IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1997] SGCA 31

CA 187/1996

Between

Chang Seow Song

… *Appellant*

And

Fong Tat Motor Co Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Land — Conveyance

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

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Chang Seow Song v Fong Tat Motor Co Pte Ltd

[1997] SGCA 31

CA 187/1996
Karthigesu JA; L P Thean JA; Yong Pung How CJ
04 August 1997

1 (delivering the judgment of the court)

2 This appeal raises once again the question of `satisfactory replies` to requisitions related to road interpretation plans in connection with a contract for the sale and purchase of immovable property.

3 The facts which give rise to this question gathered from the affidavits filed by the parties in the originating summons in question are these. We will refer to the appellant as `the vendor` and to the respondent as `the purchaser`: (i). On 18 April 1996 the vendor granted an option to one Mdm Wong Lee Ying for the purchase of his freehold land and premises known as 72A and 74A Rangoon Road, Singapore, comprising an area of 353.9 sq m situated on Lot 246-1 of Town Subdivision 18 (the property) for $4,300,000, subject to existing tenancies and subject to the grant of written permission (the written permission). We will refer to the written permission in some detail later.

4 (ii). The option was exercisable by written acceptance and the payment of $387,000 or before 2 May 1996 which together with the option money of $43,000 already paid would amount to 10% of the purchase price. However,

Mdm Wong did not exercise the option but on 2 May 1996 assigned it (as well as the benefit of the option money) to the purchaser who duly exercised it and paid the $387,000.

5 (iii). The terms of the option incorporated the Singapore Law Society`s Conditions of Sale 1994 and further provided that the purchase would be completed at the vendor`s solicitors` office 12 weeks from the date of acceptance and exercise of the option. Hence the completion date was 25 July 1996.

6 (iv). On or about 9 May 1996 the purchaser`s solicitors sent out the usual requisitions to the relevant authorities. The purchaser does not contend that the replies to these requisitions are unsatisfactory. It is to be noted, however, that the purchaser did not then apply to the Land Transport Authority for a copy of the road interpretation plan.

7 (v). It was only on 23 July 1996, just two days before the scheduled date of completion on 25 July 1996, that the purchaser`s solicitors applied to the Land Transport Authority for the road line affecting the property to be plotted on the General Interpretation Plan, which was submitted together with the application. On the same day, that is on 23 July 1996, the Land Transport Authority returned the General Interpretation Plan to the purchaser`s solicitors with a road line unplotted and with the remarks, `The road interpretation plan for the above site is not available`.

8 (vi). It is pertinent to note and it is not denied by the purchaser that the written permission approved the redevelopment of the property by erecting thereon a `4-storey residential building with shop at the first storey` but the purchaser sometime in May 1996 applied to the authorities for a change of use

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by converting the building into a boarding house whilst retaining the first storey as a shop. As of 23 July 1996 the approval had not yet been obtained.

9 (vii). Immediately on 23 July 1996 the purchaser`s solicitors informed the vendor`s solicitors that the authorities had not plotted the road lines on the General Interpretation Plan which had been submitted to them as the road interpretation plan for the property was unavailable and further that they understood from the authorities that the road lines for the Rangoon Road region were under review and that road interpretation plan for this area would only be available in about three to four months` time. This was followed by a letter dated 24 July 1996 in which what had been said on 23 July 1996 was reiterated together with the following two paragraphs:

> *In view of the above circumstances, our clients (ie the purchaser) instruct that pursuant to cl 10 of the option to purchase dated 18 April 1996 (the option to purchase) no satisfactory reply was obtained from the LTA and our clients are entitled to rescind the option to purchase.*
>
> *However, as our clients are still interested in the purchase of the above property, our clients propose, strictly without prejudice to their interests in the option to purchase, that both parties hold their hands in this matter for a further four (4) months or until the RTP is available, whichever is the earlier.*

10 (viii). The vendor`s solicitors replied on the same day, ie 24 July 1996. They said:

> *The reply from the Land Transport Authority in its letter of 23rd July 1996 that `the road interpretation plan for the above site is not available` is not and cannot be deemed unsatisfactory. Your clients are not entitled to rescind the contract.*
>
> *Please note that the terms of sale under the option provide:*
>
> 9 The sale is subject to existing tenancies;

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> 10 The property is sold subject to the grant of written permission [Ref: DC 745/41/PT 2 (94/E/0251)], a copy of the said grant is annexed hereto; and
>
> 11 Proviso (d) cl 10 which states:
>
> any reply not received by the purchaser`s solicitors by the completion date shall be deemed satisfactory.

11 The parties being at odds as to whether the unavailability of the road interpretation plan was or was not a satisfactory reply to the requisition, the purchaser, on 16 August 1996, commenced these proceedings by originating summons claiming a declaration that the sale and purchase agreement of the property had been rescinded by the purchaser`s letter of 24 July 1996 and for the refund of 10% of the purchase price already paid, namely, $430,000 and interest thereon at 6% pa from 24 July 1996 under s 9 of the Civil Law Act (Cap 43, 1994 Ed) and costs.

12 On 20 August 1996 the vendor undeterred by the purchaser`s application to court served notice on the purchaser pursuant to condition 29 of the Singapore Law Society`s Conditions of Sale to complete the sale and purchase within 21 days and thereby made time the essence of the contract. The purchaser did not comply with the notice.

13 We should now set out cl 10(d) of the option (the other provisos are not relevant) and deal more fully with the written permission. Clause 10(d) reads:

> *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*

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> *party shall then have any claim or demand against the other for costs damages compensation or otherwise provided always that:*
>
> …
>
> (d) any reply not received by the purchaser`s solicitors by the completion date shall be deemed satisfactory; …

14 The written permission dated 26 September 1995 would lapse `if the development is not completed by 26 September 1997`. It was therefore valid throughout the contract period of the purchase and sale agreement of the property and for a further period of 14 months from the scheduled date of completion. The development as stated in the written permission was for the `erection of a 4-storey residential building with shop at the first storey` on Lot 246-1 of Town Subdivision 18, ie the property. A location and site plan formed part of the written permission and the whole as we have already noted above was annexed to and formed part of the option. It must follow that when the purchaser exercised the option on 2 May 1996 the purchaser did so with the full knowledge of the written permission and in particular the location and site plan attached to the written permission.

15 The location and site plan provides valuable information to a prospective buyer. First of all it shows that the property is a corner site with a narrow frontage along Rangoon Road and a much longer frontage along what is marked on the location and site plan as an `existing service road` and is now known as Sing Avenue. It also shows that Rangoon Road and the surrounding area is densely built up but more importantly it shows the provision for road reserve both along Rangoon Road and the existing service road. In addition it shows provision for a proposed rear road reserve and a communal open space both of which are situated at opposite end from Rangoon Road of the almost rectangularly shaped plot. The plot use information tabulated in the location and site plan gives the following additional data:

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Site Area	-	353.90 sq m. This is the same
		area given in the option.
Communal open space	-	81.48 sq m
Road reserve	-	45.41 sq m
Land to be vested in the	-	18.80 sq m
State for proposed rear		
service road		
Proposed erection of a	-	208.21 sq m
4-storey residential building		
Total	-	353.90 sq m

16 In our judgment it is beyond dispute that the purchaser well knew when he exercised the option to purchase the property on 2 May 1996 that he was not paying $4.3m for 353.90 sq m of freehold land in Rangoon Road with 72A and 74A Rangoon Road erected on it from which some land would be taken away for road development but for 208.21 sq m, that being the net area available for re-development subject to the written permission which constituted the purchase and sale agreement of the property.

17 Whether, notwithstanding the written permission the Land Transport Authority would still revise the road line is another question altogether. The information relied on by the purchaser is hearsay and should be disregarded. The question must be viewed, to use the words used by the learned judge, as a `reasonably determined purchaser` would. Viewed in this way it would, in our judgment, be amply evident to any `reasonably determined purchaser` that if the Land Transport Authority did revise the road lines from that shown in the location and site plan it would be such a revision, if it affected the property

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adversely, that could only be considered de minimis or marginal and would not be a valid reason to rescind the contract. This seems clear to us from a study of the location and site plans as the road widening is principally to the existing service road (now also called Sing Avenue) connecting Rangoon Road to Sing Avenue which runs parallel to Rangoon Road. The rear road reserve is only a proposal.

18 However, the learned judge held that the Land Transport Authority`s letter of 23 July 1996 to the purchaser`s solicitors saying that the road interpretation plan was not available was a `reply` to the purchaser`s requisition or application for the road interpretation plan. He relied on **Chu Yik Man v S Rajagopal & Co & Anor** [1987] 2 MLJ 557 at p 558; [1986] SLR 534 at p 536 where Chan Sek Keong JC (as he then was) said:

> *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 the requisition. [Our emphasis.]*

19 With respect, we think, the learned judge read the words ` ***any reply*** ` too literally. Mr Chan Sek Keong could not have meant by the words ` ***any reply*** ` a response from the authority requisitioned which refused to or did not answer the question which was put by the requisition. The purpose of a requisition is to get an answer which the purchaser`s solicitors will consider in advising the purchaser whether the answer is or is not satisfactory. We cannot imagine that a reply saying that the road interpretation plan is not available is an answer to the question asking whether the property is affected by a road line and if so to indicate the road line on the general interpretation plan which was submitted with the requisition. We have no doubt that Mr Chan Sek Keong in the passage from his judgment quoted above was referring to the form in which the

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requisition is made and the manner in which the reply or answer is communicated.

20 Further the learned judge said this in his judgment:

> *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` ...*

21 We have no quarrel with the test to be applied but with the greatest respect to the learned judge we cannot see how a reply which says that the road interpretation plan is not available can firstly be considered to be an answer, for the reply is intended to be an answer to the requisition, and secondly even if it is an answer that it can be considered by a `reasonably determined purchaser`, in the context of this appeal as set out in [para] 6 and 7 above, to be unsatisfactory. We are confident that had the learned judge approached this appeal as we have done in [para] 8 and 9 he would not have held that the purchaser was entitled to rescind the sale and purchase agreement of the property.

22 In the result and for the reasons we have given in [para] 10 above the Land Transport Authority`s letter of 23 July 1996 to the purchaser`s solicitors is not `a reply` within the meaning of cl 10 of the option and since no reply was received by the purchaser`s solicitors from which it could be ascertained whether the property was affected by a road line and if so whether to a greater extent than shown in the location and site plan attached to the written permission `by the completion date`, ie by 25 July 1996 para (d) of cl 10 of the option operates and `the reply is deemed satisfactory`. Further, for the reasons we have given in [para ] 9 above, even if the Land Transport Authority`s letter of 23 July 1996 is taken to be a reply, ie an answer, no sensibly minded person or `a

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reasonably determined purchaser` would consider `not available` in the context of this appeal unsatisfactory.

23 Accordingly, the purchaser`s solicitors` letter of 24 July 1996 to the vendor`s solicitors purporting to rescind the sale and purchase agreement of the property was of no effect and did not rescind the agreement. The sale and purchase agreement was brought to an end by the operation of condition 29 of the Singapore Law Society`s Conditions of Sale 1994 following the vendor`s service of the notice to complete which the purchaser failed to comply with .

24 For these reasons, we will allow this appeal with costs here and below and set aside in its entirety the learned judge`s order dated 22 November 1996. The originating summons herein is dismissed. In the event the vendor has refunded the sum of $430,000 to the purchaser (the learned judge did not award interest under s 9 of the Civil Law Act), the purchaser shall forthwith pay it back to the vendors. The appeal deposit is refunded to the appellant`s solicitors.

Karthigesu JA
L P Thean JA
Yong Pung How CJ

James Wan Hui Hong and Paul Yong (James Wan & Co) for the appellant
Wong Chee Keong and Daniel See (William Lai & Alan Wong) for the respondent

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