Seng Swee Leng *v* Wong Chong Weng
[2011] SGCA 64

Case Number	: Civil Appeal No 231 of 2010
Decision Date	: 28 November 2011
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Quek Mong Hua, Jiang Ke-Yue and Tang Shangjun (Lee & Lee) for the appellant; Liaw Jin Poh (Tan, Lee & Choo) for the respondent.
Parties	: Seng Swee Leng — Wong Chong Weng

Contract – Remedies – Specific Performance

Land – Sale of Land

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2010] SGHC 343.]

28 November 2011 Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 This appeal stems from Suit No 949 of 2009, in which the plaintiff (the appellant in this appeal ("the Appellant")) sought specific performance of a sale and purchase agreement arising from an option dated 29 May 2009 ("the Option") granted by the defendant (the respondent in this appeal ("the Respondent")) to him (the Appellant) to purchase, at the price of $1.1m, the property at No 52 Yio Chu Kang Road, Singapore 545561 ("the Property"), which was and is currently still owned by the Respondent. The trial judge ("the Judge") dismissed the Appellant's claim and allowed the Respondent's counterclaim for an order that the Appellant withdraw Caveat No IB/378953R ("the Caveat") which he had lodged against the Property (see *Seng Swee Leng v Wong Chong Weng* [2010] SGHC 343 ("the Judgment")). Dissatisfied with the Judge's decision, the Appellant appealed to this court. The central question in this appeal, just as in the court below, is whether a contract for the sale and purchase of the Property did indeed come into being between the parties ("the Central Question"). This turns on:

(a) whether the Respondent signed the Option on 29 May 2009 with all the essential particulars therein – *ie*, the particulars of the Property, the purchase price, the particulars of the vendor (*viz*, the Respondent) and the purchaser (*viz*, the Appellant), the deadline for exercising the Option, the completion date for the sale and purchase of the Property (in the event of the Option being exercised), the name of the vendor's solicitors, the option fee and the amount to be paid upon exercising the Option (collectively, "the essential particulars") – filled in *except for* the purchaser's particulars; and

(b) if the Option was indeed thus signed by the Respondent, whether it was validly exercised by the Appellant.

Background

2 It is not in dispute that sometime in mid-May 2009, an estate agent, Mr Jeffrey Yong Siew Tat ("Yong"), saw a "for sale" notice on the Property and got in touch with the Respondent. On 29 May 2009, Yong, with the Option (which was a standard option) in hand, met up with the Respondent. Yong's evidence and the Respondent's evidence differ as to whether, at that meeting, the Respondent: (a) only initialled the Option without signing it and with all the essential particulars left blank (as alleged by the Respondent); or (b) initialled as well as signed the Option with all the essential particulars filled in except for the purchaser's particulars (as testified by Yong). The Appellant's evidence is that on 30 May 2009, upon paying the stipulated option fee of $11,000 (*viz*, 1% of $1.1m), he was given the Option, which he duly exercised on 10 June 2009. As will be seen later, there is controversy as to the events which took place on 29 and 30 May 2009. However, it is not in dispute that on 29 May 2009, the Respondent appointed Yong to be his agent to sell the Property.

The events on 29 and 30 May 2009

The Appellant's version

3 The evidence adduced on behalf of the Appellant as to the material events is as follows. On the morning of 30 May 2009, Mr Foo Kah Kim ("Foo"), a friend of the Appellant who testified for the Appellant at the trial, saw an advertisement in *The Straits Times* inserted by Yong stating that the Property was for sale at $1.28m. Foo contacted Yong and arranged for a viewing of the Property at 11.00am on the same day. At around the appointed time, the Appellant, together with Foo, arrived at the Property, where they met Yong and the Respondent, and proceeded to view the Property. They then adjourned to a nearby coffee shop ("the Coffee Shop") to negotiate further on the price. As no agreement was reached, the Appellant, together with Yong and Foo, left. The Appellant's offer then stood at $1.03m.

4 While travelling in the car, Yong mentioned to the Appellant that if the latter was willing to increase his offer from $1.03m to $1.1m, there could be a deal. Upon the Appellant agreeing, Yong, Foo and the Appellant went to the Appellant's house, where the Appellant wrote a cheque for $11,000 ("the first cheque") for the option fee and handed it to Yong. The Option, which had already been signed by the Respondent the previous day (*viz*, 29 May 2009), was handed by Yong to the Appellant after the latter's particulars were filled in. As the first cheque had a mistake in the Respondent's name, which was noted by Yong, a fresh cheque ("the second cheque") was issued by the Appellant. The second cheque was handed by Yong to the Respondent at about 2.00pm on 30 May 2009 (the Respondent admitted this in cross-examination). We should add that as far as the Respondent was concerned, he was not aware of the first cheque as it was never passed to him. The second cheque was later spotted to also have a mistake in the Respondent's name. Upon being notified of this, Yong asked the Appellant to issue a further cheque ("the third cheque"). According to both Yong and the Appellant, the third cheque was delivered to the Respondent by leaving it with the Respondent's wife at her shop at No 38 Yio Chu Kang Road later that afternoon (*viz*, the afternoon of 30 May 2009). The Respondent, however, denied receiving the third cheque. As far as the Central Question is concerned, nothing turns on the difference between the Appellant's evidence and the Respondent's evidence on this particular point.

5 That same afternoon, the Appellant, together with Foo and another person, Indra Mulia ("Indra"), visited the Property to discuss renovation plans. Foo and Indra walked ahead to the Property while the Appellant stayed behind at the car to smoke. Foo and Indra met the Respondent at the Property, whereupon the Respondent told them that he had changed his mind regarding the sale of the Property and sought to return the third cheque to Foo. Foo declined to accept the cheque and asked the Respondent to talk to the Appellant instead. The Respondent then tore up and threw away

the third cheque, and walked off. The Appellant did not hear any more from the Respondent thereafter.

6 On 10 June 2009, the Appellant exercised the Option by delivering it, together with the acceptance copy (the "Acceptance Copy") duly executed and a cheque for the sum of $44,000 (being 5% of the purchase price of $1.1m, less the option fee of $11,000), to DSPP Law Corporation ("DSPP"), the vendor's solicitors named in the Option. Later that day, DSPP replied to say that they had no instructions to act for the Respondent in the matter.

The Respondent's version

7 Turning now to the Respondent's version of the material events, the Respondent said that on 29 May 2009, Yong went to see him at his wife's shop offering to find a purchaser for the Property (the shop was close to the Property and the Respondent was regularly there). He said that Yong produced the Option and asked him to initial at the bottom of each page. He complied as requested, but the essential particulars were left blank and he did not sign the Option. According to the Respondent, he would only sign the Option when Yong had found him a purchaser at the price at which he was willing to sell, namely, $1.3m and above. He asserted that the vendor's signature in the Option was not his. He denied meeting the Appellant and Foo in the morning on 30 May 2009, whether at the Property or at the Coffee Shop, and also denied meeting Foo and Indra in the afternoon on that day. He claimed that he did not receive any cheque for the option fee that afternoon as he had, in keeping with his usual practice, returned to his residence in Johor Bahru. He also denied tearing up any cheque that day. However, in cross-examination, the Respondent admitted that Yong did visit him at his wife's shop with a cheque (*ie*, the second cheque) at about 2.00pm on 30 May 2009, which cheque he rejected because the amount was not right (the Respondent claimed that the correct option fee should have been 1% of $1.3m) and because his name was written wrongly.

Yong's version

8 Yong, who was subpoenaed by the Appellant to testify at the trial, said that the Option, which he brought with him when he went to meet the Respondent on 29 May 2009, was a standard one. According to Yong, the essential particulars (*inter alia*, the particulars of the Property, the purchase price of $1.1m and the name of the vendor's solicitors (*viz*, DSPP)) – except for the purchaser's particulars (which were left blank) – were filled in by him with the Respondent's agreement. Yong said that besides initialling the Option, the Respondent also signed it.

9 *Vis-a-vis* Yong's status as a witness, the Judge remarked at [11] of the Judgment that Yong "was neither the [Appellant]'s nor the [Respondent]'s witness but had to be subpoenaed by the [Appellant]". While the Appellant seems to think that there is a negative connotation in this remark by the Judge, we take it as no more than a statement of fact which cannot and should not be construed to suggest that the Judge implied that Yong, being a reluctant witness, was not likely to tell the truth. We should also add that although the Respondent's solicitors interviewed Yong for the purposes of this case, for reasons which were not disclosed, the Respondent ultimately decided not to call Yong as his witness.

The key differences between the Appellant's version and the Respondent's version

10 It will be noted from the foregoing that there are three significant differences between the Appellant's version of the events which took place on 30 May 2009 (which was supported by Foo's testimony) and the Respondent's version. Firstly, the Appellant said that on 30 May 2009, he met the Respondent at the Property and they viewed it together with Foo and Yong. They then adjourned to

the Coffee Shop to negotiate on the price. The Respondent, however, denied meeting the Appellant and Foo at all on 30 May 2009, whether at the Property or at the Coffee Shop. Secondly, according to the Appellant (and also Yong), a correctly written cheque (*ie*, the third cheque (see [4] above)) was eventually delivered to the Respondent on 30 May 2009 (by leaving the cheque with the Respondent's wife at her shop). The Respondent, however, denied receiving any such cheque from the Appellant. Thirdly, contrary to the evidence of Foo, the Respondent denied meeting Foo and Indra at the Property in the afternoon on 30 May 2009 and telling them that he wished to withdraw from the sale. The Respondent also denied tearing up a cheque in the presence of Foo and Indra. Here, we would observe that while Indra was not called by the Appellant to testify, we do not regard this as a material omission on the Appellant's part since Indra's evidence would only have duplicated Foo's evidence. Besides, we note that the Appellant was not reticent about Indra testifying at the trial, as can be seen from his offering of Indra to the Respondent as the latter's witness.

11 In our view, the aforesaid differences between the Appellant's and the Respondent's respective versions of the events of 30 May 2009 are not of any real significance to the Central Question (as defined at [1] above). The resolution of this question turns first and foremost on whether, on 29 May 2009, the Respondent: (a) initialled and signed the Option with all the essential particulars filled in except for the purchaser's particulars; or (b) only initialled the Option without signing it and with all the essential particulars left blank (see [2] above). All the factual differences between the Appellant's and the Respondent's respective versions of the events of 30 May 2009 which we identified earlier only go towards establishing the veracity of the witnesses. Obviously, if the Respondent is found to have signed the Option on 29 May 2009 with all the essential particulars (except for the purchaser's particulars) filled in, then the question of whether he did meet the Appellant on 30 May 2009, be it at the Property or at the Coffee Shop, would not, in law, be of any real significance to the question of whether a valid option (in the form of the Option, duly completed and signed) was granted by the Respondent to the Appellant.

The pleadings

12 We will now turn to the pleadings. In his statement of claim filed on 4 November 2009, the Appellant pleaded as follows:

(a) The Respondent granted the Appellant the Option, which was an option to purchase the Property at the price of $1.1m, in consideration of the Appellant's payment of the option fee of $11,000, that being 1% of the purchase price.

(b) The Appellant paid the option fee by way of the third cheque, which was handed to Yong (as the Respondent's agent), who accepted the cheque on the Respondent's behalf.

(c) On 10 June 2009, the Appellant exercised the Option by delivering the duly executed Acceptance Copy together with the required payment to DSPP (the vendor's solicitors named in the Option), and lodged the Caveat against the Property.

(d) DSPP replied on the same day to inform the Appellant that they had no instructions to act on the Respondent's behalf in the sale and purchase of the Property. The Appellant averred that he had nonetheless validly exercised the Option and, accordingly, a valid and binding agreement for the sale and purchase of the Property ("the Agreement") had come into being.

(e) The Respondent failed to complete the sale and purchase of the Property on the completion date in accordance with the terms of the Agreement.

(f) The Appellant thus prayed for specific performance of the Agreement, as well as damages for breach of contract and interest for late completion in accordance with the Law Society's Conditions of Sale 1999.

13 In his original defence and counterclaim filed on 31 December 2009 ("the Original Defence"), the Respondent pleaded as follows:

(a) The Respondent: [note: 1]

> … *signed* an Option to Purchase for the price of $1,100,000 (with the purchaser's name left blank) and handed the same to [Yong], who said that he would look for a purchaser for the [Respondent]. The [Respondent] further says that he was not aware that the Option to Purchase was handed to the [Appellant]. [emphasis added]

(b) The Respondent did not receive any option fee. Therefore, there was no valid option for the Appellant to exercise on 10 June 2009.

(c) Further or in the alternative, there was no valid exercise of the Option by the Appellant.

(d) The Appellant thus had no legal basis to lodge the Caveat against the Property.

Based on the above averments, the Respondent counterclaimed for an order that the Appellant withdraw the Caveat forthwith.

14 In contrast, in his amended defence and counterclaim filed almost four months later on 26 April 2010 ("the Amended Defence"), the Respondent changed his position and pleaded as follows:

(a) The Respondent did not grant the Appellant any valid option to purchase the Property at the price of $1.1m as the Respondent "*did not sign* the alleged signature at the last page of the [O]ption" [note: 2] [underlining in original omitted; emphasis added in italics]. Instead, he merely "at the request of [Yong], put his initials at the bottom of the 4 pages of the [O]ption" [note: 3] [underlining in original omitted]. The Option was "totally blank and did not contain any details" [note: 4] [underlining in original omitted] when the Respondent initialled it.

(b) The Respondent was not aware that DSPP were his solicitors.

(c) The Respondent did not receive any option fee.

(d) Even if a valid option to purchase the Property had been granted to the Appellant (which the Respondent denied), "the [Appellant] had failed to exercise the Option properly or at all" [note: 5] [underlining in original omitted].

(e) In the circumstances, there was no valid and binding agreement for the sale and purchase of the Property, and the Respondent was therefore not obliged to complete the sale of the Property.

The Respondent also reiterated his counterclaim that the Appellant should withdraw the Caveat forthwith.

The Judge's decision

15 At [2] of the Judgment, the Judge observed:

> The evidence presented in court revealed diametrically opposed versions of the facts and events surrounding the issue of the Option and the delivery of the [o]ption fee cheque. Accordingly, the outcome of the claim and [the] counterclaim turn entirely on my findings and inferences of fact.

The Judge ultimately accepted the Respondent's evidence and rejected Yong's evidence. He thus dismissed the Appellant's claim and allowed the Respondent's counterclaim.

16 The Judge found Yong to be "extremely anxious and unreliable as a witness" (see the Judgment at [11]), and described his evidence as "contradictory and changing" (see the Judgment at [11]) as well as "prevaricating and unsafe … to accept" (see the Judgment at [14]). The main grounds upon which the Judge found Yong to be an unreliable witness appeared to be these. First, Yong vacillated as to where the Appellant and Foo met the Respondent on 30 May 2009, *viz*, whether the Appellant and Foo met the Respondent: (a) at the Property itself, with the Respondent joining the Appellant and Foo to view the Property; or (b) only at the Coffee Shop after the Appellant and Foo had viewed the Property (see [11] of the Judgment). Second, Yong was uncertain as to whether, from the Coffee Shop, he left in the Appellant's car or drove off in his own car (see [11] of the Judgment). Third, Yong was not able to give a satisfactory explanation as to why he photocopied the third cheque but not the second cheque (in this regard, Yong's evidence was that he photocopied the Option and the third cheque so that he could claim his commission, but did not photocopy the second cheque (see [12] of the Judgment)). Fourth, the Judge found Yong's evidence that he had filled in (*inter alia*) the purchase price of $1.1m in the Option on 29 May 2009 with the Respondent's agreement questionable, given that Yong had also testified that the Respondent had told him on 29 May 2009 itself that he (the Respondent) wanted to sell the Property for between $1.3m to $1.4m. In the Judge's view, "there was no reason why the [Respondent] would have, on the same day, agreed to lower his asking price to $1.1 million, in the light of Yong seeking an opportunity from him to find buyers at a price acceptable to the [Respondent]" (see [10] of the Judgment).

17 In contrast, the Judge found the Respondent to be "a credible witness" (see [14] of the Judgment) whose evidence was "simple, clear, without equivocation or prevarication" (see [14] of the Judgment). At [14]–[16] of the Judgment, the Judge accepted the following evidence of the Respondent:

(a) the Respondent "expressly told Yong then [*viz*, on 29 May 2009] that he would only sell the Property for $1.3 million or more" (see [14] of the Judgment), and did not know that Yong had advertised the selling price of the Property as $1.28m;

(b) on 29 May 2009, the Respondent only initialled the Option with all the essential particulars left blank and did not sign the Option;

(c) on 30 May 2009, after Yong visited the Respondent at his wife's shop with a cheque (*ie*, the second cheque), the Respondent did not see Yong again as the Respondent returned to his residence in Johor Bahru (in this regard, the Judge also accepted the Respondent's evidence that he rejected the second cheque as it was not for the correct amount and also had an error in his name);

(d) the Respondent did not receive any cheque with the option fee correctly stated and his name correctly spelt;

(e) there was no "cheque-tearing" incident on 30 May 2009; and

(f) the vendor's signature in the Option was not the Respondent's signature and was, instead, a forgery of his signature.

Appellate intervention with a trial judge's findings of fact

18 It is trite law that an appellate court should be slow to overturn a trial judge's findings of fact, especially where they hinge on the trial judge's assessment of the witnesses' credibility and veracity, unless it can be shown that: (a) the findings of fact are plainly wrong or against the weight of the evidence; or (b) the trial judge overlooked material facts and/or took into account irrelevant facts. Intervention by an appellate court is also warranted where a trial judge's findings of fact are based not on the witnesses' veracity and credibility, but on inferences drawn from the primary or objective evidence on record – in such cases, the appellate court is in as good a position as the trial judge to undertake the exercise of drawing the appropriate inferences from the available evidence (see *Seah Ting Soon (trading as Sing Meng Co Wooden Cases Factory) v Indonesian Tractors Co Pte Ltd* [2001] 1 SLR(R) 53 at [22], *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 at [54] and *Ng Chee Chuan v Ng Ai Tee (administratrix of the estate of Yap Yoon Moi, deceased)* [2009] 2 SLR(R) 918 at [14]).

19 In the present case, for the reasons elaborated on below, we are of the view that this court is amply justified in re-examining the factual findings made by the Judge, including the critical findings that the Respondent did not sign the Option and that the vendor's signature in the Option (which was said to be the Respondent's signature) was a forgery. These findings of fact were made on the basis that Yong was not a credible witness. In this regard, we observe that the Judge's finding as to Yong's credibility was not really based on Yong's demeanour while giving evidence, but was instead based on the inference that Yong's account of the events of 29 and 30 May 2009 was not entirely consistent.

The issues before this court

20 As we see it, in order to resolve the Central Question, the issues which we need to determine are the following:

(a) Did the Respondent sign the Option on 29 May 2009 before handing it over to Yong?

(b) If the question in sub-para (a) above is answered in the affirmative, were all the essential particulars in the Option left blank when the Respondent signed the Option on 29 May 2009, or were they already filled in except for the purchaser's particulars?

(c) Did the Respondent agree to sell the Property at the price of $1.1m?

(d) If the Option was indeed a valid option granted by the Respondent to the Appellant to purchase the Property at the price of $1.1m, was it validly exercised by the Appellant?

The factual issues set out in sub-paras (a)–(c) above (collectively, "the First Issue") are clearly inter-linked and will be dealt with together, followed by the legal issue in sub-para (d) ("the Second Issue").

The First Issue

21 It is settled law under s 103(1) of the Evidence Act (Cap 97, 1997 Rev Ed) that "[w]hoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove those facts exist". Where the First Issue is concerned, the legal

burden of proof is on the Appellant to prove that on 29 May 2009, the Respondent signed the Option with all the essential particulars (except for the purchaser's particulars) filled in, in particular, with the purchase price entered as $1.1m. In the court below, the Appellant sought to discharge this burden of proof by relying on Yong's evidence (in this regard, see *Bayerische Landesbank Girozentrale v Khaw Hock Seang* [2003] SGHC 42 at [7], where the High Court, citing *Phipson on Evidence* (M N Howard gen ed) (Sweet & Maxwell, 15th Ed, 2000), held that the signature of a person on a document could be proved by, *inter alia*, calling a witness who saw the document being signed by that person). The Judge rejected the evidence adduced by the Appellant primarily because he found Yong's testimony to be "prevaricating and unsafe … to accept" (see [14] of the Judgment) as compared to the Respondent's testimony. With respect, we do not agree with the Judge. Having examined all the evidence on record and the parties' pleadings, we are of the view that Yong's evidence is much more credible than the Respondent's evidence because, as we will show from the analysis which follows, the inconsistencies in Yong's evidence which the Judge highlighted: (a) relate to relatively inconsequential matters; and (b) pale in comparison with the about-turns made by the Respondent in his pleadings as well as his evasiveness as a witness.

The inconsistencies in Yong's evidence

22 As mentioned at [16] above, there were four main factors which caused the Judge to reject Yong's evidence, namely:

(a) Yong's vacillation as to whether, on 30 May 2009, the Appellant and Foo met the Respondent at the Property or only at the Coffee Shop;

(b) Yong's uncertainty as to whether he left the Coffee Shop in the Appellant's car or in his own car;

(c) Yong's inability to give a satisfactory explanation as to why he photocopied the third cheque but not the second cheque; and

(d) the apparent implausibility of the Respondent agreeing on 29 May 2009 to a selling price of $1.1m for the Property (according to Yong) when, on Yong's own evidence, the Respondent had also indicated on the same day that he would only sell the Property for $1.3m or more.

2 3 *Vis-à-vis* the first three of the above factors, they relate to specific events on *30 May 2009* that are hardly critical to the First Issue, which turns on whether the Respondent signed the Option on *29 May 2009* with all the essential particulars, including the purchase price of $1.1m, filled in except for the purchaser's particulars. In our view, the Judge placed too much emphasis on these specific events. It must also be remembered that there was a lapse of more than 15 months between 30 May 2009 and the trial in the court below, which commenced on 13 September 2010. During that period, Yong, as an estate agent, would have marketed many other properties apart from the Property (there was no evidence to suggest the contrary) and would have made numerous trips to view other sites. Indeed, the Respondent himself stated in his written case for this appeal that Yong's job "require[d] him to persuade and sell, day in day out, on a regular basis". [note: 6] From this perspective, we are of the view that the inconsistencies in Yong's evidence set out in sub-paras (a)–(c) of [22] above only go to show that Yong's recollection of the events which took place on 30 May 2009 was (understandably) not so sharp. In this regard, we would highlight another pertinent factor, namely, Yong was not interviewed by the Appellant's counsel before the trial and thus did not file any affidavit of evidence-in-chief ("AEIC"). This would mean that he did not have the opportunity to refresh his memory of the events which took place on 30 May 2009. It is thus understandable that his recollection of the events of that day was hazy and not so precise, hence resulting in the

inconsistent evidence highlighted by the Judge. We also note that Yong was not the only witness who testified on the events of 30 May 2009. The Appellant and Foo gave evidence as well in this regard, and their evidence is broadly consistent with Yong's evidence. In our view, the Judge overemphasised the inconsistencies set out in sub-paras (a)–(c) of [22] above, which are essentially merely minor inconsistencies in Yong's evidence.

2 4 *Vis-à-vis* the fourth factor outlined at [22] above (*viz*, the apparent implausibility of Yong's evidence that the Respondent agreed on 29 May 2009 to sell the Property at $1.1m despite having indicated on the same day that he would not sell the Property for less than $1.3m), the Judge did not accept this aspect of Yong's evidence on the ground that "there was no reason why the [Respondent] would have, on the same day, agreed to lower his asking price to $1.1 million, in the light of Yong seeking an opportunity from him to find buyers at a price acceptable to the [Respondent]" (see [10] of the Judgment; see also [16] above). With respect, it appears to us that the Judge overlooked three factors which indicate that this particular aspect of Yong's evidence might not be as implausible as it seemed.

25 The first factor is the time factor. Yong testified that his first contact with the Respondent was sometime in mid-May 2009. He subsequently clarified that he had two *separate* meetings with the Respondent: the first was in mid-May 2009, when the Respondent told Yong that he wanted to sell the Property for $1.3m to $1.4m; the second was on 29 May 2009, when Yong, after filling up all the essential particulars in the Option (except for the purchaser's particulars), asked the Respondent to initial and sign the Option. In this regard, we note that Yong's oral evidence at the trial was that he met the Respondent for the first time only on 29 May 2009: [note: 7]

> Court: On the 29th of May [2009], you met [the Respondent] for the first time.
>
> Witness: Yes.
>
> Court: Right?
>
> Witness: Yes, Sir.

This contradicted Yong's earlier testimony that he first met the Respondent in mid-May 2009 and was an inconsistency. However, we also note that the Respondent's evidence was likewise that he first met Yong in person on 29 May 2009. If one bears in mind that Yong first spoke to the Respondent in mid-May 2009 (which fact is not disputed) and that during that conversation, the Respondent told Yong of the price at which he was willing to sell the Property, then the apparent inconsistency as to when Yong first met the Respondent may not be a true or a material inconsistency, in that it could have been that Yong only spoke to the Respondent in mid-May 2009 and did not meet him in person until 29 May 2009. What is far more significant, in our view, is that it is not disputed that Yong first contacted the Respondent about the sale of the Property in mid-May 2009, approximately two weeks before 29 May 2009, when the Option was presented to the Respondent by Yong. From this perspective, the Respondent's agreement on 29 May 2009 to reduce the selling price of the Property from $1.3m to $1.1m within the same day does not appear that implausible. Equally importantly, this question of the (apparent) implausibility of the Respondent lowering his asking price from $1.3m to $1.1m on the same day was never put to Yong for him to explain. Yong might well have been able to provide an answer if that question had been put to him, bearing in mind that that period (*viz*, May 2009) was a low point in the property market following the global financial collapse in September 2008.

26 The second factor which supports the credibility of Yong's evidence that the Respondent agreed on 29 May 2009 to sell the Property at $1.1m relates to Yong's conduct in placing an advertisement in *The Straits Times* the next day (*viz*, 30 May 2009) stating that the Property was for sale at $1.28m. Yong said that he proceeded to place the advertisement after the Option was signed by the Respondent on 29 May 2009. His explanation for setting the purchase price at $1.28m in the advertisement is consistent with the Option having been signed with the purchase price therein stated as $1.1m: [note: 8]

> Q[:]Now, can you clarify why you took out the advertisement for 1.28 million when [the Respondent] wanted to sell for 1.1?
>
> A[:]Because normally we asking for at least 10% or 15% higher. But buyer will bargain on the price.

We should add that the above evidence is also consistent with Yong's evidence that at approximately 2.00pm on 29 May 2009, he filled in the essential particulars in the Option – including the purchase price of $1.1m – with the Respondent's agreement, leaving only the purchaser's particulars blank, after which the Respondent initialled as well as signed the Option.

27 The third factor which points to there being more than a grain of truth in Yong's evidence that the Respondent agreed on 29 May 2009 to a selling price of $1.1m for the Property stems from the following evidence of the Respondent himself when he was cross-examined by the Appellant's counsel: [note: 9]

Q[:]	Now, you said [Yong] told you that he had a buyer who wanted to buy at a lower price. What price was this?
A[:]	Below one – below 1.1, lah, below 1.1.
Q[:]	Do you recall the amount?
A[:]	Around there, lah, below 1.1, lah, I don't – I don't accept the amount.
Court:	Why is 1.1 significant?
Witness:	Because I –
Court:	Why you remember 1.1?
Witness:	– asked for 1.3.
Court:	Yes.
Witness:	It's 1.1 – below 1.1 is not my target. I don't want – I don't –

As can be seen, the Respondent was unable to provide a satisfactory answer when he was asked why he remembered the specific price of $1.1m. His repeated references to "*below* 1.1" [note: 10] [emphasis added] and his assertion that "*below* 1.1 [was] not [his] target" [note: 11] [emphasis added] indicate that $1.1m was, in all likelihood, indeed the selling price which he agreed to on 29 May 2009.

28 Apart from the matters set out at [23]–[27] above, there are several other aspects of Yong's evidence which cast doubt on the Judge's assessment that Yong was not a credible witness. For

instance, Yong's conduct in faxing a copy of the Option to DSPP (the vendor's solicitors named in the Option) on 1 June 2009 is consistent with his evidence that a valid option was granted by the Respondent to the Appellant to purchase the Property at the price of $1.1m (in this regard, Yong also stated that he had called a Mr Shaun Chen of DSPP before faxing a copy of the Option to DSPP). Viewing Yong's evidence as a whole, we find that it is not as unreliable as the Judge thought. Indeed, as between Yong and the Respondent, we are of the view that Yong is much more credible as a witness, given the about-turns made by the Respondent in his pleadings and his evasiveness as a witness, to which we now turn our attention.

The about-turns in the Respondent's pleadings

29 We will first address the about-turns which the Respondent made in his pleadings. As mentioned earlier, the Original Defence was filed on 31 December 2009 and the Amended Defence, on 26 April 2010. These two versions of the Respondent's defence differ in several material aspects, the two most significant being the following:

(a) In the Original Defence, the Respondent admitted to having signed the Option. In contrast, in the Amended Defence, he pleaded that he merely "put his initials at the bottom of the 4 pages of the [O]ption" [note: 12] [underlining in original omitted] and "*did not sign* the alleged signature at the last page of the [O]ption" [note: 13] [underlining in original omitted; emphasis added in italics].

(b) It appears from the Original Defence (although this was not expressly pleaded) that the Option had all the essential particulars filled in, except for the purchaser's particulars, when the Respondent signed it – which is wholly consistent with Yong's evidence (see [8] above). This can be seen from the Respondent's averment that he "signed an Option to Purchase *for the price of $1,100,000* (with the purchaser's name left blank)" [note: 14] [emphasis added]. Notably, the Original Defence indicates that the purchase price of $1.1m had already been entered in the Option when the Respondent signed it. In contrast, in the Amended Defence, the Respondent said that the Option was "totally blank and did not contain any details" [note: 15] [underlining in original omitted] when he initialled it.

This significant change in position in the Respondent's pleadings was not addressed at all by the Judge in the Judgment when assessing the credibility of Yong and the Respondent, even though the Appellant's counsel had, in his opening and closing submissions before the Judge, expressly referred to it in questioning the reliability of the Respondent's evidence. This change in the Respondent's pleadings is obviously very material and important as the Judge found that "the [Respondent] gave clear and unequivocal evidence that he *never* then [*ie*, on 29 May 2009] *nor thereafter at any time* signed the Option" [emphasis added] (see [7] of the Judgment).

30 The timing of the Respondent's application for leave to amend the Original Defence is also significant. In this regard, the sequence of material events is as follows.

31 Following the filing of the Original Defence on 31 December 2009, the Appellant filed Summons No 824 of 2010 ("SUM 824/2010") on 24 February 2010 for summary judgment against the Respondent. On 31 March 2010, SUM 824/2010 was heard before an assistant registrar ("the AR"), who granted summary judgment against the Respondent. The summary judgment application was dealt with based on the Original Defence, in which the Respondent *admitted* that he had signed the Option with the purchase price of $1.1m stated therein, and pleaded as his defence that (*inter alia*): (a) he was not aware that the Option was passed to the Appellant; (b) he did not receive any option

fee and, thus, there was no valid option for the Appellant to exercise on 10 June 2009; and (c) in any case, the Appellant had not exercised the Option validly. The position set out in the Original Defence was *contradictory* to the affidavit filed by the Respondent on 16 March 2010 to resist the Appellant's application for summary judgment. In that affidavit, the Respondent stated that he had only initialled the Option with all the essential particulars left blank, and had not signed it. Even though the Respondent made these inconsistent allegations in his affidavit of 16 March 2010 some three months after filing the Original Defence, he did not at any time prior to the hearing of SUM 824/2010 (nor at the hearing itself) apply for leave to amend his original pleadings. This inconsistency between the Original Defence and the Respondent's affidavit of 16 March 2010 was noted by the AR, who also criticised the "notable lack of particularisation" [note: 16] in the Original Defence. The AR further pointed out that the Respondent was "making serious allegations of fraud and casting aspersions on whether [Yong] was a properly appointed agent" [note: 17] in his affidavit of 16 March 2010 without actually pleading those points in the Original Defence.

32 The Respondent subsequently appealed against the AR's decision (via Registrar's Appeal No 153 of 2010 ("RA 153/2010")) and also filed Summons No 1763 of 2010 ("SUM 1763/2010") on 20 April 2010 for leave to amend the Original Defence to his present defence (*viz*, the Amended Defence). RA 153/2010 and SUM 1763/2010 were heard by the same High Court judge, who ruled in favour of the Respondent on both matters (*vis-à-vis* RA 153/2010, the High Court judge allowed the appeal by granting the Respondent conditional leave to defend). Significantly, the Amended Defence (and, for that matter, the Respondent's AEIC filed on 2 August 2010) remained sparse. In the Amended Defence, the Respondent did not plead that the vendor's signature in the Option, which was purportedly his signature, was forged or that that signature was not his usual form of signature. He merely stated that he "did not sign the alleged signature at the last page of the [O]ption" [note: 18] [underlining in original omitted].

33 We also find it significant that the Respondent failed to give any proper explanation as to why he made the averments which he did in the Original Defence and why he subsequently deemed it necessary to amend those averments. In the affidavit which he filed on 20 April 2010 in support of his application for leave to amend the Original Defence (*viz*, SUM 1763/2010), the explanation which he gave was that he had prepared the Original Defence "based on [his] recollection of events, without the benefit of looking at any of the relevant documents" [note: 19] referred to in the Appellant's statement of claim, such as the Option and the Acceptance Copy. According to the Respondent, it was only "[u]pon receiving and reading … the summary judgment papers [that he] … realise[d] that [his] recollection of events [was] not correct". [note: 20] Strangely, despite this realisation, the Respondent did not apply for leave to amend the Original Defence until after the Appellant's summary judgment application (*viz*, SUM 824/2010) was heard (and, we may add, until after the AR pointed out the contradiction between the Original Defence and the Respondent's affidavit of 16 March 2010). Further, if (as pleaded in the Amended Defence), the Respondent did not in fact sign the Option, we are unable to understand why he admitted in the Original Defence that he did sign that document. It also seems strange to us that the Respondent (according to his affidavit of 20 April 2010) remembered that he *had not* signed the Option only upon seeing a copy of the Option furnished to him as part of "the summary judgment papers", [note: 21] when that copy of the Option *had* the Respondent's signature on it. In addition, as we noted earlier (at [32] above), although the Respondent denied signing the vendor's signature in the Option (which was alleged to be his signature), he did not plead in the Amended Defence that that signature was a forgery (this may have been because the Respondent was aware that he could not possibly make out a case that Yong had forged his signature in the Option since there was no suggestion that prior to 29 May 2009, Yong had previously seen or possessed a sample of his signature). In short, it appears to us that the

Respondent's initial admission (in the Original Defence) that he had signed the Option, his subsequent retraction (in the Amended Defence) of that position, his omission to lodge a police report about the apparent forgery (as the Judge found at [16] of the Judgment, even though (as we pointed out earlier) forgery was not pleaded by the Respondent) of his signature in the Option and his failure to adduce evidence in support of the Amended Defence demonstrate a remarkable nonchalance on his part if it was indeed the case that he had not signed the Option. This is not to suggest that the legal burden fell on the Respondent to prove that the vendor's signature in the Option was not his signature. The legal burden remained on the Appellant to prove that the Respondent had signed the Option, but, in our view, the evidential burden shifted to the Respondent in the light of the testimonies of the Appellant, Foo and Yong coupled with the Respondent's admission in the Original Defence that he had signed the Option.

34 The aforesaid about-turns and anomalies in the Respondent's pleadings cast doubt on the Judge's finding (at [14] of the Judgment) that the Respondent was a credible witness. This finding is further undermined by the Respondent's evasiveness as a witness, as we will show below.

The Respondent's evasiveness as a witness

35 From the evidence which the Respondent gave at the trial, it is, in our view, clear that the Respondent was less than forthcoming in many material aspects of his evidence. In the ensuing paragraphs, we will highlight some of the more significant instances of his evasiveness as a witness in terms of both the written evidence in his AEIC and his oral evidence at the trial.

36 First, in his AEIC, the Respondent claimed that he "never met the [Appellant] or Foo" [note: 22] on 30 May 2009, whether at the Property itself or at the Coffee Shop (see also [7] above). However, when cross-examined, the Respondent admitted that he saw Yong at the Coffee Shop at about 11.00am on 30 May 2009, and that Yong was then with two other persons. When probed by the Appellant's counsel and the Judge as to whether those two persons could have been the Appellant and Foo, the Respondent said, "could be and could not be, lah". [note: 23] When the Appellant's counsel pressed on, asking, "Could be, right?", [note: 24] the Respondent answered, "I don't know. It could be and could not be." [note: 25] This prompted the Judge to utter (in our view, with a tinge of cynicism), "He's almost as good as a lawyer." [note: 26] The Respondent obviously appreciated the significance of the question posed by the Appellant's counsel, which, if answered in the affirmative, would undermine the Respondent's assertion in his AEIC that he "never met the [Appellant] or Foo" [note: 27] on 30 May 2009. The Respondent was undoubtedly prevaricating.

37 Second, we earlier pointed out that the Respondent pleaded in the Amended Defence that he "did not sign the alleged signature at the last page of the [O]ption" [note: 28] [underlining in original omitted]. Given that that was the Respondent's position in the Amended Defence, one would have expected him to adduce, in his defence, expert evidence to show that the vendor's signature in the Option was not and could not possibly be his signature. Yet, that was not done. All we have is his bare denial that he signed the Option.

38 Third, one of the important factual findings made by the Judge is that the Respondent "expressly told Yong [on 29 May 2009] that he would only sell the Property for $1.3 million or more" (see [14] of the Judgment). This fact was, however, neither pleaded by the Respondent nor mentioned in his AEIC. Instead, it was a new fact that came to light only when the Respondent's counsel was cross-examining Yong. In this regard, the Respondent's counsel had asked Yong: [note: 29]

Q[:]I'm putting it to you that while you were at the [C]offee [S]hop, you were told by [the Respondent] that he did not wish to sell his property unless it was 1.3 million, do you agree with me?

A[:]He didn't mention all that.

The Appellant's counsel protested that the assertion implicit in the above question (*ie*, that the Respondent was only willing to sell the Property at $1.3m and above) was not stated in either the Respondent's pleadings or his AEIC, whereupon the Judge ordered the Respondent's counsel to retract the question. Another important factual finding made by the Judge is that after Yong visited the Respondent with a cheque (*ie*, the second cheque) at his wife's shop on 30 May 2009, the Respondent "did not see or hear from Yong again later that day because *he had gone back to his residence in Johor Bahru that afternoon*" [emphasis added] (see [15] of the Judgment). The fact that the Respondent left for his residence in Johor Bahru in the afternoon on 30 May 2009 was again never pleaded or stated in the Respondent's AEIC. This fact similarly emerged only when the Respondent blurted out during cross-examination that he could not have met Foo and Indra that afternoon as alleged by Foo because "[a]t that time [he] was … in Johor". [note: 30] These *bare* assertions by the Respondent seem to us to be like afterthoughts, which in turn makes their veracity doubtful.

39 Fourth, the Respondent was evasive as to why (according to his own evidence) he initialled the Option on 29 May 2009 with all the essential particulars left blank. His initial explanation was that he did so because at that time, Yong was in a hurry to meet the deadline for advertising the Property. This explanation was not, however, borne out by Yong's evidence during cross-examination, which was as follows: [note: 31]

Q[:]… [The Respondent] … says that he only initialled because you were in a hurry to meet the deadline to advertise the [P]roperty.

A[:]No, he didn't mention this, Sir.

During the Respondent's own cross-examination, the Respondent did not state that he initialled the Option on 29 May 2009 with all the essential particulars left blank because Yong was in a hurry to meet the deadline to advertise the Property. He was unable to give a satisfactory explanation for his conduct, which prompted the Judge to keep questioning why he had even initialled the Option to begin with: [note: 32]

Court: What was the – what's the reason in your mind to initial the [O]ption? What – who needs it?

Witness: Oh, er, [Yong] –

Court: No, you – you – you say –

…

Court: – why – what is the magic of you initialling the [O]ption? It's useless.

Witness: Yah, just to put the signature on the bottom is not very difficult, just –

Court: No, no, no, but why? Why you do it? It's a waste of time.

Witness: No, [Yong] asked me to do it.

…

Court: If – if – if what say is correct, er, initialling a document is of no value at all.

Witness: Yah, no value, just, er –

…

Court: Then the [question] is that, so why do you want a document that's initialled? Doesn't bind anybody. It's – it's not – it's no use.

Witness: Yah, no use.

Court: So why –

Witness: To me it's no use.

Court: Yes, don't – but that – why don't you ask him –

Witness: No –

Court: – "Why you want a no-use document?"

Witness: – because he want it, I – so sign for him lah.

Under repeated questioning by the Judge, the Respondent stated that he had previously initialled documents without signing them, and that his initialling of documents signified that he had read through those documents. However, on further cross-examination, he admitted that he read through documents properly only when he signed them, and that it was his normal practice to initial documents despite not having read through them. This was another clear instance of prevarication on the Respondent's part.

40 Fifth, it seems to us rather odd that the Respondent would initial a standard option (*viz*, the Option) which was (so he alleged) completely blank and which, according to his own evidence, was of "no use". [note: 33] The only reasonable inference must be that the essential particulars in the Option, except for the purchaser's particulars, had indeed (as Yong testified) already been filled in when the Option was presented by Yong to the Respondent on 29 May 2009, hence the need for the Respondent to initial each page of the Option. That the essential particulars (save for the purchaser's particulars) had already been filled in when Yong presented the Option to the Respondent on 29 May 2009 is borne out by the Respondent's inability to explain how it transpired, if indeed the essential particulars were left blank as he alleged, that Yong knew his NRIC number when Yong met him on 29 May 2009. The materials parts of the Respondent's evidence in this regard are as follows: [note: 34]

Q[:] Okay. As far as you're concerned – but as far as you are concerned, when you initialled, the [O]ption was totally blank?

A[:] Yes.

Court: Where did [Yong] get your IC number from?

Q[:] His Honour has asked you a question. Where did [Yong] get your IC number from?

A[:] He checked my, er – he used to check the records of my, er, transaction. The name of the – name of the – this, er – er, name of the title list lah.

…

Q[:] You know this for a fact?

A[:] Er –

Q[:] That he got your particulars from –

A[:] Yah, he – he – he go and check in the register lah.

Q[:] Do you know this for a fact?

A[:] Yah, of course. Our facts – because, er, all my particulars is in the register there lah.

Q[:] Yes, but [Yong] was on the stand just now when your lawyer did not put this question to him, did not ask – ask him to confirm that he got your particulars from the – from the searches.

A[:] Yah, from the searches, he told me. He told – he –

Court: He told you?

Witness: Yah, he told me. I say how –

Court: When was this?

Witness: How he get my name.

Court: When did he tell you this?

Witness: When, er, on the 29th. I say when you – how did you get my line – er, my I –

Court: When he came to you on the 29th, he had your IC number?

Witness: Yah, he have, yes. Yah, he have.

Q[:] So he already obtained your IC number?

A[:] Yes.

Q[:] And when you were initialling it [*ie*, the Option] he filled it – he filled it in.

A[:] I don't know when he filled it. I just initialled it and I left.

Q[:] So how do you – how do you know that [Yong] got the IC number from the [Land Register] searches?

A[:] He tell me.

Q[:] On the 29th?

A[:] Yah, he tell – I – I asked him, "How you get my number and the IC, erm, my name?" He tell me that he go and search.

…

Q[:] *So what prompted your question, to begin with, was the IC number written on his shirt or something?*

A[:] No, he tell me he get my, er – my name and IC number from the search.

…

Q[:] And why would he do that? I mean, when I meet you for the first time, I don't go up to you and say "Hey, I have your name and IC number".

A[:] Yah, he – when he want to sell the property, he have to search your name and IC number in – in the Land Property there.

…

Q[:] And did he write the IC number anywhere for you to verify?

A[:] No, no, no, I don't know.

…

Court: … [T]he question is not what you know now but what you – question is, you say on the 29th of May, when you met [Yong] for the first time, you say you signed and you initialled four pages of an option [*viz*, the Option] in blank, right. So when you were asked how come he need – seem to know your IC number, then you say "Oh, he told me. He knew my name and IC number". And the question is, how could he have got it then you say "Oh he told me he did a search". Now *if you are signing a document in blank, why does the question even arise?* You understand? If he –

Witness: Yah.

Court: If he wrote something, he wrote your name and IC number … then you can say "How you got my number?" *If you are signing something in blank, why does the question arise?*

Witness: Because he have to fill in my name and our IC number inside the [O]ption.

[emphasis added]

The only plausible reason for the Respondent to ask Yong how the latter had managed to get his name and NRIC number must be that those particulars had already been inserted in the Option when Yong handed the Option to the Respondent on 29 May 2009. In this connection, it is also significant that the Respondent confirmed in his testimony that Yong had not written down his name and NRIC number on any paper or shown him any other document containing those particulars [note: 35] which could have prompted him (the Respondent) to ask Yong how the latter had managed to obtain his name and NRIC number. Yong had shown only the Option to the Respondent when they met on 29 May 2009, and, as stated above, the Respondent would only have been prompted, upon seeing the Option, to ask Yong how the latter had obtained his name and NRIC number if those particulars had already been inserted in the Option.

41 Sixth, the Respondent was evasive when asked whether he had a commission agreement with Yong, as can be seen from the following exchange during the Respondent's cross-examination: [note: 36]

Q[:]… [I]sn't it true that you discussed and agreed commission terms with [Yong]? Yes or no?

A[:]Yah, we have – we have no agreement with – any signed agreement with them, don't have agreement with him.

Q[:]Yes. But were you – did you enter into an agreement with [Yong] for commission?

A[:]No, just to negotiate, not – *not agreement, just negotiate*.

Q[:]And this was all done orally, is it?

A[:]Yah, orally. Yah – yah.

…

Q[:]So is it true that [Yong] wanted 2% commission but you bargained down to 1%?

A[:]Not I bargain. He just give me 1%, not I bargain.

…

Q[:]And you agreed, right?

A[:]He offer me 1%, yah.

Q[:]*And you agreed?*

A[:]*Mm.*

…

Q[:]– but *an oral agreement* –

A[:]*Yah, just oral*.

…

Q[:]*There was an oral agreement, as you have just confirmed.*

A[:]*Just talk, no – no agreement.*

Q[:]*So now you are saying there is no agreement?*

A[:]*Yah, yah, no agreement.*

Q[:]Because earlier on your answer was, that there was an agreement on commission. It was an oral agreement, not written.

A[:]No, not agreement, just – just request, not agreement.

[emphasis added]

42 Seventh, the Respondent testified that when Yong went to see him with a cheque (*ie*, the second cheque) on 30 May 2009, Yong brought "only a cheque, *no other thing*" [note: 37] [emphasis added]. Earlier, the Respondent had testified: [note: 38]

A[:]The [O]ption is for me to exchange for the cheque. When he gives me a buyer cheque then I

sign the [O]ption; if not, I won't sign the [O]ption.

Q[:]What you are saying is that you will not sign at the signature of the vendor portion –

A[:]Yes.

Q[:]– unless you received a cheque?

A[:]Yes, yes.

On the Respondent's own evidence, when Yong went to see him on 30 May 2009, Yong brought along only a cheque, but not the Option (which the Respondent stated he had merely *initialled* – without signing – the previous day). The logical inference is that, consistent with Yong's evidence, the Option must have been both initialled *and signed* by the Respondent on 29 May 2009, which was why there was no need for Yong to bring the Option with him when he went to see the Respondent on 30 May 2009.

43 In view of the aforesaid instances of evasiveness and prevarication on the Respondent's part, and bearing in mind that the Respondent is (according to his own evidence) "quite familiar with property transactions [and] … experienced enough to do the transactions on [his] own", [note: 39] we are, with respect, unable to agree with the Judge's assessment of the Respondent as a credible witness whose evidence was "simple, clear, without equivocation or prevarication" (see [14] of the Judgment).

Our ruling on the First Issue

44 Given the about-turns made by the Respondent in his pleadings and his evasiveness as a witness, we have no hesitation in finding Yong's evidence to be more credible, notwithstanding the inconsistencies highlighted by the Judge. Yong's evidence is also corroborated by that of the Appellant and Foo. On an examination of all the evidence, where the First Issue is concerned, we are satisfied that the Appellant has proved his case well beyond a balance of probabilities. We thus find, *vis-à-vis* the first three questions set out at [20] above, that:

(a) the Respondent did sign the Option on 29 May 2009 before handing it to Yong;

(b) apart from the purchaser's particulars, the rest of the essential particulars in the Option were filled in and were not left blank when the Respondent signed the Option on 29 May 2009; and

(c) the Respondent did agree to sell the Property at the price of $1.1m.

We now turn our attention to the Second Issue, *viz*, whether the Option was validly exercised on 10 June 2009.

The Second Issue

45 With regard to the Second Issue, the evidence is that on 10 June 2009, the Appellant exercised the Option *validly* by delivering the Option, together with the duly executed Acceptance Copy and the sum of $44,000 (being 5% of the purchase price of $1.1m, less the option fee of $11,000), to DSPP, the vendor's solicitors named in the Option. The fact that later that same day, DSPP wrote to the Appellant's solicitors stating that they had no authority to act for the Respondent in the sale and

purchase of the Property cannot render the Appellant's exercise of the Option, which was *in accordance* with its terms, invalid. The Respondent should not be allowed to take advantage of his own breach of the Option (by not giving DSPP the requisite authorisation to act as his solicitors in the sale and purchase of the Property) to consequentially question the validity of the Appellant's exercise of the Option.

46 In this regard, the Appellant has cited two cases to support his argument that he exercised the Option validly. The first is *Mohamed Ali s/o Abdul Razak v Tan Ah Bee* [2009] SGHC 279 ("*Mohamed Ali*"), whose facts are very similar to the facts in the present appeal. In *Mohamed Ali*, the purchaser sent the duly completed acceptance copy of the option, together with a cheque for the sum payable upon exercising the option, to the vendor's solicitors named in the option, but the acceptance copy and the cheque were returned on the same day by the solicitors with a cover letter stating, "We have confirmed with the [vendor's] representative that we do not act for her in [the] sale" (see *Mohamed Ali* at [15]). The court did not allow the vendor to rely on her own revocation of the solicitors' authority to prevent the option from being validly exercised. The court held that once the option was validly granted, it could be validly exercised by the payment of the stipulated sum in *accordance with the terms of the option*. The court also held that that remained the position despite the vendor's attempt to return the cheque to the purchaser as "[o]therwise[,] a grantor of an option … would thereafter be able to frustrate the exercise of an option … by the simple expedient of not encashing the [o]ption cheque, tearing it up or returning it" (see *Mohamed Ali* at [25]). This – *viz*, the vendor's unilateral revocation of his solicitors' authority to act for him – is precisely what happened in the present case. The Respondent had a change of heart about selling the Property for $1.1m and thereafter intentionally did not authorise DSPP to act for him in relation to the sale and purchase of the Property. This was a unilateral repudiation which could not and did not affect the Appellant's valid exercise of the Option.

47 The second case cited by the Appellant is the Court of Appeal case of *Tai Joon Lan v Yun Ai Chin and another* [1993] 2 SLR(R) 596 ("*Tai Joon Lan*"). In that case, the name of the vendor's solicitors was left blank when the vendor granted the option to the purchaser, but there was an agreement between the purchaser and the vendor that the vendor would nominate her solicitors one or two days later. However, the vendor later deliberately refused to furnish the name of her solicitors so as to prevent the purchaser from exercising the option. The court found (at [13]) that "[b]ut for [the vendor's] breach, a contract for the sale and purchase of the property would have arisen". The court treated the purchaser's purported exercise of the option as valid and ordered specific performance of the contract for the sale and purchase of the property so as to prevent the vendor from taking advantage of her own breach. We affirm the approach taken by the High Court in *Mohamed Ali* as well as by this court in *Tai Joon Lan*.

48 We turn now to the Respondent's submission that the Option was not validly exercised because the Appellant failed to deliver the Option, together with the duly executed Acceptance Copy and the sum of $44,000 (*viz*, 5% of the purchase price of $1.1m, less the option fee of $11,000), *directly* to him within the period stipulated for the exercise of the Option. In this regard, the Respondent contends that the Appellant, instead of exercising the Option by delivering the aforesaid documents and the sum of $44,000 to DSPP, should have exercised the Option by delivering those documents and that sum directly to him within the validity period of the Option. To buttress this argument, the Respondent relies on the Australian High Court decision of *Laybutt v Amoco Australia Pty Limited* (1974) 132 CLR 57 ("*Laybutt*") as authority for the proposition that where there is a stipulation in an option for the sale and purchase of property that a deposit is to be paid but the payee is not identified, it is implied that payment should be made to the other contracting party directly. The Respondent argues that in the present case, the Appellant should have sent the Option, the duly executed Acceptance Copy and the sum of $44,000 directly to him but did not do so, and, thus, the

Option was not validly exercised. In our view, the case of *Laybutt* is hardly relevant. In that case, the court had to imply a term that payment was to be made to the other contracting party directly because the term naming the vendor's agent to whom payment was to be made was *left blank*. In contrast, in the present case, the name of the solicitors who were to act for the Respondent (the vendor named in the Option) had already been agreed upon and entered in the Option.

49 Therefore, we see no merit in the Respondent's argument that the Option was not validly exercised by the Appellant. Accordingly, we likewise rule in the Appellant's favour on the Second Issue.

Conclusion

50 In the premises, we allow this appeal and grant specific performance of the contract for the sale and purchase of the Property. We also direct that:

(a) the Respondent shall, within one month from the date of this judgment, execute all necessary documents and take all necessary steps to effect the transfer of the Property to the Appellant, failing which the Registrar of the Supreme Court shall be empowered to do so and shall also ensure that vacant possession of the Property is given to the Appellant upon the transfer of the Property being effected; and

(b) the Respondent shall pay the Appellant interest for late completion in accordance with the Law Society's Conditions of Sale 1999.

51 The Respondent shall bear the costs of both this appeal as well as the suit below. The usual consequential orders shall also apply.

[note: 1] See para 2 of the Original Defence (at vol 2, p 16 of the Core Bundle filed by the Appellant on 21 February 2011 ("ACB")).

[note: 2] See para 2 of the Amended Defence (at ACB vol 2, p 18).

[note: 3] *Ibid*.

[note: 4] *Ibid*.

[note: 5] See para 6 of the Amended Defence (at ACB vol 2, p 19).

[note: 6] See para 94 of the Respondent's Case filed on 21 March 2011.

[note: 7] See the certified transcript of the notes of evidence ("the NE") for 14 September 2010 (Day 2 of the trial) at p 32 (at ACB vol 2, p 79).

[note: 8] See the NE for 14 September 2010 (Day 2 of the trial) at p 37 (at ACB vol 2, p 84).

[note: 9] See the NE for 15 September 2010 (Day 3 of the trial) at pp 26–27 (at ACB vol 2, pp 151–152).

[note: 10] *Ibid*.

[note: 11] See the NE for 15 September 2010 (Day 3 of the trial) at p 27 (at ACB vol 2, p 152).

[note: 12] See para 2 of the Amended Defence (at ACB vol 2, p 18).

[note: 13] *Ibid*.

[note: 14] See para 2 of the Original Defence (at ACB vol 2, p 16).

[note: 15] See para 2 of the Amended Defence (at ACB vol 2, p 18).

[note: 16] See the certified transcript of the AR's minute sheet for the hearing on 31 March 2010 at p 10 (at ACB vol 2, p 41).

[note: 17] *Ibid*.

[note: 18] See para 2 of the Amended Defence (at ACB vol 2, p 18).

[note: 19] See para 8 of the Respondent's affidavit of 20 April 2010.

[note: 20] *Id* at para 11.

[note: 21] *Ibid*.

[note: 22] See para 5 of the Appellant's AEIC (at ACB vol 2, p 24).

[note: 23] See the NE for 15 September 2010 (Day 3 of the trial) at p 24 (at ACB vol 2, p 149).

[note: 24] *Ibid*.

[note: 25] *Ibid*.

[note: 26] *Ibid*.

[note: 27] See para 5 of the Appellant's AEIC (at ACB vol 2, p 24).

[note: 28] See para 2 of the Amended Defence (at ACB vol 2, p 18).

[note: 29] See the NE for 14 September 2010 (Day 2 of the trial) at p 19 (at ACB vol 2, p 67).

[note: 30] See the NE for 15 September 2010 (Day 3 of the trial) at p 70.

[note: 31] See the NE for 14 September 2010 (Day 2 of the trial) at p 8 (at ACB vol 2, p 61).

[note: 32] See the NE for 15 September 2010 (Day 3 of the trial) at pp 3–5 (at ACB vol 2, pp 128–130).

[note: 33] See the NE for 15 September 2010 (Day 3 of the trial) at p 5 (at ACB vol 2, p 130).

[note: 34] See the NE for 14 September 2010 (Day 2 of the trial) at pp 69–73 (at ACB vol 2, pp 102–106).

[note: 35] See the NE for 14 September 2010 (Day 2 of the trial) at pp 71–72 (at ACB vol 2, pp 104–105).

[note: 36] See the NE for 14 September 2010 (Day 2 of the trial) at pp 60–62 (at ACB vol 2, pp 93–95).

[note: 37] See the NE for 15 September 2010 (Day 3 of the trial) at p 32 (at ACB vol 2, p 157).

[note: 38] See the NE for 14 September 2010 (Day 2 of the trial) at p 90 (at ACB vol 2, p 123).

[note: 39] See the NE for 14 September 2010 (Day 2 of the trial) at p 55 (at ACB vol 2, p 88).