Liang and Sons Holdings (S) Pte Ltd *v* Chan Ah Beng
[2011] SGHC 236

Case Number : Originating Summons No 251 of 2011
Decision Date : 31 October 2011
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Tan Hee Liang (Tan See Swan & Co) for the plaintiff; Defendant in Person.
Parties : Liang and Sons Holdings (S) Pte Ltd — Chan Ah Beng

Contract – Breach – Remedies – Damages

31 October 2011

Lai Siu Chiu J:

1 Liang and Sons Holdings (S) Pte Ltd ("the plaintiff") filed the above Originating Summons No 251 of 2011 ("the OS") claiming *inter alia* the following reliefs against Chan Ah Beng ("the defendant"):

(a) specific performance by the defendant of the option to purchase dated 26 July 2010 ("the Option") for the sale and purchase of premises known as Apartment Block 201C, Tampines Street 21 #01-16, Singapore 523201 ("the Property") within 14 days of the order of court;

(b) the defendant be ordered to complete the sale of the Property to the plaintiff within 14 days upon receipt of the approval from the Housing and Development Board ("the HDB") for the resale/transfer;

(c) in the event the defendant failed or neglected or refused to convey the Property, the Registrar of the Supreme Court be appointed to sign the instrument of Transfer and all necessary conveyancing documents in place of the defendant;

(d) the defendant to pay the plaintiff interest for late completion at 10% per annum pursuant to clause 8 of The Singapore Law Society's Conditions of Sale 1999 ("the Conditions of Sale") commencing from 18 November 2010 until the actual date of completion;

(e) damages in consequence of the defendant's wilful delay and/or default; and

(f) costs.

2 After three hearings, I granted an order in terms of the plaintiff's application. The defendant is dissatisfied with my decision and has filed a notice of appeal (in Civil Appeal No. 88 of 2011) against my following orders:

(a) to pay interest to the plaintiff for late completion at 10% per annum commencing from 18 November 2010;

(b) to pay damages to the plaintiff by an account of rental at $8,000 per month or $266.66 per day commencing from 18 November 2010 to the date of actual completion; and

(c) costs to the plaintiff fixed at $6,000 excluding reasonable disbursements which shall be reimbursed to the plaintiff by the defendant.

I shall now set out the reasons for my decision.

3 I should point out that the facts set out hereunder were extracted from the three affidavits filed by the plaintiff's director Chuang Mui Yau ("Chuang") as the defendant did not file any affidavits. The defendant appointed solicitors Kertar & Co ("KC") on 29 April 2011 (who had acted for him in separate subordinate courts proceedings (at [12]-[13] below) but chose to act in person on and after 17 June 2011 in these proceedings.

The facts

4 The defendantwas the owner of the (commercial) Property which he occupied and used for his business of selling market produce.

5 On 26 July 2010, the defendant granted the plaintiff the Option to buy the Property at $1.2m in exchange for an option fee of $12,000 paid by the plaintiff. Under cl 8 of the Option, completion of the sale and purchase would take place:

(i) within fourteen (14) weeks from the date of exercise of the Option; or

(ii) within fourteen (14) days upon receipt of the HDB's approval or;

(iii) in the event that provisional approval is granted by the HDB, within fourteen (14) days upon receipt of the HDB's letter confirming that all unauthorised works in the Property has been rectified by the [defendant];

whichever date is later

6 Clause 6 of the Option stated:

The sale is subject to the [plaintiff] giving the [defendant] a tenancy term of one (1) year only for a monthly rental of $8,000.00 with effect from the date immediately after the contractual date of completion.

while cl 9 stated:

The [defendant] and the [plaintiff] shall use their best endeavours to obtain the HDB's approval to the sale and purchase herein and the [defendant] shall proceed with the submission of the HDB application form to the HDB within fourteen (14) days from the date of exercise of the

Option. The administration fee amounting to S$535.00 payable to the HDB shall be borne by the [defendant].

And cl 10 states:

10.1 The sale and purchase of the Property shall be subject to:

(i) the written approval from the HDB and such terms and conditions as the HDB may impose from time to time at its absolute discretion;

(ii) …

10.2 In the event that any of the aforesaid conditions are not fulfilled and/or breached, the [plaintiff] shall be at liberty to rescind and cancel this Agreement (but without any obligation on the [plaintiff's] part to do so) by giving the [defendant's] solicitors written notice in that behalf and upon such notice being given, this Agreement shall be declared null and void…

10.3 Without prejudice to any of the aforesaid conditions, in the event that the HDB does not grant written approval to the sale and purchase herein due to circumstances beyond the control of either parties and the parties herein having done all that is necessary for the HDB's approval, the Agreement shall forthwith be treated as null and void and the Deposit paid herein shall forthwith be refunded to the [plaintiff] without any interest compensation or deduction whatsoever and neither party shall have any claim or demand against the other whether for costs damages compensation or otherwise.

7 The plaintiff duly exercised the Option on 12 August 2010 by paying the (balance) 4% of the deposit amounting to $48,000 to the defendant's solicitors acting in the conveyance J S Yeh & Co ("JSY"). It was the plaintiff's case (with which the defendant disagreed) that under cl 8(i) of the Option, completion was to take place on 18 November 2010, being fourteen weeks from the date of exercise of the Option.

8 The Option incorporated the Conditions of Sale which Condition 8 states:

8. **Late Completion Interest**

8.1 Interest Payable by Purchaser

If –

(a) …

(b) …

…

8.2 Interest Payable by Vendor

8.2.1 If –

(a) the sale is not completed on or before the date fixed for completion; and

(b) the delay in completion is due solely to the default of the Vendor,

he must pay interest (as liquidated damages) commencing on the day following the date fixed for completion up to and including the day of actual completion. Interest will be calculated on the purchase price of 10% per annum.

8.2.2 If the Vendor has delivered vacant possession of the property before the date of actual completion, then the interest payable to the Purchaser will be reduced by a sum equivalent to a rent calculated on the annual value of the property fixed under the Property Tax Act (Cap. 254).

8.3 No Interest Payable

No interest (as liquidated damages) will be payable if the delay in completion is due to some cause other than the default of the Vendor or the Purchaser or to the default of both the Vendor and the Purchaser.

9 Completion did not take place as scheduled as the plaintiff discovered that the defendant was in breach of the conditions of his lease with the HDB as which result, the HDB refused to approve the sale.

10 On 6 September 2010, the plaintiff's solicitors submitted the application for resale/transfer of the Property to the HDB. The HDB inspected the Property on or about 15 September 2010 after which it wrote to both the plaintiff's solicitors and JSY on 9 November 2010 to advise it had discovered the following irregularities during the inspection:

(a) there had been unauthorised renovation in relation to the installation of a cold room;

(b) brackets had been installed at the shop front; and

(c) there was excessive display/storage of merchandise at the common area at the shop front.

The said letter pointed out that display of goods at the common area of the Property's frontage required the approval of the Tampines Town Council ("the Town Council"). The HDB disclosed that the Town Council had a pending court case against the defendant. Under the HDB's terms and conditions for resale/transfer of commercial properties, neither the transferor nor the transferee should have any outstanding judgments or court cases against them. As such, the HDB advised it was unable to process the resale application unless and until the defendant rectified his breaches.

11 In JSY's letter dated 8 December 2010 to the plaintiff's solicitors, the defendant indicated he would apply to the authorities for retention of the cold room after completion of the sale and purchase and agreed to allow JSY to retain $10,000 from the sale proceeds as stakeholders for this purpose. The HDB had advised JSY on 13 December 2010 (copied to the plaintiff's solicitors) that in the re-inspections it conducted on 29 November and 2 December 2010, it was noted that although the defendant had removed the brackets in [10(i)], he had failed to provide an undertaking to rectify the cold room and owed the HDB sums of $12,019.10 and $5,913.65 (excluding double rent) on two other HDB commercial properties for which Notices to Quit (which expired on 30 June 2010) had been issued by the HDB but the defendant had failed to comply therewith. The plaintiff's solicitors' letter to JSY dated 17 December 2010 stated completion should have taken place on 18 November 2010 but because of the defendant's failure to give his written undertaking to rectify or retain the cold room and the debts owed to the HDB, completion had been delayed. They gave notice that the plaintiff would charge interest for late completion pursuant to condition 8.2 of the Conditions of Sale (see

[8]).

12 Chuang's third affidavit had exhibited the cause papers of the Town Council's claim against the defendant in DC Suit No. 3475 of 2010 ("the action") which was commenced on 14 October 2010. The action was for trespass by the defendant for continuously displaying for sale fruits and vegetables on the common property (which is called the outdoor display area or the five foot way) at the Property's frontage for which the defendant required but had not been granted, a Temporary Occupation Licence ("TOL") since 1 January 2007. The writ of summons pleaded that the defendant had been issued eleven summonses between June 1993 and April 2009 for obstructing common property (all of which were compounded).

13 On 10 November 2010, the defendant through KC filed a defence and counterclaim *inter alia* denying the Town Council's right to sue him (asserting the common property belonged to the HDB). The defendant counterclaimed for damages arising from the Town Council's frivolous/vexatious claim. However the Town Council obtained judgment in the action against the defendant on 27 April 2011 for his failure to comply with an earlier "unless" order made by the district court; his counterclaim was dismissed. I should point out that the defendant did not disclose to the plaintiff the proceedings taken against him by the Town Council.

14 When the plaintiff discovered that the defendant had taken steps to obtain retrospective approval of the unauthorised cold room only on or about 6 January 2011 (when he gave his long overdue undertaking to HDB to submit all unauthorised works to the necessary government departments for approval, which was well past the scheduled completion date of 18 November 2010), its solicitors wrote to JSY on 19 January 2011 stating the defendant had wilfully delayed settlement of several outstanding summonses and that was the main reason for the HDB's refusal to consent to the sale. The plaintiff's solicitors stated that interest for late completion from 19 November 2010 was chargeable at $328.76 per day. JSY replied on 25 January 2011 denying the plaintiff's allegations and claimed that the defendant had settled all arrears of service and conservancy charges ("S&C charges") owed to the Town Council and that the action against the defendant had been withdrawn.

15 JSY's information was untrue as JSY received a letter (copied to the plaintiff's solicitors) dated 1 February 2011 from the HDB stating that the defendant had paid the S&C arrears up to November 2010 but not those for December 2010 and January 2011. The plaintiff's solicitors subsequently received a letter dated 9 February 2011 from the Town Council stating there were pending committal proceedings against the defendant for non-compliance with an injunction order dated 10 November 2010 ("the injunction order") the Town Council had obtained in the action restraining the defendant from using the common property at the Property's frontage to display his goods. The plaintiff was subsequently provided with a copy of the committal order dated 18 March 2011 that the Town Council had obtained against the defendant committing him to imprisonment for breaching the injunction order. The plaintiff then filed the OS on 30 March 2011.

16 There was protracted exchange of correspondence between the plaintiff's solicitors and/or JSY/KC as well as with the HDB in May and June 2011 over the issue of the defendant's compliance with the HDB's requirements and his settlement of the action as well as the arrears of S&C charges the defendant still owed. It included the following letters:

(a) from KC to the HDB dated 19 May 2011 claiming the defendant had used his best endeavours to obtain HDB's approval to the sale transaction in that he: (a) had given his undertaking to rectify the unauthorised cold room by engaging relevant experts to regularise its construction; removed the brackets and removed the obstructions of the common area: (b) had paid all outstanding S & C charges; (c) he would not be contesting the action of the Town

Council nor the injunction obtained thereunder. The defendant requested a final site inspection by the HDB;

(b) a letter dated 25 May 2011 from the Town Council's solicitors to KC copied to the plaintiff's solicitors stating that the defendant was still in breach of the injunction order;

(c) KC's letter dated 25 May 2011 in reply to the Town Council's solicitors reiterating that the defendant had cleared all obstructions and enclosing two photographs (shown to this court at the second hearing on 24 May 2011) that purportedly proved the common area was clear of obstructions;

(d) KC's letter dated 25 May 2011 to the HDB repeating the contents of their above letter to the Town Council's solicitors and requesting approval of the sale to the plaintiff;

(e) the HDB's letter dated 25 May 2011 to both parties' solicitors stating that the Board had been advised by the Town Council's solicitors that the judgment sum in the action was still outstanding and that the obstruction to the common area had not been removed. Hence, the plaintiff's application in [10] for the transfer of the Property was rejected. The plaintiff was advised to resubmit the application after the defendant had settled the action with the Town Council;

(f) on 2 June 2011, KC gave notice to the plaintiff's solicitors pursuant to cl 10.3 of the Option that the defendant intended to rescind the sale and purchase in the event the HDB did not grant approval;

(g) on 3 June 2011, the plaintiff's solicitors rejected the defendant's attempt to rescind the sale and purchase, *inter alia* pointing out that the defendant had not only failed to use his best endeavours to obtain HDB's approval but had wilfully caused the HDB to reject the application;

(h) On 6 June 2011 the Town Council's solicitors wrote to the defendant copied to the plaintiff's solicitors JSY and KC indicating that the defendant had attended court on 3 June 2011 and had proposed settling the Town Council's action (and would be attending court on 24 June 2011) by paying the judgment sum and costs totalling $28,629.50;

(i) the above settlement was confirmed in a separate letter dated 10 June 2011 to the Town Council's solicitors from JSY who requested that the Town Council expedite its confirmation of settlement to the HDB to whom a fresh application for approval had to be made;

(j) on 14 June 2011, the plaintiff's solicitors requested confirmation from JSY that the defendant would withdraw his notice to rescind the sale and purchase, would undertake to resubmit the resale application to the HDB, would consent to the plaintiff's prayers in the OS, and would give his irrevocable instructions to them to set aside the sum of $28,629.50 from the completion sum to pay the Town Council;

(k) JSY informed the plaintiff's solicitors on 17 June 2011 that the defendant did not consent to the plaintiff's prayers in the OS contending that no interest for late completion was due to the plaintiff, relying on cl 8(ii) of the Option. However, the defendant was still prepared to sell the Property to the plaintiff and would resubmit an application to the HDB; and

(l) on the same day, the plaintiff's solicitors gave notice to JSY that the plaintiff would pursue its remedies at the hearing before this court on 27 June 2011.

17 Chuang on the plaintiff's behalf took it upon himself to visit the Property to verify the situation. He took photographs on 25 May, 29 May and 20 June 2011 respectively. He found that merchandise was still displayed at the common property despite the defendant's claim to the contrary.

18 There were two hearings in May 2011 before this court granted the plaintiff's application. On 3 May 2011, KC requested a postponement of the hearing and urged the court to allow the defendant an opportunity to rectify his breaches. I acceded to the request and the hearing was adjourned to 24 May 2011.

19 On 24 May 2011, KC's counsel again requested an adjournment stating that his firm had requested the HDB to carry out an inspection of the Property as the defendant had cleared the obstructions on the common property, resolved the issue of the illegal cold room and the defendant wished to settle the judgment debt and committal order of the Town Council. KC's counsel handed to the court photographs the defendant had given to him a day earlier which showed the defendant had cleared the five foot way at the front of the Property. Counsel for the plaintiff was sceptical informing the court that when he received a copy of the letter dated 19 May 2011 from KC to the HDB (informing the HDB that the common property was no longer obstructed), the plaintiff had checked on-site and found the statement to be untrue. Counsel added that the defendant did not have a TOL to display goods at the common property since 31 December 2006 and had refused to apply for another TOL since. KC's counsel however explained it was not that the defendant refused to renew the TOL but that the Town Council had refused to renew TOLs for all HDB shop-owners because it did not want to lease out the yellow box area of common properties at the front of shops. I again acceded to the defendant's request for an adjournment.

20 At the last hearing on 27 June 2011, the defendant appeared in person. He claimed he discharged his solicitors because they did not conduct the case according to his instructions. He indicated he did not intend to contest the plaintiff's case but in fact had every intention to settle it by proceeding with the sale. He explained the delays in completion were due to his ignorance of HDB's rules and regulations. The defendant then embarked on a lengthy explanation of his family's business of selling vegetables which was his sole livelihood. He complained that he could not understand why the Town Council refused to allow him to display his goods in the yellow box area/common property when he had been doing so for 30 years. He did not realise until March 2011 that the sale of HDB shops needed to have approval of the Town Council and that his tussle with the Town Council would affect the sale. When he learnt that the HDB would only grant approval to the sale if clearance was given by the Town Council, he told the latter he would not fight any more. Questioned by the court, the defendant claimed he had obtained approval to retain the unauthorised cold room.

The decision

21 The court noted that as far back as December 2010 (see [11]), the plaintiff's solicitors had given notice to JSY that the plaintiff would be charging interest to the defendant for late completion after 18 November 2010. When the court pointed out to the defendant on 27 June 2011 that he was in breach of the Option due to his problems with the Town Council and his construction of a cold room without approval not to mention being committed to prison for contempt of court, the defendant did not deny his breaches. Instead, he requested the court's assistance and claimed he had agreed to settle the judgment debt in the action and had also agreed to pay interest and costs as demanded by the plaintiff's solicitors, contrary to the stand taken in JSY's letter dated 17 June 2011 set out in [16(k)]. Consequently, I granted the plaintiff's prayers in [1(d) and (f)].

22 Counsel for the plaintiff then requested that in lieu of damages (under prayer (e) of the OS at [1]), that the court grant the plaintiff rent pursuant to cl 6 of the Option (at [6]) from 18 November

2010 until the actual date of completion, calculated at $8,000 per month or $266.66 per day. The defendant complained it was unfair of the plaintiff to charge him interest for late completion commencing from November 2010 and rent should only be charged from January 2011 onwards. He did not elaborate further and I did not accede to the defendant's request for reasons set out at [24] and [25] below.

23 It was plain from the history of the sale transaction set out earlier in [10] to [17] that the defendant had not only failed to comply with cl 9 of the Option in that he had not used his best endeavours to obtain the HDB's approval to the sale and purchase but had also by his conduct, prevented the HDB from granting the requisite approval in time for completion on 18 November 2010. He persisted in using the common property at the front of the Property to display his goods without a TOL, despite repeated summonses being issued against him between 1993 and 2009 by the Town Council. He constructed a cold room without prior approval from the HDB and when his transgression was discovered in September 2010, he dragged his feet and made no attempts to rectify his breach until January 2011 and even then, it was only after repeated pressing by the plaintiff's solicitors. He caused the Town Council to resort to legal action including the taking out of an injunction and committal orders before he agreed to rectify his default. Further, he was less than truthful when he repeatedly claimed (through his counsel) that he no longer obstructed the common property with his goods when that was not true even as of 20 June 2011.

24 The defendant's recalcitrance and pugnacious attitude was not only inexcusable but reprehensible. The court could not condone his wrongful conduct by allowing him to rescind the sale and purchase under cl 10.3 of the Option as it could not be said that the sale was delayed or could not take place due to circumstances beyond the defendant's control and he had done all that was necessary to obtain the HDB's approval to the sale. Specific performance is an equitable remedy and he who comes to equity to be excused from the relief must come with clean hands. In order for the defendant to be able to rescind the sale or to have the court exercise its discretion not to penalise him in contractual interest or other liquidated damages for late completion, he had to be blameless as provided for under Condition 8.3 of the Conditions of Sale. It could not be said that the defendant was blameless. Indeed, his predicament was self-induced. Had he not constructed a cold room without the HDB's approval, the HDB would not have withheld its approval to the plaintiff's application for the transfer submitted on 6 September 2010 (see [10]). Had he complied with the HDB's request and given his written undertaking to rectify the unauthorised cold room as soon as he received HDB's letter dated 9 November 2010, HDB may well have given its provisional approval under cl 8(iii) of the Option and completion would have been extended to fourteen (14) days of receipt of HDB's letter confirming all unauthorised works had been rectified by the defendant

25 There was no valid reason why the court should deny the innocent plaintiff the reliefs that were claimed under the OS all of which were stipulated in the Option or provided for in the Conditions of Sale. It was for the defendant to prove that even if he was not in breach of his lease with the HDB, did not owe S&C charges and there was no court case pending against him by the Town Council, the approval for the sale from the HDB could not have been given by 18 November 2010; he did not. It bears noting that the HDB had inspected the Property quite promptly (on or about 15 September 2010) after receiving the plaintiff's application. Further, even if the court accepted the defendant's explanation that he was unaware that his dispute with the Town Council would affect the sale of the Property, the fact remained that the defendant also owed rent/double rent to the HDB on two other HDB properties. Surely he could not claim to be ignorant of HDB's policy that it would not approve the sale of the Property unless he settled whatever sums he owed to the HDB.

26 Instead, true to his unreasonable self, the defendant chose to appeal against the orders that I had made, notwithstanding that prayers 1(d) and (f) were granted based on his own assurance to the

court that he would pay those items.

Copyright © Government of Singapore.