

Ahuja Vivek Gopaldas and Another v Sukanda Sutisna
[2007] SGHC 224

Case Number : OS 759/2007
Decision Date : 28 December 2007
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Kelvin Chia (Balkenende Chew & Chia) for the plaintiffs; Andre Arul (Arul Chew & Partners) for defendant
Parties : Ahuja Vivek Gopaldas; Sadhana Desai Ahuja — Sukanda Sutisna

Land

Civil Procedure

28 December 2007

Lee Seiu Kin J:

1 The plaintiffs are a married couple. The defendant is the owner of the apartment at 50 Draycott Park #24-02 ("the Property"). In this summons, the plaintiffs sought the following declarations:

1 ...that the Defendant had granted the Plaintiffs a valid and effective option to purchase the property known as 50 Draycott Park #24-02 Singapore 259396 ("the Property") at the price of \$3,860,000.00 on the terms and conditions stated in the Option dated 1 April 2007 as extended to the Plaintiffs ("the Option");

2 ...that the Plaintiffs had validly exercised the Option on 11 April 2007, and that there is a valid and binding agreement between the Plaintiffs and the Defendant for the sale of the Property to the Plaintiffs, such sale to be completed by 4 July 2007 in accordance with the terms and conditions of the Option.

2 On 27 July 2007, after hearing submissions by counsel for the parties I granted both declarations and ordered the defendant to pay costs to the plaintiffs. The defendant has since appealed and I now give the grounds for my decision. The facts related below are based on the affidavits filed by the parties in the summons.

The plaintiff's version of events

3 According to the plaintiffs, they saw an advertisement in The Straits Times of 20 March 2007 offering the Property for sale. They telephoned the number given in the advertisement and spoke to one Carmen Ng Li Hua ("Ng"), a housing agent from Electronic Realty Associates Pte Ltd ("ERA"). Ng arranged for them to view the Property, which they did several times. On 1 April 2007, the plaintiffs made an offer to purchase the Property for \$3.86m in the following manner. They gave Ng a cheque in the sum of \$38,600.00 being a 1% option fee with instruction to Ng to release the cheque to the defendant only if he accepted the offer and issued a duly signed option to purchase to the plaintiffs. The plaintiffs specifically requested an option period of 14 days.

4 On 2 April 2007, the 1st plaintiff called Ng to ask whether the defendant had accepted the

offer. The plaintiffs said that Ng replied by short messaging service ("SMS") (presumably the 1st plaintiff could only reach Ng's voice mail and left a voice message) at 9.04 am as follows: "Sori, i missed yr call. D seller intend to buy other prop so he is seriously considering d offer. He will reply me tis aft. I wil try my best to close it". Despite the bad spelling and grammar, the message it is intended to convey is clear enough. That afternoon, at 3.52pm, Ng sent another SMS with the following message: "Still trying to convince him". Then at 6.02pm, Ng sent this message to the 1st plaintiff: "I'm going to prepare d option to let d owner sign now".

5 Around 6.40pm, Ng went to the plaintiffs' home at 8 Claymore Hill #17-02 and handed to the 2nd plaintiff (the 1st plaintiff was not home) an option to purchase ("the Option") signed by the defendant and dated 1 April 2007. The 2nd plaintiff noticed that the space for the expiry date of the option period was not filled up and Ng proceeded to fill in the date, 15 April 2007 which would give a 14-day option period from the date of the Option. The following day, 3 April 2007, Ng sent the following SMS to the 1st plaintiff at 9.23am: "U r welcome, thk u too for purchasing thru me. Pls let me knw when u hv excercised d option. Cheers". However, that evening Ng called the 2nd plaintiff and told her that the defendant had received a higher offer for the Property and asked if the plaintiffs would be exercising the Option. The 2nd plaintiff told her that they would.

6 On 4 April 2007, Ng called the 2nd plaintiff again. This time she asked if they would agree to give up the Option in exchange for monetary compensation from the defendant. The 2nd plaintiff told Ng that they were not interested in compensation and that they intended to exercise the Option. On 5 April 2007, the plaintiffs lodged a caveat against the Property through their solicitors, Messrs Balkenende Chew & Chia ("BCC"). On 9 April 2007, Ng sent an SMS to the 2nd plaintiff at 10.28am to notify her of the particulars of the defendant's solicitors for the sale and purchase of the Property. Later that day Ng called the 2nd plaintiff to say that the defendant had requested her to inform the plaintiffs that the Property was infested with termites and had a leakage problem. The plaintiffs decided to view the Property and did so in the afternoon of 10 April 2007. They were accompanied by their renovation contractors as well as the bank's valuers. Also at the Property were Ng and two representatives from the pest control company PestBusters. After the inspection, Ng asked the plaintiffs if they were still interested to exercise the Option. They answered in the affirmative as they felt that the problem was manageable.

7 On 11 April 2007, upon the plaintiffs' instructions, BCC exercised the Option by way of a letter to the defendant's solicitors, Messers Legal21 LLC ("Legal21") and enclosing a cheque for the sum of \$154,400.00 being payment of the balance 5% deposit specified in the Option.

8 Five days later, on 16 April 2007, Legal21 replied enclosing the plaintiffs' cheque for \$154,400.00 and advised that the Option had been exercised out of time. Paragraph 3 of that letter stated as follows:

Clause (A) of our client's duplicate copy of the Option to Purchase states that the option was opened for acceptance until 4.00 p.m. **2 April 2007**. Whilst we note that your client's copy of the Option to Purchase states that the option was amended to 15 April 2007, our client never authorised any person to amend or vary the terms of the Option to Purchase. [emphasis in original]

9 The plaintiffs said that they were shocked at this. They said that at no time up to 16 April 2007 had the defendant alleged that he had issued an option with a one day expiry period. Further, the plaintiffs pointed out that the defendant had signed the Option in the evening of 2 April 2007 (although it is dated 1 April 2007) and therefore the deadline of 4pm on 2 April 2007 had expired when he signed it. The plaintiffs called Ng to express their unhappiness at this turn of events.

10 On 19 April 2007, on the plaintiffs' instructions, BCC wrote to Legal21 to reiterate that the Option was validly exercised. An exchange of letters followed and the parties could not resolve the matter. The plaintiffs decided to take out this summons and filed it on 16 May 2007.

The housing agent's version

11 The housing agent, Ng, filed an affidavit in which she related the events from her point of view. She said that after the plaintiffs had viewed the property a number of times and the usual negotiations, they made an offer to purchase it at \$3.86m by handing her a cheque for the sum of \$38,600.00 representing the 1% option fee. She also said that they requested a 14-day option period. Ng said that this was the normal period for such options in Singapore. Indeed, I note that this period is specified in the agreement signed by the defendant's daughter, Imelda Sutisna ("Imelda"), on his behalf, granting ERA the exclusive right for 90 days to sell the Property. This document, exhibited in Imelda's affidavit and entitled "Exclusive Authorization to Sell", was signed on 3 March 2007 and specified a proposed price of \$4m, option fee of \$40,000.00, option period of 14 days and completion period of 12 weeks.

12 Ng confirmed that the plaintiffs had instructed her to hand the cheque to the defendant only in exchange for the duly signed Option. Ng confirmed that on 2 April 2007 at 9.04am she sent the first SMS (see *supra* [4]). Then in the evening she sent the third SMS at 6.02pm (see *supra* [4]) just before she met the defendant at his home at around 6.15pm. Ng said that the defendant confirmed that he agreed to sell the Property to the plaintiffs at \$3.86m and signed the Option. Ng said she vividly recalled telling the defendant that the plaintiffs wanted a 14-day option period and the defendant readily agreed to it. Ng then handed the plaintiffs' cheque to the defendant. She then went to the plaintiffs' home to deliver the Option. She said that the 2nd plaintiff noticed that the expiry date of the Option was blank. Ng said that she realised that in her haste she had not filled it in and she then inserted the date 15 April 2007 in the Option.

13 Ng said that at 7.21pm that night, she received an SMS from another agent who stated that her client was prepared to offer \$3.95m for the Property. Ng said that she did not inform the defendant of this offer as he had already granted the Option to the plaintiffs. Ng said that the defendant apparently found out about this offer from somebody else because on 3 April 2007, he requested her to attend at his solicitors' office at 4 Robinson Road #10-01. Ng said that present at the meeting were the defendant, his daughter Imelda, her husband Kenneth and their solicitor Nicholas Loh ("Loh") of Legal21. Ng said that she was accused of mishandling the sale, specifically that she was negligent in not responding to the other agent's offer. As a result of this, the defendant had missed the opportunity to sell the Property at a higher price. Ng denied any fault, saying that the higher offer was received only after the Option was given to the plaintiffs. However, she agreed to contact them to find out if they intended to exercise the Option.

14 Ng said that after the meeting, between 7pm and 8pm, she called the 2nd plaintiff and told her that the defendant had received a higher offer and asked if they intended to exercise the Option. The 2nd plaintiff answered in the positive. On 4 April 2007, Ng called Loh to tell him of this. A few hours later Loh called Ng and said that the defendant was prepared to pay some monetary compensation to the plaintiffs if they agreed to back out of the purchase. However, he did not specify the amount. Ng immediately called the 2nd plaintiff to tell her of this but the latter said that they were not interested in the compensation and would be exercising the Option.

15 On 6 April 2007, at the defendant's request, Ng went to his home at around 3pm to discuss the matter. Ng was accompanied by Alan Toh ("Toh"), a division director of ERA. At the meeting, the defendant requested Ng to try to persuade the plaintiffs not to exercise the Option as the Property

had termites and leakage problems. Ng said that she would agree to do so, but requested the defendant to check with his solicitors whether he would be doing anything wrong in trying to get the plaintiffs to abandon the purchase on account of these issues. On 9 April 2007, the defendant called Ng to say that his solicitors had assured him that it was proper to do this. Thereupon Ng contacted the 2nd plaintiff on this matter. At the 2nd plaintiff's request, Ng arranged for an inspection of the Property on 10 April 2007 at 4pm. Ng said the 2nd plaintiff arrived with her valuers and renovation contractors and inspected the Property. The 1st plaintiff arrived a little later. At the end of the inspection, upon Ng's inquiry, the 2nd plaintiff said that the problems appeared to be manageable and they would exercise the Option. Ng then called the defendant to tell him of this. The defendant asked her when the Option would be exercised by the plaintiffs as he would be leaving for Indonesia shortly. Ng answered that it would probably be no later than 13 April 2007 as 14 and 15 April 2007 fell on a weekend.

16 On 16 April 2007, Ng received an irate telephone call from the 2nd plaintiff who told her that the defendant had, through his solicitors, rejected their exercise of the Option on the ground that it had expired at 4pm on 2 April 2007. Ng said that she was shocked to learn of this. Ng reiterated in her affidavit that the defendant had expressly agreed to a 14-day option period when he signed the Option. Ng pointed out that it did not make sense for the defendant to grant an option that had expired before he even signed it, and that his conduct throughout was inconsistent with his position that the Option had expired. Ng said that she would like to make it clear that the defendant had never suggested an option period of only one day. She said that if this had been the case, she would not have handed the plaintiffs' cheque to him, nor would she have taken the trouble to take the Option and deliver it to the plaintiffs on 2 April 2007.

17 The ERA division director, Toh, who followed Ng to the meeting of 6 April 2007 at the defendant's home, filed an affidavit confirming Ng's account of that event.

The defendant's version

18 The defendant is an Indonesian businessman who divides his time between Jakarta and Singapore. In early March 2007, he decided to sell the Property and appointed his daughter Imelda, who resides in Singapore, to help him do it. On 3 March 2007, Imelda, on behalf of the defendant, appointed Ng to look for potential buyers for the Property. On 31 March 2007, the defendant arrived in Singapore and an appointment was made for Ng to meet him on 1 April 2007 to discuss potential purchasers.

19 I need not set out the defendant's narration in his affidavit of the various events leading to the signing of the Option as they are not so germane to the issues before me. Suffice it to say that he took great pains to emphasise that he wanted a minimum of \$4m. However, this did not quite square with an SMS sent by Imelda to Ng on 1 April 2007 at 10.17am which contained the following message:

Hi carman am in church. Will call u later. My dad is looking at least 3.85 or 3.9. Thats why I will arrange for u to meet him perhaps later to explain the price. Pls use the above price guide to sell.
Thanks

20 What is relevant is that the defendant said that on 2 April 2007 at about 6.15pm, Ng arrived at his residence at 25 Balmoral Park #11-05 and produced an option to purchase for him to sign. Upon perusing the document, the defendant saw the names of the plaintiffs for the first time. The defendant said that he was reluctant to sell at \$3.86m, but Ng kept insisting that this was a very good deal. He said that Ng "pressed me to sign .. and rushed me through the whole transaction, and reluctantly I signed the Option". The defendant exhibited his copy of the Option in his affidavit and

pointed out three features:

- (a) It was dated 1 April 2007 although he had signed it on 2 April 2007.
- (b) Clause (A) was filled by Ng to read "which offer remains open for acceptance ... until 4.00 p.m. on the 2 day of April 2007".
- (c) The space after "Vendor's solicitors" was blank as he had not appointed them at that time.

21 The defendant said at [38] of his affidavit that at the time he signed the Option he did not realise that Ng had backdated it to 1 April 2007 and that she had filled in 2 April 2007 as the expiry date. The defendant said that Ng signed on the document after him, tore out the carbon copy and handed it to him. He said that Ng then gave him the plaintiffs' cheque for \$38,600.00. He did not say as much in his affidavit but it would appear from the flow of the narrative that he accepted it. Because of what he said at a later part of his affidavit, it is important to set out in full what he said at [38]:

38. At the time I signed the Option to Purchase form I also did not realize that Carmen had dated the same **1 April 2007** or that **Carmen had filled in the expiry date of the Option as 4.00pm, 2 April 2007**. Carmen told me just before I signed that the details were correct, so I signed the same with the aforementioned information filled in. [emphasis in original]

22 It would appear from this that the defendant had not noticed the date of the Option or the date of its expiry. However, a few paragraphs later, after the defendant denied Ng's allegation that she had told him that the plaintiffs requested a 14-day option period and he had certainly not "readily agreed" as this was not raised at all that evening, he said that the plaintiffs' version about the 2nd plaintiff pointing out to Ng that the expiry date for the Option was blank and that Ng then filled in "15 April 2007" was a "pack of lies". He then said the following at [47]:

47. What really happened at the meeting on 2 April 2007 was that **Carmen did not leave the expiry date column of the Option to Purchase in the blank**. She **filled in** the expiry date as **"2 April 2007"** before me and both of us signed off on the Option to Purchase bearing the expiry date **"2 April 2007"**. **This explains why my copy of the signed Option to Purchase, which is a blue sheet of paper, bears the expiry date "2 April 2007"**. If the Plaintiffs' story was true, my copy of the Option to Purchase **ought not be filled with any expiry date at all**. [emphasis in original]

From the context, the words "before me" in the second sentence must mean "at an earlier time" rather than "in the defendant's presence". This means that the defendant had assumed that, because his copy had "2 April 2007" as the expiry date, it must mean that it was there at the time he signed it, and since it was a carbon copy, the plaintiffs' copy of the Option, being the first copy, must also have had 2 April 2007 as the expiry date. It is clear from the defendant's affidavit that he did not notice it at all at the material time.

23 The defendant then went on to describe how he discovered that there was another offer of \$3.95m for the Property. He said that at about 9.30pm on 2 April 2007, a lady telephoned Imelda to ask if the Property had been sold, saying that she was prepared to offer \$3.95m. Imelda told her that the Option had just been signed. Then at 9.45pm that lady called again, this time identifying herself as a housing agent by the name of Caroline. She said that she had been in contact with Ng about the Property as she had a client from Hong Kong who was interested in it. However, Ng had not been cooperative because they would then have to share the commission. She told Imelda that earlier that

evening she had sent an SMS to Ng to offer \$3.95m. On hearing of this, the defendant became very upset at Ng. This was followed by a call from Ng who said that she had forgotten to ask the defendant to sign the agreement pertaining to her commission and wanted to meet him immediately. The defendant refused, telling her that he was tired and to do so the following day.

24 On 3 April 2007, the defendant went with Imelda and Kenneth to meet Caroline. The latter told them that she had tried to contact Ng between 27 March 2007 and 2 April 2007 but could not reach her. Then Caroline sent an SMS to Ng on her client's offer of \$3.95m on the night of 2 April 2007 but Ng sent a reply by SMS that the defendant had decided "not to sell". The defendant and Imelda were very upset at Ng and decided to consult Loh, who was a friend of Imelda. They proceeded to Loh's office sometime at 4pm that day.

25 The defendant said that Ng was summoned to Loh's office and she arrived just after 5pm. They recorded the conversation with Ng at the meeting and the defendant exhibited the transcripts thereof. The transcripts concern the issue whether Ng had acted against the defendant's interest in the matter. The transcripts do not deal with the expiry date of the Option.

26 The defendant said that he gave Ng the opportunity to rectify the situation by seeing if the plaintiffs would be prepared to withdraw from the purchase. He was prepared to return the option fee of \$38,600.00 but he denied offering any additional monetary compensation. On 5 April 2007, when Ng told him that there was no progress, Kenneth suggested that as a face-saving method for Ng to call off the transaction, the defendant could tell Ng about the problems with termite and leakage. When Ng reverted with the plaintiffs' request to inspect the Property, the defendant asked Ng to meet him on 6 April 2007 to discuss this. The defendant was surprised when Toh turned up with Ng. He said that Toh merely kept quiet throughout the meeting during which he complained about the poor service that ERA had rendered and said that he would not pay any commission to Ng or ERA. Ng assured him that she would try her best to call off the transaction.

27 I now come to an important part of the defendant's affidavit. He noted at [81] that the space specifying the vendor's solicitors was left blank. He then noted that, "as a matter of commonsense" that the Option was incapable of being exercised because, "leaving aside the issue concerning the expiry date, no solicitors had been appointed by me to accept the Option to Purchase or the payment of deposit". As an aside, it is noteworthy that it is the defendant's position that even if the expiry date had been specified as 15 April 2007, the fact that he did not specify the name of his solicitor would render the Option invalid. The defendant, at [83] of his affidavit, then invited this court to note that Ng herself, at [10] of her affidavit, **"admits that she was aware by 3 April 2007 that I wanted to call off the whole transaction"** [emphasis in original]. It is difficult to see quite how the defendant came to that conclusion because this was what Ng said at [10] of her affidavit:

10) At the aforesaid meeting, I was accused of mishandling the sale ... Specifically, it was alleged that I was negligent ... as a result of which the Defendant had ... failed to sell ... at a higher price. I denied any wrongdoing in the matter, pointing out that the higher offer was only received by me **after** the Option was given to the Plaintiffs. However I agreed to contact the Plaintiffs to find out if they intended to exercise the Option. [emphasis in original]

28 Furthermore, it was not for the defendant to call off an otherwise valid option agreement. This point was clear in Ng's mind when she notified the plaintiffs that Legal21 were acting for the defendant in the sale – see Ng's second affidavit at [6]. The defendant had in [61] of his affidavit, deposed that Legal21 did not have his warrant to act in respect of the sale of the Property, saying as follows:

61. I would clarify however that **Legal21 LLC were not appointed by me to act as my solicitors as regards the sale or transfer of the Property**. No Warrant to Act was signed by me. **Legal21 LLC only came into the picture because I needed legal advice on how to deal with the breaches and/or fraudulent conduct of Carmen and/or the Plaintiffs**. [emphasis in original]

He said in [85] that Ng had, behind his back, sent an SMS to the plaintiffs to advise them that Legal21 were his solicitors for the sale when she was supposed to convince the plaintiffs to call off the transaction. The defendant said that the implications of what Ng did were startling. He further deposed at [86]:

86. What is even more startling is that **Legal21 LLC had never been appointed by me to deal with the sale and purchase of the Property**. They were instead helping me look into the issue of [Ng's] misconduct and the consequences of the same. They did not even come into the picture until **3 April 2007**, which is **after the Option to Purchase had been signed by me on 2 April 2007**. [emphasis in original]

29 The problem with this proposition is that on 16 April 2007 Legal21 had sent a letter to the plaintiffs' solicitors which reads as follows:

1. We act for Mr Sukand Sutisna, the owner of [the Property].
2. We refer to your letter to us dated 11 April 2007 enclosing our client's Option to Purchase dated 1 April 2007 ("Option to Purchase") issued in favour of your clients ... together with your client's cheque ... dated 11 April 2007 made out in our favour for S\$154,400 ("Cheque").
3. Clause (A) of our client's duplicate copy of the Option to Purchase states that the option was opened for acceptance until 4.00p.m. **2 April 2007**. Whilst we note that your client's copy of the Option to Purchase states that the option was amended to 15 April 2007, our client never authorised any person to amend or vary the terms of the Option to Purchase.
4. As such, the option period under Clause (A) had expired before your client's acceptance of the said Option to Purchase. Accordingly, we enclose herewith the following for your retention:
 - a. Your client's copy of the Option to Purchase; and
 - b. Your client's Cheque
5. We also enclose a copy of our client's Option to Purchase stating the date 2 April 2007.

[emphasis in original]

30 It would therefore have been startling from the point of view of Legal21 that they lacked the instructions to act for the defendant. The defendant explained this in [91] by saying that Legal21 wrote that letter to the plaintiffs' solicitors "on my instructions". However, Legal21 did not in that letter state that at the time the cheque was tendered on 11 April 2007, they had not been instructed to act for the defendant and therefore this was another reason why the Option exercise was invalid.

31 Imelda filed an affidavit essentially corroborating the defendant's version. However I note that in [37], she had coyly skirted the issue as to whether she had seen Ng fill in the expiry date as 2 April 2007.

32 Finally, the defendant deposed that he had, on 22 May 2007, "filed a police report regarding this matter" – see [93] of his affidavit. He did not specify what the nature of the complaint was and whom the report was directed against. Neither did he exhibit a copy of the report.

The defendant's submission

33 Counsel for the defendant submitted that I should order that the Originating Summons be converted to a writ action on the following grounds:

- (a) There are substantial disputes of fact that can only be resolved by a trial.
- (b) The defendant has a valid counterclaim against the plaintiffs and/or Ng and/or ERA.
- (c) There are pending criminal investigations into the defendant's allegations of forgery.
- (d) In the event that the court is minded to adjudicate the matter, the affidavits clearly show that the plaintiffs are not entitled to the declarations sought.

Are there material disputes of fact?

34 The first ground is the most substantial one. Indeed, were I satisfied that the matter hangs on a disputed issue of fact, I would have no hesitation in making the order suggested by counsel for the defendant. The issue was whether the defendant had granted an option the expiry date of which was 15 April 2007 and whether the plaintiffs had validly exercised the Option on 11 April 2007 by tendering a cheque to Legal21.

35 On the first issue, the defendant had carefully refrained from saying outright that at the time he signed the Option, he had noted that the expiry date was 2 April 2007 or that he had seen Ng filling in that date. He is relying on the fact that the date "2 April 2007" now appears in his copy of the Option to make all the allegations against Ng and the plaintiffs. It is noteworthy that he did not mention when he discovered that this was the expiry date (and this will have important ramification later). It is not difficult to understand why he had carefully skirted this question. One important reason would be that he would have to explain why, if he had agreed to sell that Property at \$3.86m shortly after 6.15pm on 2 April 2007, he would sign an option that had expired even before he signed it. There are of course other less benign reasons. For instance, if he had signed the Option with the knowledge that it was a worthless piece of paper at the outset, his motives in accepting the cheque could be called to question. There are even baser circumstances than this, but I need not delve into them. Suffice it to say that I was prepared to consider the matter from the position that the defendant was not aware of the expiry date at the time he signed the Option.

36 Therefore we have only the 2nd plaintiff's version that the expiry date was not filled in when Ng delivered the Option to her. Now the main basis for the defendant's allegations against the plaintiffs (whatever the justification he may have in respect of his allegations against Ng) is the fact that the expiry date of his copy of the Option was eventually found to be 2 April 2007. Once this is found to be baseless, there is nothing in the way of accepting the plaintiffs' version of events. Indeed, the plaintiffs' version is much more consistent with the agreed facts than the defendant's. It is consistent with the behaviour of the defendant from the time he discovered the higher offer through to his warning about termites and leakage problems to his failure to cite the expiry of the Option as a ground for rejection until five days after its exercise by the plaintiffs. In view of the fact that a 14-day expiry period is specified in the agreement entitled "Exclusive Authorization to Sell", signed by Imelda on 3 March 2007, and the fact that I accept Ng's contention that this is the usual period in

Singapore for such options, I would hold that Ng had the authority to fill in the expiry date as 15 April 2007. In any event, it would be a matter that I would have granted relief by way of rectification of contract as it was clearly, in the context of the subsequent action of the parties, what they had intended.

37 In my view, there are very important questions that beg for answers but were left unanswered or unsatisfactorily answered by the defendant. For instance, if he had known all along that the Option had expired, why drag the matter further by asking Ng to ask the plaintiffs if they were going ahead with the purchase, or telling them about the problems with termites and leakage. Why not just tell them immediately that the Option had expired? Why wait until at least 11 April 2007 (the date the plaintiffs sent the cheque for the balance 5% to Legal21)? And why wait another five days before rejecting it on 16 April 2007? Furthermore, the evidence of his solicitor, Loh, is crucial to the defendant and yet it is not forthcoming. Looking at all the circumstances of the case, I was more than satisfied that it is a sham defence and put up to delay the inevitable.

Is there a valid counterclaim?

38 If the defendant has any claim against anyone, it would be Ng, whose expertise – at least in relation to the document – is rather suspect. Not only did she miss out on the expiry date, she also missed out on getting the defendant to sign the documents pertaining to her own commission. This has nothing to do with the plaintiffs and so there is no issue of a counterclaim against the plaintiffs.

Is there a pending police investigation?

39 The defendant had neglected to provide details of the nature of his police report. I do not see how, on that bare statement in [93] of the defendant's affidavit, his counsel can make the submission that the police are currently investigating whether the Option was forged.

40 In any event, if there were any forgery, it is not an issue pertaining to the plaintiffs. It is quite impossible to see how the plaintiffs, having parted with a cheque for \$38,600.00 would have participated in such skulduggery instead of insisting on an Option with a 14-day option period or a return of that cheque.

41 For these reasons, therefore, I did not find any merit in this ground.

Are there adequate grounds disclosed on the affidavits?

42 As I have pointed out in relation to the first ground, the plaintiffs' version of events are fully supported by the undisputed facts. There is no doubt in my mind that in the circumstances painted by the affidavits of the parties, the defendant had granted an option expiring on 15 April 2007 and the plaintiffs had validly exercised it on 11 April 2007. I accordingly granted an order in terms of the summons and gave costs to the plaintiffs.

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