting to $230,000 (the payment) of the purchase price as the booking fee for the property and was duly receipted by the plaintiffs for the payment on 12 September 1994.

14 4. By January 1995 the plaintiffs had finalised their building plans. The plaintiffs' director Ng Kim Siong (Ng) contacted Madam Tan's brother Rodney Tan (Rodney) who was her representative, to inform him that the plaintiffs had a draft sale and purchase agreement ready for Madam Tan and they required her to sign the document before end March 1995.

15 5. In late February 1995 Rodney informed Ng that Madam Tan had made a subsale of the property to Lee and Madam Tan wanted the plaintiffs to enter into a sale and purchase agreement (the agreement) direct with Lee. The plaintiffs' then solicitors K & Co wrote to Lee's solicitors (C) on 3 April 1995 to say that the agreement (forwarded earlier) should be signed and returned to the plaintiffs by 7 April 1995 together with a letter of authority from Madam Tan (the letter of authority) to direct the plaintiffs to credit the payment (of $230,000 by Madam Tan) to Lee.

16 6. C replied to K & Co on 7 April 1995 forwarding the (executed) agreement and also a cheque for the second progress payment amounting to 10% (the 10% payment) of the purchase price but not the letter of authority which they said would be handed over in due course. On 17 April 1995 Lee lodged a caveat against the entire development of the plaintiffs including the property, with the Registry of Titles (the first caveat).

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17 7. The plaintiffs executed the agreement and backdated it to 12 September 1994 as was intended by the parties. The agreement was then forwarded to C on 26 April 1995 together with the plaintiffs' receipt for the 10% payment.

18 8. On 6 June 1995 K & Co sent a reminder to C for the letter of authority. On 20 June 1995 C replied to say that Lee had subsold the property to Sumbershire Management Resources Pte Ltd (Sumbershire) which completion was fixed for 7 July1995, C requested a fresh agreement in favour of Sumbershire. K & Co wrote to C on 23 June 1995 and again on 6 July 1995 for the letter of authority, otherwise they could not consider the request for a new agreement in favour of Sumbershire.

19 9. On 13 July 1995 C informed K & Co that Sumbershire had changed its name to Galleria Management Pte Ltd (Galleria) the second defendant in this action and pointed out that the plaintiffs would be in breach of the agreement if they refused to issue a fresh agreement in favour of Sumbershire/Galleria.

20 10. Further correspondence between K & Co and C proved fruitless as neither side was prepared to compromise on the stand it had taken. The plaintiffs took the view that without the letter of authority they could not credit the payment to Lee and consequently Lee had, since 7 April 1995 been in arrears of the first instalment of $230,000.

21 11. On 24 July 1995, K & Co wrote to C to say if they did not receive the letter of authority or $230,000 by 12 noon of 25 August 1995 the plaintiffs would treat the agreement as repudiated by Lee. C replied on 25 July 1995 to say the request for the letter of authority was untenable. In a subsequent letter

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dated 1 August 1995 C renewed his request for a fresh agreement in favour of Galleria.

22 12. On 28 August 1995 K & Co wrote to C giving notice that the plaintiffs were treating the sale of the property as aborted and, being entitled to, were forfeiting Lee's 10% payment; they requested for the first caveat to be removed from the parent title of the property. On the same day K & Co wrote separately to C as solicitors for Joylore Pte Ltd (Joylore), the third defendant with whom Lee had entered into a subsale, to request that Joylore's caveat be similarly removed.

23 13. On 6 September 1995 C lodged fresh caveats against the property on behalf of Lee and Joylore followed two days later by a caveat lodged on Galleria's behalf (the second caveats). 14. On 8 September 1995 K & Co received from C belatedly, a notice of assignment dated 12 August 1995 of an assignment of Lee's interest in the agreement to Galleria.

24 15. On 12 September 1995 the plaintiffs' (present) solicitors wrote to C to advise that they would be instituting legal proceedings for the removal of the first caveats.

25 16. By letter dated 26 October 1995 C informed the plaintiffs' solicitors that Lee would be withdrawing the first caveat and Joylore's caveat. However C rejected the plaintiffs' solicitors' request to remove the second caveats. In consequence, the plaintiffs were unable to sell the property to other purchasers.

26 The second application. 17. On 3 November 1995 the plaintiffs commenced these proceedings. At the first hearing on 19 March 1996, counsel for the plaintiffs put forward the following reasons for vacating the hearing date:

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27 i. the plaintiffs had served Interrogatories on Lee on 13 March 1996 to ascertain how Lee had the means to make the 10% payment when he was adjudged a bankrupt on 3 November 1995 (in bankruptcy no 3852 of 1995 on a petition of a bank for a debt in excess of $100,000);

28 ii. in his affidavit filed on 5 March 1996 Lee had stated that one Edward Seky (Seky) had issued the two cheques for the payments to the plaintiffs/Madam Tan. The plaintiffs believe Seky is a non citizen and that Lee acted as Seky's nominee in the purchase. The plaintiffs needed to file a further affidavit to depose to the fact that Lee did not feature in the negotiations with Madam Tan's representative (Rodney) for the subsale, it was all done by Seky. The plaintiffs managed to trace Rodney's whereabouts recently and wanted him to file an affidavit to depose to the parties' intentions as to the provision of the letter of authority at the relevant time;

29 iii. the plaintiffs were not aware of the illegality issue when they commenced these proceedings;

30 iv. the plaintiffs may wish to convert these proceedings to a writ action.

31 18. In opposing the second application, counsel for Lee pointed out that it was filed very late in the day after I had granted a previous adjournment and had given directions on the filing of affidavits which directions the plaintiffs had not adhered to. Moreover he would be applying to court for the Interrogatories to be withdrawn as the facts sought to be established by the Interrogatories are wild and speculative -- 'fishing' in nature seeking to show that Seky was Lee's undisclosed principal. The purpose of Interrogatories is to save time and costs; they should not be allowed in this case as much time and costs would be wasted if the hearing was vacated.

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32 19. Mr Gan for Galleria and Joylore associated himself with the arguments of Lee's counsel. Although his clients had no locus standi vis a vis the Interrogatories the same appeared to be very oppressive to the extent of asking for Lee's income. Counsel pointed out that it would serve no purpose to adjourn the hearing in order to allow the plaintiffs to file an affidavit deposing to the illegality issue if indeed Lee acted as a nominee for Seky in the agreement. This would be contrary to the plaintiffs' contention that the agreement was validly terminated due to Lee's failure to obtain the letter of authority from Madam Tan. Further, even if the hearing date is vacated and the plaintiffs turn this action into a writ, if they fail on the illegality issue, they would still have to deal with these issues later; it served no purpose therefore to postpone the hearing.

33 19A. Even if Seky funded Lee's purchase of the property, it is not illegal. It is not unknown of foreign banks, foreign companies and foreigners alike to finance the purchase of landed properties in Singapore for profit reasons. In this case there was no intention of Seky or Lee to retain title in the property because of the subsale to Joylore on the very same day as the agreement.

34 19B. I agreed with counsel for the defendants that it would serve no useful purpose to vacate the hearing date and allow the plaintiffs to file a further affidavit to depose to the illegality issue. Accordingly I dismissed the second application; I was of the view that the issue of illegality could always be taken up separately at a later stage by the plaintiffs if they so desired.

35 20. I also dismissed the OS and ordered the plaintiffs to specifically perform the agreement, ordered them to comply with cl 3 of the agreement with regard to the subsale between Lee and Galleria/Joylore and held the plaintiffs

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liable to pay damages to Lee for late completion of the subsale to Galleria and Joylore.

36 21. After I had dismissed the application, counsel for the plaintiffs wrote in for further arguments which request I acceded to. At the further hearing, counsel applied for a stay on my orders for specific performance which request I refused; I shall set out the parties' arguments later.

37 The affidavits 22. Before I set out the arguments canvassed by counsel in respect of the application, I need to refer to the affidavits filed by the parties.

38 23. I have already set out the plaintiffs' version of the facts as culled from Ng's (first) affidavit. I shall now set out the defendants' version.

39 (i) the first defendant's version 24. In his affidavit Lee deposed to the following facts: i. in March 1995 his solicitor C had corresponded with K & Co on the draft of the agreement and amendments were made to two drafts of the same. The final version of the draft was ready on 24 March 1995 at which time there was no request from K & Co for the letter of authority. Instead he dealt with the plaintiffs on the basis that the payment of Madam Tan would be treated as having been made by him and he would settle the amount with Madam Tan;

40 ii. K & Co requested the letter of authority for the first time in their letter to his lawyer (C) dated 3 April 1995. C returned the agreement on 7 April 1995 to K & Co together with the 10% payment under cl 3(1)(a); the agreement was backdated to 12 September 1994 in compliance with the undertaking requested by C of the plaintiffs, so as to coincide with the payment made by Madam Tan. Relying on the plaintiffs' undertaking that the payment (Madam Tan's) would be credited to him, Lee paid Madam Tan $230,000 through Madam Poh Ban

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Leng (who was the intermediary who introduced Madam Tan to the plaintiffs and is Rodney's wife), which sum Madam Poh acknowledged;

41 iii. on 7 April 1995 itself he entered into the subsale with Joylore (see exh LKH 8) to sell the property at $3.05m and also executed a power of attorney in favour of Seky (see exh LKH 9);

42 iv. when C received the executed agreement on 26 April 1995 from K & Co there was no mention of the letter of authority; he was receipted for his 10% payment;

43 v. K & Co repeated their request for the letter of authority in their letter dated 6 June 1995 alleging that C had given the assurance that the same would be given; C denied this in his letter of 17 June (mistakenly dated 17 May) 1995;

44 vi. because of the plaintiffs' refusal to issue a fresh agreement for sale and purchase to its nominee Galleria, he was liable to Joylore for late completion interest;

45 vii. on 13 July 1995 C wrote to K & Co stating the plaintiffs were in breach of the agreement in refusing to issue the fresh agreement; K & Co replied that the plaintiffs would issue the same on condition that he furnished the letter of authority and gave notice that the plaintiffs would treat the agreement as having been repudiated by Lee if he failed to furnish the same by 25 August 1995;

46 viii. on 1 August 1995 C wrote to K & Co giving notice that the subsale was scheduled for completion that day and repeated the request for the fresh agreement;

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47 ix. on 12 August 1995 Seky as Lee's attorney entered into a subsale deed of assignment with Galleria notwithstanding which he was still obliged to obtain a fresh agreement for Galleria;

48 x. on 28 August 1995 K & Co notified C that the plaintiffs had treated the agreement as having been repudiated by him and had forfeited the 10% payment;

49 xi. further correspondence between K & Co and C resulted in an impasse. C then lodged a caveat on his behalf on 6 September 1995 followed by a notice of assignment to K & Co of the subsale deed of assignment;

50 xii. the plaintiffs' proceedings were misconceived as he had a valid claim for an order for specific performance of the agreement and or damages for breach of that agreement.

51 (ii) the second defendant's version

52 25. Hee Mong Keow (Hee), a director of Galleria, filed an affidavit wherein he opposed the application and repeated in large part, the facts set out in Lee's affidavit regarding the subsale to Galleria by Lee by the deed of assignment executed by Seky. Hee said

53 i. on 21 July 1995 Joylore as Galleria's nominee, exercised the option granted by Lee to Galleria on 7 July 1995;

54 ii. on 12 August 1995 Lee entered into a subsale deed of assignment with Galleria which notice was sent to the plaintiffs' solicitors on 8 September 1995. Under the terms of the subsale, Lee was obliged to procure for Galleria a fresh agreement from the plaintiffs but this has not been done;

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55 iii. Galleria's then solicitor (C) lodged a caveat against the property on 12 August 1995 because Galleria has an interest to protect by caveat vis a vis the plaintiffs, Lee and Joylore.

56 (iii) the third defendant's version 26. The third defendant's director Tay Yew Beng (Tay) filed an affidavit where he confirmed the contents of Hee's affidavit. Tay further said;

57 i. Joylore had paid Lee $610,000 upon execution of the sub-subsale agreement following which C, then the solicitor for Joylore, lodged Joylore's caveat against the property on 12 July 1995;

58 ii. on 21 July 1995 Joylore nominated Galleria to complete the subsale and sub-purchase of the property and this was followed by a subsale deed of assignment on 12 August 1995 between Lee and Galleria;

59 iii. Lee still has to procure a fresh agreement from the plaintiffs for Joylore as Galleria's nominee, as he is obliged to, under cl 3 of the terms of the subsale.

60 The arguments 27. Counsel for the defendants confirmed, upon my inquiry, that the crux of the plaintiffs' argument was that Lee failed to furnish the letter of authority, therefore the plaintiffs rightfully terminated the agreement and Lee had no interest in the property which he could convey to Galleria and or Joylore.

61 28. Counsel for Lee associated himself with the arguments put forward by Mr Gan for Galleria and Joylore which were as follows:

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62 i. cl 3(1) of the agreement sets out the mode of payment for the purchase price and cl 5 sets out the penalties for late and non payment of the instalments; 3(1)(a) a sum equal to 10% of the purchase price upon the execution of this Agreement receipt of which is hereby acknowledged and a further 10% of the purchase price on or before 7th April 1995; 5(1) if any of the instalments referred to in clause 3 hereof remains unpaid by the purchaser at the expiration of fourteen days from the due date, interest on any such unpaid instalment or instalments shall commence to run on the day after the expiration of such period and shall remain payable by the purchaser until: a. such time as the unpaid instalment is paid, or b. the expiration of the 21 days' notice given by the vendor pursuant to subclause 5(3) below; whichever is the earlier. 5(3) If any such unpaid instalments and interests remain unpaid for any period in excess of fourteen (14) days after its due date, the vendor shall be entitled at his option on giving to the Purchaser or their solicitors not less than twenty-one (21) days' notice in writing to treat this Agreement as having been repudiated by the Purchaser and (unless in the meanwhile such unpaid instalments and interest shall have been paid) this Agreement shall at the expiration of such notice (and in this respect time shall be of the essence) be annulled and in such an event, without prejudice to any other rights available to them at law or in equity, the Vendor shall be entitled to: a. to resell or otherwise dispose of the property.....; b. to recover from the instalments (excluding payments...) c. to forfeit and retain for his own benefit a sum equal to 20%... the plaintiffs have not complied with cl 5(3) and therefore there is no valid rescission of the agreement. The plaintiffs should have but failed to make a demand from Lee for the first 10% payment. If indeed they had demanded, the plaintiffs would have asked for double payment as Madam Tan had paid them; there is nothing to stop the plaintiffs from appropriating Madam Tan's payment to Lee's account. Lee had produced

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evidence to show he had reimbursed Madam Tan which the plaintiffs did not challenge; Lee is subrogated to Madam Tan's payment;

63 ii. the plaintiffs only asked for the letter of authority and therefore they cannot proceed under cl 5(3) to annul the contract -- if they can demonstrate there was a breach of a condition, they can sue for rescission but they did not. The plaintiffs went on a wrong premise and in not complying with the agreement, they cannot obtain the declaration they have prayed for;

64 iii. as Madam Tan was receipted for the payment, there is a sufficient memorandum under s 4 of the Statute of Frauds to constitute a contract (Mary-Ann Arrichiello v Tanglin Studio Pte Ltd < 1981 > 2 MLJ 60);

65 iv. acting on Madam Tan's instructions (which must be on the basis that she assigned her rights to Lee), K & Co prepared and forwarded the engrossed agreement to Lee's solicitor wherein, without any prompting (see exh LKH-4), the plaintiffs changed cl 3(1)(a) to show two (2) separate payments of 10% each of the purchase price whereas in the draft agreement forwarded to Madam Tan earlier, the payment in cl 3(1)(a) was stated to be 20% of the purchase price, such sum to include the booking fee (if any) paid. Clause 3(1)(a) in the agreement was a clear representation by the plaintiffs that Madam Tan had paid the first 10% of the purchase price which sum will be taken into account for Lee. This was confirmed by the fact that K & Co (when forwarding the agreement for Lee's signature) requested payment of the second 10% Instalment due under cl 3(1)(a);

66 v. K & Co asked for the letter of authority for the first time in early April 1995, two (2) weeks after forwarding the agreement to Lee's solicitors;

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67 vi. in a usual sale and purchase transaction where a subsale is involved, there is no privity of contract between the vendor and the sub-purchaser. In practice when a vendor's solicitor receives a request for a fresh agreement in favour of the sub-purchaser, the vendors' solicitor will not deal with the sub-purchaser's solicitors; it is the purchaser's solicitor who has to arrange for the fresh agreement to be given by the developer to the sub-purchaser who will in exchange thereof request for the letter of authority from the purchaser;

68 vii. the letter of authority is not stipulated in the agreement, it is a creature of convenience devised by conveyancing lawyers. Therefore Lee's failure to provide the same does not entitle the plaintiffs to rescind the agreement. If at all, they have a claim or damages for breach of a collateral contract;

69 viii. the plaintiffs should have obtained from Madam Tan whatever assurances they required including the letter of authority, before acting on her direction to enter into a contract direct with Lee. After they had complied with her instructions, the plaintiffs are discharged from their obligations to Madam Tan and the letter of authority is superfluous;

70 ix. the court can grant relief against forfeiture with regard to Galleria and Joylore even where time is of the essence in the contract (Pacific Rim Investments Pte Ltd v Lam Seng Tiong & Anor < 1995 > 3 SLR 1).

71 29. Counsel for Lee submitted that the plaintiffs are estopped by the clear wording and by their acknowledgment of payment in cl 3(1)(a) from asserting that they did not receive the first 10% payment. He pointed out that pursuant to cl 1(3) of the agreement, the plaintiffs are obliged to enter into a fresh sale and purchase agreement with Lee's sub-purchaser. He on behalf of

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Lee, had directed the plaintiffs to enter into a fresh agreement with Galleria. Because of the plaintiffs' refusal to accede to his request, Lee is liable to Galleria and Joylore for interest for late completion as completion could not/did not take place on 7 July 1995.

72 30. At the further hearing on 22 April 1996, counsel for the plaintiffs put forward the following reasons in applying for a stay of execution on my orders for specific performance:

73 a. if the plaintiffs were to institute fresh proceedings based on illegality of the agreement for contravention of the Residential Property Act Cap 274 (the Act) and succeed, they would be faced with two (2) conflicting orders from courts of co-ordinate jurisdiction, one for specific performance and the other that the agreement was null and void;

74 b. the profit sharing arrangement between Lee and Seky suggested by counsel for Galleria and Joylore would still offend the provisions of the Act which state in unequivocal terms that no foreigner can purchase landed property without prior approval from the Controller -- the agreement would still be illegal and void. Besides the cheque payments, another matter which calls for further inquiry is the power of attorney from Lee to Seky allowing the latter to deal with residential property;

75 c. the court had disallowed the plaintiffs from filing further affidavits to adduce evidence of illegality.

76 31. Mr Hwang on behalf of all the defendants opposed the plaintiffs' application for a stay. He pointed out that having dismissed the second application, the court went on to deal with the OS on which the plaintiffs failed,

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did not request for further arguments and, had filed a notice of appeal. That being the case the interlocutory matters were subsumed in the judgment and are no longer live issues. The court is therefore functus officio save for any problems concerning implementation of the various orders made.

77 31A. Mr Hwang further pointed out that the course of action the plaintiffs intended to take vis a vis the issue of illegality was incompatible with the court's decision on the OS -- the court is unlikely to be sympathetic to a litigant who says he is entitled to reliefs based on a valid contract and at the same time try to run a parallel argument that the contract is null and void. What the plaintiffs could have done on 19 March 1996 but did not was, to apply to discontinue the OS and then start proceedings afresh based on illegality. As it is, the plaintiffs need not be concerned with the possibility of conflicting decisions from two courts of competent jurisdiction as, on the issue of illegality, they must frame their relief with reference to the agreement then subsisting and presumably ask for a declaration that the fresh agreement to be issued on Lee's direction to Galleria/Joylore is tainted with illegality. The plaintiffs have not applied for a stay of execution on the dismissal of their OS.

78 31B. Mr Hwang pointed out that the plaintiffs sought to argue the point of illegality based on the fact that certain cheques issued to them were signed by an Indonesian; there could be one or more explanations for those payments -- the Indonesian could be repaying Lee's loan. A profit sharing arrangement by contract could be another possibility and it is perfectly legal without the foreigner intending to take any interest in land. It was wrong of counsel for the plaintiffs to equate such an arrangement with a trust arrangement which would be void under the Act.

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79 31C I shall not dwell on the response of counsel for the plaintiffs to the defendants' arguments as I refused the former's application for a stay, for reasons which I shall set out below.

80 The decision 32. I shall first give my reasons for refusing to grant the plaintiffs the declarations prayed for in the OS. It bears repeating that the crux of the plaintiffs' case (that they were entitled to rescind the agreement) was, that Lee omitted to give the letter of authority from Madam Tan. That requirement however does not appear anywhere in the agreement, nor was it a condition precedent imposed by the plaintiffs' then solicitors K & Co for the issuance of a fresh agreement. As was pointed out by Mr Gan for Galleria and Joylore, the first inkling that the plaintiffs required the letter of authority came in K & Co's letter of 3 April 1995 after they had already forwarded the agreement for Lee's signature on 24 March 1995 (see exh LKH 5).

81 33. By the plaintiffs' own admission they were prepared to accept Madam Tan's request to bypass her altogether and enter into the agreement directly with Lee. Indeed I believe they acted on her oral instructions as no written instructions from Madam Tan have been exhibited in any of the affidavits. What then is the position? However one looks at it, there must at law have been an assignment of Madam Tan's rights to Lee at a point in time when Madam Tan only had a receipt from the plaintiffs to evidence the payment but which is sufficient to constitute a memorandum under the Statute of Frauds (Mary-Ann Arrichiello v Tanglin Studio Pte Ltd < supra >). If indeed the letter of authority was as crucial as the plaintiffs contended, one would have thought it would only have been prudence on their part to have requested the same from Madam Tan before they acted on her verbal instructions bearing in mind that there is no privity of contract between themselves and her sub-purchaser before they signed the agreement with Lee. In any event Lee had furnished evidence

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that he had reimbursed Madam Tan and she had acknowledged, the payment (see exh LKH 7); the plaintiffs would have been paid twice over if they were to be paid again by Lee the first 10% instalment due under cl 3(1)(a) of the agreement. There would be an equitable subrogation by Lee to Madam Tan's payment once he had reimbursed her; otherwise the plaintiffs would be unjustly enriched at Lee's expense (see Goff & Jones' Law of Restitution 4 ed at pp 594 and 601.

82 34. Further, by the words receipt whereof is hereby acknowledged in cl 3(1)(a), the plaintiffs made a clear representation to Lee that they had received the first 10% instalment and in reliance thereof, Lee reimbursed Madam Tan $230,000 -- his cheque to Madam Tan was issued on 7 April 1995 the same day that his solicitors returned the duly executed agreement to the plaintiffs' solicitors. Lee is entitled to raise the defence of estoppel to the plaintiffs' claim for $230,000 set out under prayer 1(c) of the OS.

83 35. Clause 1(3) of the agreement states: In the event of a subsale by the Purchaser, the Purchaser shall be entitled to authorise and direct the Vendor to enter into a fresh Sale and Purchase Agreement with any person/persons, firm and or corporations who is either a Singapore Citizen or has obtained the approval of the Land Dealings (Approval) Unit of the Ministry of Law to purchase the property and with whom the Purchaser has contracted to sell the property subject to the payment of reasonable administrative fees to the Vendor and their solicitors.

84 Clearly (as Lee's counsel submitted), unlike the letter of authority, Lee was contractually entitled to the issuance of a fresh agreement in favour of his sub-purchaser and the plaintiffs would be and are in breach of the agreement for

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their refusal to issue a fresh agreement to Galleria, who was/is Joylore's nominee.

85 36. As Lee was not in arrears on the payments, the plaintiffs were not entitled to give Lee a notice to complete on 24 July 1995 relying on cl 5(3) of the agreement -- there was no unpaid instalment and or interest which remained unpaid let alone in excess of fourteen (14) days, as stipulated under that clause. Accordingly the plaintiffs' notice to complete is invalid.

86 37. I shall now give the reasons why I refused the plaintiffs' application for a stay on my orders for specific performance which refusal is the subject of a separate appeal filed by the plaintiffs.

87 38. The OS was premised on the agreement being valid but that the plaintiffs were entitled to rescind the same due to Lee's breach. In applying for a stay, counsel for the plaintiffs explained it was because his clients intended to file a fresh application praying for declaratory reliefs to the effect that the agreement was tainted by illegality, an argument which was diametrically opposite to those advanced for the OS. It seemed to me that the plaintiffs wanted to have two bites of the same cherry, granting their request could result in the scenario their counsel painted -- my decision was premised on the agreement being valid but another court may hold that the agreement was tainted by illegality for breach of the Act, if the plaintiffs succeed in their fresh contention that Seky (presumably a non citizen) was the actual purchaser and Lee was merely his nominee. The plaintiffs should not be allowed to blow hot and cold at one and the same time to suit their convenience. In this regard I accept the arguments put forward by counsel for Galleria and Joylore, that there could be any number of reasons why Seky paid the sums on Lee's behalf to Madam Tan and the plaintiffs; it is noted that on the same day he executed the agreement,

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Lee divested himself of his beneficial interest in the property by his sub-sale to Joylore.

88 39. It bears mentioning that there was another sub-purchaser involved in this transaction and the rights of Galleria and Joylore, who are innocent third parties, must be taken into account. It would be a grave injustice to these innocent purchasers for value without notice, if the agreement was rescinded, as their rights hinged upon the validity of the agreement.

89 40. I also took into account that even if Lee was in breach of what at best is only a collateral contract (to provide the letter of authority in exchange for the fresh agreement), a court still has the discretion to grant relief against forfeiture (Pacific Rim Investments Pte Ltd v Lam Seng Tiong < 1995 > 3 SLR 1).

90 41. For all the foregoing reasons, I dismissed both applications of the plaintiffs.

91 Lai Siu Chiu
Judge

Lai Siu Chiu J

Wong Tze Roy (Martin & Partners) for the plaintiffs
Khush Chopra (Khush Chopra) for the first defendant

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