IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1998] SGCA 50

CA 222/1997

Between

LKM Investment Holdings Pte Ltd

… *Appellant*

And

Goh Chin Soon Ricky

… *Respondent*

GROUNDS OF DECISION

Contract — Contractual terms

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LKM Investment Holdings Pte Ltd v Goh Chin Soon Ricky

[1998] SGCA 50

CA 222/1997
Karthigesu JA; Tan Lee Meng J; Yong Pung How CJ
28 August 1998

Judgment:

TAN LEE MENG J

(delivering the grounds of decision of the court): The appellants, who agreed to sell seven of their own properties in Hemmant Road and Guillemard Road and two adjoining plots of State land to the respondent for $7m, were ordered by the court below to pay $73,550 to the respondent, a property developer, who paid $7,073,550 for all the said properties after he exercised his contractual right to purchase the said State land directly from the relevant government authority. We allowed the appeal against the decision of the learned judicial commissioner and now set out the reasons for our decision.

2. **Background**

By an agreement in writing dated 14 May 1990, the appellants agreed to sell to the respondent `the land and premises described in Schedule I and Schedule II (hereinafter jointly referred to as `the property`)` for $7m. Schedule I referred to seven lots in Hemmant Road and Guillemard Road owned by the appellants

while Schedule II referred to two plots of State land adjoining the appellants` own properties. As the State land had not been alienated to the appellants, the appellants undertook to purchase the State land from the relevant government authority and transfer it to the respondent.

3.It was important that the respondent acquire both the State land in question as well as the appellants` properties because the State land, when combined with the appellants` own seven lots, was large enough for a proposed condominium project. In view of this, the respondent`s position in the event that the appellants failed to acquire the State land from the relevant government authority was safeguarded by cl 14(2) of the agreement for sale and purchase in a number of ways. To begin with, $1.3m out of the purchase price of $7m was set aside for the purpose of enabling the appellants to purchase the State land from the relevant government authority. This sum was to be retained by the respondent until the appellants sent him a certified true copy of the letter from the relevant government authority offering to alienate the State land to the appellants. Secondly, if the appellants failed to obtain the said written offer for the sale of the State land on or before 30 June 1991, the respondent was given two options. The first was to rescind the entire agreement for the sale and purchase of the appellants` properties as well as the State land. The other step which the respondent was entitled to take was to forfeit the $1.3m set aside for the purchase of the State land and proceed to purchase the State land directly from the relevant government authority.

4.Different completion dates were provided for the sale of the appellants` properties and the State land. The sale and purchase of the appellants` properties was completed by 7 August 1990. This affected the appellants` application to purchase the State land for on 24 April 1991, the Land Office informed the appellants` solicitors that as the appellants had sold the private land affected by

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the proposed condominium project to the respondent, the appellants` application for the alienation of State land was deemed to have been withdrawn. Consequently, the appellants were in no position to obtain the requisite letter of offer for the alienation of the State land from the relevant government authority by 30 June 1991.

5.As the appellants failed to obtain the requisite letter of offer for alienation of the State land by 30 June 1991, the respondent`s solicitors informed the appellants in a letter dated 10 July 1991 that the respondent was forfeiting the sum of $1.3m and would proceed to purchase the State land directly from the relevant government authority. The respondent managed to purchase the State land from the relevant government authority for $1,373,550, which was $73,550 more than the sum he had forfeited under the terms of his agreement with the appellants. When the appellants sued the respondent with respect to the latter`s obligations under the agreement for sale and purchase of the said properties, the respondent counterclaimed for the sum of $73,550 under cl 14(4) of the agreement, which provided as follows:

> *In the event that the price at which the State land is purchased from the relevant government authority (hereinafter referred to as `the State land price`) exceeds the sum of Singapore Dollars One Million Three Hundred Thousand Only (S$1,300,000.00), the excess sum shall be solely borne by the [appellants].*

6.The learned judicial commissioner allowed the respondent`s counterclaim in view of cl 14(4) of the agreement for sale and purchase. His Honour explained (at [para] 19):

> *I have set out cl 14(4) above. It provides that the excess is to be solely borne by the plaintiff. This provision arises where the Sch II land is purchased and the price at which it is purchased exceeds $1.3m. Where the defendant elects to `proceed with the purchase` of the Sch II land as he has done in this case and the price exceeds $1.3m as it does in this case also then it seems to me that the conditions for the operation of cl 14(4) are satisfied*

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> *and the excess has to be borne by the plaintiff. In my judgment the defendant is entitled to recover the excess from the plaintiff.*

7. **The appeal**

When considering whether there is any merit in the appellants` appeal against the decision of the learned judicial commissioner, the ambit of cl 14 of the agreement for sale and purchase must be ascertained. For convenience, cl 14 is set out in its entirety below:

> (1) The [appellants] shall purchase and acquire from the relevant government authority those parts of the property more particularly described in Schedule II hereto (hereinafter referred to as `the State land`) and shall transfer and convey the State land to the [respondent].
>
> (2) The [respondent] shall reserve and set aside the sum of Singapore Dollars One Million Three Hundred Thousand Only (S$1,300,000.00) for the exclusive purpose of facilitating the purchase by the [appellants] of the State Land from the relevant authority. In the event that the [appellants] fails or is unable to obtain letter of offer from the land office on or before 30 June 1991, the [respondent] shall have the discretion to forfeit the sum of One Million Three Hundred Thousand and proceed with the purchase of the State land or the [respondent] may choose that the sale and purchase shall be aborted and wholly cancelled and of no further effect whatsoever, whereupon the [respondent] shall forthwith be refunded the following moneys:
>
> (a) the deposit together with interest calculated at the rate stated in cl 13; and
>
> (b) any money paid by the [respondent] to the [appellants] in accordance with cll 8(2) and 14(3) if any together with interest calculated at the rate stated in cl 13.
>
> Each party shall then bear its own solicitors` costs in the matter and neither party shall have any claim or demand against the other for costs, damages, compensation or otherwise whatsoever in the matter.
>
> (3) The sum referred to in cl 14(2) shall be paid by the [respondent] to the [appellants] on receipt by the [respondent] from the [appellants] of a certified true copy of the letter from the relevant government authority containing the offer to sell

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> the State land to the [appellants] and shall be paid forthwith by the [appellants] to the relevant government authority.
>
> (4) In the event that the price at which the State land is purchased from the relevant government authority (hereinafter referred to as `the State land price`) exceeds the sum of Singapore Dollars One Million Three Hundred Thousand Only (S$1,300,000.00), the excess sum shall be solely borne by the [appellants].
>
> (5) In the event that the State land price is lower than the sum of Singapore Dollars One Million Three Hundred Thousand Only (S$1,300,000.00), the [appellants] shall be entitled to retain the difference between the aforesaid sum of Singapore Dollars One Million Three Hundred Thousand Only (S$1,300,000.00) and the State land price.
>
> (6) No further consideration shall be required from the [respondent] for the transfer and conveyance of the State land by the [appellants] to it.

8.Admittedly, cl 14(4) does not make any distinction as to whether the State land is purchased by the appellants or the respondent. As such, if cl 14(4) is construed on its own, and without any regard to the other parts of cl 14, it would appear that if the respondent acquired the State land directly from the relevant government authority and paid more than $1.3m for the said land, the appellants will have to pay the sum in excess of $1.3m. However, the appellants contended that on its true and proper construction, cl 14(4) is only applicable when the appellants continue to bear responsibility for the purchase of the State land and that it is not applicable when the respondent has forfeited the deposit of $1.3m. There is merit in this argument.

9.The drafting of cl 14(4) leaves much to be desired. The position could certainly have been made clearer. In the circumstances, cl 14(4) should be construed not in isolation but in the context of the clauses which precede and follow it. Such an approach has been adopted on innumerable occasions. In **Barton v Fitzgerald** [1812] 15 East 530 at p 541; 104 ER 944 Lord Ellenborough summed up the position as follows:

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> *[T]he sense and meaning of the parties in any particular part of an instrument may be collected* ***ex antecedentibus et consequentibus*** *(ie from what goes on before and from what follows); every part of it may be brought into action in order to collect from the whole one uniform and constant sense, if that may be done.*

10.It may be evident that in the context in which cl 14(4) is found, it is only applicable when the appellants are the purchasers of the State land. We read cll 14(3), 14(4) and 14(5) as related to one another. Clause 14(3), which must first be considered, requires the respondent to hand over $1.3m to the appellants as soon as a certified true copy of the requisite letter of offer for the alienation of the State land to the appellants has been received by the respondent. Clauses 14(4) and (5), which should be read together, are intended to govern the rights of the parties in the event that the price which the appellants are required to pay for the alienation of the State land is either higher or lower than the $1.3m set aside for the purchase of the same. If the price paid by the appellants is higher than $1.3m, cl 14(4) applies and the effect of this provision is that the excess sum shall be borne by the appellants. On the other hand, if the price paid by the appellants is lower than $1.3m, cl 14(5) applies and the effect of this provision is that the appellants are entitled to retain the difference between the purchase price and the $1.3m paid to them by the respondent pursuant to cl 14(3). Finally, cl 14(6) sums up the matter by providing that no further consideration shall be required from the respondent for the transfer and conveyance of the State land by the appellants to him.

11.In short, cll 14(3), 14(4), 14(5) and 14(6) are only applicable if the appellants purchase the State land from the relevant government authority and not if the respondent purchases the State land directly from the relevant government authority. It follows that if the respondent exercises his right under cl 14(2) to forfeit the $1.3m set aside for the purchase of the State land and opts to purchase

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the State land directly from the relevant government authority instead of aborting the sale and purchase, he takes the risk of the purchase price being higher than $1.3m.

12.Such an interpretation of cl 14(2) is a sensible one. If cl 14(4) applies when the respondent has opted to purchase the State land directly from the relevant government authority, the appellants would be held responsible for the risk but not the benefit of the respondent`s direct dealings with the relevant government authority. There was no stipulation in the agreement with respect to the time within which the respondent had to procure an offer for the alienation of the State land to him. The respondent could have applied for the alienation of the State land several months after forfeiting the $1.3m and this may have resulted in the purchase of the State land at a higher price. Construing cl 14(4) in isolation, and without taking into account the clauses which precede or follow it, would expose the appellants to financial liability of an unknown extent and over which they had no control. It is most unlikely that the parties intended such a result.

13. **Conclusion**

In the circumstances, we allowed the appeal.

Karthigesu JA
Tan Lee Meng J
Yong Pung How CJ

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Prem Singh (Prem & Co) for the appellants
Thomas Tan (Haridass, Ho & Partners) for the respondent
