

Goh Kim Heong and Others v AT & J Co Pte Ltd
[2001] SGHC 269

Case Number : OS 600751/2001
Decision Date : 15 September 2001
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Peter Wong, Li Ping and Jennifer Leng (William Lai & Alan Wong) for the plaintiffs;
Ng Siew Hoong and Lim Shack Keong (Peter Moe & Partners) for the defendants
Parties : Goh Kim Heong — AT & J Co Pte Ltd

Civil Procedure – Appeals – Leave to appeal to Court of Appeal – Value of claim below statutory threshold – Whether right of appeal absolute – Whether dispute involves important question of law for determination by Court of Appeal – s 34(2)(a) Supreme Court of Judicature Act (Cap 322, 1999 Ed)

Land – Conveyance – Completion – Amount payable to vendor on legal completion – Functional completion following death of one of purchasers pending letters of administration – Payment of balance of purchase price as per vendor's completion account on functional completion – Servicing of mortgage by purchasers on behalf of vendor after functional completion – Receipt of rents by purchaser after functional completion – Entitlement of vendor to further sums on legal completion

: This action arose out of a sale of a property known as No 61 Ubi Avenue 2, [num]04-18, Automobile Megamart, Singapore (`the property`). The defendant company was the vendor. It issued an option dated 19 November 1999 to Fuu Khee Tong [commat] Foo Khee Tong, Goh Sewi Tong, Woo Koh Wan and Goh Keng Hock trading in partnership as Goh & Goh Motor Enterprise to purchase the property at a price of \$890,000. The option was duly accepted and exercised on 2 December 1999 with the payment of 10% of the purchase price.

The vendor had not completed its purchase of the property with the developer, and the certificate of title to the property was not issued. In view of this the parties agreed pursuant to cl 10 of the option that:

The sale and purchase shall be by way of a Deed of Assignment of the Vendor`s rights title and interests in the property. The Vendor shall endeavor to procure a fresh Agreement for Sale and Purchase to be made between the Developer and the Purchaser, provided that all the Developer`s administrative fee and legal costs for the fresh Agreement for Sale and Purchase shall be borne by the Purchaser who shall return the fresh Agreement for Sale and Purchase duly executed at least ten (10) working days prior to completion.

Under the terms of the option, completion between the vendor and the purchasers was to take place on 10 February 2000.

Although the certificate of title was not issued, the unit was ready for occupation and was tenanted out, and the sale was subject to the existing tenancy.

The transaction did not proceed in accordance to the terms of the option. The progress was disrupted by the death of Fuu Khee Tong [commat] Foo Khee Tong (`the deceased`) on 9 January 2000.

The deceased's death held up the completion of the sale because the developers required the grant of letters of administration to his estate to be produced before they would enter into a fresh sale and purchase agreement with the purchasers. The letters could not be produced by 10 February 2000, and were not extracted till 29 November 2000. The first and second plaintiffs are the administrators of the estate.

The vendor and the purchasers entered into negotiations to alleviate the effects of the delay. The purchasers' solicitors, William Lai & Alan Wong informed Peter Moe & Partners, solicitors for the vendor that:

(O)ur clients propose the following pending issuance of the Grant of Letters of Administration:-		
(a)	(1)	our clients make payment of the cash portion of the sale proceeds ("cash proceeds") to your clients derived as per the formula:-
		90% of the sale price less (the unpaid progress payments and outstanding redemption amount of your clients' mortgagee for the property)
		(which redemption statement has to be furnished to us);
	(2)	interest is not to be charged pending completion which should take place within about a month from 10 February 2000 ...
...		
(c)		property tax, maintenance fees and interest on overdraft facilities of your clients will be borne by our clients until the date of payment of the amount in (b)(2) provided the while of the rental proceeds is paid to our clients.

They replied:

Our clients instruct as follows:-	
1.	They are agreeable to the arrangement stated in your letter of 18 February 2000.
2.	They will not charge interest if completion takes place not later than 9 March 2000. If your clients are unable to complete on 9 March 2000, our clients will charge interest from 11 February 2000 to the actual date of completion.

and followed that with another letter that:

The rental payment of \$8,000.00 excluding GST is to be paid to your clients with effect from 1 March 2000 if your clients pay the balance of the purchase price less the unpaid purchase price (8%) and the outstanding redemption amount to be paid to the existing Mortgagees, on 29 February 2000.

On 29 February, the vendor's solicitors sent a completion account to the purchasers' solicitors:

Sale Price	\$890,000.00	
Less:		
(a)	10% deposit paid	\$89,000.00
(b)	Balance 8% of the Purchase price due to developers	\$59,200.00
(c)	Redemption amount owing to Bank of China	
Add:		
3% GST on the 10% deposit	\$2,670.00	
3% GST on the balance sale price of \$741,800.00		
Amount payable on 29 February 2000		

\$370,495.64 \$518,695.64 \$22,254.00 \$396,228.36 adding

We require the following on 29 February 2000:-

...

5. your confirmation that your clients will:-

(a) settle the monthly instalment due and payable to our clients' mortgagees promptly;

(b) pay all property tax and maintenance fee as from 1 March 2000;

(c) perform and observe all the terms of the Tenancy Agreement dated 23 September 1999 and shall indemnify our clients for any breach thereof.

I will refer to this form of completion by payment and delivery of possession as the functional completion, and the form of completion contemplated by cl 10 of the option as the legal completion.

Pursuant to the agreement reached, \$371,304.36 was paid by the purchasers to the vendor on 8 March 2000. When they tendered the payment the purchasers' solicitors wrote to the vendor's solicitors to place on record that:

(Y)our clients are agreeable to accept a sum of S\$371,304.36 towards part payment of the purchase price (as per your letter dated 29th February 2000 but not including GST at 3% on 10% deposit which has already been paid by our clients and not including GST at 3% on the balance sale price of S\$741,800.00).

...

(T)he following ... has been agreed:-

1 you may release the balance 10% deposit of the sale price to your clients;

2 our clients will pay the property tax and maintenance charges with effect from 1st March 2000, which you have informed us today that the bills have not been issued or received by you;

3 our clients will pay the monthly instalment of S\$6,954.71 to your clients directly before the 28th of every month as you have informed us that your clients' payment of the monthly instalment is by monthly giro deduction on the 28th of every month;

4 you will forward to us the rental sum of S\$8,000.00 which your clients have collected for the month of March 2000 within 3 days from the date hereof and our clients will collect the rental of S\$8,000.00 for future months from your clients directly every month.

Nothing eventful took place thereafter while the parties waited for the letters of administration. When the letters were extracted the parties proceeded with the legal completion.

At this stage, a disagreement arose over the amount to be paid to the vendor on the legal completion. The vendor's solicitors issued another completion account dated 29 January 2001:

Sale Price		\$890,000.00
Less:		
10% deposit paid	\$89,000.00	
8% purchase price yet to be paid to the developers (based on \$740,000.00)	\$59,200.00	
Amount paid to us on 8 March 2000	\$371,304.36	
Rental Deposit		
Add:		

3% GST on the balance sale price of \$741,800.00		
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\$16,000.00 \$535,504.36 \$22,254.00 \$376,749.64 The purchasers` solicitors pointed out that:

(Y)our completion account is not correct. Kindly note that as agreed, our clients have been servicing the monthly instalment payments on your clients` behalf to pay down the Term Loan. As at 29th February 2000, as per your completion account, the redemption amount to Bank of China then was \$370,495.64. When we complete, our clients will only have to pay the outstanding balance of the Term Loan outstanding and due to Bank of China on redemption and completion only. Our clients have paid to your clients their cash equity in full for the sale already. Accordingly, on completion, we will only have to pay the following:-

1 outstanding Term Loan due to Bank of China on completion. In this respect, kindly let us have Bank of China breakdown of the redemption statement/statement of account urgently as requested in our letter dated 1st February 2001; and

2 the GST at 3% on the balance sale price of \$741,800.00.

The vendor`s solicitors did not agree that the redemption sum should be the amount stated in the completion statement of 29 February. They informed the purchasers` solicitors:

Our clients agree that your clients had been servicing the monthly instalment payments on our clients` behalf to the Bank of China. However, the monies utilised by your clients to do so actually came from the rental of \$8,000.00 to which our clients are entitled. In this regard, it did not come from the purchase price of \$890,000.00 or balance thereof which your clients have to pay.

Using the figures in our completion account, the total monies paid by your clients is not more than the purchase price of \$890,000.00. However, using your calculation, the total amount paid or to be paid by your clients, even taking into consideration the monthly instalments paid, is actually less than the sale price of \$890,000.00.

Again the purchasers` solicitors explained, in greater length:

(T)he matter was deemed completed as per the completion account given by you vide your letter dated 29th February 2000. In the completion account, your clients` balance proceeds of sale in the sum of S\$371,304.36 was paid in full to them, and the only amount outstanding was the redemption amount owing to your clients` mortgagee, Bank of China in the sum of S\$370,495.64 at that point of time. If the property was transferred to our clients at that point of time, then the outstanding sum of S\$370,495.64 would have been paid to your clients` mortgagee and not to your clients. However, due to the unfortunate death of one of our clients, Fuu Khee Tong [commat] Foo Khee Tong, deceased, the arrangement as per your letter dated 29th February 2000 was agreed upon,

wherein our clients will continue to pay down your clients` Term Loan until you can finally transfer the property to our clients upon obtaining the Grant of Letters of Administration. Accordingly, our clients need only pay the outstanding balance of the Term Loan due to your clients` mortgagee on full redemption as agreed (less the rental deposit of S\$16,000.00) and there should not be additional cash payment or monies to your clients. There is no other payment or monies due to your clients.

*(T)he intention behind the arrangement was that there was no further payment or monies to your clients when the property is transferred to our clients other than the sum of S\$371,304.36 paid to your clients as per your completion account dated 29th February 2000. For all intents and purposes our clients were deemed to have completed the matter and taken over the property and the loan as at 29th February 2000. This is why our clients assumed responsibility and liability for payment of the property tax, maintenance charges and the loan, except for the technically (**sic**) of not being able to get the property transferred to our clients in their names due to the death of Foo Khee Tong [commat] Foo Khee Tong, deceased.*

By their reckoning the sum payable on legal completion should be:

(a)	Redemption sum due on the mortgage	\$323,010.76
(b)	GST on balance of purchase price of \$741,800	\$22,254.00
Less:		
(c)	Rental deposit on tenancy	
		\$329,264.76

(\$16,000.00) The vendor`s solicitors were not persuaded. A proposal that the difference of \$47,484.88 between the vendor`s computation of \$376,749.64 and the purchasers` computation of \$329,264.76 be held by stakeholders upon completion pending a determination of the issue was turned down. Eventually legal completion took place on 9 March with the plaintiffs paying \$376,749.64 under protest on 8 February.

After making the payment they instituted the present proceedings for the refund of \$47,484.88.

The vendor`s position was set out in an affidavit deposed by its director Chong Kim Seng:

(i) (T)he purchase and sale of the Property was never treated by us as completed on 29 February 2000 as alleged. As far as we were concerned, there is no question of the purchase being "deemed" completed as alleged in the Plaintiffs` solicitors` letter dated 5 March 2001. Neither was there any intention on our part that there would be no further payment or monies due to us on the actual day of completion.

and

(ii) (T)he Plaintiffs` claim that they are entitled to the Excess Cash appears to be based on the erroneous belief that the monthly instalments which they had paid to the Mortgagee from March 2000 to January 2001 ("the relevant period") should be accounted for in the completion account. This cannot be so. These monthly instalments should be treated quite differently and apart from the Sale Price. In any event, we had allowed the Plaintiffs to utilise the Rental to service the monthly instalments to the Mortgagee. The monthly instalments due to the Mortgagee is only \$6,954.71. The monthly property tax and maintenance payments amount to a sum of about \$1,276.87. The Rentals would help to cover most of the monthly payments which the Plaintiffs had taken over during the relevant period. In other words, the Plaintiffs did not need to utilise much of their own monies to pay for the monthly payments that they had taken over from the Defendants. The payments therefore cannot be accounted for in the completion account for the purchase of the Property.

The vendor`s position was not correct. Upon functional completion, the vendor received from the purchasers \$371,304.36:

Sale price	\$890,000.00
Less	
10% deposit paid	(\$89,000.00)
Amount still to be paid to the developers	(\$59,200.00)
Redemption sum for the mortgage	
	\$371,304.36

(\$370,495.64) When it received that sum, it received the full amount which would be due to them if legal completion had taken place then.

The functional completion put the parties in as close a position to legal completion as they can get at that time. The vendor received the payment it would have received on legal completion, and did not have to make further mortgage payments, property tax and maintenance fees and the purchasers had benefit of the possession of the property reflected in the rents received under the tenancy agreement.

As long as they absolved the vendor from liability under the mortgage and the tenancy agreement the purchasers have fulfilled their obligations to the vendor. They could have redeemed the mortgage on functional completion, or on legal completion, or at any time in between.

The vendor`s entitlement should not vary because the redemption sum on the date of legal completion was reduced by the periodic repayments the purchasers made, or because the purchasers received rent under the tenancy agreement after the functional completion.

There was no substance in the vendor`s contention that it did not intend that there would be no further payments due to it after the functional completion. That was irrelevant in the determination of

the parties' respective contractual rights. There was no express provision for further payments and no basis for implying such a term for further payments when the redemption amount at the date of legal completion is lower than it was at the date of the functional completion. To the contrary the tenor of the functional completion was for the vendor to get the benefit of the payment due from the sale, and that the purchasers would get the benefit of the property without waiting for the letters of administration. All that remained for the parties to do was for the purchasers to get the letters of administration and for the vendor's interest in the property to be transferred to the purchasers after that.

I therefore rejected the defence and gave judgment to the purchasers.

Leave to appeal

The vendor does not accept the decision and wishes to appeal against it. However it does not have an absolute right of appeal because under s 34(2)(a) of the Supreme Court of Judicature Act (Cap 322, 1999 Ed),

Except with the leave of the Court of Appeal or a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:

(a) where the amount or value of the subject-matter at the trial is \$250,000 or such other amount as may be specified by an order made under subsection (3) or less.

The intended appeal is \$200,000 short of the threshold figure.

It is axiomatic that an applicant must show that it deserves leave to appeal. Although the basis for granting leave to appeal to the Court of Appeal is not set out in s 34 (or in s 21 relating to leave to appeal to the High Court), a body of case law has developed on it.

When the Court of Appeal considered s 34 in **Spandek Engineering (S) v Yong Qiang Construction** [1999] 4 SLR 401, it referred to the Minister of Law's explanation that the threshold amount in s 34(2) was raised from \$30,000 to \$250,000 to avoid straining limited resources of the Court of Appeal, and it concluded that the intention of Parliament in raising the threshold in s 34(2)(a) was to limit the right of appeal to the Court of Appeal.

In what circumstances would leave be granted? In **Anthony s/o Savarimiuthu v Soh Chuan Tin** [1989] SLR 607 [1989] 3 MLJ 5, Lai Kew Chai J in dealing with an application for leave under s 21, held ([1989] SLR 607 at 608; [1989] 3 MLJ 5 at 6):

*To obtain leave to appeal when the amount involved is below the statutory amount an applicant for leave must show that a serious and important issue of law is involved ... The circumstances for granting leave would include (though obviously not limited to) cases where an applicant is able to demonstrate a prima facie case of error or if the question is one of general principle upon which further argument and a decision of a higher tribunal would be to public advantage. That was pronounced by Edgar Joseph Jr J in **Pang Hon Chin's** case ([1986] 2 MLJ 145). These propositions have a common thread: that to deny leave may conceivably result in a miscarriage of justice.*

and this was cited and approved by the Court of Appeal in **Lee Kuan Yew v Tang Liang Hong** [1997] 3 SLR 489. The court went on to state in [para]16:

[I]t is apparent that there are at least three limbs which can be relied upon when leave to appeal is sought: (1) prima facie case of error; (2) question of general principle decided for the first time; and (3) question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

The issue received further consideration in **Abdul Rahman bin Shariff v Abdul Salim bin Syed** [1999] 4 SLR 716, where Tay Yong Kwang JC held at [para]30:

*I should clarify here the words `a prima facie case of error` used in **Anthony Savarimiuthu**`s case. In another application of this nature heard by me, the applicant there sought to demonstrate a prima facie case of error by referring me to the evidence adduced at the trial and attempting to show that the collision could not have occurred in the way described by the plaintiff there on such evidence. That, in my view, was no more than an attempt to show an erroneous conclusion on the facts of the case for which leave to appeal must be and was denied. If it were otherwise and facts have to be examined in detail in each case to demonstrate the error, the High Court might as well hear the appeal proper.*

He went on at [para]31:

In my opinion, leave of court to appeal may be granted where the applicant is able:

(1) to demonstrate a prima facie case of error of law that has a bearing on the decision of the trial court;

(2) to show that there is a question of law decided for the first time or a question of law of importance upon which a decision of a higher tribunal would be to the public advantage;

(3) to show a question of law on which there is a conflict of judicial authority and a pronouncement from a higher court in the judicial hierarchy is desirable.

Leave of court should not be granted when there are mere questions of fact to be considered.

thereby refining and clarifying the principles to be applied.

I suggest that the value of the proposed appeal and the costs and time burdens the appeal would place on the parties and the appellate court should also be taken into account.

The vendor failed to discharge the burden on it. All that was said in the affidavit filed in support of the application for leave was:

The Defendants wish to appeal to the Court of Appeal given that there are serious and important issues of law involved, namely:-

a. whether the Plaintiffs' alleged "deemed completion" of the sale and purchase of the property on 29 February 2000 was vague and for which oral evidence ought to have been required;

*b. whether there were substantive issues of facts pertaining to the existence of the agreements of the parties, such that the Court ought to have invoke (**sic**) Order 28 Rule 8 of the Rules of Court and made directions as if the matter had been begun by way of a Writ.*

The dispute between the parties arose from its peculiar facts. It turned on the effect of the recorded terms the parties agreed to for the functional completion, and whether there were other implied conditions as asserted by the vendor. It did not involve any important question which should be determined by the Court of Appeal. This dispute over \$47,484.88 does not merit further expenditure of time and costs on the part of the parties and the Court of Appeal, and leave to appeal was refused.

Outcome:

Order accordingly.

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