Lim Cheng Liang and Another v 33 Boat Quay Pte Ltd and Another
[2007] SGHC 125

Case Number : OS 519/2007

Decision Date : 06 August 2007

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Kesavan Nair (David Lim & Partners) for the plaintiffs; Kevin Kwek Yiu Wing (Legal Solutions LLC) for the defendants

Parties : Lim Cheng Liang; Lim Siew Lun — 33 Boat Quay Pte Ltd; 34 Boat Quay Pte Ltd

6 August 2007

Choo Han Teck J:

1 This vendor-purchaser summons was taken out by the plaintiffs for a declaration that, under the terms of the contracts for the sale and purchase of two properties known as 33 and 34 Boat Quay respectively, the plaintiffs as purchasers were not obliged to pay a further sum of $100,000 for each of the two properties, and conversely, that the defendants as vendors were not entitled to those sums. The peculiar problem arose in this way. One Chou Li Chen ("Chou"), who was a director of the defendant companies, signed a contract with the plaintiffs on the morning of 18 October 2006 ("the earlier agreement"), offering "*to cause 33 Boat Quay Pte. Ltd. and 34 Boat Quay Pte. Ltd. each to enter into an Agreement for Sale and Purchase with you or to grant you with an Option to Purchase upon the specific terms and conditions as follows*". The main term in issue was in the following words:

2. The respective sales and purchases shall be subject to the existing tenancy(ies) with V 4X Joint Venture as 'the Tenant' per the Tenancy Agreement dated 7th December 2004; and in the unlikely event of any one of the said sales and purchases being able to be subsequently altered as "not subject to the existing tenancy", then you will agree to pay S$100,000/- more for that particular sale-and-purchase.

[emphasis in original]

2 Later, on the same day, a solicitor was appointed to represent the parties and drafted the sale and purchase agreements which were executed on the same day between the plaintiffs and Chou who signed on behalf of the defendants ("the sale and purchase agreements"). Under cl 1 of the earlier agreement, the terms and conditions of the sale and purchase agreements were to be drafted in accordance with the entire agreement. Crucially, cl 13 of the sale and purchase agreements provided as follows:

13 The Property is sold with existing tenancy to V 4X Joint Venture ('the Tenant') as per copy of stamped tenancy agreement dated 7th December 2004 attached but with the exclusion of the therein-installed computer system equipment and facilities save with permission for its use by the Purchasers and the Tenant. If the Vendor is able to deliver vacant possession on completion, then the Purchaser shall pay Dollars One Hundred Thousand ($100,000.00) more for the purchase price.

3 It will be useful to explain the significance of the difference in the words of cl 13 of the sale

and purchase agreements, and cl 2 of the earlier agreement (set out at [1] above). The two properties in question were initially tenanted by a tenant known as "V 4X Joint Venture". The tenancy commenced on 1 January 2005 and was for two years. There was also a provision for a further renewal but that is not relevant to the issues in this action. On 29 March 2006, V 4X Joint Venture became a sole proprietorship of Patrician Holdings Pte Ltd ("Patrician"). Patrician then incorporated V 4X Joint Venture Pte Ltd on 13 July 2006 and terminated the business of V 4X Joint Venture on 30 September 2006. V 4X Joint Venture Pte Ltd continued to pay rent to the defendants and it maintained that the defendants were aware of the change in the identity of the tenant, and further, that the defendants had accepted the renewal notice given by the new entity V 4X Joint Venture Pte Ltd. Mr Kwek, counsel for the defendants, submitted that the defendants did not know that the entity had changed, and when they eventually found out, served a notice to quit on V 4X Joint Venture Pte Ltd. On 15 December 2006, the defendants' solicitors gave notice to V 4X Joint Venture Pte Ltd that they were trespassers. The latter responded on 19 December 2006 denying the allegation.

4 The sale and purchase of the two properties were thus completed on 31 December 2006 without vacant possession. The dispute between the parties involved the question as to whether cl 13 of the sale and purchase agreements or cl 2 of the earlier agreement was the operative term of the parties' agreement. If cl 13 applied, the defendants would not be entitled to the further sum of $200,000 ($100,000 for each of the two properties) since they were unable to hand over vacant possession. However, if cl 2 of the earlier agreement applied, then the defendants might be so entitled since, as Mr Kwek claimed, the existing tenancy had been terminated and the contracts for sale were "not subject to the existing tenancy". If this were right, it would lead to the result of the plaintiffs no longer having a tenant to negotiate the terms of continuing the tenancy, and more significantly, they would be left with a "trespasser" if the vacant possession term in the sale and purchase agreements had no application.

5 Mr Kwek advanced two arguments. First, he submitted that the earlier agreement should be used to interpret the sale and purchase agreements. This would, in effect, substitute cl 13 of the sale and purchase agreements with cl 2 of the earlier agreement. I do not think that that would be right. The operative words in the sale and purchase agreements (*ie,* cl 13) are clear and do not require interpretation. The contract was drafted by a solicitor and executed by the parties, and in the case of the defendants, by the same director who had signed the earlier agreement. Furthermore, whether the existing tenancy had been terminated appeared to be a matter in dispute between V 4X Joint Venture Pte Ltd and the defendants. The remedies for the defendants insofar as the $200,000 was concerned lay elsewhere than against the plaintiffs.

6 The second argument put forward by Mr Kwek was that the two agreements ran concurrently and therefore cl 2 of the earlier agreement can still apply. I do not think this is a tenable argument. Clause 1 of the earlier agreement specifically referred to an agreement to follow. Chou made it clear in the earlier agreement that he was offering to cause the owners to enter into an agreement with the plaintiffs or otherwise grant an option to purchase to them. The earlier agreement was binding until subsequent agreements were executed.

7 When that was done, the earlier agreement became subsumed in the final contracts (ie, the sale and purchase agreements). A clearly expressed term would be required in the final contracts if any term in the earlier one was to be preserved, but that would, in practice, be unnecessary because, given that the two contracts were not very long or complex, the parties could easily have incorporated the term into the final contract. The solicitor who drafted the sale and purchase agreements had not given evidence as to whether the phrasing of cl 13 was a mistake on his part or otherwise. Either way, the plaintiffs could not be faulted.

8 For the reasons above, I gave judgment in favour of the plaintiffs. Mr Kwek has requested for a certification that no further arguments are required pursuant to s 34(1)(c) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed). This is unnecessary because a final order was made and therefore, s 34(1)(c) does not apply.