IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 54

OS 1005/1995

Between

Alivestone Investment Pte Ltd

… Plaintiff

And

Splendore Investments Pte Ltd

… Defendant

GROUNDS OF DECISION

Land — Sale of land; Words and Phrases

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

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Alivestone Investment Pte Ltd v Splendore Investments Pte Ltd

[1996] SGHC 54

OS 1005/1995
Judith Prakash J
28 March 1996

1 ***Introduction***

2 In this originating summons, the plaintiffs who were the purchasers of immovable property from the defendants (the vendors) claimed that the vendors were liable to pay them either:

> (a) interest for late completion of the sale of the property at the rate of 10% pa pursuant to condition 8(b) of the Law Society`s Conditions of Sale 1981 for the period 10 August 1993 to 29 September 1995; or
>
> (b) interest at such rate as the court deemed proper on the sum of $460,000 wrongfully forfeited by the vendors, for the period from 10 August 1993 to 29 September 1995 or such other date as the court deemed proper.

3 The vendors owned certain properties at Liang Seah Street, Singapore (the properties). In April 1993, the vendors granted an option to purchase these properties at a price of $4.6m to one Mr Chua Boon Kwang and/or his nominee on the terms and conditions stated in the option. The plaintiffs (the purchasers) exercised the option as purchaser on 17 May 1993 and paid the vendors a sum of $414,000 being the balance of the 10% deposit (Mr Chua having paid

$46,000 at the time the option was granted). A contract for sale therefore came into existence and, in accordance with the terms of the option, completion of the sale and purchase was to take place on 10 August 1993. The Law Society`s Conditions of Sale 1981 were imported into the contract by cl 9 of the option.

4 Clause 4(A) of the option provided that the sale was subject to the vendors obtaining the consent in writing of the Tenants Compensation Board (TCB) under s 4(10) of the Controlled Premises (Special Provisions) Act (Cap 60) (the Act) to sell the properties. By sub-cl (ii) it was provided that to enable the vendors to obtain such consent, the purchasers had to satisfy the TCB that they had a fund of $800,000 to carry out the approved development of the properties.

5 The sale was not completed on 10 August 1993. On the next day, the vendors` solicitors wrote to the purchasers` solicitors claiming that the purchasers were in breach of cl 4(A)(ii) of the option in a manner which indicated that they wished to repudiate the contract and that therefore the vendors were entitled to forfeit the 10% deposit paid. Thereafter each party took out an originating summons. The proceedings were heard together and in August 1994, the High Court decided that the vendors had been discharged from further performance of the contract and that they were entitled to retain the deposit. The purchasers appealed. In April 1995, the Court of Appeal reversed the decision of the High Court and held that the purchasers were not in breach of the contract and that the vendors had to complete the sale. The vendors were ordered to apply forthwith to the TCB for approval of the sale of the properties and an extension of the time granted for the development of the properties.

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6 The vendors complied with the order of the Court of Appeal and completion of the sale and purchase of the properties took place on 29 September 1995. In October 1995, the purchasers took out this summons.

7 ***Condition 8(b) of the Law Society`s Conditions of Sale 1981***

8 The first claim which the purchasers made was based on this condition, a form of liquidated damages clause. The vendors` stand was that the condition did not apply in the circumstances of the case and that the purchasers were not entitled to claim interest at the rate of 10% pa as provided in the condition. Condition 8 in so far as it is relevant reads:

> *If the sale shall not have been completed on or before the date fixed for completion, then:*
>
> *(a) If the delay in completion is attributable solely to the default of the purchaser, he shall pay interest on the amount of the purchase price (less the deposit and any sum paid to account) at the rate of 10% pa from and including the date fixed for completion until the date of actual completion of the sale.*
>
> (b) 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% pa on the purchase price of the property from and including the date fixed for completion until the date of actual completion: ...

9 It can be seen from the above that where one party to a contract for the sale and purchase of land uses this condition as a basis for claiming interest from the other on account of a delay in completion of the sale, the claimant must satisfy two conditions. First, he must show that such delay arosefrom the default of the other party and secondly, that such default is the sole reason for the delay.

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10 What constitutes `default` in this context? Parker J in ***Re Bayley-Worthington and Cohen`s Contract*** [1909] 1 Ch 648 considered the meaning of `default` in the course of his judgment. He said at (p 656):

> *... Default must, I think, involve either not doing what you ought or doing what you ought not, having regard to your relations with the other parties concerned in the transaction; in other words, it involves the breach of some duty you owe to another or others. It refers to personal conduct and is not the same thing as breach of contract.*

11 So, in contracts for the sale of real estate providing for completion at a certain date, and containing provisions as to what is to happen if completion be delayed beyond that date by or without the default, or wilful default, of either party, the conduct of that party has to be considered; and if he has been guilty of no breach of duty he will not, I think, be in default within the meaning of the contract. Of course the duties of each party towards the other must be determined by all the circumstances, including the nature of the contract and its provisions; and in determining these duties the complexities of the English law of real property must be borne in mind.

12 The above definition of `default` has been accepted in Singapore as applying to the construction of that word in condition 8. See ***See Bee Hoon v Quah Poe Hoe*** [1989] 3 MLJ 65 and ***Toh Teck Sun v Mandarin Gardens Pte Ltd*** [1988] 2 MLJ 276 .

13 To decide whether the vendors were in default, I therefore had to determine whether there was something which they did not do which they ought to have done or whether they did something which they should not have done. This question had to be determined in relation to the obligations which the vendors owed the purchasers under the contract of sale and it involved a detailed

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scrutiny of what each party had actually done in relation to the TCB approval after that contract came into existence.

14 ***Events from 17 May 1993 to 10 August 1993***

15 It would be recalled that the sale was subject to the vendors obtaining the TCB`s written consent to it. To enable the vendors to obtain such consent, the purchasers agreed, inter alia, to commence development of the property in accordance with certain approved plans within six months of 10 December 1992 and to satisfy the TCB that they had a fund of $800,000 for the purpose of this development. Bearing in mind the agreed completion date of 10 August 1993, the parties had 86 days (including Sundays and public holidays) from 17 May 1993 to do what each of them was contractually bound to do in order to obtain the TCB consent and complete the sale by that date.

16 On 7 June 1993, the vendors` solicitors wrote to the purchasers` solicitors requesting that, in order for their clients to apply to the TCB for the necessary consent, the purchasers furnish them with their mortgagees` letter of confirmation that the sum of $800,000 was ready and available to enable the purchasers to carry out the approved development. Two reminders, on 24 June and 28 June respectively, were sent out before the purchasers` solicitors replied on 29 June 1993. Their response was that they wanted evidence that it was necessary to satisfy the TCB that the purchasers had $800,000 and that upon receipt of such evidence, they would advise their clients to produce their financiers` letter of confirmation. On 5 July 1993, the vendors` solicitors explained that the vendors had only been able to obtain an order under s 4 of the Act allowing them to recover the properties from the statutory tenants who occupied them by giving an undertaking to the TCB that they would develop the properties in accordance with the approved plan and by furnishing

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documentary evidence that they had the means to do so. As a matter of principle, the TCB required a similar undertaking and similar evidence to be given by the purchasers before it would consent to the sale.

17 After further correspondence, on 14 July 1993, the purchasers` solicitors forwarded to the vendors` solicitors a copy of a letter dated 12 July 1993 from Singapore Finance Ltd (SFL) to the purchasers. In this letter, SFL offered the purchasers a revolving loan of $800,000. The letter stated that the loan was to be used for working capital and that it would only be available after the purchase price for the properties had been paid. The vendors thought that this was insufficient evidence for the TCB and the next day, the vendors` solicitors requested that the SFL letter be amended to clarify that the $800,000 loan was to be used by the purchasers for the intended development of the properties. SFL issued an amended offer letter to the purchasers on 19 July 1993 in which they stated that the purpose of the loan was for use in the proposed development works pertaining to the properties.

18 On 21 July 1993, the purchasers` solicitors forwarded the amended SFL letter to the vendors` solicitors. At the same time, however, they informed the latter that the purchasers had sold the properties to a related company (M/s Eng Neo Development Pte Ltd) and that the sale would be by way of a tripartite conveyance and that on completion, the sub-purchasers would give the vendors a similar letter of offer from their own mortgagees in respect of the development costs.

19 The vendors took the view that the purchasers had put them in a predicament by sub-selling the property and requiring a tripartite conveyance on completion. Their reasons were first, that because the purchasers would be sub-selling instead of purchasing the property, the vendors could not apply to

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the TCB for the requisite consent on the basis that the purchasers would be carrying out the development of the properties. Secondly, because they had contracted to sub-sell the properties to a third party, the purchasers could no longer give the TCB the necessary undertaking to develop them. Thirdly, the sub-sale required the TCB`s approval in the same manner as the original sale. Therefore, unless the TCB consented to the sub-sale before 10 August 1993, the intended tripartite conveyance could not be effected that day. On 26 July 1993, the vendors` solicitors informed the purchasers` solicitors of the problems that had arisen from the sub-sale.

20 The purchasers obviously then had second thoughts about the wisdom of their proposed course of action. They decided not to proceed with the sub-sale and to purchase the properties themselves on completion. On the evening of 4 August 1993, their solicitors informed the vendors` solicitors of their change of mind and, in the same letter, stated that the purchasers had changed their financiers. Enclosed with that letter was a letter dated 4 August 1993 addressed to the TCB from the Overseas Union Trust Ltd (OUT). OUT`s letter referred to the properties and confirmed that a total loan of $4m was available to the purchasers for the properties.

21 The vendors took the view that the OUT letter did not specify the purpose of the loan and was not, therefore, clear evidence of the purchasers` financial ability to carry on the intended development. The next day, 5 August, their lawyers wrote asking for a clearer letter. On 6 August, the purchasers` solicitors took the position that the OUT letter was sufficient and asked the vendors to proceed with the application to the TCB without further delay. By a reply of the same day, the vendors` solicitors reiterated their reasons for requiring another letter. Their position was that the OUT letter showed that a total loan of $4m was available to the purchasers when the total cost of

purchasing and developing the properties amounted to $5.4m. Accordingly, they thought that unless the loan of $4m was specifically stated to be meant only for the development costs, the OUT letter did not constitute the evidence which the vendors required to proceed with the application.

22 The purchasers did not respond to that letter of 6 August 1993. The sale was not completed on 10 August 1993 and a day later, the vendors took the position that the purchasers had committed a breach of the contract. Accordingly, by their letter of the same day, the vendors` solicitors, on behalf of the vendors, rescinded the contract.

23 ***The Court of Appeal`s decision***

24 The Court of Appeal in the litigation arising out of that rescission (reported in [1995] 2 SLR 214) decided that no breach of the contract had been committed by the purchasers and that the rescission was wrongful. It further held that the vendors had been in breach of their obligation under cl 4A(ii) of the option as they had failed to apply to the TCB for its consent to the sale. The court`s ruling was that under cl 4A(ii) of the option, satisfactory evidence of the funds mentioned was necessary for the purpose of an application to the board for its consent. Following from this, whilst it was the primary obligation of the vendors to apply to the board for such consent, there was a concomitant obligation on the purchasers to furnish the vendors with some evidence of their financial ability to carry out the approved development of the properties in order to support the vendors` application to the board. The court further held, however, that under the clause whether the evidence of the purchasers` financial ability to carry out the approved development of the properties was satisfactory was to be determined by the TCB and by the TCB alone because it was the TCB who had to be satisfied that the purchasers had

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the necessary funds. This was not a matter for the vendors to judge. In the court`s view, the two letters from SFL clearly stated that a loan of $800,000 was available to the purchasers for the approved development of the properties and the failure of the vendors to thereafter apply to the TCB for its consent to the sale was a clear breach by the vendors of their primary obligation under cl 4A(ii) of the option, the purchasers having discharged their concomitant obligation thereunder to furnish the necessary evidence to enable the vendors to make the application.

25 In relation to the OUT letter, Karthigesu JA who delivered the judgment of the court stated (at p 223):

> *Not deterred by the objections the vendors had taken on the two letters of Singapore Finance Ltd referred to above, the purchasers, having changed their financiers, forwarded to the vendors` solicitors on 4 August 1993 a letter from Overseas Union Trust Ltd addressed to the Board and dated 4 August 1993 which read - `We are pleased to confirm that a total loan of S$4m is available to Alivestone Investment Pte Ltd (the purchasers) for the above captioned properties (ie the properties).` The vendors, again on their own, determined that the letter was unsatisfactory because it did not `specify the purpose of the loan`. We repeat what we have said earlier, that it is not for the vendors but for the Board to determine the satisfactoriness of the letter. Accordingly, by again not making the application to the Board supported by this letter the vendors are in breach of cl 4A(ii) of the option agreement. If the Board so required it, it would have been up to the Board to prescribe how much of the loan is to be set aside and earmarked specifically for the approved development of the properties. The vendors have no right to reject the letter as being unsatisfactory.*

26 Thus, in our judgment, it is the vendors who are in breach of cl 4A(ii) of the option agreement and not the purchasers. Hence, the vendors` contention that the purchasers are in breach of cl 4A(ii) of the option agreement and that such breach is repudiatory in nature which the vendors accept, thus discharging themselves from further performance of the option agreement and entitling them

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to retain the deposit (ie $460,000) to their own use and benefit is wholly erroneous.

27 The finding of the Court of Appeal that the vendors should have applied for the TCB consent either after receipt of the two SFL letters or after receipt of the OUT letter and that by failing to do so they were in breach of the obligation imposed on them by cl 4A(ii) of the option is binding on me. There were, however, three distinct breaches involved and whilst each of these was capable of constituting a `default` within condition 8, whether in fact it was a default to which the delay in completion was attributable required further examination.

28 ***What was the cause of the delay?***

29 Before me, the vendors did not seriously argue that they were not guilty of default. Their main contention was that their default was not the sole cause of the delay in the completion. They pointed out that the actual period which it took to obtain the TCB`s approval after steps to obtain this were put in motion in July 1995, was 37 days. They therefore argued that even if they had applied for consent at the time when the OUT letter was given to them on 5 August 1993, such consent would not have been forthcoming on or before 10 August 1993 and, in any event, completion would have been delayed. The vendors also contended that the purchasers had failed to act reasonably in relation to the application and that their unreasonableness had contributed to the delay so that it was not solely attributable to the vendors` default.

30 The purchasers` position was straight forward. They submitted that completion depended on TCB`s consent and that consent in turn depended on an application for it being made by the vendors. Because the vendors failed to make the application it was impossible to obtain the consent on or before 10

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August 1993 and therefore also impossible to complete on 10 August 1993. They contended that the delay in completion between the originally scheduled date and the actual completion date in September 1993 was solely due to the vendors` failure to put in the necessary application.

31 I could not agree with the purchasers` submission. The Court of Appeal decided that two obligations arose under cl 4A(ii) of the option. One was an obligation on the part of the vendors: to make the application. As the Court of Appeal pointed out, however, such an application would have failed in limine if it had not been supported by some evidence on which the TCB could have come to a conclusion on the purchasers` financial ability to carry out the development. Thus, the second obligation under the clause arose. That was an obligation on the part of the purchasers to supply some evidence for the TCB`s consideration.

32 It would be noticed from the recital of events given above that the purchasers were somewhat dilatory about fulfilling their obligation to furnish the evidence in support of the application. Although asked to do so as early as 7 June 1993, they only forwarded SFL`s first letter to the vendors` solicitors on 14 July 1993. Whilst, as the Court of Appeal found, the vendors were obliged to make the application on receipt of this first letter, it was my view that their failure to make the application on 14 July 1993 or soon thereafter could not be regarded as a default which led to the delay in completion. This is because when the vendors` solicitors pointed out that the SFL letter was not clear, the purchasers accepted this point and arranged for the second letter to be issued. They, therefore, waived any default which took place on 14 July 1993.

33 The failure of the vendors to make the application upon receipt of the second SFL letter on 14 July 1993 again, in my view, was not a default on which

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the purchasers could rely for the purposes of condition 8. This was because although there was evidence to support an application by the vendors, the purchasers by their sudden decision to sub-sell the properties and their requirement that the sub-sale be completed on 10 August 1993 together with the original sale had changed the basis on which the application was to be made. If the vendors had proceeded with the application with the only document which they had which was the second SFL letter, they may have been able to get TCB`s consent to the sale but there would have been no basis on which to get TCB`s consent to the sub-sale and therefore, no way of executing a tripartite conveyance on 10 August 1993. The purchasers, in my view, acted unreasonably in changing the nature of the transaction at such a late stage and therefore could not complain of the fact that instead of proceeding with the application for approval of the original sale, the vendors wrote to them to point out the difficulties of the position. Further, by subsequently dropping the sub-sale and producing a different letter in support of their financial position, I think that the purchasers waived reliance on the default, if any, constituted by the vendors` failure to apply immediately on receipt of the second SFL letter.

34 On the afternoon of 4 August, the vendors` solicitors received the OUT letter and confirmation that the purchasers were not proceeding with the sub-sale nor requiring a tripartite conveyance. They had no further excuse not to apply immediately for TCB`s approval and their failure to make such application on 5 August 1993, the next working day, was a default on their part. In my judgment, however, this default was not the sole cause of the delay. 5 August 1993 was a Wednesday and 8 August 1993 and 9 August 1993 were public holidays in Singapore, being a Sunday and National Day respectively. Thus, the vendors had only three working days in which to apply for and obtain the TCB consent prior to the completion date. When the actual application

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process was initiated again in July 1995, it took 37 days for the TCB`s approval to be issued from the date the whole process started, although the actual time which elapsed between filing of the application and the granting of the approval was 21 days. This was because various formalities had to be completed and also the TCB had to meet to consider the application. Even using the shorter time frame of 21 days as a guide, it appeared to me to be highly unlikely if not impossible that an application made by the vendors on 5 August 1993 would have been approved by the TCB in time to allow completion on 10 August 1993. Accordingly, I was unable to agree with the purchasers that the failure to complete the transaction resulted solely from the vendors` default. The purchasers by their actions and dilatoriness contributed to the inability to complete on schedule. I therefore dismissed the purchasers` application for interest under condition 8(b).

35 ***Interest on the deposit***

36 The purchasers contended that on 11 August 1993 when they purported to rescind the contract, the vendors forfeited the deposit of $460,000 and, having done so wrongfully, deprived the purchasers of this money and should have to pay them interest on it. I was not able to accept this argument. A claim for interest such as this was a claim for damages for loss caused by the wrongful withholding of money. In this particular case, the purchasers did not want their deposit back. If they had accepted the vendors` action as a repudiation of the contract and had sued the vendors for damages and the return of the deposit, they would have been entitled to interest on the deposit from the date of payment to the date of refund. But this was not what they wanted. What they wanted was completion of the purchase. If they wanted to complete the purchase, they would have to abide by the terms of the contract and one of these terms was cl 2 of the option which provided that the deposit was to be held by the vendors` solicitors

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as stakeholders until completion. The purchasers knew that they could not both complete the contract and in the meantime have the use of the deposit money. That being the case, they could not contend that they suffered loss merely from the withholding of the deposit. The loss that they suffered, if any, would have arisen from the delayed completion of the purchase and would have to be claimed and proved by them in a proper fashion. That loss could not be equated to loss of interest on a sum of money which once they had placed it in the hands of the vendors` solicitors they could not have expected to see again since what they wanted were the properties in exchange for that deposit and the balance of the purchase price. I saw no merit in the claim for interest on the deposit and dismissed it.

37 ***Claim dismissed.***

Judith Prakash J

Mohan Pillay and Tay Peng Cheng (Wong Partnership) for the plaintiffs
Jimmy Yap (Donaldson & Burkinshaw) for the defendants

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