

UOL Development (Novena) Pte Ltd v Commissioner of Stamp Duties
[2007] SGHC 173

Case Number : OS 158/2007
Decision Date : 15 October 2007
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Tan Kay Kheng and Teo Lay Khoon (Wong Partnership) for the applicant; Liu Hern Kuan (Inland Revenue Authority of Singapore) for the respondent
Parties : UOL Development (Novena) Pte Ltd — Commissioner of Stamp Duties

Land – Strata titles – Collective sales – Contract to purchase property – How stamp duty to be assessed on properties acquired via en bloc sale – Whether contracts viewed separately for each unit sold or as single contract for all units sold – Whether stamp duty payable on separate contracts – Section 33A Stamp Duties Act (Cap 312, 2006 Rev Ed)

15 October 2007

Judgment reserved.

Tan Lee Meng J:

1 This case, which involves an appeal by UOL Development (Novena) Pte Ltd (“UOLD”), a subsidiary of United Overseas Land Ltd (“UOL”), against the assessment of stamp duty by the respondent, the Commissioner of Stamp Duties (“the Commissioner”), raises an interesting question as to how stamp duty is assessed on properties acquired on the basis of an *en bloc* sale.

Background

2 In the latter part of 2005, the registered proprietors of all 53 properties at Nos 29, 39, 41, 43, 45, 47, 49 and Lot 330C TS 29 Minbu Road, Singapore (“the Minbu properties”) decided to sell their properties on the basis of an *en bloc* sale by tender in order to obtain a higher price than would be secured if they sold their properties individually.

3 On 25 October 2005, UOLD, which is in the business of property development, made an offer to purchase the Minbu properties on the terms of the tender for \$61m.

4 When informed that its offer would be accepted, UOLD’s solicitors, Messrs Wong Partnership, requested the registered proprietors’ solicitors, Messrs Wee Ramayah & Partners, to forward 53 separate letters of acceptance from the registered proprietor or proprietors of all 53 units in the Minbu properties. Although Messrs Wee Ramayah & Partners thought that a single letter of acceptance was required under the terms of the tender, it nonetheless agreed to forward to Messrs Wong Partnership 53 separate letters of acceptance, all of which were signed by Mr David Mitchell (“Mr Mitchell”), the solicitor in charge of the matter, on behalf of the registered proprietors of the 53 units. Each letter of acceptance identified the individual unit, its registered proprietor or proprietors and the amount which the registered proprietor or proprietors of the stated unit was entitled to from the collective sale price of \$61m. An example of such a letter of acceptance is as follows:

VENDOR: SUBSIDIARY PROPRIETOR OF 29 MINBU ROAD
#01-31 SINGAPORE
STRATA LOT U445K OF TS 29
(the "Property")

I, the Vendor, hereby accept your offer to purchase the Property at the price of \$753,471.95 collectively with the other properties on Nos 29, 39, 41, 43, 45, 47 and 49 Minbu Road and Lot 330C of TS 29 (collectively with the Property known as the "Minbu Road Properties") and on the terms and conditions as set out in the Terms and Conditions of Tender for the Minbu Road properties annexed thereto.

SIGNATURE OF VENDOR

Signed by David Mitchell
Advocate & Solicitor
For and on behalf of Low Geok Bian

5 Under the First Schedule of the Stamp Duties Act (Cap 312, 2006 Rev Ed) (the "Act"), stamp duty on a contract to purchase property is assessed on the following basis:

- (a) 1% for the first \$180,000 of the purchase price:
- (b) 2% for the next \$180,000; and
- (c) 3% of the balance of the purchase price that exceeds \$360,000.

6 In view of the lower rate of stamp duty on the first \$360,000 of the purchase price of a property, which results in a saving of \$5,400 on stamp duty, it mattered in the present case whether there is only one contract for the *en bloc* sale of the Minbu properties for \$61m or 53 separate contracts between UOLD and each of the registered proprietor or proprietors of the 53 units in the Minbu properties ("53 separate contracts"). If there is only one contract for the *en bloc* sale of the Minbu properties for \$61m, UOLD would be required to pay stamp duty at the rate of 3% on the remaining \$60,994,600 of the purchase price. On the other hand, if stamp duty is payable on 53 separate contracts, the savings of \$5,400 on stamp duty for the first \$360,000 of the purchase price could be enjoyed 53 times by UOLD and there would be a saving of \$286,200 in stamp duties.

7 UOLD claimed that it had entered into 53 separate contracts and it presented 53 instruments, one for each of the 53 units in the Minbu properties, for the purpose of stamping.

8 The Commissioner took the view that there was a single transaction for the *en bloc* sale of the Minbu properties for \$61m and that the stamp duty on \$61m would be reflected on one of the letters of acceptance. All the other letters of acceptance would be charged stamp duty at a nominal rate of \$10.

9 When the Commissioner stood firm on his method of assessing stamp duty in the case of the Minbu properties, UOLD appealed to the High Court under s 40 of the Act to uphold its method of computation of stamp duty.

The appeal

10 The issue before the court is whether or not the Commissioner is right in insisting that stamp duty be paid on the \$61m that UOLD paid for the *en bloc* sale of the Minbu properties as a single transaction.

11 The Commissioner's position was summed up as follows in a letter to UOLD's solicitors, Messrs Wong Partnership, on 8 January 2007:

It is clear from the Tender that it was an invitation for the [collective] purchase of [the Minbu properties]. The Acceptances of the Tender by the solicitor on behalf of the sellers were also accepted collectively. This is also clearly spelt out in the Letter of Acceptance.

Although separate Letters of Acceptance were entered into for the sale of each of the units, the Letters of Acceptance formed one transaction that is the collective sale of the 53 units. Ad valorem duty is therefore chargeable ... on the basis of a collective sale....

12 UOLD contended that it is entitled to pay the lower stamp duty rate for the first \$360,000 for each of the 53 units in the Minbu properties for the following reasons:

(i) Its purchase of the Minbu properties was on the basis that there were 53 separate contracts of sale and purchase with the individual registered proprietors of the said properties; and

(ii) Even if there had been an *en bloc* sale, it is entitled under the provisions of the Stamp Duties Act to pay stamp duty on the basis of the 53 instruments submitted by them.

Whether there were 53 separate contracts or a single contract

13 When considering whether or not UOLD had entered into 53 separate contracts of sale and purchase, it must first be noted that the registered proprietors of the Minbu properties intended to sell their properties on the basis of an *en bloc* sale. The Invitation to Tender issued by the registered proprietors provided as follows:

The registered proprietors of the properties above described (hereby collectively called the "Vendor") hereby *collectively* invite offers for the purchase of the property described in the Particulars of Tender above *on an en bloc basis* (individually an "unit" and collectively and together with the common property hereinafter referred to as the "Property") by way of tender subject to the terms and conditions of tender hereinafter contained.

[emphasis added]

14 It is trite law that an invitation to tender is, without more, an invitation to treat and not an offer. In *Spencer v Harding* (1870) LR 5 CP 561, where an invitation to bid for a company's stock in trade did not indicate that the goods will be sold to the highest bidder, it was held that the invitation to tender was only an attempt to ascertain whether an offer can be obtained within such a margin as the sellers are willing to sell. Of course, the position is different if, as was the case in *Harvela Investments Ltd v Royal Trust Company of Canada (CI) Ltd* [1986] AC 207, the invitation to tender promised that the highest bid would be accepted. In that case, which concerned the sale of shares, the House of Lords held that the invitation to tender constituted an offer to enter into a contract with the highest bidder.

15 In the present case, clause 5(ii) of the terMs of the Invitation to Tender specifically provided

that the "Vendor is not bound to accept and reserves the right to reject the highest or any tender". It follows that UOLD, who submitted a tender for the Minbu properties on 25 October 2005, was the offeror. Although UOLD's solicitors claimed in a letter to the Commissioner dated 8 December 2006 that its offer to purchase the Minbu properties was made on the basis that separate contracts were to be entered into for each property, there is no evidence that this was the case. Undoubtedly, UOLD's offer was submitted on the basis of the terms of the tender, which concerned an *en bloc* sale. In its offer, UOLD stated as follows:

Having carefully read, examined and understood **the terms and conditions of the Tender** and in consideration of the sum of Singapore dollars one (\$1.00) received from you:-

(1) We UOL DEVELOPMENT (NOVENA) PTE LTD hereby offer to purchase the Property described in the Particulars of Tender **on the terms and conditions set out in the TERMS AND CONDITIONS OF TENDER at the price of Singapore Dollars Sixty One Million Only (S\$61,000,000) ("the Sale Price")**. My/Our offer shall be irrevocable and remain open for acceptance by you at any time before 6.00 pm on 25 November 2005.

[emphasis added]

16 Apart from the fact that there is no reference to 53 separate contracts in UOLD's offer to purchase the Minbu properties for \$61m, UOLD did not assert that there was any written evidence to support its claim that it had purchased the Minbu properties on the basis of 53 separate contracts. Neither did UOLD explain how else the registered proprietors of the Minbu properties could have known that UOLD purchased the said properties on the basis of 53 separate contracts.

17 UOLD's solicitors had asked the registered proprietors' solicitors for 53 separate "acceptances" at the very last minute. In an e-mail dated 31 October 2005, the registered proprietors' solicitor, Mr Mitchell, informed Knight Frank Pte Ltd ("Knight Frank"), the sole marketing agent for the *en bloc* sale, as follows:

UOL wants separate acceptances from me; could you kindly assist by letting me know the breakdown of the purchase price for each unit.

18 On the same day, Knight Frank's assistant manager, Ms Jasmine Lau ("Ms Lau"), forwarded to Mr Mitchell the details of the units, their registered proprietor or proprietors as well as the amount which is due to the registered proprietor or proprietors of that unit from the *en bloc* sale price of \$61m. The information requested by Mr Mitchell was furnished by Ms Lau on the same day and Mr Mitchell signed all 53 separate letters of acceptance immediately. It is pertinent at this juncture to note that clause 6(i) of the Invitation to Tender provides that the person whose tender is accepted shall be informed of the acceptance of his tender by letter sent to him by the registered proprietors' solicitors. It was not suggested by anyone, and rightly so, that the registered proprietors had been consulted on or had given any thought to replacing the terms of the *en bloc* sale with 53 separate contracts for the sale and purchase of their individual units.

19 UOLD's counsel, Mr Tan Kay Kheng, said that it was not the task of UOLD to determine what was on the registered proprietors' minds since they were represented by counsel. In this regard, the response of the registered proprietors' solicitors on 7 February 2007 to a query by the Commissioner on 19 January 2007 as to why there was a need for 53 letters of acceptance and not a single collective letter of acceptance makes the position crystal clear. In its letter, Messrs Wee Ramayah & Partners stated as follows:

With regard to your query ... we would inform you that there was no requirement to sign the 53 sets of Letters of Acceptance. *In our view, a single letter will suffice.* [UOLD's] solicitors had requested for 53 separate Letters of Acceptance and *our former solicitor* having conduct of the matter, namely Mr David Mitchell, *obliged their request.*

[emphasis added]

20 In short, the registered proprietors' solicitors also did not give any thought to converting the *en bloc* sale and purchase of the Minbu properties to 53 separate contracts. As such, the 53 letters of acceptance signed by Mr Mitchell must be taken to be a response to UOLD's offer on 25 October 2005, which was to purchase on an *en bloc* basis "the Property" described in the Tender document as all the individual units together with the common property.

21 When faced with the inevitable problems of lack of a meeting of minds between UOLD and the registered proprietors regarding the alleged 53 separate contracts, UOLD's counsel, Mr Tan, suggested that the 53 letters of acceptance could be regarded as counter-offers that were accepted by UOLD. This analysis is fundamentally flawed because it cannot be said that the individual registered proprietors or Mr Mitchell had given any thought to having 53 separate contracts for what was in every way an *en bloc* sale of the Minbu properties.

22 In truth, UOLD knew that it had purchased the Minbu properties on an *en bloc* basis. After all, in her affidavit filed on 26 January 2007, UOLD's Investment Manager, Ms Pearly Lim Boon Teen, stated at [9] that "notwithstanding that the *sale of the Units was on an en-bloc basis*, the fact remained that there were 53 separate and distinct contracts for the sale and purchase of the Units" (emphasis added).

23 I thus hold that there was an *en bloc* sale and purchase of the Minbu properties for \$61m and not the sale and purchase of the 53 units in the Minbu properties under 53 separate contracts with the respective registered proprietors of those units.

Whether UOLD is entitled under the Act to pay duty on the basis of the 53 instruments submitted by them

24 UOLD also contended that even if there had been an *en bloc* sale, it is entitled to pay stamp duty on the basis of 53 separate contracts.

25 To begin with, UOLD asserted that stamp duty is imposed on instruments and not transactions as s 4(1)(a) of the Act provides as follows:

4. – (1) Subject to the provisions of this Act and any other written law, every instrument mentioned in the First Schedule, being an instrument –

(a) which, not having been previously executed by any person, is executed in Singapore;
....

shall be chargeable with duty of the amount specified in that Schedule as the proper duty for that instrument.

26 UOLD took the view that as it presented 53 instruments to the Commissioner for stamping, these 53 instruments should be separately stamped at the rates provided for under the First Schedule of the Act.

27 That stamp duty is imposed on instruments and not documents has been stressed in a number of decisions: see, for instance, *Commissioners of Inland Revenue v G Angus & Co* (1889) 23 QB 579 at 589. It is also true that if a transaction can be effected without any need to create an instrument chargeable with duty, no stamp duty is payable: see, *inter alia*, *Carlill v Carbolic Smoke Ball Co* [1892] 2 QB 484. However, these cases must be read in the proper context as there are numerous cases which make it clear that the instrument presented for stamping must be as described by the party submitting it to the stamp office. In *Limmer Asphalte Paving Co Ltd v Commissioners of Inland Revenue* (1872) LR 7 Exch 211, Martin B explained at pp 214-215 as follows:

In order to determine whether any, and if any what stamp duty is chargeable upon an instrument, the legal rule is that *the real and true meaning of the instrument is to be ascertained; that the description of it given in the instrument itself by the parties is immaterial, even though they may have believed that its effect and operation was to create a security mentioned in the Stamp Act*, and they so declare. For instance, if a writing were headed by a recital that the parties had agreed to execute the promissory note thereafter written, yet if in truth the contract set forth was not a promissory note but an agreement of another character, the stamp duty would not be that of a promissory note but of the agreement. The question, therefore, stamp or no stamp, and if a stamp to what amount, is to be determined upon the real and true character and meaning of the writing.

[emphasis added]

28 Furthermore, s 5(1) of the Act provides that “all the facts and circumstances affecting the liability of any instrument to duty or the amount of the duty with which any instrument is chargeable are to be fully and truly set forth in the instrument” and under s 5(2) of the Act, the Commissioner is given the power “to require to be furnished with such evidence as he may consider necessary to prove that all such facts and circumstances are truly set forth in it”.

29 More importantly, it cannot be overlooked that UOLD’s liability to pay stamp duty in the present case is governed by s 22(1) of the Act, which provides as follows:

22. -(1) Every *contract or agreement for the sale of* –

(a) any equitable estate or interest in any property; or

(b) any estate or interest in any property except property situated outside Singapore

shall be charged with the same ad valorem duty, payable by the purchaser, as if it were an actual conveyance on sale of the estate, interest or property or agreed to be sold.

[emphasis added]

30 Section 22(1) of the Act provides that it is the “contract for the sale” of the Minbu properties that is chargeable with stamp duty. As such, the focus should be on the nature of the contract of sale for the Minbu properties, which is clearly a contract for the *en bloc* sale of the same for \$61m.

31 UOLD argued that as s 22(1) of the Act provides that a contract of sale of property shall be chargeable with the same *ad valorem* duty payable by the purchaser *as if it were* an actual conveyance on sale of the estate, the instrument that is liable for stamp duty is the “conveyance on sale”. UOLD added that as the transfer of the title to the 53 units in the Minbu properties to UOLD requires 53 separate transfers, stamp duty must be payable with respect to the 53 instruments that

are required to transfer all the said 53 units to UOLD.

32 Mr Liu Hern Kuan ("Mr Liu"), who appeared for the Commissioner, did not agree that the transfer of title of the 53 said units to UOLD requires the separate transfer of each unit. He also pointed out that UOLD's affiliated companies in the UOL group of companies, had acquired properties on an *en bloc* basis, including Eng Cheong Towers, Maryland Park and Bo Bo Tan Gardens, and that these affiliated companies of UOLD had paid stamp duty on the *en bloc* price for the said properties.

33 Whatever may be the conveyancing practice, s 22(1) of the Act, which was part of the anti-speculation measures introduced in 1996 to prevent an overheating of the property market, is only concerned with stamp duty on contracts of sale and not with how the properties that are the subject of the contracts of sale are to be conveyed by the registered proprietors to the purchasers, be it by one or several separate instruments. The words "*as if it were ... an actual conveyance*" in s 22(1) of the Act merely indicate the rate of stamp duty payable for the contract of sale and there is thus nothing in s 22 of the Act that suggests that the rules on conveyancing of property are relevant to the assessment of stamp duty on contracts of sale of properties. In fact, it was envisaged when the anti-speculation measures were introduced in Parliament in 1996 that buyers under an *en bloc* sale would pay stamp duty on the global price for all the properties being sold collectively. When the Stamp Duties (Amendment) Bill 1996 was considered in Parliament on 12 July 1996, then Minister for Finance, Dr Richard Hu, while explaining another anti-speculation measure, namely the imposition of stamp duty on a seller who disposes of residential property within 3 years of its acquisition, informed Parliament as follows [see Parliamentary Reports, Vol 66 Col 451]:

Sir, this is to enable the new seller's duty to be computed on the basis of a rate. *Buyers under en bloc sales will have their duty computed on the global price.*

[emphasis added]

34 UOLD's argument that s 22(3) of the Act would not make sense unless there were 53 separate contracts also does not rest on solid ground. Section 22(3) of the Act provides as follows:

Where any purchaser or sub-purchaser has paid *ad valorem* duty upon any assignment, contract or agreement in accordance with subsection (1), or (2) the conveyance or transfer made to the purchaser or sub-purchaser, as the case may be, shall be chargeable with a duty of \$10.

35 Section 22(3) of the Act assumes that *ad valorem* duty has been paid in accordance with s 22(1) with respect to the purchase price of \$61m stipulated in the contract for the *en bloc* sale of the Minbu properties. The effect of s 22(3) of the Act is that if stamp duty has been paid on the \$61m, then transfer instruments for each of the units in the Minbu properties shall be charged at the rate of \$10 per instrument. As such, even if 53 separate instruments had been prepared to pass to UOLD the titles for the Minbu properties, this cannot outflank s 22(1), which requires stamp duty to be paid on the contract for the *en bloc* sale of the Minbu properties.

36 As I have found that the contract of sale is for the *en bloc* sale of the Minbu properties and that the 53 instruments presented by UOLD for stamping disguise the true nature of the contract for the *en bloc* sale of the Minbu properties, stamp duty is payable on the \$61m that UOLD has agreed to pay for the said properties. In view of this, the question of stamping the 53 instruments on the basis of the amount each registered proprietor would receive from the *en bloc* sale price of \$61m does not arise.

Section 33A of the Act

37 I now turn to the Commissioner's assertion that s 33A of the Act, which empowers him to disregard certain transactions and dispositions, is applicable to the present case. Section 33A of the Act provides as follows:

33A. -(1) Where the Commissioner is satisfied that the purpose or effect of any arrangement is, directly or indirectly –

- (a) to alter the incidence of any duty which is payable or which would otherwise have been payable by any person;
- (b) to relieve any person from any liability to pay duty; or
- (c) to reduce or avoid any liability imposed or which would otherwise have been imposed on any person by this Act,

the Commissioner may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the arrangement and make such adjustments as he considers appropriate, including the amount of duty payable, or the imposition of liability to duty, so as to counteract any reduction in or avoidance of duty payable by that person from or under that arrangement....

38 At the second reading of the bill that introduced s 33A, the then Minister for Finance, Dr Richard Hu, said [see Parliamentary Reports, Vol 170, Col 2155]:

Tax avoidance schemes are *purely tax-driven with little or no commercial value or rationale*. This is unlike tax planning where the transactions or schemes have some commercial basis, and where the issue is structuring the most tax-efficient arrangement in accordance with the relevant tax laws. Generally, tax planning, if carried out within the confines of existing laws, would not be caught under s 33A. In assessing whether a particular scheme or arrangement would fall under the ambit of section 33A of the Act, the Inland Revenue Authority would amongst other things look at the presence of artificiality or contrived transactions to reduce or avoid tax liabilities but which have little or no commercial basis.

[emphasis added]

39 UOLD did not furnish to the court any commercial reason for the 53 separate acceptances. Instead, it relied on *Mullens v Federal Commissioner of Taxation* 76 ATC 4288 ("*Mullens*") for the proposition that a tax payer cannot be faulted if he chooses to rely on specific provisions offering tax relief or where the incidence of tax is that contemplated by the legislature. In that Australian case, Barwick CJ stated as follows at p 4294:

[T]here will be no relevant alteration of the incidence of tax if the transaction, being the actual transaction between the parties, conforms to and satisfies a provision of the Act even if it has taken the form in which it was entered into by the parties in order to obtain the benefit of that provision of the Act. It would be otherwise if there had been some antecedent transaction between the parties, for which the transaction under attack, was substituted in order to obtain the benefit of the particular provision of the Act.

40 The difficulty faced by UOLD in its attempt to rely on *Mullens* is that the "actual transaction" in the present case was in truth an *en bloc* sale of the Minbu properties and not, as UOLD had contended, 53 separate contracts with the registered proprietor or proprietors of each of the 53 units

in the Minbu properties.

41 Finally, UOLD argued that if s 33(A) is read too widely, the tax incentives or relief afforded by other provisions of the Act will be nullified. The answer to this line of argument is that s 33A(3)(b) specifically provides that the section shall not apply to any arrangement that has been carried out for *bona fide* commercial reasons and does not have the avoidance or reduction of stamp duty as one of its main purposes. In the present case, the plan for 53 separate contracts was mooted for the sole purpose of lessening the stamp duty payable on the *en bloc* sale. There was never any intention to create rights and obligations for the parties concerned other than those envisaged in the Invitation to Tender. The plan for 53 separate contracts had no sound commercial basis and was so contrived that it was clearly intended to reduce or avoid tax liabilities. Section 33A of the Act thus provides another justification for the position adopted by the Commissioner in the present case.

Costs

42 The Commissioner, whose position on the assessment of stamp duty in this case is upheld, is entitled to costs.

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