IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 297

Originating Summons

Between

Fong Tat Motor Co Pte Ltd

… Plaintiff

And

Chang Seow Song

… Defendant

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Fong Tat Motor Co Pte Ltd v Chang Seow Song

[1996] SGHC 297

Originating Summons
Goh Joon Seng J
31 December 1996

Judgment:

GROUNDS OF JUDGMENT

The facts 1. The defendant is the owner of that parcel of land being Lot 246-1 Town Sub-division 18 with the building thereon known as 72/A and 74/A, Rangoon Road, Singapore < 'the property' > . The area of the property is 353.9 sq m.

2. On 18 April 1996, in consideration of the option fee of $43,000, the defendant granted an option < 'the option' > to one Wong Lee Ying and or her nominee to purchase the property at the price of $4,300,000.

3. The material clauses of the option were clauses 3, 4, 7, 10 and 14. They read:

OPTION TO PURCHASE Clause 3

The property is sold subject to the Grant of Written Permission. < The grant was dated 26 September 1995. >

Clause 4

The sale is subject to the Singapore Law Society's Conditions of Sale 1994, so far as they are applicable to a sale by treaty and and are not varied by or inconsistent with the terms and conditions herein.

Clause 7

The purchase shall be completed at the office of the Vendor's solicitors within twelve (12) weeks from the date of acceptance and exercise of this Option (the completion date).

Clause 10

The sale and purchase is subject to the Purchaser's solicitors receiving satisfactory replies to their legal requisitions and applications for Interpretation Plans to the various Government Departments and Land Transport Authority (MRTC) insofar as such replies/Interpretation Plans relate to the Property and if any of such replies and/or Interpretation Plans are found to be unsatisfactory then this Option may be rescinded at the Purchaser's option and in such event the Vendor shall forthwith refund to the Purchaser all monies paid by the Purchaser to the Vendor or to the Vendor's solicitors but without any interest compensation or deduction whatsoever and thereupon neither party shall then have any claim or demand against the other for costs damages compensation or otherwise. PROVIDED ALWAYS that:

a) the answers from the Property Tax Department, Environmental Health, Sewerage Department, Land Transport Authority (Street Works), Planning Department and Building Control Division shall not be deemed unsatisfactory

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unless the same disclose that the Property is affected by any notice or order which has not been complied with and which is incapable of being complied with by the Purchaser before completion;

b) any Category 5 road proposals or lines (whether actual or proposed) affecting the Property shall not be construed as unsatisfactory;

c) any backlane or line of road reserve or proposal or scheme which will only be implemented if there is a development/redevelopment of the Property will not be considered unsatisfactory;

d) any reply not received by the Purchaser's solicitors by the completion date shall be deemed satisfactory; and

e) any reply from the Chief Planner or the Land Transport Authority (MTRC) < sic > indicating that the Property is affected by any MRT proposal scheme or safeguarded zone shall be deemed unsatisfactory.

Clause 14 The Option Money of SINGAPORE DOLLARS FORTY-THREE THOUSAND ONLY (S$43,000.00) shall be treated as part payment towards the 10% deposit of the purchase price which shall be paid upon the exercising of this Option as aforesaid.

4. By letter of authority dated 2 May 1996, Wong Lee Ying authorised and directed to defendant to convey all his right title and interest in the property to the plaintiff and to credit the option fee to the account of the plaintiff.

5. On the same day, the plaintiff as the nominee under the option exercised the same in the manner stipulated in the option, that is, by returning the acceptance copy thereof to the defendant's solicitors together with a cheque for $387,000

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being balance of the 10% deposit payable upon exercise of the option to be held by the defendant's solicitors as stakeholders pending completion.

6. Pursuant to clause 7 of the option, 25 July 1996 became the completion date.

7. On or about 9 May 1996, the plaintiff's solicitors sent out the usual requisitions to the relevant authorities. It is not contended by the plaintiff that the replies to these requisitions were not satisfactory.

8. On 23 July 1996, two days before the completion date, the plaintiff's solicitors applied to the Land Transport Authority for a copy of the Road Interpretation Plan < 'RIP' > that would show if the property was or would be affected by any road schemes and if it was the extent to which it was or would be affected. The application was accompanied by a copy of the General Interpretation Plan < 'GIP' > which was to be returned by the Land Transport Authority as the RIP with the road lines plotted if there was or would be any road scheme affecting the property.

9. On 23 July 1996, the Land Transport Authority replied stating: The Road Interpretation Plan for the above site is not available.

The GIP submitted was returned unplotted. On the same day, plaintiff's solicitors were also informed orally by an officer of the Land Transport Authority that the Master Plan for the Rangoon Road area was under review by the Chief Planner and that parts of the Rangoon Road area might possibly be acquired for road widening. The plaintiff's solicitors were further informed that the RIP would only be available in about 3 - 4 months therefrom. This would be well past the completion date.

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10. On 24 July 1996, the solicitors for the plaintiff wrote to the defendant's solicitors stating that in the circumstances the plaintiff was entitled under clause 10 of the option to rescind the sale and purchase. But as the plaintiff still desired to purchase the property they suggested without prejudice to the position of the plaintiff that the parties hold the matter in abeyance for four months or until the RIP was available whichever would be the earlier. This suggestion was rejected by the defendant. The plaintiff thereupon, by notice of the same date, rescinded the sale and purchase and demanded the refund of the 10% deposit. The demand was not complied with.

11. On 16 August 1996, the plaintiff commenced these proceedings for, inter alia, a declaration that the plaintiff was entitled to rescind and had effectively by its said notice of 24 July 1996 rescinded the sale and purchase, an order for the refund of the deposit and costs.

12. On 20 August 1996, the defendant's solicitors served a notice under condition 29 of the Singapore Law Society's Conditions of Sale 1994 to complete the sale and purchase within 21 days therefrom, thereby making time of completion the essence of the contract. The notice was not complied with.

13. The matter then came before me for hearing. I gave judgment in terms of the plaintiff's claim. The defendant has appealed to the Court of Appeal. I now give my reasons.

The plaintiff's case 14. Substantially, it was the plaintiff's case that the reply from the Land Transport Authority of 23 July 1996 stating that the RIP was not available was not a satisfactory reply to its requisitions and or its application for the RIP. Therefore it was entitled to rescind the sale and purchase under clause 10 of the option and it had done so by its notice of 24 July 1996.

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The defendant's case 15. The defendant's defence was principally that the sale was 'subject to the Grant of Written Permission' for the erection of a 4-storey building. A copy of the Grant with the location plan had been annexed to the option. The area required to be surrendered for road widening upon completion of the development was delineated in the location plan and by clause 10 proviso c such a requirement could not be considered unsatisfactory. Furthermore, the words 'not available' in the reply of the Land Transport Authority did not render the reply 'unsatisfactory'. The plaintiff was therefore not entitled to rescind the sale and purchase. As such, its purported rescission constituted wrongful repudiation. Accordingly, the defendant was entitled to forfeit the 10% deposit.

My decision 16. The request for the RIP was a requisition to the competent authority and any reply be it in the RIP or by letter was a reply to the plaintiff's requisitions. See Chu Yik Man v S Rajagopal & Co & Anor < 1987 > 2 MLJ 557 at 558 where Chan Sek Keong JC (as he then was) stated:

A request for a Road Interpretation Plan whether or not made pursuant to the standard form of requisition is as much a requisition as Form DC9 (DO)-5 and any reply from the competent authorities, whether contained in the said plan or by separate correspondence, is a reply to a requisition.

The reply in the Land Transport Authority's letter of 23 July 1996 was therefore a 'reply' to the plaintiff's requisition or application for the RIP.

17. The plaintiff did subsequently on or about 6 November 1996 obtain the RIP. The road lines plotted therein affected an area of 69.89 sq m of the property. Although they were similar or close to the road lines shown in the location plan attached to the option, it must be borne in mind that the Written Permission was dated 26 September 1995. The Written Permission could have been or could be

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overtaken by subsequent changes to the Master Plan. The reply stating that the RIP was not available would suggest that there were or could be such changes notwithstanding the subsisting Written Permission. Whether such a reply was a satisfactory reply should be determined according to the objective test of a 'reasonably determined purchaser' applied by Lai Kew Chai J in Peh Kwee Yong v Sinar Co (Pte) Ltd < 1984 > 2 MLJ 260 at 262 where the learned judge said:

In my view, only those answers to requisitions which are unsatisfactory to a reasonably determined purchaser could entitle such a purchaser to call off the agreement. And whether a particular answer is unsatisfactory to a reasonably determined purchaser within the meaning of the clause is, in each case, a question of fact.

As the extent and how such possible changes to the Master Plan could affect the Written Permission and the property were not known at the material time, the RIP being unavailable, it was my view that to a reasonably determined purchaser such a reply was not a satisfactory reply to the plaintiff's requisition or application for the RIP. The plaintiff was therefore entitled to rescind the sale and purchase. Accordingly, I granted the orders applied for.

GOH JOON SENG

< JUDGE >

Goh Joon Seng J

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Wong Chee Keong for the plaintiffs
James Wan Hui Hong for the defendant

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