IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 327

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)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Fernhill City Investments Pte Ltd v Lee Keng Huat and Others

[1997] SGHC 327

OS 1078/1995
Lai Siu Chiu J
04 December 1997

1 **Judgment:**

2 **GROUNDS OF DECISION**

3 *The application*

4 1. On 21 August 1997, on an application made by the second and third defendants, I awarded interest to them at 10% per annum, on the sub-sale price of $3,050,000 they had paid for No 82 Fernhill Road (the property) from 8 July to 21 November 1996 (both dates inclusive) and from 5 to 20 December 1996 (both dates inclusive). The plaintiffs have now appealed against my decision (Civil Appeal No 193 of 1997) as well as against the following additional orders which I made:

5 a.. the plaintiffs to pay directly to the second defendant the sum of $432,903.60;

6 b. the second defendant be entitled to set this sum off from the progress payment of $460,000 called by the plaintiffs pursuant to the Sale and Purchase

Agreement dated 18 December 1996 (the fresh agreement) between the plaintiffs and the second defendant;

7 c. the sum of $274,639.41 being held by Messrs Allen & Gledhill in an interest bearing escrow account pursuant to an agreement between the parties, be paid to the plaintiffs and the second defendant in this manner:

8 Plaintiffs: $ 10,833.29;

9 Second defendant: $263,806.12;

10 d. the accumulated interest of $1,493.74 earned on the sum of $274,639.41 held in the interest bearing escrow account be paid to the second defendant;

11 e. the plaintiffs do pay the second defendant the sum of $1,574.78 being the net interest loss suffered by the second defendant in having to draw-down the sum of $274,639.41 from its mortgagee, after giving credit for the interest earned by that sum in the interest bearing escrow account, and after giving credit for the interest due to the plaintiffs under cll 3(1)(g) and (h) of the fresh agreement, from 2 July 1997 to 21 August 1997 (both dates inclusive), and

12 f. the plaintiffs do pay the second and third defendants' costs of this application including the costs of all the issues stated in Messrs Allen & Gledhill's letter dated 12 May 1997 to the Registrar of the Supreme Court and in the second and third defendants' submissions dated 21 August 1997, to be taxed unless otherwise agreed.

13 *The background*

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

14 2. This is the second appeal filed by the plaintiffs in these proceedings. The earlier appeal, filed in Civil Appeal No 55 of 1996 (the first appeal) was against my decision made on 19 March 1996 wherein I ordered inter alia, that the plaintiffs specifically perform the Sale and Purchase Agreement dated 12 September 1994 (the Agreement) in favour of the first defendant (Lee) and that the plaintiffs were liable to pay damages, commencing 8 July 1995, to Lee for late completion of the sub-sale to the second and third defendants; I refer to my grounds of decision dated 31 August 1996 in particular paras 3-14, for the history of the sale and sub-sales. The plaintiffs did not file the appellants' case under Order 57 r 9 of the Rules of the Supreme Court.

15 3. According to counsel for the second and third defendants and an affidavit they filed, they were advised by the plaintiffs' solicitors on 1 October 1996, that the plaintiffs would not be proceeding with the first appeal and further, that the plaintiffs were willing to issue a fresh sale and purchase agreement (the fresh agreement) to the second defendant, pursuant to the terms of the Agreement signed with Lee.

16 4. A dispute then arose between the solicitors for the second defendant and for the plaintiffs regarding the terms of the fresh agreement; the former said a swimming pool was omitted from the plans attached to the fresh agreement whereas it had been included in the original Sale and Purchase Agreement of Madam Tan the first purchaser, as an item in the second schedule as well as in the sales brochure. The plaintiffs' solicitors countered that the swimming pool was only meant for the bungalow in the development and not the two (2) semi-detached houses of which the property was one. Correspondence on this dispute continued until end 1996 culminating in the plaintiffs' solicitors eventually forwarding the (revised) fresh agreement to the second defendant's solicitors on 20 December 1996, duly signed by the plaintiffs.

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

17 5. The application, which is now the subject of Civil Appeal No 193 of 1997 (the second appeal), was a follow-up from the orders which I made on 19 March 1996. Counsel for the second and third defendants requested a determination of the issue of interest due to their clients, now that the plaintiffs had abandoned the first appeal, against my decision that the sub-sale to the second and third defendants by Lee was valid.

18 6. On 4 and 7 January 1997, the plaintiffs' solicitors acting for them in the conveyance, advised the second defendant's conveyancing solicitors that progress payments in the sums of $920,000 and $230,000 respectively were due. On 10 January 1997, the second defendant's solicitor advised the plaintiffs' solicitors that damages payable to his client totalled $443,786.89 calculated at 10% per annum on the sub-sale price ($3,050,000) from 8 July 1995 to 20 December 1996 and seeking to set off this amount from the progress payments. The plaintiffs' solicitors disputed the quantification and informed the second defendant's solicitors on 11 January 1996 that the amount should only be $159,123.36 based on 10% per annum but calculated on $1,210,000 (the difference between $3,050,000 and the unpaid portion [$1,840,000] of the original sale price) from 8 July 1995 to 30 October 1996 (on which date the fresh agreement was sent to the second defendant's solicitors by the plaintiffs' solicitors). The plaintiffs' solicitors also disputed Lee's right to do a set off from the progress payments due.

19 7. On 25 April 1997, the second and third defendants' solicitors in these proceedings wrote to the plaintiffs' solicitors demanding payment of $443,736.89 by 3 May 1997. In the interval, the plaintiffs' solicitors wrote to the Official Assignee (OA) since Lee was a bankrupt, to seek his views whether the damages should be paid to the OA or to the second defendant. On 3 May 1997, the plaintiffs' solicitors replied to the solicitors of the second and third

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

defendants to say that the damages should be paid to the OA and, the amount should be calculated up to 20 December 1996, excluding the period 14 November - 4 December 1996 because the second defendant should have but failed, to return the fresh agreement within 14 days after it was sent to its solicitors. Naturally, the solicitors for the second and third defendants disagreed and accordingly sought a hearing to seek my clarification of the orders made on 19 March 1996.

20 8. On 13 May 1997 the plaintiffs' solicitors wrote to their counterparts for the second and third defendants to say that the OA had directed that damages be paid directly to the second defendant; however, they still required Lee's confirmation; the plaintiffs' solicitors disagreed. In any event, on 19 May 1997 the plaintiffs' solicitors wrote again, this time to say that the plaintiffs would pay damages directly to the second defendant. However, on 2 June 1997, they wrote to the second and third defendants' solicitors to say payment would not be made even of the sum computed by the plaintiffs without Lee's agreement. On the same day, Lee's counsel confirmed to the plaintiffs' solicitors that the second defendant was entitled to the damages.

21 9. On 3 June 1997 the plaintiffs' solicitors called for further progress payments (2) of $460,000 and on 11 June 1997, they forwarded a cheque in favour of the second defendant to its solicitors, in the sum of $169,097.48 which they contended was the damages payable.

22 10. On 12 June 1997, the solicitors for the second and third defendants replied to reiterate that the damages payable amounted to $443,736.89 and less the sum received, the difference payable was $274,639.41 ($443,736.89 - $169,097.48). Accordingly, they advised that their clients would only pay $185,360.59 on the progress payments called for ($460,000 - $274,639.41).

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

They further proposed, if the plaintiffs maintained that only $169,097.48 was payable, that the amount of $274,639.41 which the second defendant sought to set off, should be paid into an interest bearing escrow account, pending the court's decision on the dispute and, the second defendant would pay the balance of $185,360.59 due on the progress payment. Notice was given however, that the second defendant would claim loss of interest suffered by its having to draw-down the sum of $274,639.41 from its mortgage loan, in the event the court ruled in its favour on the quantification of damages. This was accepted by the plaintiffs whose solicitors replied to the proposal on 17 June 1997 save that they requested the solicitors for the second and third defendants to hold the money as stakeholders and, the plaintiffs would claim interest for late payment, pursuant to cl 5 of the fresh agreement, if they were held to be correct in their computation; such interest would also be set off against the loss of interest suffered by the second defendant in having to draw-down on its loan.

23 11. Accordingly, on 23 June 1997, the second and third defendants' solicitors paid the sum of $274,639.41 into an interest bearing account earning interest at 3.25%; the second defendant paid to its mortgagees interest at 6.75% per annum from 17 June 1997, for drawing down the same amount from its loan.

24 *The decision*

25 12. The foregoing facts reflected the position when the parties appeared before me for the further hearing on 21 August 1997. I ruled in the second defendant's favour by the various orders which I made, essentially accepting (save for one aspect) its solicitors' computation of the damages payable by the plaintiffs for late completion, for the reasons which I shall now set out.

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

26 13. As all parties confirmed that the issue for determination was only quantum, I need not concern myself with liability since it was common ground that damages should be paid to Lee's sub-purchaser, namely the second defendant.

27 14. On computation, I would refer to the submissions of counsel for the second defendant, with which I was in general agreement. The orders I made on 19 March 1996 (which the plaintiffs have accepted by reason of their failure to pursue the first appeal) meant in essence that the plaintiffs had to pay ultimately to the second and third defendants, the damages payable to Lee for late completion of the sub-sale, as the sub-sale to the former from the latter, was valid. Therefore the document which would govern the computation of damages would be the sub-sale agreement, namely the fresh agreement, not the (original) Agreement.

28 15. Under the fresh agreement, the price of the property to the second defendant was $3,050,000, not $2,300,000, which was the price Lee paid. The fresh agreement contained no special conditions for late completion save that cl 1(1) made the contract subject to the Singapore Law Society's Conditions of Sale 1994 (the Conditions).

29 16. Accordingly one has to look to the Conditions for guidance and the relevant provision thereunder would be Condition 8 which states:

30 (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% per annum from the day following the date fixed for completion up to and including the day of actual completion of the sale.

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

31 (b) If the default 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% per annum on the purchase price of the property from the day following the date fixed for completion up to and including the day of actual completion. Provided that if vacant possession of the property sold has been delivered by the Vendor to the Purchaser before the date of actual completion then such damages shall be abated by a sum equivalent to a rent calculated on the annual value of the property fixed under the Property Tax Act.

32 (c) If the delay in completion is attributable to some cause other then the default of the Vendor or the Purchaser or to the default of both the Vendor and Purchaser, no interest or damages shall be payable.

33 17. Under the fresh agreement, the delay in completion was due to default on the part of the vendor, Lee. Accordingly, under Condition 8(b), Lee is obliged to pay by way of liquidated damages, interest at the rate of 10% per annum on the sub-sale price, which is $3,050,000

34 18. The plaintiffs had computed the interest payable based on $1,210,000, that being the actual sum paid by Lee as at 8 July 1995, of the total sub-sale price of $3,050,000, the balance of $1,840,000 remaining unpaid. Presumably this argument was premised on a Practice Direction of the Law Society's Conveyancing Committee which Rule 12 states:

35 (a) Question:

36 Whether the balance of the unpaid original purchase price which is to be paid by a sub-purchaser by way of progress payments to the developer after completion of a sub-sale should be deducted from the amount of the sub-

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

purchase price for the purposes of calculation of any interest payable under cl 8(a) of the [Conditions] on completion of the sub-sale between the original purchaser and the sub-purchaser.

37 (a) Ruling:

38 The interest payable would depend on whether the balance of the purchase price payable to the original purchaser by the sub-purchaser on completion of the sub-sale included the unpaid sum due to the developer. If it did not, then the interest was only chargeable on the amount paid to the original purchaser.

39 The short answer to the argument is, that the computation of interest in this case is based on Condition 8(b) of the Conditions whereas, the Ruling spells out interest payable by a defaulting purchaser under Condition 8(a); the Ruling therefore does not apply. The second difference is, that Condition 8(b) refers to payment of interest by the defaulting vendor by way of liquidated damages whereas Condition 8(a) refers to payment of interest only by the defaulting purchaser; the third difference is the base figure on which interest is calculated -- Condition 8(a) refers to the outstanding purchase price (less the deposit and other payments already made) whereas 8(b) refers to purchase price only.

40 19. The rationale for the difference in the base figures for computation of interest between the two (2) subsections and Rule 12 of the Law Society's Rulings is as follows: under Condition 8(a) and Rule 12, as against a defaulting purchaser, the innocent vendor would have been kept out of the outstanding purchase price and is therefore entitled to interest only on what should have been paid to him. On the other hand, the innocent purchaser under Condition

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

8(b), besides being kept out of the property would have suffered other consequential loss

41 *Where delay in giving possession proceeds not from a want of title but from some cause within the control of the vendor, such as wilful default to give possession...the purchaser will be entitled to recover substantial damages for the loss of possession...The measure of damages in these circumstances is the loss.....which may reasonably be said to have been in the contemplation of the parties as likely to arise from the partial breach of contract* (see Voumard's Sale of Land 5 ed p 40).

42 Given that under Condition 8(b), the defaulting vendor would have to pay interest as liquidated damages on the entire purchase price, there is no reason why Lee, the sub-vendor should not do so too; equally the sub-purchaser which is the second defendant, like Lee was vis-a-vis the plaintiffs, is kept out of the property.

43 20. The proviso to Condition 8(b) presumes that actual completion has taken place between the parties, as it goes on to provide for abatement of the liquidated damages payable by a sum equivalent to the rental valuation of the property. Hence I rejected the plaintiffs' interpretation that the damages payable should be based on unpaid portion of the purchase price as that would clearly be inequitable and unfair to Lee and in turn to the second and third defendants. It should be based on the entire sub-sale purchase price of $3,050,000. This was the approach taken by the Assistant Registrar when he assessed damages due to an innocent purchaser from the vendor in default, in *See Bee Hoon v Quah Poe Hoe & Anor* [1989] 3 MLJ 65 which was not disturbed on appeal. Another decision in which damages were ordered against a vendor in default was *Orchard Twelve Investment Pte Ltd v Golden Bay Realty Pte Ltd* [1986] 2 MLJ

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

356. However because cl 14(2) of the agreement for sale and purchase stipulated it, liquidated damages were calculated on 85% of the purchase price.

44 21. Counsel for the plaintiffs had argued that Condition 8(b) had no application as it only pertained to completed properties because the words *vacant possession* were used in the proviso; this case involved an uncompleted property and if no progress payments are called for, nothing is due and payable to the plaintiffs. Therefore Condition 8(b) may not necessarily be incorporated into the sub-sale and if it was, it had to be modified. Further, only an equitable title can pass on completion, not the legal title and no transfer was or could be effected. The sub-sale price of $3,050,000 is also a hypothetical figure as it will not be paid on completion. I rejected this argument as misconceived -- as between Lee and the second defendant, the sub-sale had been completed based on $3,050,000; it was a very real figure. To say that $3,050,000 was not the true bargain between the parties was to ignore the fact that Lee had, by a deed of assignment dated 12 August 1995 assigned all his rights, title and interest in the property to the second defendant for that consideration, of which notice was given to the plaintiffs on 8 September 1995. The difference ($1,840,000) between Lee's progress payments ($1,210,000) to the plaintiffs based on the original sale price ($2,300,000) either had to be paid by Lee to discharge the vendor's (the plaintiffs') lien or, as in this case, he had to provide for the sum fully, which he did in the completion account with the second defendant by subtracting the amount. By the assignment, the second defendant assumed the obligation to pay that sum to the plaintiffs (see cl 2[a]) but it had, in the completion account (after making provision for paying the $1,840,000 to the plaintiffs) fully paid $3,050,000 to Lee.

45 22. As for the proviso to subsection (b), no doubt it applied to completed properties but that does not mean that the entire subsection was limited to

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

completed properties, there are no words of limitation in the subsection itself. The argument that if Condition 8(b) applied, it did so with modifications had even less merit as cl 1(1) thereof made the fresh agreement subject to the Conditions without any qualifications whatsoever.

46 23. Counsel's second contention was, that Condition 8(b) was not enforceable as it would be a penalty and not a genuine pre-estimate of loss, resulting in Lee (and in turn the plaintiffs) having to pay a sum far in excess of the greatest loss conceivable in the circumstances. As with the plaintiffs' first contention, I rejected this argument because it was raised too late in the day. The issue of liability vis-a-vis the parties under the Agreement and the sub-sale had been decided on 19 March 1996 against which decision the plaintiffs had abandoned their (first) appeal. It was no longer open to them to revive or to raise new, arguments touching on liability or, on the interpretation of the Agreement and or the sub-sale documents; the issue was res judicata. In any event I could not see how the principles in *Gunac Enterprise (Pte) Ltd v Utraco Pte Ltd* [1995] 1 SLR 11 cited by counsel in support of his arguments that: (a) damages are not meant to enrich the innocent party and, (b) as far as possible, the innocent party is to be put in as good a position as if the contract had been performed, had been offended by my computation of interest due to Lee from the plaintiffs for their breach of contract and in turn due to the second defendant. Indeed, using the plaintiffs' figure of $1,210,000 as the base would unjustly enrich them at the expense of Lee and the second defendant.

47 24. The only objection of the plaintiffs which had some merit touched on whether they had to pay interest for the three (3) week period 14 November - 4 December 1995 when, so they alleged, there was a delay by Lee's and the second defendant's common solicitors in returning the fresh agreement. In this regard I refer to para 4 above. The second defendant contended that interest

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

payable by the plaintiffs should run continuously from 9 July until 20 December 1996 when its solicitors received the fresh agreement duly executed by the plaintiffs. The contrary argument from the plaintiffs was, it should only have taken the second defendant 14 days from 30 October 1996, the date it was sent to the latter's solicitors, to sign and return the fresh agreement. Therefore interest should only run until 14 November 1996 and, the plaintiffs should not pay for the interval up to 4 December 1996 when the fresh agreement executed by the plaintiffs was returned to the second defendant's solicitors. Thereafter interest would run from 5 to 20 December 1996.

48 25. Counsel for Lee explained that there was no unreasonable delay on his part in returning the fresh agreement to the plaintiffs' solicitors duly signed by the second defendant. He had compared the specifications in the fresh agreement with those in the sales brochure and he wanted the specifications to be those in the brochure. He made repeated requests for the correct specifications to be given but it did not come; the Agreement referred to a swimming pool but there were no plans attached therewith when the plaintiffs' solicitors sent the Agreement to him; the sub-sale by Lee to the second defendant was on that basis. As the court had ordered a new sale and purchase agreement in favour of the second defendant in terms of the (original) Agreement, the second defendant's solicitors said they took five (5) weeks to consider the request of the plaintiffs' conveyancing solicitors whether to accept the modified version which specifications did not correspond to those in the brochure or in the Agreement; such a period was not unreasonable. Lee's counsel said his client was magnanimous and he then prevailed upon the second defendant to be likewise. Instead, the plaintiffs turned round and used that factor against the second defendant.

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

49 26. I varied the second defendant's computation to include the period for computation of interest to run from 8 July 1995 to 21 November 1996 only (both dates inclusive) and not continuously up to 20 December 1996 as a reasonable grace period for the second defendant would be three (3) not two (2) or five (5), weeks in which to sign and return the fresh agreement, taking into consideration that it had to seek legal advice on the missing swimming pool. The reason for interest to commence from 8 July 1995 was because that was the day after the original completion date for Lee's sub-sale to the second defendant had to be aborted due to the plaintiffs' refusal to issue a fresh sale and purchase agreement. Interest on the stakeholders' sum of $274,639.41 was accordingly apportioned between the plaintiffs and the second defendant based on my ruling. Interest would again run from 5 to 20 December 1996 as it was not unreasonable that the plaintiffs should have two (2) weeks from 21 November 1996 in which to sign and return the fresh agreement to the second defendant's solicitors. This latter period I would add was not disputed by the plaintiffs. The other orders which I made reflected the parties' agreement on how the interest on the stakeholders' amount of $274,639.41 should be apportioned, in accordance with para 10 above.

50 **Lai Siu Chiu**

51 **Judge**

52 4 December 1997.

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

Lai Siu Chiu J

Wong Tze Roy & Jayapal Seshadri (Martin & Partners) for the plaintiffs
Khush Chopra (Khush Chopra) for the first defendant
Michael Hwang & Christopher Daniel (Allen & Gledhill) for the second and third defendants

---

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