IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1998] SGCA 58

CA 264/1997

Between

Woon Wee Hao

… *Appellant*

And

Coastland Realty Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Land — Sale of land

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

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Woon Wee Hao v Coastland Realty Pte Ltd

[1998] SGCA 58

CA 264/1997
Chao Hick Tin J; L P Thean JA; Yong Pung How CJ
16 September 1998

Judgment:

LP THEAN

Cur Adv Vult

(delivering the judgment of the court): This is an appeal against the decision of Lai Siu Chiu J in which she dismissed the application of the appellant for a declaration that the respondents` obligation to pay Goods and Services Tax (GST) under a sale and purchase agreement made between the appellant and the respondents for the purchase by the respondents of an undivided share of a certain property had not merged in the transfer upon completion of the sale and purchase.

2. **Facts**

The material facts that gave rise to this appeal are not in dispute. The appellant entered into an agreement with the respondents on 9 April 1997, whereby the appellant agreed to sell to the respondents an undivided 1/6th share of the land

known as Lot 3268 of Mukim 26 with the premises thereon known as Nos 222, 224, 226, 228, and 230 Changi Road (the property) for the sum of $1,833,333.33. At or about the time of execution of the agreement, the respondents also entered into similar agreements with the owners of the remaining undivided shares in the property for the purchase of their undivided shares. The dispute which arose here is only between the appellant and the respondents relating to their sale and purchase agreement (the agreement) and centred on the effect of cl 17 thereof which reads as follows:

> *The Purchaser shall be liable and shall pay for the Goods and Services Tax and the stamp fees in respect of or in connection with the sale and purchase of the Vendor`s share in the Property or the said sale price.*

3.After the agreement was entered into, the appellant was advised by his solicitors that based solely on the sale of his undivided share in the property he could be considered to have made a taxable supply in excess of $1m within the period as provided in the GST Act (Cap 117A, 1997 Ed) and therefore the sale of his undivided 1/6th share (the undivided share) in the property could attract GST under the Act. As a result, the appellant by his solicitor`s letter dated 28 May 1997 sought to claim from the respondents an amount representing the GST payable on the sale of the undivided share or some form of security for that amount. The respondents refused to pay any amount or furnish any security. To avoid jeopardising or delaying the sale, the appellant proceeded to complete the sale under protest and reserved his rights, if any, to claim the GST from the respondents should it be necessary; but the respondents disputed the appellant`s entitlement to do so. Nevertheless, the parties completed the sale and purchase of the property. After the completion, the appellant took out an originating summons seeking a declaration that the respondents` obligation to pay GST under cl 17 of the agreement had not merged in the transfer on the completion of the sale and purchase.

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4. **The decision below**

While the application was pending, Warren LH Khoo J delivered his judgment in the case of **ACS Computer Pte Ltd v Rubina Watch Co** [1998] 1 SLR 72 in which he held that a purchaser`s obligation to pay GST under a similar clause in the sale and purchase agreement of a certain property did not merge in the transfer upon completion of the sale. Thus, when the originating summons came on for hearing before Lai Siu Chiu J, the respondents accepted the decision of Warren LH Khoo J. Nevertheless, the respondents argued that at the time of completion, the appellant was not registered for the purpose of GST, and therefore no GST was payable. The appellant, on the other hand, argued that while he was not registered for GST purpose at the time, he might be liable to be registered under para 1(1) of the First Schedule to the GST Act and therefore might be liable to pay GST. Lai Siu Chiu J rejected the appellant`s argument and dismissed his application on the ground that he was not a taxable person under s 8(2) of the GST Act at the time of the completion of the sale and purchase. She said at [para] 5 of her grounds of judgment:

> *While I accepted that the [appellant] may be liable for registration and that registration is made with retrospective effect to the date when the supplier is liable for registration, this simply means that the [appellant] will have an obligation to account for GST from that date. However, the fact remains that only registered persons can charge and collect GST. The [appellant`s] liability to be registered, if any, would, at the earliest, arise at the end of the quarter - 30 June 1997. He would, as from this date, have an obligation to account for GST but until he is registered, he cannot collect GST on his sales or for that matter claim GST incurred on his purchasers. In the present case, the sale of the [appellant`s] 1/6th share in the property clearly took place before any liability to pay GST on the plaintiff`s part arose. The plaintiff was simply not a taxable person under s 8(2) of the GST Act at the time of supply. No GST was therefore payable by the [respondents] in turn.*

5. **The appeal**

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Against her decision, the appellant has now appealed. The main question is whether the appellant is entitled to the declaration that the respondents` obligation under cl 17 of the agreement had not merged in the transfer on completion of the sale and purchase of the undivided share in the property.

6.In determining this issue, it would be helpful to examine in some detail the case of ***ACS Computer Pte Ltd v Rubina Watch Co (Pte) Ltd*** . There, the vendors under two separate but similar agreements agreed to sell to the purchasers two properties respectively. Each of the sale agreements provided, inter alia, that the sale was subject to the Singapore Law Society`s Conditions of Sale 1994, in so far as they were applicable to a sale by private treaty and were not inconsistent with or varied by the terms and conditions of the agreement. Each agreement by cl 17 (which was similar to cl 17 of the agreement in the present case) provided that the purchasers were liable to pay any GST incurred in connection with the sale and purchase of the property. The sale and purchase of each property was completed, and no payment of GST was made at or before the completion of the sale. Subsequently, the vendors requested the purchasers to pay the GST payable in respect of the transactions, but the purchasers refused to do so on the ground that their obligations to pay GST under the agreements had merged in the transfers of the properties upon completion of the sale and purchase. They relied principally on s 66 of the Land Titles Act (Cap 157, 1994 Ed) (the Land Titles Act), which provides as follows:

> *All obligations created by a contract for the sale of registered land shall, upon registration of the transfer giving effect to the contract, be deemed to have merged in that transfer unless express provision in writing is made to the contrary.*

7.It was there not in dispute that the sales of the properties attracted GST in accordance with the provisions of the GST Act, and the main argument of the purchasers was that as no payment of the GST was made at the time of the

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completion of the sales, their obligations under cl 17 of the sale and purchase agreements had merged in the transfers on completion. Warren Khoo J dismissed the purchasers` arguments and held that s 66 of the Land Titles Act did not disentitle the vendors from claiming GST under cl 17 of the sale agreements. He held that s 66 should be construed in the context of the Land Titles Act as a whole as well as in the context of the neighbouring provisions in Part VII thereof where s 66 is found. He said at [para] 27 and 28:

> 27 It is clear that all these sections in Pt VII, like almost all the other parts of the Act, deal primarily with estates and interests in registered land and transactions affecting them. When one considers obligations of a contract for the sale of land registered under the Act, I think it is important to make a distinction between the obligation to transfer title, ie to transfer the estate or interest in the land, and obligations not related to the estate and interest in the land, for example, obligations to construct a building in a workmanlike manner, as in **Lawrence v Cassel** [1930] 2 KB 83. Transfers of registered land, as required by s 63(1), is effected by an instrument in the prescribed form. As to be expected, the prescribed form purports to transfer only the estate and interest of the proprietor to the transferee; it does not deal with any other obligations of the sale contract not related to the transfer of the estate or interest in the land.
>
> 28 It seems to me that in the context of the part of the Act in which s 66 is found, particularly s 63(1), s 66 can be reconciled with the common law rule and full effect can be given to both if one were to confine the operation of s 66 to those provisions of the contract of sale which deal with estates and interests in the land contracted to be sold, and, to borrow the words in s 63(1), all easements rights and powers belonging or appertaining to the land. Provisions of the contract relating to such matters, in the absence of any express provisions in the contract to the contrary, would merge in the transfer, since according to s 63(1), the registration of the transfer will pass and vest the land and such easements, rights and powers to and in the transferee. However, provisions not dealing with, or related to, estates and interests in the land or with such easements, rights and powers, would not merge in the transfer. Section 66 thus makes perfect sense if read as an adjunct of s 63(1).

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Applying that construction of s 66 to the case before him, the learned judge held that the obligation under cl 17 did not merge in the transfer upon completion, and hence the purchasers` liability to pay GST remained. He said at [para] 31:

> *Reading s 66 in the way proposed in the context of the case at hand, also makes good sense. The contract provided for the payment of the purchase price and the payment of the GST on the part of the purchaser. The instrument of transfer by its own terms transferred only the `estate and interest` of the plaintiffs to the defendants in consideration of the payment of the purchase price only. The purchase price has been paid, but the GST has not. It is still outstanding. The obligations to transfer the title and the obligation to pay the main purchase price have no doubt merged in the transfer. But obviously the obligation to pay the GST has not merged, and was not intended to merge, in the transfer. Reading s 66 in the way proposed is fully in accord with the intention of the parties, and produces a result which is at once just and fair. Reading it literally would produce a result which is patently unreasonable and absurd. If the restricted reading of s 66 attracts the criticism that it might amount to adding words from s 63 (such as `in so far as they relate to the estate or interest in the land`), so be it. Although the general rule of construction is to adhere to the ordinary meaning of words used in a statute, if that meaning leads to a manifest repugnancy or absurdity, the language of the statute may be modified or varied so as to avoid it:* ***Christopherson v Lotinga*** *[1864] 33 LJCP 121 at p 123, per Willes J.*

8.In our respectful opinion, the decision of the learned judge is correct. Section 66 does not lay down an absolute rule of merger. The section embodies the doctrine of merger at common law and, as the learned judge held, only those obligations to be performed on the transfer of the property merged in the transfer. In the case at hand, cl 17 of the agreement is not a provision `dealing with, or related to, estates and interests in the land or with [any] easements, rights and powers` relating to the land and accordingly the obligation thereunder did not merge in the transfer of the undivided share of the property upon completion of the sale and purchase, and such obligation remains outstanding.

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9.The respondents argue that at the date of completion no GST was payable by the appellant in respect of the sale of his undivided share of the property, and consequently there was no obligation on the part of the respondents under cl 17 of the agreement. It was not intended by the parties under the agreement that the obligation under cl 17 should enure beyond the date of completion. In particular, there was no agreement made between the appellant and the respondents which allowed the appellant to preserve his position as regards his liability for GST well after the completion of the sale. We think that this argument misses the point. Under cl 17 of the agreement, the respondents agreed to bear the burden of paying any GST payable on the sale and this burden still remains undischarged, notwithstanding that the transfer of the undivided share to them had taken place. There was nothing in the agreement which suggests that the obligation under cl 17 was predicated on the payment of the GST being exigible upon completion of the sale. The obligation under cl 17 remains outstanding notwithstanding completion; it has not arisen yet for performance.

10.The respondents further argue that there must be a pre-determined time within which they were liable to pay any GST payable, and that the time was the completion of the sale, and that, as the time had passed, their liability ceased. They rely on the case of **Tropical Properties & Trading Pte Ltd v Suganung Tasani** [1996] 1 SLR 677 . That was a case of sale and purchase of a commercial property. When the agreement was made, there was no liability to pay any GST, as at that point in time no such tax was payable. The GST Act came into force after the sale agreement was entered into but before the completion of the sale of the property took place. After completion the plaintiffs, the vendors, requested the defendant, the purchaser, to pay the GST payable in respect of the sale of the property. The defendant refused. TS Sinnathuray J held that the sale of the property, which was a commercial

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property, was a taxable supply within the meaning of the GST Act and accordingly GST was due at the time of the supply, ie at the time of completion of the sale of the property. On the basis of the provision of s 8(3) of the Act, that GST was the liability of the `person making the supply`, ie the vendors, but s 40 of the Act entitled them to add to the purchase price the amount of GST payable by them as of right, unless there was an agreement to the contrary. This section provided a mechanism for the vendors to shift the tax burden to the purchaser. However, the learned judge said at p 680:

> *[T]he section does not automatically transfer the burden of GST to the person supplied as s 40 states that `the supplier may add to the agreed price in the contract the amount of that tax`. This clearly indicates that the supplier has to make an election whether to add the GST to the price of the goods or services supplied.*

Since the plaintiffs did not make their election to add the GST to the price of the property at the time of completion, s 40 did not allow them to claim GST from the defendant after the sale of the property had been completed. Accordingly, the plaintiffs had to bear the burden of paying the GST. The learned judge said at p 682:

> *In the present case, no doubt the right of the plaintiffs to add to the price the amount of the tax is a statutory right, and the obligation to pay the purchase price is one that does not merge upon conveyance, nevertheless, it cannot have been the intention of Parliament that s 40 should allow the supplier an indefinite period of time to decide whether to add GST to the agreed price; more so, to request the purchaser to pay GST on a transaction after it has been completed. In my view, it is in the public interest that there ought to be finality and certainty in business and commercial affairs and an end party ought not to be open to future uncertain liabilities when performance of the contract has been completed and the purchase price discharged. As the plaintiffs had failed to inform the defendant that they would be adding GST to the purchase price before the transaction was concluded, they cannot be entitled to claim payment of GST from the defendant. Having thus decided that the plaintiffs are not entitled to claim GST from the defendant, there was no need to decide on the second question as to the amount payable.*

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11.That case was decided on the basis of s 40 of the GST Act. That section gives to the taxable supplier, in the circumstances there stated, the right to add to the purchase price the GST payable on the taxable supply. It was held in that case that the tax ought to have been added to the price at the time of supply, and as the supplier had failed to do so he could not recover the tax from the purchaser. The case therefore is of no assistance to the respondents.

12.To address the point raised by the respondents it is necessary to consider the relevant provisions of the GST Act. Only a person registered under the GST Act can charge and collect GST in respect of transactions he entered into, and he in turn accounts to and pays the Comptroller of Income Tax the GST payable. The position is governed by s 8 of the GST Act, which reads:

> (1) Tax shall be charged on any supply of goods or services made in Singapore where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.
>
> (2) A person is a taxable person for the purposes of this Act while he is or is required to be registered under this Act.
>
> (2A) A taxable supply is a supply of goods and services made in Singapore other than exempt supply.
>
> (3) Tax on any supply of goods and services is a liability of the person making the supply and (subject to the provisions on accounting and payment) becomes due at the time of supply.

13.Where a person, who is not registered under the Act for GST purpose, makes taxable supplies, he is liable to be registered and to pay GST. This is contained in para 1(1) of the First Schedule of the GST Act, which is as follows:

> 1(1) Subject to sub-paragraphs (3) to (5), a person who makes taxable supplies but is not registered is liable to be registered -
>
> (a) at the end of any quarter where the total value of all his taxable supplies made in Singapore in that quarter and the 3

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> quarters immediately preceding that quarter has exceeded $1 million; or
>
> (b) at any time, if there are reasonable grounds for believing that the total value of his taxable supplies in the period of 12 months then beginning will exceed $1 million.

14.Thus, under these provisions the appellant may be liable to be registered and consequently may be a taxable person within the meaning of s 8(2) of the GST Act. It seems to us that in this case the liability of the appellant for the GST payable would depend on when he is liable to be registered under para 1(1) of the First Schedule, which in turn is dependent on whether taxable supplies made by him exceed $1m within the period as prescribed in that paragraph. The ascertainment of these facts would determine whether the appellant will have to pay GST. It does not seem to us that the appellant`s liability to pay GST in respect of the sale of his undivided share would remain undetermined indefinitely or would be determined only after a lapse of a lengthy period. We are therefore unable to accept that the appellant would hold the respondents to their obligations under cl 17 of the agreement for an unlimited period of time.

15.In the result, we allow the appeal with costs here and below. We set aside the judgment below and make a declaration that the respondents` obligation under cl 17 of the agreement had not merged in the transfer of the undivided share on completion of the sale and purchase thereof. We should add that the relief we are granting is only a declaration, and as and when the respondents are called upon by the appellant to pay the GST payable in respect of the sale, the latter would have to show the basis of his claim. There will be the usual consequential order that the deposit as security for costs is to be refunded to the appellant or his solicitor.

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Chao Hick Tin J
L P Thean JA
Yong Pung How CJ

Muthu Kumaran (WT Woon & Co) for the appellant
Chong Pik Wah (Lim Kia Tong & Partners) for the respondents

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