IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 52

OS 611/1997

Between

Woon Wee Hao

… *Plaintiff*

And

Coastland Realty Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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Woon Wee Hao v Coastland Realty Pte Ltd

[1998] SGHC 52

OS 611/1997
Lai Siu Chiu J
24 February 1998

Judgment:

GROUNDS OF DECISION

1. This was an application by the plaintiff for a declaration that the defendants' obligation to pay Goods and Services Tax ("GST") under clause 17 of an option to purchase had not merged on the completion of the sale. After hearing arguments, I held that no GST was payable by the plaintiff and in turn by the defendants and dismissed the application. The plaintiff has now appealed against my decision (Civil Appeal No 264 of 1997).

2. On 26 March 1997, the plaintiff granted the defendants an option to purchase his 1/6th share in Nos. 222, 224, 226, 228 and 230 Changi Road, Singapore Lot No. 3268 Mukim 26 ("the Property"). Clause 17 of the Option to Purchase reads:

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 on the said sale price.

After the defendants exercised the option on 9 April 1997, there arose a dispute as to whether the defendants should pay the plaintiff monies or provide some form of security on account of GST which may be payable on the plaintiff's sale to the defendants. To avoid jeopardising or delaying the sale, the plaintiff completed the sale under protest and reserved in writing his rights to claim for GST from the defendants. The defendants disputed the plaintiff's entitlement to do so and asserted that their obligation to pay GST, if any, had merged on the completion of the sale.

3. At the hearing, this issue was no longer in contention since counsel for the defendants was prepared to accept Khoo J's decision in *ACS Computer Pte Ltd v Rubina Watch Company (Private) Limited formerly known as Rubina Watch Assembling Co. (Private) Ltd and Anor* [1998] 1 SLR 72. There, Khoo J gave a restricted interpretation of s 66 of the Land Titles Act and decided that the obligation to pay GST under a similarly-worded clause 17 had not merged in the transfer of property. Counsel for the defendants therefore proceeded on the ground that at the time of completion, the plaintiff was not registered for the purposes of GST, therefore no GST was payable. The plaintiff conceded that he was not registered for GST purposes at the material time. His argument was that he may be liable to be registered under paragraph 1(1)(a) of the First Schedule to the GST Act since he was selling his 1/6th share of the Property for a consideration in excess of $1 million and may be selling other properties within the next 12 months. Paragraph 1(1) of the First Schedule provides:

... a person who makes taxable supplies but is not registered is liable to be registered -

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(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 quarters immediately preceding that quarter has exceeded $1 million; ...

4. I considered the plaintiff's arguments to be misconceived. The relevant section of the GST Act 1993 reads:

8. - (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 who makes or intends to make taxable supplies is a taxable person while he is or is required to be registered under this Act; and a taxable supply is a supply of goods and services made in Singapore other than an exempt supply.

(3) Tax on any supply of goods and services is a liability of the person making the supply and (subject to provisions on accounting and payment) becomes due at the time of supply...

5. While I accepted that the plaintiff 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 plaintiff 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 plaintiff'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 purchases. In the present case, the sale of the plaintiff's 1/6th share in the Property clearly took place before any liability to pay GST on

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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 defendants in turn.

6. At the hearing, counsel for the plaintiff suggested that the period for the Comptroller to decide on the GST status of the plaintiff which expires on 8 April 1998 should be allowed to lapse. To this I note that the law places a burden on the person to notify his liability for registration or to apply for registration without the Comptroller having to notify him of the same: (see s 61 GST Act*)*.

7. For the above reasons, I dismissed the plaintiff's application.

Lai Siu Chiu

Judge

Lai Siu Chiu J

Muthu Kumaran (W T Woon & Co) for the plaintiff
Chong Pik Wah (Lim Kia Tong & Partners) for the defendants

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