

Goh Lye Chin Raymond and another v Poon Soon Chin and another
[2010] SGHC 232

Case Number : Originating Summons No 449 of 2010
Decision Date : 12 August 2010
Tribunal/Court : High Court
Coram : Philip Pillai J
Counsel Name(s) : Fan Kin Ning (David Ong & Partners) for the plaintiffs; Tan Tuan Wee (Sim Mong Teck & Partners) for the defendants.
Parties : Goh Lye Chin Raymond and another — Poon Soon Chin and another

Land

12 August 2010

Judgment reserved.

Philip Pillai J:

1 This is an originating summons for, *inter alia*:

- (a) a declaration that the option to purchase dated 27 December 2009 granted by the defendants for the purchase of the property known as 242 Westwood Avenue, #14-50, Singapore 648365 ("the Property") was duly exercised by the plaintiffs on 12 April 2010 and that there is a valid and binding agreement ("the Sale & Purchase Agreement") for the defendants to sell and the plaintiffs to purchase the Property;
- (b) In the alternative, a declaration that by an agreement ("the Option Agreement") between the first plaintiff and the defendants made on 27 December 2009 the defendants agreed to issue the first Plaintiff an option to purchase the Property for a sum of \$888,000.00 which option to purchase is to be exercised within 14 days of the issuance of the option to purchase and the purchase to be completed within 14 weeks of the exercise of the option to purchase;
- (c) an order for specific performance of the Sale & Purchase Agreement or, alternatively, the Option Agreement; and
- (d) that the Registrar of the Supreme Court be empowered to execute all documents, deeds and instruments necessary for the sale of the Property for and on behalf of the defendants under the Sale & Purchase Agreement or, alternatively, under the Option Agreement.

2 The parties were introduced by a property agent. After some viewing of the Property, the parties met on 27 December 2009 to discuss the sale and purchase of the Property. It is not in dispute that the first plaintiff was at the time under the mistaken impression that he was unable to take an option to purchase in his name because of the Housing Development Board's ("HDB") minimum occupation period requirement. It is also not disputed that, as a result, the agent procured the parties to sign three separate documents concurrently: (i) an Offer to Purchase, signed by both

defendants and the first plaintiff; (ii) an Option to Purchase ("the Option") signed by both defendants; and (iii) a handwritten side letter signed by both defendants and the first plaintiff ("the Side Letter").

3 The Option was granted to the first plaintiff's mother, Ong Siah Liyo and/or her nominee(s) in consideration of the sum of \$8,000 ("the Option deposit"). The Option provided that it was to be exercised upon the signing of the Option and the tender of \$35,520 less the Option deposit being paid to the defendants' solicitors. Critically for present purposes, the Option did not contain any expiry date.

4 The Side Letter contained the following terms:

(1) The Seller [*ie*, the defendants] is aware that buyer [*ie*, the first plaintiff] can legally purchase the house in 05/04/2010. The buyer would buy using the mother's name (ONG SIAH LIYO S1148589H), upon 05/04/2010, we would prepare another option to purchase for the legal conveyancing.

(2) In the event if from this agreement date [*ie*, 27 December 2009] till 05/04/2010, buyer were to change his mind and not proceed with the purchase, seller would have rights to forfeit the 1% option fees \$8,880.00

...

(4) During this period till 05/04/2010, Seller cannot sell to anyone else except for the above buyer.

(5) The buyer request to ascertain that he can purchase this Floravale (EC) while still holding on to his HDB flat. In the event if can't hold the HDB, buyer would still go ahead with the purchase of above premises.

5 Read cumulatively, the three documents provide for the defendants to receive the option fee and not to sell to anyone else until 5 April 2010. They anticipated the issue of a fresh option by 5 April 2010 in the event that the first plaintiff had problems with his HDB minimum occupation period.

6 Upon further checking it emerged that the first plaintiff had no problems with respect to HDB's minimum occupation period arising from his obtaining the Option, which is distinct from the exercise of an Option or the sale and purchase of the Property. The relevant statutory provision is section 49A of the Housing and Development Act (Cap 129, 2004 Rev Ed), which only prohibits a *sale*, and not the mere holding of an option which is not exercised.

7 The defendants were advised by the first plaintiff that he was travelling from 4–8 April 2010. Attempts for his agent to meet with the defendants on 5 April 2010 to proceed further were abortive. On 12 April 2010 the plaintiffs purported to exercise the Option by signing the Option and paying the exercise deposit and delivered the same personally to the defendants. On 14 April 2010, the defendants' lawyers returned the exercise cheque and documents, as well as the original Option deposit and informed the plaintiff's lawyers that their clients took the position that the Option had expired but they were still willing to sell the Property at a price of \$1m. Negotiations thereafter occurred with respect to a new price but no agreement materialised leading to the plaintiffs instituting this originating summons.

8 The only critical point of contention relates to 5 April 2010 which the defendants say was the

expiry date of the Option. There is no expiry date in the Option. 5 April 2010 is a date which appears in the side letter but even there it is not described as an expiry date but only as the date up to which the defendants cannot sell the Property to anyone else except the first plaintiff.

9 The plaintiff had informed the defendant that he would be travelling between 4-8 April 2010. The property agent had been urgently contacting the defendants on the plaintiff's behalf to proceed as agreed and a meeting took place on 5 April 2010 between the defendants and the property agent and nothing further transpired. The defendants' conduct evinces an intention to resile from the agreements in order to hold out for a higher price. The defendants had not sold the property to any third party and had engaged in discussions after 5 April 2010 with the property agent and the plaintiff to negotiate a higher price, which did not eventuate in any agreement. The conduct of the defendants with regard to events before, during and after the exercise of the Option, in my view constitute circumstances similar to those contemplated by *Tai Joon Lan v Yun Ai Chin and another* [1993] 2 SLR(R) 596 which accordingly merit the treatment of the exercise of the Option on 12 April 2010 to be valid and that the defendants be compelled to perform the Option and proceed to complete the contract for the sale and purchase of the property provided therein.

10 I therefore grant judgment in the following terms:

- (a) The Option dated 27 December 2009 granted by the defendants for the purchase of the property known as 242 Westwood Avenue, #14-50, Singapore 648365 (the "Property") was duly exercised by the plaintiffs on 12 April 2010;
- (b) Order for specific performance of the Option;
- (c) The defendants be ordered to execute all documents, deeds and instruments to complete the transaction within 14 weeks of the date of this Declaration, failing which the Registrar of the Supreme Court be empowered to execute the same; and
- (d) Damages, interest and adjustments relating to any tenancy to be assessed.

11 The plaintiffs are entitled to costs.

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