IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 24

Suit No 2056 of 1991

Between

LKM Investment Holdings Pte Ltd

… Plaintiff

And

Ricky Goh Chin Soon

… Defendant

GROUNDS OF DECISION

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LKM Investment Holdings Pte Ltd v Ricky Goh Chin Soon

[1998] SGHC 24

Suit No 2056 of 1991
Lim Teong Qwee JC
22 January 1998

Judgment:

GROUNDS OF JUDGMENT

1. By an agreement in writing dated 14 May 1990 the plaintiff agreed to sell to the defendant "the land and premises described in Schedule I and Schedule II ... (hereinafter jointly referred to as 'the Property')" for $7m. I shall refer to the land and premises in the two schedules as "the Sch I land" and "the Sch II land" and together as "the Property". The agreement provides for completion of the sale of the Sch I land on 6 August 1990 but there is no express provision as regards completion of the sale of the Sch II land.

2. The Sch I land comprises seven plots. Three of them are contiguous and of the remaining four plots two are also contiguous. The Sch II land comprises two contiguous plots. These two plots and the seven plots of the Sch I land together form one single plot. It was a term of the agreement for sale that good title to the Property should be properly deduced. At the date of the agreement for sale the plaintiff was in a position to transfer the Sch I land or to cause it to be transferred to the defendant on completion. The Sch II land however was State

land and the plaintiff was not whether at the date of the agreement or at any time at all in a position to compel the State to transfer it to the defendant.

3. The agreement is subject to the plaintiff "obtaining in-principle Planning Permission for development of not less than fifty-two (52) housing units in a Condominium Project and according to the drawing prepared by M/s James Yip & Partners annexed in this Agreement". The drawing is not before me but it is not disputed that the development involves both the Sch I land and the Sch II land. It is also not disputed that in-principle planning permission was obtained by 31 January 1991.

4. Clause 14(1) of the agreement provides that the plaintiff shall "purchase and acquire" the Sch II land from the State and cl 14(2) provides in part that the defendant shall "reserve and set aside" $1.3m for the exclusive purpose of facilitating the purchase of the Sch II land. The plaintiff did not purchase or acquire the Sch II land whether before or after completion of the sale of the Sch I land or at any time at all.

5. Clause 8(1) provides that the plaintiff shall:

"(a) clear all squatters from the Property;

(b) demolish all existing structures, fixtures and installations erected on the Property; and

(c) build a chain-link fence or wooden hoardings on the perimeter of the Property."

The plaintiff was given until 31 December 1990 which is nearly five months after the completion date for the Sch I land to do this. Clause 8(2) provides in

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part that the defendant shall "reserve and set aside" $2.4m for the exclusive purpose of facilitating the execution and completion of the squatter clearance referred to.

6. The sale of the Sch I land has been completed. The defendant has paid the whole of the price less $1.3m in respect of the purchase of the Sch II land. $2.4m in respect of squatter clearance was withheld but it has all been paid except for $30,000 which is in dispute. The defendant has subsequent to the completion of the sale of the Sch I land acquired the Sch II land from the State and the price paid was $1,373,550.

7. In this action the plaintiff claims $30,000 for an amount short-paid in respect of the $2.4m withheld and $19,279.75 for interest for late payment of part of this $2.4m. A claim for damages was not proceeded with. The defendant denies the plaintiff's claim and counterclaims $73,550 for the excess in the price paid for the Sch II land and $28,229.96 for property tax in respect of the period down to the completion date in respect of one of the plots comprised in the Sch I land.

8. On 1 October 1997 I allowed the plaintiff's claim for $30,000 and dismissed the claim for $19,279.75. I also allowed the defendant's counterclaim for $73,550 and for $28,229.96 and I gave judgment accordingly. The plaintiff has appealed against that part of the judgment on the counterclaim and these are my grounds.

$73,550

9. I have referred to cl 14(1) and part of cl 14(2) of the agreement. This is what the rest of cl 14(2) provides:

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"... In the event that the [plaintiff] fails or is unable to obtain Letter of Offer from the land office on or before 30th June 1991 the [defendant] 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 [defendant] may choose that the sale and purchase shall be aborted and wholly cancelled and of no further effect whatsoever, whereupon the [defendant] shall forthwith be refunded the following moneys:-

(a) the deposit together with interest calculated at the rate stated in clause 13; and

(b) any money paid by the [defendant] to the [plaintiff] in accordance with clauses 8(2) and 14(3) if any together with interest calculated at the rate stated in clause 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."

10. The plaintiff did not obtain the letter of offer from the Land Office or any offer from the State to enable it to purchase or acquire the Sch II land at any time on or before 30 June 1991. As he was entitled to do under cl 14(2) the defendant elected to "forfeit" the sum of $1.3m and to proceed with the purchase of the Sch II land. I think what this means is that he no longer has to pay the plaintiff any part of the $1.3m "reserved" and "set aside" for facilitating the purchase of the Sch II land by the plaintiff.

11. Clause 14(4) provides:

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"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 [plaintiff]."

The defendant's case is that the price at which the Sch II land was purchased was $73,550 more than $1.3m and the excess has to be borne by the plaintiff.

12. The plaintiff says in its defence to the counterclaim that the defendant submitted revised plans to re-develop the Property increasing the gross floor area from 6,908.372 sq m to 7,039.59 sq m and by doing so delayed the grant of the letter of offer in respect of the Sch II land. I heard no submission on this defence. It is clearly unsustainable in the light of the undisputed evidence. The Commissioner of Lands in his letter of 5 May 1997 said that an offer of the Sch II land could not be made to the plaintiff for the reason that the plaintiff did not complete its own purchase of the Sch I land affected by the proposed development and the Sch I land was transferred to the defendant. The submission of the revised plans had nothing to do with the plaintiff not being able to obtain the letter of offer in time or at all.

13. The plaintiff's alternative defence is that its performance of cl 14 became impossible without any fault on its part and this part of the agreement for sale of the Property was frustrated. Again I heard no submission on this defence but I am unable to see any merit in it.

14. The plaintiff agreed to sell the Property ie both the Sch I land and the Sch II land together. The agreement is subject to good title being deduced. In respect of the Sch II land what the agreement contemplates is a letter of offer upon the acceptance of which offer the plaintiff is able to compel the assurance of the

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interest in the Sch II land to the defendant. The plaintiff could and ought to have obtained the letter of offer before the transfer of the Sch I land to the defendant. The agreement for sale is subject to planning permission to develop the Property and the plaintiff ought to have known that there was a serious risk that the letter of offer would not be given to it if it did not have any interest in the Sch I land. The plaintiff could also have completed its purchase of the Sch I land. Its own failure either to obtain the letter of offer before completion of the sale as regards the Sch I land or to complete its own purchase of the Sch I land in time resulted in its being unable to obtain the letter of offer. It was itself in default and the defence of frustration is not avilable to it.

15. The third ground of defence is that the Sch II land was "ultimately alienated to ... Adamas Development Pte Ltd and not to the Defendant" and accordingly the defendant is not entitled to rely on cl 14(4). It is apparent that cl 14(4) does not require that the Sch II land be alienated or transferred or otherwise assured to the defendant. It has only to be "purchased from the relevant government authority". It was the defendant who elected to purchase the Sch II land but on completion it was alienated to his company Adamas Development Pte Ltd. In my judgment this defence fails.

16. Ms Molly Lim submitted that on a true construction of the agreement and of cl 14 in particular the defendant was not entitled to claim the excess against the plaintiff. She said that the agreement had to be seen as an agreement for sale of the Sch I land for $5.7m and for sale of the Sch II land for $1.3m. If the letter of offer was not obtained in due time then the defendant could either rescind the entire agreement or deduct $1.3m and purchase the Sch II land on his own. She said that the second option ie deducting $1.3m and purchasing the Sch II land on his own amounted to a rescission of the agreement for sale of the Sch II land and the plaintiff's obligations came to an end.

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17. There are serious difficulties in the way of such a construction. First the Sch I land is of much less value without the Sch II land. It is substantially made up of four separated plots. The Sch II land is what joins all of them together as one plot of land and the agreement for sale is subject to planning permission for development of the Property ie of the whole of the Sch I and the Sch II land. Secondly the plaintiff was under cl 8 required to "clear" all squatters, demolish structures and fence in the Property and a substantial part of the price was "reserved" and "set aside" for squatter clearance. Far from regarding the agreement as one for sale of the Sch I land for $5.7m and the Sch II land for $1.3m I think the parties intended this to be an agreement for sale of the whole of the Property for $7m.

18. The plaintiff has to obtain the letter of offer on or before 30 June 1991. If it fails then the defendant may either "forfeit" the $1.3m and proceed with the purchase of the Sch II land or "choose that the sale and purchase shall be aborted and wholly cancelled and of no further effect whatsoever". If the defendant "chooses that the sale and purchase shall be aborted" which really means if he elects to rescind the agreement for sale then he is entitled to a refund of all money paid as provided in cl 14(2). The concluding part of cl 14(2) follows immediately and provides that "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". I think this part can only apply where the defendant elects to rescind and not where he elects to proceed with the purchase of the Sch II land.

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

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

$28,229.96

20. This is the amount of the property tax payable in respect of Lot 981 of Mk 25 ("Lot 981") which is part of the Sch I land down to the date of completion. The defendant's case is that the agreement for sale by cl 1 incorporates the Singapore Law Society's Conditions of Sale 1981 ("Conditions of Sale") and by condition 7 of the Conditions of Sale the plaintiff shall pay such tax.

21. Lot 981 was included in the valuation list under the Property Tax Act by an amendment made after the date of completion and property tax became due with effect from 1 January 1984. It is not disputed that the amount claimed is the property tax due on Lot 981 down to the date of completion. It appears from the documents produced that Lot 981 was vacant land with an area of 248.4 sq m.

22. The plaintiff denies liability. It says in its defence to the counterclaim that condition 7 of the Conditions of Sale has been excluded by cl 1 of the agreement for sale and by virtue of cl 9 of the agreement the plaintiff is "only required to pay the outstanding charges and taxes on or before the date of actual completion".

23. Clause 1 of the agreement so far as it is relevant for the present purpose provides that the plaintiff shall sell and the defendant shall purchase the Property:

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"subject to the following special conditions and to the general conditions of sale known as ‘the Singapore Law Society’s Conditions of Sale 1981’ so far as the same are applicable to a sale by private treaty and not varied by or inconsistent with the said special conditions herein."

Clause 9 of the agreement (which is one of the special conditions) provides:

"The [plaintiff] shall pay all outstanding charges, rates, taxes, assessment and all outgoings in relation to the Property on or before the date of actual completion."

Condition 7 of the Conditions of Sale provides:

"The [plaintiff] shall pay for all property tax (including surcharge thereon) down to but excluding the day fixed for completion, whether such tax shall have been levied or (as the case may be) increased before on or after completion and the [plaintiff] shall indemnify the [defendant] in respect of the same. The provisions herein shall not merge in the Conveyance/ Transfer by the [plaintiff] to the [defendant]."

24. Clause 9 of the agreement requires the plaintiff to pay property tax (and other outgoings mentioned) which are outstanding and to pay such property tax on or before the date of actual completion. Undoubtedly the property tax claimed was not outstanding on the date of actual completion or at any time before that. If there was any property tax that was outstanding then it had to be paid on or before the day of actual completion. In my opinion cl 9 is concerned with the time for payment of such property tax as may be outstanding. The expression "on or before" clearly governs "shall pay" and not "outstanding". Reading it the other way round leads to the absurd construction that the plaintiff

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may be required to pay a tax that was outstanding *before* but may no longer be so *at* the date of completion. Clause 9 is in sharp contrast with the relevant condition in *Econ Properties Pte Ltd v National University of Singapore* [1990] SLR 395. In that case the condition provides that all taxes "which are due and outstanding as at the date of completion shall be met by the vendor and shall in any other case be met by the purchaser".

25. Condition 7 of the Conditions of Sale apportions the property tax in respect of time between the plaintiff and the defendant. What it provides is that all property tax is apportioned as at the day fixed for completion whether such tax is levied or increased before on or after completion. It defines the respective liabilities of the parties as vendor and purchaser. The concluding sentence in this condition makes it clear that such liability survives completion by conveyance or transfer.

26. Condition 7 is not inconsistent with the agreement for sale or any of the clauses in it. It is not in any way varied by anything in the agreement and it is not suggested that it is not applicable to a sale by private treaty. In my judgment it has not been excluded by cl 1 of the agreement.

27. The plaintiff says in its defence that the defendant had a right of appeal against the property tax assessed but failed to inform the plaintiff to invoke such right. Ms Molly Lim said that the defendant was in breach of his obligation and such breach discharged the plaintiff altogether. It was not shown how the obligation arose and why a breach should completely discharge the plaintiff and the plaintiff's defence to the counterclaim as pleaded offers no assistance.

28. Property tax is payable at specified rates for each year upon the annual value of all houses, buildings, lands and tenements whatsoever included in the

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valuation list authenticated under the Property Tax Act. Section 20 of the Act provides that the valuation list may be amended where it appears that it is or has become inaccurate in any material particular. Section 20(9)(d) provides that the valuation list shall be deemed to be inaccurate in a material particular where property not exempted under the provisions of the Act has not been included in the valuation list. Section 21(4) provides that where any property is included for the first time in a valuation list then in the case of land the tax in respect of the property shall be payable from such date as may be determined by the Comptroller of Property Tax but not in any case for more than six years prior to such inclusion on the basis of the annual value ascribed to the property in the valuation list. Property tax is payable by the owner and the owner may appeal against any decision to include the property in the valuation list and any decision to "back tax" him.

29. At the time of completion in respect of the Sch I land (which included Lot 981) Lot 981 was vacant land. It also appears from the documents produced that at the time of such completion Lot 981 was not included in the valuation list whether on its own or as appurtenant to any house or building occupied with it or as part of any other property. Section 19(1) of the Act provides:

"Whenever any estate or interest in any house, building, land or tenement included, or capable of being included, in a Valuation List is sold or transferred whether by instrument or operation of law or otherwise, the vendor or transferor shall, within one month after the sale or transfer, give notice thereof to the Chief Assessor in such form as may be prescribed by the Chief Assessor."

The notice in respect of the transfer of Lot 981 shows that the consideration was $620,000. This may be a mistake but this is a notice to the Chief Assessor and

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it is the Chief Assessor who amends the valuation list and it is a notice to be given by the vendor or transferor.

30. "Annual value" in relation to land means the gross amount at which it can reasonably be expected to be let from year to year the landlord paying the expenses of repair, insurance, maintenance or upkeep and all taxes (other than goods and services tax) or at the option of the Chief Assessor the annual value shall be the sum which is equivalent to the annual interest at 5%:

"(a) on the estimated value of the property, including buildings, if any, thereon; or

(b) on the estimated value of the land as if it were vacant land with no buildings erected, or being erected, thereon."

The annual value ascribed to Lot 981 was $18,700. At 5% this would give a capital value of $374,000. Property tax was determined to be payable from 1 January 1984 which is six years prior to the inclusion in the valuation list. Even if the defence to this part of the counterclaim had been sufficiently pleaded there is no evidence to suggest that no tax would have been payable or as alleged in the defence to the counterclaim that there were "no good reasons for the retrospective revision".

31. I allowed the defendant’s counterclaim of $73,550 for the excess in the price at which the Sch II land was purchased under cl 14(4) of the agreement for sale and $28,229.96 for property tax in respect of Lot 981 for the period down to the day fixed for completion under condition 7 of the Conditions of Sale. Having regard to all the circumstances I allowed the plaintiff three-quarters of the costs

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of the claim and the defendant the costs of the counterclaim. Judgment was given accordingly.

Dated this 22nd day of January 1998.

LIM TEONG QWEE

JUDICIAL COMMISSIONER

SUPREME COURT

Solicitors: Wong Tan & Molly Lim

Haridass Ho & Partners

Lim Teong Qwee JC

Molly Lim and Matthew Saw for the plaintiff
Thomas Tan for the defendant

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