

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 165

Originating Application No 64 of 2022

Between

- (1) Goh Kar Tuck (Wu Jiada)
- (2) Teh Yiok Moi

... Claimants

And

Samuel Koh

... Defendant

GROUND S OF DECISION

[Contract — Remedies — Specific Performance]

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**Goh Kar Tuck (alias Wu Jiada) and another
v
Koh Samuel**

[2022] SGHC 165

General Division of the High Court — Originating Application No 64 of 2022
Audrey Lim J
8 July 2022

14 July 2022

Audrey Lim J

1 The claimants in this application (the “Application”) are husband and wife. They sought specific performance for the sale of a condominium unit located at 57 Choa Chu Kang Loop (“the Property”), pursuant to an option to purchase (“the Option”) granted by the defendant. I granted specific performance to the claimants, and I now give my grounds of decision.

The claimants’ case

2 The claimants’ case was as follows.

3 In or about February or March 2022, the claimants sold their Housing and Development Board (“HDB”) flat and asked their property agent (“Swan”) to look for a condominium in the western part of Singapore. After doing their calculations, the claimants concluded that they were able to afford a three-bedroom condominium unit that costs around \$1m. Upon the recommendation

of Swan, the claimants made an offer for the Property, on about 8 March 2022, of \$1.058m to the defendant through the parties' respective property agents.¹

4 On or about 10 March 2022, the defendant through his property agent ("Lee"), confirmed that he was agreeable to the offer of \$1.058m.² Subsequently, Lee prepared the Option which he sent via a WhatsApp message to the defendant (who was then residing in Myanmar)³ for the defendant's execution. It was not disputed that on 18 March 2022, a copy of the Option duly signed by the defendant was sent by him to Lee via WhatsApp. Lee then forwarded this copy to Swan for the claimants' purposes.⁴ For completeness, I set out the terms of the Option that are relevant to this Application:⁵

To: **Goh Kar Tuck (Wu Jiada)** and **Teh Yok Moi** (the "Purchaser")

Re: Property known as **57 Choa Chu Kang Loop** ... (the "Property")

(A) IN CONSIDERATION of the sum of ... (S\$ 10,580) (the "Option Money") received by **Samuel Koh** (the "Vendor") from the Purchaser via paynow transfer, the Vendor hereby offers to sell to the Purchaser the Property upon the terms and conditions set out herein, which offer remains open for acceptance in the manner hereinafter prescribed until 4.00 p.m. on the 7th day of April 2022.

(B) This Option shall be accepted by the Purchaser by signing at the portion of this Option marked "Acceptance Copy", and delivering this Option duly signed to the Vendor's solicitors

¹ Claimant's 1st affidavit ("CA") at [6]–[9]; Claimants' Written Submissions ("CWS") at [3].

² CA at [10].

³ Defendant's 1st affidavit ("DA") at [4].

⁴ CA at [14] and pp 46–47; DA at [8].

⁵ CA at p 63; Copy of Option filed in e-lit on 8 July 2022.

Subra TT Law LLC at ..., together with a cheque for five percent (5%) of the sale price (the “Deposit”) less the Option Money.

...

(C) If the Purchaser exercises this Option in the prescribed manner, the Option Money paid by the Purchaser will be credited to the sale price herein. If the Purchaser does not exercise this Option in the prescribed manner, this Option will be null and void, and the Option Money will be forfeited to the Vendor.

TERMS AND CONDITIONS

...

(2) The sale price of the Property shall be ... (S\$ 1,058,000) ...

...

(4) The purchaser agrees to allow the Vendors to continue to stay in the property until 20th day of August 2022, free of rent or other considerations, subject to the Vendors paying for the property tax and all other outgoings incurred by the vendor during the course of stay...

(5) The sale and purchase shall be completed ... on 9th day of June 2022 ...

[emphasis in original]

5 In exchange for the duly signed Option, and pursuant to Recital A of the Option, the claimants then transferred the 1% option money of \$10,580 (“Option Money”) to the defendant by PayNow, on 19 March 2022. It was not disputed that the defendant received the Option Money.⁶

6 On or about 22 March 2022, Lee informed Swan that the defendant had sent over the original Option. While the claimants did not receive the original Option, they instructed their lawyers to proceed with the exercise of the Option as the defendant had already sent a copy of the Option by a WhatsApp message

⁶ CA at pp 50–52; DA at [7] and p 43.

on 18 March 2022 (see [4] above) and it was clear to them that “the [d]efendant was doing everything necessary to issue the Option to [them] and to close the deal”.⁷

7 On or about 6 April 2022, the claimants’ lawyers proceeded to exercise the Option by delivering it to the defendant’s lawyers, Subra TT Law LLC (“Subra Law”) together with a cheque of 5% of the sale price less the Option Money already paid to the defendant (“Remainder Sum”). However, Subra Law refused to accept the Option or the Remainder Sum and informed the claimants’ lawyers that they (Subra Law) had not been appointed nor engaged by the defendant to act for him in the sale of the Property.⁸

8 Thus, on 11 April 2022, the claimants’ lawyers issued a letter of demand to the defendant to instruct Subra Law to proceed to accept the Option and to complete the sale and purchase of the Property in accordance with the Option.⁹ The parties were unable to resolve the dispute, resulting in the Application being filed by the claimants.

9 The claimants submitted that it was inequitable for the defendant to renege on the agreement to sell the Property by preventing them from exercising the Option. They therefore sought specific performance of the sale and purchase of the Property as they have to deliver vacant possession of their HDB flat (which they had sold) by about 14 September 2022. The defendant’s actions left them in a lurch as they would have no place to stay after 14 September 2022. Moreover, if there was a delay in obtaining an order for specific performance,

⁷ CA at [16]–[17] and p 54.

⁸ CA at [18]–[19] and pp 59–64.

⁹ CA at [20] and p 66.

they would have to incur further costs in obtaining alternative accommodation. As such, time was of the essence. The claimants further attested that they were ready, willing and able to exercise the Option and complete the purchase of the Property.¹⁰

The defendant's case

10 The defendant claimed as follows.

11 He had engaged Lee to market the Property with an initial asking price of \$1.2m. Sometime in March 2022, Lee informed the defendant of an interested buyer for the Property at \$1.058m, lower than the initial asking price. The defendant told Lee that he needed some time to consider the price and asked Lee for a valuation before he would decide whether to sell.¹¹

12 Lee did not inform the defendant that the buyers (the claimants) would unilaterally transfer the Option Money to him via PayNow. The defendant never instructed Lee to have the Option Money transferred to him by PayNow nor asked for the Option Money to be paid immediately, and the Option Money was transferred to his PayNow account without his knowledge or confirmation. The defendant's position is that he had not agreed to accept payment of the Option Money by PayNow as he wanted to be paid by cheque.¹²

13 On 16 March 2022, Lee sent the Option (with the stated selling price as \$1.058m) via WhatsApp to the defendant. The defendant signed the Option with his younger brother as the witness. He signed the Option because Lee had been

¹⁰ CA at [25]–[27]; CWS at [22] and [24].

¹¹ DA at [5]–[7].

¹² DA at [7].

pestering him on the matter. He then sent the signed Option to Lee via WhatsApp on 18 March 2022 (which was then forwarded to Swan¹³), but he also told Lee that he could not sell the Property at the stated price as he felt it was grossly unfair to him. In spite of this, the defendant signed another copy of the Option as the first one that he had signed was not clear. The defendant's explanation for this was that Lee had "again resorted to pushing [him] to re-sign another copy of the [Option]".¹⁴

14 The defendant then performed a check of his own and found out that a similar unit in the same development as the Property (but at a different block) had been sold for \$1.24m in December 2021. As such, the defendant claimed that Lee had not done his due diligence and had misled the defendant in respect of the price of the Property. Hence on 31 March 2022, the defendant decided to call off the sale, and that was also the reason why he did not instruct Subra Law to act in the sale of the Property.¹⁵

15 The defendant elaborated that he called off the sale of the Property because: (a) he felt that Lee had taken unfair advantage of him and made him accept an offer that was detrimental to him as the sale price was below the current market value; and (b) he has an autistic son who was slowly becoming accustomed to the Property and surrounding estate and might have difficulty adjusting to new surroundings if the family had to move from the Property, thereby impeding his son's growth. The defendant also claimed that when he

¹³ CA at p 46.

¹⁴ DA at [8].

¹⁵ DA at [9]–[10].

signed the Option whilst still in Myanmar, he was under tremendous pressure from his work and from the living conditions there.¹⁶

16 Following his decision to call of the sale, the defendant asked Lee for the claimants' details so that he could return the Option Money to them. He managed to get the claimants' details on 6 April 2022 from Lee but when he tried to transfer the Option Money to them, he could not do so. He therefore claimed that the claimants wanted to frustrate his attempt to return the Option Money by failing to link their NRIC number to their PayNow account.¹⁷

My decision

Liability

17 I start by observing that the Option the defendant signed contained the essential particulars, namely the buyers' names, the description of the Property, the amount of Option Money to be paid, the amount of the Remainder Sum to be paid and to whom and by when, and the date of completion (see the clauses reproduced at [4] above). Hence it cannot be said that the Option was void for uncertainty. Nevertheless, I will deal with the defendant's assertions as to how he came to sign the Option and receive the Option Money, which I find in any event did not cause the Option to be invalid.

18 First, the defendant claimed that he signed the Option because his agent, Lee, kept pestering him to sell the Property and he wanted to get Lee off his back (see [13] above). He claimed that when he returned the signed copy of the Option to Lee (via WhatsApp) on 18 March 2022, he informed Lee that he could

¹⁶ DA at [10]–[12] and [16].

¹⁷ DA at [15].

not sell the Property at the stated price in the Option as he felt it was grossly unfair to him. However, the defendant's claims were not supported by the evidence. The WhatsApp messages (which the defendant exhibited) between him and Lee did not show that he informed Lee that he did not wish to sell the Property for \$1.058m (the stated price in the Option). His claims also flew in the face of his conduct of signing the Option, getting a witness for the Option and then returning the Option to Lee, knowing it would be forwarded to the claimants for them to act on. If the defendant did not wish to sell the Property at the stated price, he could have just refused to sign the Option. In this regard, it is material that the defendant did not sign the Option once, but twice – the second time after he was informed by Lee that the first signed Option was unclear (see [13] above). There was no reason why he would re-sign the Option and forward a copy of it to Lee if he had already told Lee that he did not want to sell the Property at the stated price.

19 Further, contrary to the defendant's claim that he was sent the Option on 16 March 2022, the WhatsApp chats showed Lee had already sent the defendant a copy of the Option around 11 March 2022.¹⁸ This was after the defendant was informed by Lee on 7 March 2022 of an offer of \$1.05m, and then on 8 March 2022 that the offer had been increased to \$1.058m. The defendant was also told by Lee, on 8 March 2022, to think about the offer.¹⁹ These messages were significant to show the defendant had time to consider the offer and did in fact do so before he signed the Option.

20 In fact, when the defendant received a copy of the Option on 11 March 2022, he did not object to the stated price of the Property, but merely informed

¹⁸ DA at [8] and pp 16–17.

¹⁹ DA at pp 13–14.

Lee that he had difficulty printing out a copy of the Option to sign due to, *inter alia*, the electricity power in the city being cut off.²⁰ Even when he signed the Option on 18 April 2022, the defendant did not mention any reservations about the price of the Property to Lee. Instead, he only asked Lee whether there was anything he needed to take note of, *whereupon Lee informed him specifically of the dates of the exercise of the Option and of completion*, to which the defendant merely replied “ok bro”.²¹

21 Second, the defendant’s claims that: (a) he had not agreed to accept payment of the Option Money by PayNow but wanted payment by cheque; and (b) he did not know the claimants would unilaterally transfer the Option Money to him by PayNow, were contradicted by the documentary evidence. Recital A of the Option which the defendant signed (and would have read) provided for the Option Money to be paid by “paynow transfer”. There was also no documentary evidence (such as WhatsApp messages) to show the defendant had informed Lee that he wanted to be paid by cheque and that he would not accept PayNow as a mode of payment of the Option Money.

22 On the contrary, the WhatsApp messages showed that on 19 March 2022, Lee informed the defendant that the claimants wanted to pay him the Option Money by PayNow. Lee also asked the defendant to link his PayNow to his NRIC details by updating his profile on the internet-banking facility, to enable payment to be effected by PayNow. The defendant did not object but instead replied to tell Lee to “give [him] a while” as he was unable to verify Lee’s request. The defendant subsequently sent Lee a screenshot on WhatsApp showing the updated profile of his POSB bank account that had been linked to

²⁰ DA at pp 16–19.

²¹ DA at p 39.

his NRIC number.²² Before me, the defendant confirmed that he linked his NRIC details to his POSB bank account after being asked by Lee to do so, because he knew it was to allow the Option Money to be paid through PayNow.²³

23 I thus find that the defendant had signed the Option and linked his NRIC details to his POSB bank account because he was agreeable and willing to sell the Property for \$1.058m. By granting the Option to the claimants and for which the Option Money was paid to the defendant, the defendant had obtained good and valuable consideration for the Option (see *Tai Joon Lan v Yun Ai Chin and another* [1993] 2 SLR(R) 596 (“*Tai Joon Lan*”) at [13]).

24 The only reason the defendant decided not to complete the transaction was because he subsequently discovered another property in the same development had been transacted at a higher price. If the defendant felt that Lee had not done his due diligence before advising the defendant on whether he was getting a fair price for the Property (as he claimed)²⁴, then it was for the defendant to pursue Lee on this matter. As for his son’s condition, this was not something that invalidated the Option.

25 Finally, I add that the claimants have attempted to exercise the Option on 6 April 2022 by delivering a signed copy and the Remaining Sum to Subra Law, together with a cover letter. There was no dispute that the claimants were within the timeline for exercising the Option. That Subra Law refused to accept the exercise of the Option (and Remaining Sum) was due to the defendant’s

²² DA at pp 22, 40–42.

²³ 8 July 2022 Minute Sheet (“Minute Sheet”).

²⁴ DA at [9]–[10].

default in failing to see through the matter, given his refusal to instruct Subra Law to act on his behalf. In this regard, two decisions by the Court of Appeal are instructive.

26 In *Tai Joon Lan* (at [15]), the Court of Appeal found that if the appellant had performed her obligation of nominating a firm of solicitors to accept the notice of exercise of the option and to receive the 10% purchase price (less what had been paid as option money), the respondents would have duly exercised the option and there would have arisen a contract for the sale and purchase of the property between them. It was the appellant who had repudiated the option and prevented the respondents from exercising it and purchasing the property. The Court thus treated the delivery of the notice of exercise of the option and the down-payment (as stipulated in the option) as valid and compelled the appellant to perform the contract. As such, the Court upheld the trial judge's decision granting specific performance, *ie*, that the appellant should sell and transfer the property to the respondents. In *Tai Joon Lan*, the deposit was to be paid to the vendor's solicitors which had not yet been named in the option. The Court of Appeal nevertheless held that this did not invalidate the option as the vendor had earlier informed the purchasers that she would name the solicitors but subsequently refused to do so. As in *Tai Joon Lan* (at [13]), the claimants here were prevented from duly exercising the option by the defendant's omission.

27 In *Seng Swee Leng v Wong Chong Weng* [2011] SGCA 64, the appellant had exercised the option validly by delivering the option with the duly executed acceptance copy and the sum of 5% of the purchase price (less the option fee) to the vendor's (respondent's) solicitors, DSPP Law Corporation ("DSPP"), named in the option. The Court of Appeal held (at [45]) that although DSPP then 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, this could not render

the appellant's exercise of the option, which was in accordance with its terms, to be invalid. The Court further held that 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. The Court thus granted specific performance of the contract for the sale and purchase of the property.

28 Likewise in the present case, Subra Law was stated in Recital B of the Option as the defendant's lawyers to receive the Remainder Sum and it was the defendant who had refused to authorise Subra Law to act for him in the sale and purchase of the Property. The defendant had prevented the claimants from exercising the Option and completing the sale and purchase of the Property. He was in breach of his obligation under the Option and cannot be allowed to take advantage of his own breach.

Remedy

29 Given the above, I then considered whether I should order specific performance as prayed for by the claimants, or damages in the alternative.

30 Specific performance is a discretionary remedy that will only be ordered where it is just and equitable to do so. Factors that would affect the court's exercise of discretion include whether damages would be an adequate remedy and whether the person against whom the relief of specific performance is being sought would suffer substantial hardship (*Lee Chee Wei v Tan Hor Peow Victor and others and another appeal* [2007] 3 SLR(R) 537 at [53]).

31 In the present case, I granted specific performance and ordered that the defendant should sell and transfer the Property to the claimants.

32 I found that damages would not be an adequate remedy because the Property was bought for the “personal enjoyment” of the claimants and not as a form of investment to sell with a view to making a profit (see *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Ltd and another, interveners)* [2011] 2 SLR 232 at [106]; *Lim Beng Cheng v Lim Ngee Sing* [2016] 1 SLR 524 at [107]). The claimants were purchasing the Property with the intention of staying in it, having already sold their HDB flat. They had chosen the Property based on its location and size and their budget (see [3] above). I accepted that the claimants were ready, able and willing to complete the sale and purchase of the Property. They demonstrated this by sending a cheque for the Remainder Sum to Subra Law, the lawyers on record in the Option, and within the time stipulated in the Option.

33 I also found that the defendant’s reliance on his son’s autism as a reason to call off the sale and to argue that his family should not be forced to move out from the Property, which is their home, was insufficient to tilt the balance in favour of ordering damages in lieu of specific performance. First, the condition of the defendant’s son was known to him before he even contemplated selling the Property. The defendant confirmed before me that his son’s condition was a pre-existing condition and that he had agreed to sell the Property in spite of it.²⁵

34 Second, the defendant never raised his son’s condition as an issue to Lee during the time leading up to the Option being signed. On the contrary, the defendant was eager to sell the Property in spite of his son’s condition. This can be seen from the WhatsApp messages between the defendant and Lee on 1 March 2022 as follows:²⁶

²⁵ Minute Sheet.

²⁶ DA at p 12.

Defendant: *Bro how's the property selling progress?*

It's been a quite a few months and we didn't get a good offer right bro?

Lee: Best was 1.07m.

Most of the comment is they need to reno the whole house which is a significant cost.

Defendant: I see 1.07 also was not bad.

Lee: Ya but over already. I will towards that.

Defendant: Ya bro.

I hope will close the deal soon.

[emphasis added]

35 Third, the defendant had not adduced any evidence to show that his son would have problems adjusting to a new home or environment should the defendant's family have to move from the Property.

36 Given the above, I was satisfied that the defendant had not shown that he would suffer substantial hardship if specific performance were granted.

Conclusion

37 In the premises, I granted the claimants specific performance and made the following consequential orders:

- (a) The defendant is to appoint lawyers to deal with the sale and purchase of the Property by 18 July 2022, failing which the claimants will be allowed to appoint lawyers in this regard.

(b) The claimants are allowed to exercise the Option by 29 July 2022, by executing and delivering the Option form and a cheque for the Remainder Sum to the appointed lawyers.

(c) Completion is to take place by 7 September 2022. In this regard, the defendant shall be allowed to continue to stay at the Property until the completion date.

(d) The defendant is to execute all necessary documents and take all necessary steps to complete the transaction and effect the transfer of the Property to the claimants within the stated timelines, failing which the Registrar of the Supreme Court is empowered to do so to give effect to the sale and completion of the Property.

38 I also awarded costs of the Application to the claimants.

Audrey Lim
Judge of the High Court

Leslie Yeo Choon Hsien and Jolene Tan (Sterling Law Corporation)
for the claimants;
Defendant in person.