IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 46

Originating Summons No 995 of 1996

Between

Gain City Best-Electric Pte Ltd

… *Plaintiff*

And

Olivine Magnetic Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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

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Gain City Best-Electric Pte Ltd v Olivine Magnetic Pte Ltd

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Goh Joon Seng J
03 March 1997

Judgment:

GROUNDS OF DECISION

On 11 January 1996, the Defendant in consideration of the sum of $12,600 < 'the option fee' > granted an option <'the option' > to the Plaintiff to purchase its property known as 130 Genting Lane, Singapore < 'the property' > at the price of $1,260,000 subject to existing tenancy. The property is held by the Defendant under a 30-year lease granted by the Jurong Town Corporation < 'JTC' > at a yearly rent payable on the first day of January each year. The relevant terms of the option are clauses 2, 4, 5, 6, 12 and 13. They read:&ltp&rt2. The sale is subject to the 'Singapore Law Society's Conditions of Sale 1994' so far as the same are applicable to a sale by private treaty and are not varied by or inconsistent with the terms herein.

... ...

4(a) The Sale and Purchase herein is subject to :

(i) the written approval of Jurong Town Corporation (JTC) being obtained by the Vendor for the sale and

(ii) the written approvals of JTC and other relevant authorities being obtained by the Purchaser for their intended use for

(b) The Vendor shall apply to the JTC for the said approval to the sale herein within two (2) weeks from the date of exercise of the Option.

(c) ... ...

5 In the event that the JTC's written approvals as aforesaid are not obtained or are refused the sale and purchase herein shall become null and void in which event the deposit paid herein shall forthwith be refunded to the Purchaser free of interest and thereafter neither party shall have any claim against the other.

6 The sale shall be completed at the office of M/s Tan Harjeet & Partners ten (10) weeks from the date of the exercise of the option or three (3) weeks after JTC's written approval for the Sale and Purchase herein whichever is later.

... ...

12 The Vendor hereby warrants that it has not breached any of the terms, covenants or conditions of the Lease issued by JTC or any of the JTC's rules and regulations and further warrants that it is eligible to sell the property.

13 The Vendor hereby confirms that no alterations or additions have been made to the property without all necessary consents of all relevant authorities. If any part of this Clause is not complied with or fulfilled on or before the date fixed for completion, the Purchaser shall be entitled to rescind this Agreement by

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giving written notice thereof to the Vendor or the Vendor's solicitors and in such event all monies paid by the Purchaser hereunder shall forthwith be refunded to the Purchaser free of interest and thereafter neither party shall have any claim against the other whatsoever in the matter.

2 By sub-clause (vii) of the special covenants and conditions of the lease, the Defendant covenanted with JTC not to erect any structure on the property without the consent in writing of the latter.

3 By the terms of the option, the offer was to be accepted on or before 24 January 1996 by the return of the acceptance copy of the option duly signed together with payment of a deposit of 10% of the purchase price inclusive of the option fee.

4 On 24 January 1996 the Plaintiff duly exercised the option and paid to the Defendant the sum of $113,400 which was the balance of the 10% deposit to be held by the Defendant pending completion.

5 By cl 6 of the option the completion date of the sale and purchase was 3 April 1996 or 3 weeks after JTC's written approval for the same whichever should be the later. It should be noted that the intended use of the property in cl 4(a) of the option was not specified.

6 On 12 March 1996, the Plaintiff as purchaser forwarded to the Defendant its application form to be submitted to JTC for the requisite approval. It gave its 'proposed activities/use' as follows:

With the formation of a Project Department in the Company, the purpose of which is to concentrate on mechanical and electrical engineering project sales,

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it is the intention of the company to manufacture certain products for mechanical and electrical engineering usages so as to be more cost effective; productive and to ensure good quality finished products.

7. By letters of 4 and 22 April 1996 to the Defendant's solicitors, the Plaintiff's solicitors requested inter alia for a copy of JTC's approval of the sale and purchase. There was no reply. On 13 May 1996, the Plaintiff's solicitors by letter enquired of the Defendant's solicitors if JTC had approved of the sale and purchase. On the same day the Defendant's solicitors replied stating that JTC's 'approval of the sale and purchase is still pending'. As it turned out this reply is less than forthright.

8 On 17 May 1996, the Plaintiff enquired of JTC direct if the application had been approved. On 23 May 1996, JTC replied stating that the application would be considered and processed pending the rectification of the breaches. A copy each of JTC's letters of 16 and 22 April 1996 addressed to the Defendant's solicitors on the breaches was enclosed. The letter of 16 April 1996 referred to the erection of unauthorised structures. It read:

We would like to bring your attention to the unauthorised structures which are still intact in the above premises (please see attached sketch plan). As the matter has been long outstanding, your client is required to remove or regularise the said structures by 15 May 96, failing which we shall have no alternative but to refer the matter for enforcement action.

Please also note that no application for transfer will be considered pending the rectification of the breach.

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The letter of 22 April 1996 disclosed that there were arrears of rent due from the Defendant. It read:

We regret to inform you that although we sympathise with your client's current situation, we are unable to accede to your client's request to delay the payment of the arrears. We therefore strongly urge your client to remit the full sum of $84,322.59 < for 128 and 130 Genting Lane > (as at 15 Apr 96) being the arrears for the above properties by 30 Apr 96 at the latest, failing which we shall have no alternative but to refer to the matter for legal action. In that event, all costs incurred shall be borne by your client. Please also note that interest at 8.5% per annum will continue to be charged up to the date of full payment.

Kindly also be reminded that your client is to remove or regularise the unauthorised structures at the above premises by 15 May 96.

9 It thus came to light that at the material time the Defendant was in arrears of rent reserved under the JTC lease. It was also in breach of its warranty in cl 12 of the option. Its confirmation in cl 13 that there were no unauthorised alterations or additions to the property is also untrue.

10 Upon being informed of these breaches of covenants by the Defendant, the Plaintiff's solicitors on 24 May 1996 wrote to the Defendant's solicitors reserving its position stating:

Re: NO. 130 GENTING LANE

It has been more than one and a half months from the date fixed for completion and we refer to our reminders dated 4.4.96, 22.4.96 and 13.5.96. We also wish

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to put on record that we have at no time been informed of any developments in respect of your clients' application to sell the above JTC property.

Please see the JTC letter dated 23.5.96 (with attachments) in response to our query of 17.5.96.

We are instructed that it is patently clear that your clients are in breach of both clauses 12 and 13 of the Option to Purchase dated 11.1.96.

In view of the fact that all deposit monies have been released to your clients, we are taking urgent instructions from our clients on this issue.

In the interim, we are instructed to reserve all our clients' rights in respect of the said breaches.

11 On 19 August 1996, the Defendant's solicitors served a 21- day notice to complete. At the date of this notice JTC's approval of the sale and purchase had not been obtained. Completion was therefore not due. Further without JTC's approval the Defendant was not ready and able to complete. It was therefore not an effective notice under condition 29(2) of the Singapore Law Society's Conditions of Sale 1994 which reads:

If the sale shall not be completed on the date fixed for completion either party may on that date or any time thereafter (unless the contract shall first have been rescinded or become void) give to the other party notice in writing to complete the transaction in accordance with this condition but such notice shall only be effective if the party giving the same at the time the notice is sent is either ready, able and willing to complete or is not so ready, able and willing by reason of the default or omission of the other party to the contract.

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12 On 20 August 1996 the Plaintiff's solicitors replied as follows:

... ...

We are instructed that your clients' 21 days' notice is without basis.

a) Your clients have been in breach of Clause 12 of the Option to Purchase since the date of execution (as confirmed by JTC in view of this failure to pay arrears in excess of $84,322.59) even up to the date scheduled for completion;

b) Similarly, JTC was not able to process your clients' application due to the unauthorised structures erected by your clients in breach of Clause 13.

For your information, our clients have forwarded their business plan to JTC. However, further to our last fax of 24.5.96, our clients exercise their rights under the said clause 12 & 13 and accordingly hereby give your clients notice of rescission of their purchase of the said property.

We are instructed to request for the return of the deposit, ie, $126,000.00 within 48 hours failing which we have strict instructions to commence proceedings against your clients without further reference.

13 Unknown to the Plaintiff, the Defendant had paid up the arrears of rent on 28 June 1996, and the building plan for the alterations and additions approved by the Building Authority was received on 30 July 1996. The approved building plan was however not accepted by JTC until 10 September 1996. Be that as it may, a breach of the 'warranty' in cl 12 of the option would not have entitled the Plaintiff to rescind the agreement. See Chitty on Contracts, General Principles (27th Ed) para 12-029 which states:

The word 'warranty' has been described as 'one of the most ill-used expressions in the legal dictionary.' In many older cases, it was used in the sense of 'condition' and today it is very frequently used simply in the sense of a contractual undertaking or promise. In its most technical sense, however, it is to be understood as meaning a term of the contract, the breach of which may give rise to a claim for damages but not to a right to treat the contract as repudiated. The use of the word 'warranty' in this sense is reserved for the less important terms of a contract, or those which are collateral to the main purpose of the contract, the breach of which by one party does not entitle the other to treat his obligations as discharged. ... ...

14 On the other hand by cl 13 of the option if the necessary consents of all relevant authorities to the alterations or additions had not been obtained by the 'date fixed for completion', the Plaintiff would be entitled to rescind the sale and purchase. But the date fixed for completion was ten weeks from the date of exercise of the option, that is 3 April 1996, or three weeks from date of JTC's written approval of the sale and purchase whichever was the later. As at 20 August 1996 the written approval of JTC had still not been obtained. Completion was therefore not due. The Plaintiff's purported rescission based on breach of cl 13 not rectified by the date of completion was therefore premature and constituted wrongful repudiation by the Plaintiff of the sale and purchase. But the Defendant did not accept the repudiation. Instead in their reply of 21 August 1996 the Defendant's solicitors stated:

Our clients maintain that their 21 days' notice is valid and should your clients fail to complete by the 9th September 1996 our clients will forfeit your clients' deposit.

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15 In the meantime, the Plaintiff at the request of JTC had submitted its business plans on 8 August 1996. It read:

The Company's existing business activities include installation, repairing, maintenance of air-cons, wholesaling and retailing of electrical appliances.

The management of the Company has recently been assigned to carry out a feasibility study into the long term corporate planning on diversification and expansion. One approach considered is the possible diversification into export, project and commercial sales which may entail various ancillary manufacturing type functions.

Company is however currently constrained by manpower limitations and the critical success factors such as the impact of business re-engineering on the Company's immediate and long-term bottom line is subject to further extrapolation modelling and study. Moreover, we also lack of expertise in these new business areas where we do not have any previous experience.

Although the Company is keen in the long- term diversification and expansion, in view of all these constraints and the uncertainties of new business areas, the Company has to exercise prudence and caution in its expansion plans.

16 On 3 September 1996, JTC rejected the application for approval of the sale and purchase of the property stating that it was 'not agreeable to the proposed transfer in view of the commercial nature of the proposed purchaser's operations'. Under cl 5 of the option, on the refusal of such approval by JTC the sale and purchase became 'null and void' and the Plaintiff was entitled to the refund of the deposit.

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17 Accordingly I ordered the Defendant to refund the deposit with interest at 6% from 22 August 1996 and costs fixed at $3,000. In view of the provisions of cl 5 of the option, interest should only run from the date of the said refusal of approval of JTC that is, 3 September 1996, whereupon the sale and purchase became 'null and void' and the deposit refundable.

Dated this 3rd day of March 1997

GOH JOON SENG

JUDGE

Goh Joon Seng J

Ho Chee Tong for the plaintiffs
Harjeet Singh for the defendants

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