Lim Hun Ching and Another v Lim Ah Choon
[2002] SGHC 195

Case Number : OS 927/2002

Decision Date : 28 August 2002

Tribunal/Court : High Court

Coram : Lee Seiu Kin JC

Counsel Name(s) : Cheah Kok Lim (Ang & Partners) for the plaintiffs; David de Souza and Jeanette Lee (De Souza Tay & Goh) for the defendant

Parties : Lim Hun Ching; Another — Lim Ah Choon

Land – Sale of land – Clause in option barring buyer from compensation on account of any incorrect statement relating to property – Buyers electing to complete transaction despite shortfall – Whether buyer can rely on clause and claim compensation – Whether buyer can proceed with transaction without the clause

Land – Sale of land – Definition of 'gross floor area' – Whether parties have common understanding of term

Land – Sale of land – Description of property's gross floor area – Seller's description of property's gross floor area higher than that of URA's – Whether misdescription by seller

Words and Phrases – 'Gross floor area'

Judgment

GROUNDS OF DECISION

1 This is an application under section 4 of the Conveyancing and Law of Property Act. The matter relates to a contract between the Plaintiffs and the Defendant for the purchase of a two-storey semi-detached house at 244E Pasir Panjang Road ("the Property") for the sum of $1,710,000.00. The Plaintiffs seek a declaration that they are entitled to an abatement in the sale price by way of compensation amounting to $209,317.50.

2 The facts are as follows. The Defendant purchased the Property in April 1999. She engaged an architect, Ms Melati Salleh ("the Architect") of Design 2000 Pte Ltd, to take charge of reconstruction of the building. The Defendant's husband, Tan Joon Say ("Tan") liaised with the Architect and contractors and represented the Defendant in the entire matter.

3 In April 2002, the Defendant advertised the Property for sale. The Plaintiffs, who are husband and wife, answered the advertisement and viewed the Property on two or three occasions. Tan attended to them and conducted the negotiations on behalf of the Defendant. There is some disagreement on what were said in those negotiations and I shall revert to this issue later.

4 On 30 April the parties reached agreement on the price, S$1.71 million, and Tan handed the Plaintiffs a draft option. The Plaintiffs took it and said that they would seek the advice of their solicitors. The parties' solicitors then negotiated on the text of the option but by 2 May 2002 they could not reach an agreement. In particular, the Plaintiffs' solicitors had insisted that the "area and size" of the Property be stated in the option. The Defendant's solicitors were only prepared to state that according to the Certificate of Title, the land area was 429.9 square metres.

5 To resolve this stalemate, Tan met the Plaintiffs at their office around 4 May. A day or so after that Tan returned with a new version of the option prepared pursuant to the earlier meeting. The Plaintiffs approved it. Tan then went off to obtain the Defendant's signature and returned shortly with the signed option ("the Option"). By agreement the Option was backdated to 30 April 2002. The 2nd Plaintiff gave Tan a cheque for $17,100 for the Option. On 14 May 2002 the Plaintiffs exercised the Option

by signing on the acceptance copy of the Option and making payment of the $153,900.00.

6 The only reference in the Option to the area and size of the Property is at the heading, which states as follows:

> "**244E Pasir Panjang Road, Singapore**
>
> Land area 429.9 sq. m.
>
> Estimated Total Gross Floor Area 397 sq. m."

7 On 23 May Tan discovered from the Architect that the Gross Floor Area of the Property as approved by the URA was 348.36 square metres. This is smaller than the figure of 397 square metres described as "Estimated Total Gross Floor Area" in the Option. Tan said that the Architect explained to him that the "total gross floor area" or "built-up floor area" remained at approximately 397 square metres.

8 On 24 May Tan telephoned the 2nd Plaintiff and told her about this. The 2nd Plaintiff recalled that she was quite upset about this. She told Tan that she would speak to the 1st Plaintiff. A day or so later the 1st Plaintiff telephoned Tan and asked for compensation for the shortfall in the gross floor area. He requested a pro-rated reduction in the sale price. The 1st Plaintiff made his calculation based solely on the "shortfall" in "gross floor area" and asked for a corresponding reduction of $193,850 in the price. There was some negotiation on the amount of compensation. Tan offered $50,000 and the Plaintiffs asked for this to be put down in writing. However Tan changed his mind and on 3 June telephoned the Plaintiffs to say that he had been advised that there was no change in area and the Defendant would not offer any reduction in the price.

9 From then on, the solicitors took over the matter and it is not necessary for me to relate the details of their exchange except that the parties reserved their rights. In the event the sale and purchase was completed without prejudice on 9 July 2002.

10 This matter turns on two issues:

> (i) Whether the statement in the Option "Estimated Total Gross Floor Area 397 sq. m." is a misdescription of the area of the Property; and
>
> (ii) Whether clause 10 of the Option precludes the Plaintiffs from obtaining compensation or damages even if there is a misdescription.

To succeed in this action, the Plaintiffs need both issues to be determined in their favour.

Misdescription

11 First of all it is necessary to clear the air in respect of the expression "gross floor area" (hereafter "GFA"). This expression is used by the URA to control the quantum of built up space that may be permitted in any land. This is done by way of the plot ratio of the land in question which would limit the GFA permissible. Therefore the URA has a definition of GFA for this purpose. However this definition is not a static one and has varied over the years to reflect changes in policy as well as to accommodate feedback from building professionals.

12 The URA has a wealth of information on its web-site: www.ura.gov.sg and the various circulars to building professionals from 1992 are posted there. Among them are circulars relating to GFA. Hence on 15 July 1993, URA issued a circular entitled "Revised Gross Floor Area Definition" which provided as follows:

> 1. In 1989, following the introduction of the new development charge system, a simplified approach was adopted to determine the Gross Floor Area (GFA) of a building. Under this concept, all covered floor areas of a building, except otherwise stated, and uncovered areas for commercial uses are

deemed the GFA of the building for purposes of plot ratio control and development charge. Owners/developers are free to make their own decisions on how much neutral areas they want in their buildings.

2. Since then, URA has received feedback from practitioners, appeals and the professional institutes that the interpretation of the GFA definition in some instances inhibits building designs and penalises the use of modern construction technology.

3. We are pleased to inform you that we have reviewed the definition of GFA. Without changing the concept of GFA as a control on building bulk and intensity of development, the revised GFA definition takes into account the following principles:

a. Where the floor areas are uncovered and do not generate activities that will intensify the development, they would be excluded from GFA.

b. Where the floor areas are required by government agencies or to meet public policies/ objectives, they would be excluded from GFA.

c. Where the building design features or the use of modern construction techniques do not give rise to additional floor space and intensity of development, they would be excluded from GFA.

d. Where the floor areas have a limited height clearance (1.5m or less) and are used for M&E or other services, they would be excluded from GFA.

4. In line with the principles mentioned, the following are additional areas not counted as GFA:

a. Covered linkways, pavilions and sheds

b. Basement diaphragm walls

…

5. The following areas are however partially counted as GFA:

a. Lift shafts

b. Vertical service duct space

…

Implementation

6. The above revised GFA treatments are to be applied with immediate effect and floor area previously counted as GFA (for cases approved after 1 Sept 1989) could be used to offset proposed additional floor space submitted as amendments or additions/alterations plans. The new proposal should comply with the planning requirements for the site

…

13 Over the last ten years there have been a number of such URA circulars clarifying or changing the definition of GFA. Indeed, matters must have reached such a state of confusion that it was necessary for the URA to publish a compilation of

clarifications of GFA and distribute it with the following circular on 3 March 1999:

> **CLARIFICATION ON GROSS FLOOR AREA (GFA)**
>
> 1. Many planning applications have frequently excluded certain covered areas from GFA calculations even though these areas are part of the GFA. This has resulted in longer processing time as much time and effort are wasted on identifying such areas. Additional time and effort are also required to compile the GFA errors made.
>
> 2. To improve our customer service and to assist your members, we have compiled a list of the frequently made GFA errors in Appendix 1 attached. The areas to be counted as GFA areas are indicated in the Appendix.
>
> 3. I would appreciate it if you could convey the contents of this circular to the relevant members of your organisation.
>
> 4. If you or your members have any queries about this circular, please do not hesitate to call our DCD Customer Service Hotline at Tel: 223 4811. We would be pleased to answer queries on this, and any other development control matter.

14 In the present case, the Architect explained that prior to April 2001, the URA definition of GFA included car porches, terraced areas and external staircases. It was on that basis that she had come up with the figure of 397 square metres. On 26 April 2001 the URA issued a circular which states, *inter alia*, the following:

> **GROSS FLOOR AREA (GFA) EXEMPTION FOR CAR PORCHES AND GARAGES IN LAND-TITLED LANDED HOUSING**
>
> 1. I am pleased to inform you that with immediate effect, all car porches and garages in land-titled landed housing are excluded from Gross Floor Area (GFA) computation. This GFA exemption is to provide more flexibility for the provision of covered car porches and garages in land-titled landed housing development, similar to the car parking spaces in other residential developments.
>
> …

This means that from that date, the owner of a "Land-Titled Landed Housing" need not include any built up space used as car porches or garages as part of his GFA. This means that he is entitled to have more built up space for other areas, such as rooms in his house. On the basis of this exemption, the Architect computed that the GFA for the Property was 348.36 square metres.

15 From this, it can be seen that the expression GFA, if it is intended to refer to the meaning that URA would ascribe to it for the purpose of planning approval, is a fluid one and changes with time. Counsel for both sides agree that the protagonists had no clue as to the URA definition of GFA. Indeed, it would appear that even the building professionals are sometime not very clear about it and the URA had found it necessary to issue clarifications from time to time. Against this background, I turn to consider the evidence as to the communications between the parties up to the point where the text of the Option was arrived at.

16 The following are the portions of the 2nd Plaintiff's first affidavit touching on those communications:

> 6. At the first viewing, I asked Tan the land area and the gross floor area (GFA) of the house. Tan told us that the GFA would not be less than [390 sq m] but he asked me and my husband to take it that it would be about [381 sq m] to be on the safe side. …
>
> …

14. After this letter of 2nd May 2002 from Fong Partners & Associates, we had a meeting with Tan at our office … in the afternoon. We went through the Option and resolved all the terms. During this discussion, we insisted that the GFA and the land area be set out clearly in the option as this was very important to us. He said that he would get it from the architect and include this in the option. This meeting lasted for about an hour.

…

15. A few days later, Tan came to see me at [our office]. He showed me the option, which incorporated all the amendments. I checked and verified that the land area and the GFA was stated in the Option. I then signed the option.

17 In his affidavit filed on behalf of the Defendant, Tan described the relevant transactions in the following manner:

8. At the first viewing, the 2nd Plaintiff asked to know the land area and the "built-up" area of the Property. I told her that the land area was about [427 sq m] but I did not know the built-up area. However, I said that the Defendant's Architect had estimated the total gross floor area of the Property at [381 sq m] or [390 sq m]. I further informed the 2nd Plaintiff that the Defendant had a letter from the Defendant's Architect stating the estimated total gross floor area in square metres. The Plaintiffs did not ask for a copy of this letter.

9. In the premises, the 2nd Plaintiff's statement in paragraph 6 of the Plaintiffs' 1st Affidavit that she had asked me for "the gross floor area (GFA) of the house" is not true.

10. I further state that the Plaintiffs did not tell me that they needed to know the gross floor area of the house for bank valuation or any other purpose. …

…

20. … On or about 4 May 2002, the Plaintiffs had discussions with me on the Draft Option and we eventually agreed on the terms of the option to be granted by the Defendant to the Plaintiffs (the "Option") … The discussions and the agreements leading to the Option are set out in the paragraphs below.

21. The Plaintiffs asked that the floor area of the house be inserted in the description of the Property. I told them that I could only state the "estimated total gross floor area" of 397 sq m mentioned in the Defendant's Architect's letter … in the description of the Property. The Plaintiffs agreed. They did not ask for a copy of the letter. They also did not ask what was meant by the term "estimate total gross floor area".

22. In accordance with the above agreement, I amended the Draft Option so that the Property was described in the heading of the Option as:

244E Pasir Panjang Road, Singapore

Land area 429.9 sq. m.

Estimated Total Gross Floor Area 397 sq. m.

18 In her reply affidavit, the 2nd Plaintiff gave the following responses to Tan's allegations:

> 8. With regard to paragraph 8 and 9 of Tan's affidavit, Tan told me that the land area was about [427 sq m]. It was he who told us that the total gross floor area was [390 sq m] but to take it at [381 sq m] to be on the safe side. He did not mention anything about any letter from the Defendant's architect or how he obtained gross floor area. When we discussed the gross floor area, Tan, my husband and I were all talking about the same thing that is the covered area within the four walls of the property.
>
> …
>
> 12. With regard to paragraph 21 of Tan's affidavit, we wanted the Gross Floor Area to be included in the option as he had already told us the Gross Floor Area when we first viewed the house and we had maintained this position even when the draft option was discussed. He did not tell us that he had a letter from the architect. He said he would [obtain] the GFA from the architect and include it in. As we did not know there was a letter from the architect, we did not ask for it. He did not offer to show us any letter from the architect.

19 It is only in her reply affidavit that the 2nd Plaintiff deals with what was meant by GFA. This is found in the last sentence of 8 (underlined above). It is in the form of an ambiguous statement that this was what the Plaintiffs and Tan meant by GFA was the "covered area within the four walls of the property". The 2nd Plaintiff, who had the right of reply in under the summons procedure, did not expressly state that the three of them had clarified what GFA meant. That sentence could be interpreted to mean that this was her impression of what they all had meant by GFA. The 2nd Plaintiff stated in 29 and 30 of her reply affidavit that there was no discussion on the meaning of GFA. Those provide as follows:

> 29. With regard to paragraph 38 of Tan's affidavit, Tan did not at any time tell the 1st Plaintiff or I that the meaning of 'estimate total gross floor area' referred to the total usable or built up area of the house and included the car porch, the external staircase and the balconies. The 1st Plaintiff and I agreed to use the term estimated total gross floor area based on what we had discussed. We had relied on this in obtaining financing and in agreeing to purchase the property. If Tan had thought otherwise, he would have just told me that the total estimated gross floor area remains the same and there would not have been any discussions in May 2002 regarding compensation. Moreover, if we had wanted to use the term built up area, we would have done so.
>
> 30. With regard to paragraph 39 of the said affidavit, Tan did not at any time inform at the time when the option was granted that estimated total gross floor area was equivalent to the built up area. …

20 The following are the features of the situation:

> (a) The protagonists have no idea of the URA definition of GFA;
>
> (b) The Plaintiffs had meant built up area within the four walls of the Property. There is no evidence as to whether this corresponds to the URA definition of GFA at the time;
>
> (c) Tan, on behalf of the Defendants, had meant the URA definition of GFA prior to 26 April 2001, when URA exempted car porches, garages and some other areas from the computation of the GFA.

At the time the terms of the Option were settled, the parties were not talking of the same thing in relation to GFA. Therefore there could not have been any misdescription by the Defendant in the Option inasmuch as Tan was not referring to the "built up area within four walls" that the Plaintiffs had intended, but to the pre-April 2001 URA definition.

21 For completeness, I should add that there is no issue on the accuracy of the figure of 397 square metres based on the pre-April 2001 URA definition of GFA. In the premises, I would hold that there is no misdescription of the Property by the Defendant.

Clause 10

22 The Defendant also relies on clause 10 of the Option to absolve her of any liability even if there is a misdescription in the size of the built up area. Clasue 10 states as follows:

> 10. The property is believed to be and shall be taken as correctly described and any incorrect statement error or omission shall not annul the sale or entitle you to be discharged from your purchase nor shall either party claim or be allowed any compensation in respect thereof.

23 The effect of such a provision is summarized in *Emmet on Title (19 ed.)* as follows (at 4.023):-

> **Conditions of sale as to misdescription**
>
> - In the past, conditions of sale to the following general effect were commonly encountered with the consequences indicated:
>
> First, *that no misdescription shall annul the sale*. The purport of this condition is that the vendor should be able to enforce the contract despite rule (1) above [that a substantial misdescription will render the contract unenforceable by the vendor]. However the condition will *not* have this effect: the purchaser will still be able to avoid the contract, recovering both his deposit and costs, where the misdescription is substantial …
>
> Secondly, ...
>
> Thirdly, *that the purchaser shall not be entitled to compensation for any misdescription.* If the misdescription is substantial, the vendor will still be unable to enforce the contract against the purchaser (*Jacobs v Revell* … and *Lee v Rayson* …), and this is so even though the vendor is willing to waive the exclusion of compensation (*Watson v Burton* ...). Therefore, the application of this condition is limited to preventing the purchaser from obtaining compensation if *he* asks for specific performance (*Re Terry and White's Contract* (1886) 32 Ch D 14) or from recovering damages for breach of contract (see *Curtis v French* [1929] 1 Ch 253).

24 *Jacobs v Revell* [1900] 2 Ch 858 is a case in which there was a misdescription in the title to a part of the property. The purchaser claimed rescission of the contract and a return of the deposit paid by him. The vendor counter-claimed for specific performance. The Court held that the vendor was unable to obtain specific performance and the purchaser was entitled to rescission. That case is therefore different from the present case where the Plaintiffs have elected to complete the purchase. However Buckley J reviewed the authorities on the effect of compensation provisions for misdescription. With regard to the situation in which the purchaser seeks specific performance with a reduction in the purchase price where there is a provision in the contract that disentitles him to compensation or damages, the judge said (at p 866):

> In *Cordingley v. Cheeseborough* the purchaser sought for specific performance with an abatement of the purchase-money. The contract contained a clause that the admeasurements were presumed to be correct, but that if any error was discovered therein no allowance should be made or required either way. The clause, therefore, excluded compensation; but the purchaser, alleging that he was getting less than he contracted to buy, asked for specific performance with compensation. He wanted to buy upon altered terms. The Court decreed specific performance without compensation. Lord Westbury L.C. says: "In deciding this question it must be recollected exactly what is the nature of the present suit. It is not the suit of a vendor seeking to enforce a specific performance. It is the case of a purchaser coming for a specific performance, but insisting that he is entitled by virtue of the contract to a deduction from his purchase-money." In other words, he was insisting to something which was not in the contract.

25 *Cordingley v. Cheeseborough* (1862) 4 DE G F & J 379 involved an innocent misdescription which resulted in the actual area of the property being a little over half of that stated in the contract. The vendor offered to vacate the contract, to repay the purchaser his cost and to give interest on the deposit. The purchaser insisted on completing the purchase and instituted proceedings for a reduction in the purchase price. The exemption clause considered by the Court was, "*The admeasurements are presumed to be correct, but if any error be discovered therein no allowance shall be made or required either way.*" The Court held that the purchaser was not entitled to compensation or a reduction in the purchase price. Lord Westbury said at p 1232:

> … My attention has been called, and very properly, to the decisions of the Court with respect to the construction of the particulars and conditions of sale against the vendor. No doubt it is a very wholesome maxim that a vendor shall be required to bring into the market particulars and conditions of sale prepared with great care and fairness; and when the vendor is the Plaintiff for a specific performance, that rule is, in my judgment, properly enforced as against the vendor. But when the purchaser insists that the terms of this contract give him a right to a deduction, claiming still to have the benefit of the contract, the rule to which we have been referred is no longer applicable, and the contract must be construed according to the ordinary rules of construction for the purpose of ascertaining whether he is or is not entitled to the deduction from his purchase-money.

And at page 1234:-

> The purchaser adheres to his contract. The only question therefore is, whether here the purchaser, seeking a deduction from purchase-money, is entitled to that deduction according to the proper meaning of the contract that he has entered into. I am of opinion that he is not.

26 In *Curtis v French* [1929] 1 Ch 253 there was a provision similar to the one in clause 10 which states that: *"No error, misstatement or omission in the particulars, sale plan or conditions shall annul the sale, nor shall any compensation be allowed either by the vendor or purchaser in respect thereof."* The premises had been stated to be sold with vacant possession on completion but in fact there was a sub-tenant who was entitled to remain as a statutory tenant. Eve J said at p 261:

> But here is a term of the contract which says, notwithstanding that it is a misstatement, the purchaser is not to be entitled to recover any damages or compensation in respect of it. In the position which has arisen he would be entitled to rescind the contract, to recover his deposit with interest, and the costs of investigating the title, but nothing more. He has bargained for vacant possession of that which he has purchased. He cannot have vacant possession, the vendor cannot give him what he contracted to give him, but the contract itself precludes him from recovering anything for the loss sustained by reason of the misstatements. The action is brought for specific performance, but at the time the plaintiff does not ask for this relief; he is content with damages if he can obtain them. In my opinion he cannot, the terms of the contract are too strong, and the action, so far as it is an action for damages, fails.

27 In *Re Terry and White's Contract* (1886) 32 Ch D 14, there was a mis-statement of approximately 25% in the area of the property. The vendor refused to make compensation but offered to annul the sale. The purchaser refused to consent to the annulment and claimed for specific performance with compensation. The vendor then rescinded the contract pursuant to a provision therein. Lord Esher, MR said at p 22:

> … Conditions of sale are not always the same, they vary; some vendors may put in more stringent conditions of sale than others; but when the conditions of sale are put in, what are the rights of the parties? Why, the purchaser bids, knowing of those conditions of sale, and therefore agreeing to be bound by them; so that the conditions of sale are the agreement under which the purchaser bids and the vendor sells. Then, that is a contract, the conditions of sale forming part of the contract. How are they to be construed? To my mind they are to be construed in precisely the same manner in a Court of

> Law as in a Court of Equity. They are to be construed according to the ordinary interpretation of language as used in business, unless there is something in the contract or something in the subject-matter which obliges the Court – not which entitles the Court, but which obliges the Court – to read the language otherwise than in its ordinary sense.
>
> Now, take that rule of interpretation, and apply it to the conditions before us. First of all, I will go to the third condition. "Each lot is believed" – that is only a statement as to the good faith of the vendor, - "and shall be taken to be" – that part of it is against the purchaser – "and shall be taken to be correctly described as to quantity and otherwise," and the respective purchasers shall be satisfied with certain evidence, "and shall be deemed to buy with full knowledge of the state and condition of the property as to repairs and otherwise, and no error, mis-statement, or misdescription shall annul the sale, nor shall any compensation be allowed in respect thereof." Now, let us construe that according to its ordinary meaning. It is meant to put the purchaser, if he does not choose to go and look at the land and have it measured according to the description, - which he might do, I presume, - to put him really in the condition of a man who has done so … It seems to me that if we construe that condition according to its plain meaning, it is a contract between the purchaser and the vendor that so far as the contract is concerned, no misdescription, honest misdescription, shall have any effect, or at least shall have any greater effect, than if the purchaser had gone to look at the land and bought the land on his own judgment; and, if he had, why then an innocent misdescription could have had no effect. It seems to me that the purchaser has therein contracted that if the contract is to go on, he shall not have any compensation for a misdescription of quantity.

28 The Plaintiffs submitted that clause 10 does not have the effect of relieving the Defendant from liability for misdescription and cited the following authorities: (i) *Kassim Syed Ali v Grace Development* [1998] 2 SLR 393; and (ii) *Lau Lay Hong v Hexapillar* [1993] 3 SLR 198.

29 *Kassim Syed Ali v Grace Development* involved the sale and purchase of shopping units in The Adelphi. It was originally designed to accommodate an hotel in its tower block and a shopping centre in its podium block. The shopping units in question were sold on this basis to the defendants. However the plaintiffs decided to convert the tower block into offices instead of the hotel and obtained planning permission for this without the defendants' consent. When the defendants refused to make the progress payment upon procurement of the certificate of statutory completion, the plaintiffs sued for specific performance. The Court of Appeal held that the plaintiffs were in breach of the sale and purchase agreements as it was contemplated therein that The Adelphi was to be built as an hotel and shopping complex but delivered as an office and shopping complex. The plaintiffs relied on condition 11 of the Law Society's Conditions of Sale which provides as follows:

> The property is believed and shall be taken to be correctly described as to quantity and otherwise and is sold subject to all chief, quit, and other rents and out-goings and to all incidents of tenure, rights of way, and other rights and easements (if any) affecting the same and if any error, misstatement, or omission (not of a serious or vital nature nor considerably affecting the value of the property) shall be discovered in the particulars special conditions or contract the same shall not annul the sale nor shall any compensation be allowed by or to either party in respect thereof.

30 The Court of Appeal agreed with the High Court that condition 11 had no application because the matter did not concern any error or misstatement or omission in the description of the property being sold and it was a case where the premises delivered to the defendants were different from what they had purchased. This is quite different from the present case which involves a misdescription in the GFA and clearly falls within the ambit of clause 10.

31 In *Lau Lay Hong v Hexapillar* the sale and purchase agreement also contained condition 11 of the Law Society's Conditions of Sale. It should be noted that in this condition, the words *"error, misstatement or omission"* are qualified by *"not of a serious or vital nature nor considerably affecting the value of the property"*. There was a shortfall of 76 square feet in the area of the apartment the subject of the sale, amounting to 2.83% of the total area. Warren Khoo J held that the magnitude of

this shortfall brought it outside the qualifying words and hence the scope of condition 11. The judge reasoned as follows (at p 206):

> On the question of the area shortfall, I can dispose of the question very shortly as follows. I do not think that the shortfall was so substantial as to enable a purchaser to rescind the contract. However, it does appear to me to be substantial enough to be a subject of compensation. I do not think it is caught by condition 11.

32 In *Yeo Brothers Co (Pte) Ltd v Atlas Properties (Pte) Ltd* [1987] SLR 443, the sale and purchase contract contained condition 11 of the Law Society's Conditions of Sale. The High Court held that the shortfall in area of 10.77% was sufficiently substantial to bring it outside the scope of condition 11 and accordingly the purchaser was entitled to an abatement in the price.

33 In *Re a Contract Dated 24th July, 1929* [1930] SSLR 199 there was also an exemption clause identical to condition 11 of the Law Society's Conditions of Sale. The shortfall there was about 8% and the Court held that it was serious enough to bring it outside the scope of the exemption clause and an abatement of the price was allowed.

34 The exemption clause in the present case is different from that dealt with by the Court in *Lau Lay Hong & Anor v Hexapillar Pte Ltd*, *Yeo Brothers Co (Pte) Ltd v Atlas Properties (Pte) Ltd* and *Re a Contract Dated 24th July, 1929*. In those cases, the exemption clause only protected the vendor to the extent that the error, misstatement, or omission was not of a serious or vital nature or considerably affecting the value of the property. Consequently, the issue before the Court in those cases was whether the reduction in the area of the property from that stated in the contract was outside the exemption. Clause 10 in the present case is not qualified at all and covers all misdescriptions. This was the view taken by Stevens J in *Re a Contract dated 24th July 1929*, where he said as follows:

> The third point concerns the construction of Singapore condition No. 11. It is clear that but for the insertion of the words "not of a serious or vital nature nor considerably affecting the value of the property" this condition would have afforded complete protection to the vendors (see *Terry & White's Contract*) unless the misdescription was such as to strike at the whole basis of the contract, so that the parties could not be said to be *ad idem*.

35 The Plaintiffs had elected to complete their purchase of the Property although they were fully aware of the provisions of clause 10 of the Option. They made such election notwithstanding that the Defendant had offered to refund the deposit and treat the Option as cancelled. Applying the principles in *Jacobs v Revell*, *Cordingley v Cheeseborough*, *Re Terry White's Contract* and *Curtis v French*, I hold that clause 10 of the Option precludes the Plaintiffs from obtaining compensation or damages for any shortfall in the estimated total gross floor area of the Property. Even if they were entitled to rescind the contract on account of a misdescription, they cannot choose to proceed with the contract without clause 10.

Conclusion

36 In the premises, I dismissed the Plaintiffs' application with costs fixed at $9,000.

Sgd:

LEE SEIU KIN

JUDICIAL COMMISSIONER