

Yongnam Development Pte Ltd v Springleaves Tower Ltd and Another  
[2003] SGHC 301

**Case Number** : Suit 747/2002  
**Decision Date** : 01 December 2003  
**Tribunal/Court** : High Court  
**Coram** : S Rajendran J  
**Counsel Name(s)** : SA Pillai and Brandon Choa (Acies Law Corporation) for plaintiffs; Tan Chuan Thye and Tan Xeauwei (Allen and Gledhill) for second defendants; Yvonne Quek appears as corporate representative of second defendants; Wong Hur Yui (Wee Swee Teow and Co) on watching brief for Hong Leong Singapore Finance Ltd (in connection with OS 10/2003); Thio Shen Yi and Karen Teo (TSMP Law Corporation) on watching brief for United Overseas Bank Ltd (in connection with OS 20/2003)  
**Parties** : Yongnam Development Pte Ltd — Springleaves Tower Ltd; Somerset Development Pte Ltd (formerly known as Liang Court Development Pte Ltd)

*Agency – Construction of agent's authority – Powers of attorney – Whether defendants had authority to contract on behalf of donor under terms of power of attorney – Whether "indoor management rule" applicable*

*Agency – Construction of agent's authority – Powers of attorney – Whether powers of attorney are to be strictly construed*

*Agency – Ratification – Manner – Whether there was any express or implied ratification by defendants*

*Choses in Action – Assignment – Effect – Whether defendants had been assigned debt allowing them to sue in contract – Whether both assignor and assignee must be parties to action*

*Equity – Estoppel – Whether defendants estopped from insisting on their strict legal rights*

**S Rajendran, J:**

1 This is a claim by Yongnam Development Pte Ltd ("YDP") against Springleaves Tower Ltd ("STL") and Somerset Development Pte Ltd, formerly known as Liang Court Development Pte Ltd ("LC") for specific performance – alternatively a refund of the purchase price – of the sale and purchase of the 23<sup>rd</sup> floor of a building known as "Springleaf Tower". There were two Sale and Purchase Agreements, both dated 31 March 1999, entered into between the parties in respect of the 23<sup>rd</sup> floor. I will refer to the first – which accorded with the prescribed Sale and Purchase Agreement under the Sale of Commercial Properties Act ("the Prescribed Form") – as the Sale and Purchase Agreement ("S&P Agreement") and the second, under which considerable amendments to the S&P Agreement were effected, as the Supplemental Sale and Purchase Agreement ("SS&P Agreement"). I will refer to the two agreements together as "the Sale Contracts".

2 STL did not seek to defend the claim against it and YDP has obtained judgment against STL. That judgment, however, remains unsatisfied due to the impecunious financial position of STL. LC denied liability to YDP on three grounds:

- (a) YDP had given no consideration for the purchase.

- (b) The person who signed the Sale Contracts was not authorised to do so on behalf of LC.
- (c) There had been no acceptance or ratification by LC of the Sale Contracts.

### **Joint Development Agreement.**

3 STL and LC (jointly referred to as the Defendants) were joint developers of Springleaf Tower ("the Project") and owned the land on which Springleaf Tower was to be built as tenants-in-common in the proportion 70 (STL) : 30 (LC). Their respective rights and obligations in respect of the Project were set out in a Joint Development Agreement ("JDA") dated 13 June 1996. Under the JDA, the contribution of the Defendants towards the construction and other costs of the Project was also to be in the proportion 70:30.

4 The JDA required the Defendants to co-operate in securing separate credit facilities for each to finance their respective interest in the Project. Pursuant to that requirement, arrangements were made with Overseas Union Bank ("OUB") to finance STL and LC. As security for the financing, the Defendants, on 15 January 1998, mortgaged the entire Project to OUB and covenanted in the mortgage documents that each would, in the event of default by the other, repay the other's indebtedness to OUB.

5 Under the JDA, the Defendants also agreed that Tuan Kai Construction Pte Ltd ("TKC") – which like STL was part of the Ban Hin Leong group of companies – would be the main contractor of the Project. It was not in dispute that the controlling shareholder of the Ban Hin Leong group of companies was one Richard Lim Choon Hock ("Richard Lim"). TKC was appointed as the main contractor of the Project on 1 October 1997.

### **Supplemental Joint Development Agreement.**

6 Following the allotment, under the Strata Titles Act, of share values in the units in Springleaf Tower, the Defendants entered into a Supplemental Joint Development Agreement ("Supplemental JDA") dated 19 January 1998 – which allocated the strata units in the Project between STL and LC. STL desired to sell some of the strata units allocated to it and provision was accordingly made – in cl 4 of the Supplemental JDA – for such sales. As these sales would be "off the plan" the units could – except with the consent of the Controller of Housing ("the Controller") – be sold only in accordance with the Prescribed Form. Annexed to the Supplemental JDA as Appendices B and C were the forms in which any Option/Sale and Purchase Agreement relating to any unit in the Project was to conform. Appendices B and C were identical to the Prescribed Form.

7 The provisions of cl 4 of the Supplemental JDA are of particular relevance to these proceedings. I will therefore set out the provision in cl 4 in full:

#### **4. SALE OF STRATA UNITS**

STL shall be entitled to sell the STL Units and LC shall be entitled to sell the LC Units subject to the following conditions:-

- (1) Each option to purchase and sale and purchase agreement (collectively the "S&P Documents") naming both STL and LC as joint vendors shall be in the forms set out in Appendices B and C respectively, which forms are prescribed under the Sale of Commercial Properties (Amendment) Rules 1997 incorporating amendments approved by both STL and LC and approved by the Controller of Housing;

(2) Both STL and LC shall be parties to the S&P Documents as joint vendors for the sale of each STL Unit and each LC Unit;

(3) To enable LC to co-ordinate, carry out and complete the sale of the LC Units, STL shall issue a power of attorney to LC (the "STL Power of Attorney") in respect of the LC Units, in the form set out in Appendix D;

(4) To enable STL to co-ordinate, carry and complete the sale of the STL Units, LC shall issue a power of attorney to STL (the "LC Power of Attorney") in respect of the STL Units, in the form set out in Appendix E;

(5) STL and LC shall maintain the two project accounts which have been opened in their joint names with Overseas Union Bank Limited, namely Project Account No. 89-41506-3 which shall be operated solely by STL ("STL Project Account") and Project Account No. 34-41907-5 which shall be operated solely by LC ("LC Project Account");

(6) The entire sale proceeds from the sale of the STL Units shall be deposited into the STL Project Account for the sole benefit of STL;

(7) The entire sale proceeds from the sale of the LC Units shall be deposited into the LC Project Account for the sole benefit of LC;

(8) On legal completion of the sale and purchase of each sold Strata Unit, STL and LC shall jointly execute and deliver:-

(a) the transfer of the strata title of each sold STL Unit to the purchaser thereof, as directed by STL; and

(b) the transfer of the strata title of each sold LC Unit to the purchaser thereof, as directed by LC.

It will be noted that STL and LC were required by sub-cll (5) to (7) above to deposit the sale proceeds of any units sold into their respective project accounts with OUB.

8 LC and STL were also required, under sub-cll (3) and (4) above, to execute powers of attorney (PAs) in favour of each other in the forms set out. On the same day that the Supplemental JDA was signed (19 January 1998), STL and LC gave to each other their respective PAs. The PA authorised the attorney to sign Options to Purchase/Sale and Purchase Agreements on behalf of the donor in the forms annexed to the PA as Annexures B and C. Annexures B and C of the PA were identical to Appendices B and C of the Supplemental JDA which, as noted earlier, complied with the Prescribed Form.

### **The amended contract.**

9 On 26 January 1998 – soon after the Supplemental JDA had been entered into – the contract between STL and LC and the main contractor TKC was amended. Clause 4 of this new contract with TKC ("the Amended Contract") spelt out that the progress payments payable to TKC by STL and LC were to be in the same proportion as the strata units allocated to them under Supplemental JDA. Clause 4 further provided:

For the avoidance of doubt, the Contractor [TKC] expressly acknowledges and agrees that

Springleaves Tower Ltd and Liang Court Development Pte Ltd shall each only be liable to make payment to the Contractor of any monies due or payable under the Contract Agreement or this Supplemental Agreement, in accordance with the proportion set out in and based substantially on the Joint Development Agreement.

The extent of STL's and LC's obligation to pay TKC was therefore restricted to their respective share in the Project, ie to the proportion 70 : 30.

**YEC: the nominated sub-contractor.**

10 Yongnam Engineering and Construction Pte Ltd ("YEC") was the nominated sub-contractor for the structural framework for the Project. As work on the Project proceeded YEC began to get increasingly concerned about TKC's failure to effect progress payments on time and requested STL to guarantee these payments. It would appear that this request was made of STL because STL was a sister company of TKC in the Ban Hin Leong group of companies. LC was not party to and did not know of this request. I would note here that LC was not, at any time, in breach of its obligation to TKC to pay its proportionate share of TKC's invoices.

**Settlement Agreement.**

11 In spite of the guarantee given by STL, TKC again failed to make progress payments in time to YEC. Discussions ensued between YEC, STL and TKC with a view to resolving the problems STL and TKC faced in making such payments. Seow Soon Yong ("Seow"), the Chief Executive Officer of YEC, told the court that in trying to resolve these problems he had spoken frequently with Sam Tan, a Senior Vice President of OUB, and Sam Tan had encouraged YEC to take up from STL a floor in the Project in lieu of payments by TKC. Seow did not at any time discuss the problems faced by YEC with LC. LC played no role in the discussions between STL, TKC and YEC.

12 On 13 February 1999, YEC, STL and TKC entered into an agreement – referred to as the Settlement Agreement – whereby STL assumed TKC's liabilities to YEC under the YEC sub-contract and agreed to transfer the 23<sup>rd</sup> floor of Springleaf Tower to YEC (valued at \$13.9 million inclusive of a compensatory credit of about \$2.7 million) against the amount due from STL/TKC to YEC. On the same day, STL sent a letter to YEC that summarised the arrangement between them relating to the said transfer. The letter read as follows:

We refer to the Settlement Agreement (the "Agreement") dated 13 February 1999 and entered into between yourselves, ourselves and Tuan Kai Construction Pte Ltd.

We hereby acknowledge that in the ordinary course of business, the consideration payable to you under the Contracts (as defined in the Agreement) would be paid to you in cash. However, we and Tuan Kai have requested you to purchase the Floor (as defined in the Agreement) for a purchase price of S\$13,964,600 and that the amount of S\$11,234,487.80 to be paid to you under the Contracts shall be paid by being applied as payment towards the purchase price of the Floor.

We hereby further acknowledge that :-

1. by purchasing the Floor in settlement of the amount payable to you under the Contracts, you are acquiring an illiquid asset in lieu of cash; and
2. you are not agreeable to a purchase price of S\$13,964,600 for the Floor and that in the current market conditions, you are only willing to purchase the Floor at a purchase price of

S\$11,234,487.80.

In light of the reasons set out above, and in consideration of your agreeing to enter into the Agreement, we hereby agree and undertake on behalf of ourselves and Liang Court Development Pte Ltd to procure that you shall be given a discount in the amount of S\$2,730,112.20 on the purchase price of the Floor in the form of a Compensatory Credit in accordance with Clause 5 of the Agreement.

13 The entire 23<sup>rd</sup> floor had, under the Supplementary JDA, been allocated to STL and, as can be seen from the representations and warranties given by STL to YEC in the Settlement Agreement, YEC knew that LC had no beneficial interest in the said floor. These representations and warranties were as follows:

6.1 STL hereby represents and warrants to Yongnam that:-

6.1.1 it is the beneficial owner of the Floor;

6.1.2 STL and Liang Court are tenants-in-common in respect of the Floor but that under the terms of the JDA, *Liang Court only has a bare legal title to the Floor and Liang Court has no beneficial interest whatsoever in the Floor and/or any payments so received/to be received for the purchase thereof*;

6.1.3 STL is entitled to sell the Floor to Yongnam (or such party as Yongnam may nominate); and

6.1.4 nothing in the JDA shall prohibit STL from entering into this Agreement or from carrying out its obligations under this Agreement or the S&P Agreement or Standard S&P (as the case may be). [Emphasis added]

The recital as well as the body of the Settlement Agreement expressly referred to the JDA and the Supplemental JDA. It can be inferred from that that YEC, in entering into the Settlement Agreement, and YDP, in subsequently entering into the contracts for the purchase of the 23<sup>rd</sup> floor, were conversant with the contents of the JDA and the Supplemental JDA. YEC would therefore have known that save for being a joint holder of the legal title, YEC had no beneficial interest in the 23<sup>rd</sup> floor.

14 It is relevant to note that cl 7.5 of the Settlement Agreement specifically acknowledged the existence of OUB's paramount mortgage over the Project (and hence the 23<sup>rd</sup> floor). Clause 7.5 provided as follows:

The parties acknowledge that the Bank has a paramount mortgage (the "Paramount Mortgage") over the Springleaf Tower development, including the Floor, and STL hereby agrees and undertakes to Yongnam that STL shall procure that the Bank shall release its mortgage over the Floor on or before the Agreed Date.

It is clear from this provision that YEC agreed to accept the 23<sup>rd</sup> floor in settlement of the amounts due to it from STL/TKC, on the understanding that STL would be responsible to procure that OUB releases its mortgage over that floor.

15 The fact that it was STL's obligation to ensure that the 23<sup>rd</sup> floor was free of encumbrances

prior to its transfer to YEC was also clear from the representations and warranties given by STL to YEC in cl 7.6 of the Settlement Agreement, which read:

7.6.1 the Floor shall be free and clear of all caveats, security interests, liens, encumbrances, pledges, defects in title, restrictions and other burdens save and except those which are or would be in favour of Yongnam, its assigns or its mortgagee;

7.6.2 STL shall not, and shall procure that the Vendor shall not, create or suffer or subsist any mortgage charge or suffer to subsist any mortgage charge or other encumbrance whatsoever (whether fixed or floating) on the Floor or any part thereof; and

7.6.3 neither STL nor Liang Court has done or knowingly suffered or been party or privy to any deed or thing whereby the Vendor may be hindered or prohibited from transferring the Floor to Yongnam.

It is relevant to note that LC – which had been duly paying its contributions towards the progress payments due to TKC in respect of its share of the Project – was not party to the Settlement Agreement. It is abundantly clear from the terms of the Settlement Agreement that the obligation was on STL and STL alone to effect the transfer of the 23<sup>rd</sup> floor to YEC free from all encumbrances.

16 As the proposed transfer of the 23<sup>rd</sup> floor was to be on the basis of a set-off, the Settlement Agreement recognised that the terms of the Sale and Purchase Agreement – annexed to the Supplemental JDA as Appendices B and C – would have to be varied. The consents of LC and the Controller were needed for such variation. STL undertook to procure the consent of LC. It was spelt out in the Settlement Agreement that YEC's solicitors Yeo Wee Kiong & Partners ("YWKP") would, on behalf of STL, LC and YEC, apply to the Controller for the necessary amendments. It was expressly agreed by STL, TKC and YEC that YWKP, in making this application, would be acting as YEC's solicitors and not as solicitors or agents of TKC or the vendors (ie STL and LC).

17 It was envisaged in the Settlement Agreement that YEC may elect to purchase the 23<sup>rd</sup> floor through a nominee. To cover such eventuality, cl 10 of the Settlement Agreement provided:

In the event that Yongnam shall nominate a third party (the "Nominee") to enter into the S&P Agreement ... Yongnam shall be entitled to assign all monies owing or to be owing by STL to Yongnam under the terms of this Agreement or the Contracts to the Nominee.

In the event of such assignment by Yongnam to the Nominee STL hereby agrees and undertakes that STL shall acknowledge such assignment to the Nominee (in a form as shall be satisfactory to Yongnam).

YEC did in fact nominate a third party as the purchaser of the 23<sup>rd</sup> floor. The party so nominated was Yongnam Development Pte Ltd ("YDP"), the plaintiffs in this action. YDP was a company incorporated on 20 March 1999 with an issued and paid-up capital of \$2. Its shares were held by Yongnam Holdings Ltd which was also the holding company of YEC. It was not in dispute that YEC had not, up to the time the hearing of this action commenced, assigned moneys due to it from STL to YDP.

18 YWKP, as provided in the Settlement Agreement, applied for and obtained the consent of the Controller to the variation that had to be made to Prescribed Form to effect the transfer of the 23<sup>rd</sup> floor to YEC. After obtaining that consent YWKP sought the approval of the Controller to

substitute YDP as the purchaser in place of YEC. That approval was granted on 31 March 1999 and the parties on the same day entered into the Sale Contracts. The S&P Agreement was in the Prescribed Form and the SS&P Agreement contained the variations to the Prescribed Form necessitated by the terms of the Settlement Agreement. STL, purporting to act under the PA given to it by LC, signed the Sale Contracts on behalf of LC.

19 On 17 March 1999, STL updated OUB on the details of the Settlement Agreement reached by STL/TKC with YEC and informed OUB that more details would be provided later. On 15 April 1999, copies of the Sale Contracts entered into with YDP were forwarded to OUB. As will be seen hereafter, copies of the Sale Contracts were not sent to LC by STL until much later. There was no direct communication of any nature between YDP/YEC and LC.

### **Involvement of Liang Court.**

20 The Springleaf Tower Project was essentially a development of the Ban Hin Leong group of companies in which LC's 30% investment was – in the words of Ng Liang Seng ("Ng"), the Vice President in charge of commercial operations of LC – "largely that of an investor as opposed to an active co-developer". Ng testified that it was the Ban Hin Leong Group – through STL and TKC – that handled day-to-day matters in relation to the Project. According to Ng, STL would not consult LC even in respect of substantial decisions affecting the Project but would merely keep LC informed of such decisions. This testimony of Ng was not seriously challenged.

21 Ng was aware that in late 1998 STL had some cash flow problems but did not know of any formal Settlement Agreement with the sub-contractor. In early March 1999, Patrick Koh ("Koh") of STL rang up Ng and told Ng that STL and TKC had struck a deal whereby STL would sell the 23<sup>rd</sup> floor to YEC and offset the purchase price against amounts due to YEC by STL/TKC. Ng was told that this transaction would have no adverse impact on LC. As LC had no beneficial interest in the 23<sup>rd</sup> floor and as the proposed transfer would have no adverse commercial effect on LC, Ng did not raise any objections.

22 Koh, on 5 March 1999, followed up that conversation with Ng by writing to LC as follows:

I refer to our telephone conversation on 3 Mar and 5 Mar 1999.

As you know, Yongnam Engineering & Constructions Pte Ltd ("YEC") are the sub-contractors for the project responsible for the structural steel and other related works.

Springleaves Tower Ltd ("STL") and Tuan Kai Construction ("TKC") have agreed to pay YEC for their works in the project by STL selling the 23<sup>rd</sup> floor of Springleaf Tower to YEC at the purchase price of \$1300 psf. There will be no cash payment for this purchase as the monies due to YEC by TKC will be offset against the purchase price for the floor. This arrangement resolves certain difficulties encountered in the project by ensuring that YEC gets paid and by enabling us to proceed smoothly to completion. STL's cash flow would also improve.

As this is a non-cash offset transaction the standard approved sale and purchase agreement ("S&P Agreement") cannot be used. We are applying to the Controller of Housing to amend the S&P Agreement to provide for this special structure and STL and YEC have jointly appointed M/s Yeo Wee Kiong & Partners to apply for these amendments.

LCD will not be directly involved in this application for amendment as the unit (23<sup>rd</sup> floor) belongs

to STL. LCD's contractual obligations with STL remain unchanged. However, as joint owners of the entire property, LCD's agreement to this amendment is necessary. We understand you have no objections and we are therefore proceeding accordingly.

Thank you for your co-operation.

Thereafter copies of some letters relating to the application to the Controller were faxed to LC by YWKP. These letters were referred to LC's legal department. It was the evidence of Ng that he was not aware that YEC had nominated YDP as the purchaser in place of itself until very much later when copies of the Sale Contracts were sent to LC.

23 Of the letters that YWKP were said to have copied to LC, LC disputed receiving: (a) the initial application dated 5 March 1999 seeking approval for amendments to the standard S&P Agreement necessitated by the special payment terms envisaged under the Settlement Agreement; and (b) a letter dated 31 March 1999 from YWKP wherein YWKP forwarded a letter from the Controller of the same date confirming that the Controller had no objection to YDP, instead of YEC, being the purchaser of the said floor.

24 YDP had been on notice, for a considerable period of time, that LC disputed receipt of the two letters from YWKP noted above. As receipt was disputed, it was incumbent on YDP to prove that the letters had in fact been despatched to LC. YWKP were the solicitors of YDP/YEC. YDP could therefore have easily elicited the necessary evidence of despatch from YWKP. YDP, however, failed to do so. YDP also failed, when requested by LC, to provide LC with the fax transmittal records of YWKP relating to these two letters. In the circumstances, I ruled that the two letters, objected to by LC, were not admissible as evidence against LC.

25 One important clause in the S&P Agreement was cl 8. Clause 8 provided:

If the land on which the Unit is built is subject to an encumbrance, the Purchaser must, instead of paying the instalments of the Purchase Price due under clause 5 to the Vendor, pay the instalments to the encumbrancer, and the Purchaser shall be regarded as duly performing his obligations under clause 5 by making payment in that manner.

This was a clause designed to protect the interests of any party to which the land may have been mortgaged. Clause 3.1.6 of the SS&P Agreement replaced cl 8 of the S&P Agreement with the following provisions:

8.1 If the land on which the Unit is built is subject to an encumbrance, the Vendor shall procure that the mortgagee (the "Mortgagee") shall release and discharge its mortgage over the Unit immediately upon the Purchase Price being fully paid and in any event by 30<sup>th</sup> June 1999.

8.2 The Vendor represents and warrants to the Purchaser that upon the release and discharge of the mortgage by the Mortgagee:-

8.2.1 the Unit shall be free and clear of all caveats, security interests, liens, encumbrances, pledges, defects in title, restrictions and other burdens save and except those which are or would be in favour of the Purchaser, its assignor or its mortgagee;

8.2.2 the Vendor shall not create or suffer to subsist any mortgage, charge or suffer to subsist any mortgage, charge or other encumbrance whatsoever (whether fixed or floating) on the Unit or any part thereof; and



8.2.3 the Vendor has not done or knowingly suffered or been party or privy to any deed or thing whereby the Vendor may be hindered or prohibited from transferring the Unit to the Purchaser.

By deleting cl 8 of the S&P Agreement and substituting therefor the above provisions, STL was, in effect, removing the obligation on the purchaser to pay the purchase price direct to the mortgagee bank and instead requiring the vendors (STL and LC) procure the release of the mortgage. STL did not obtain LC's consent to this change.

26 I accept that STL did not forward a copy of the Settlement Agreement to LC. However, from the contents of the letter from STL to LC dated 5 March 1999 and the fact that there had been discussions on the matter between Koh and Ng (and between Richard Lim and Koh Boon Hwee the respective heads of the Ban Hin Leong Group and LC), it seems reasonably clear that LC at that time had been informed of the salient features of the Settlement Agreement.

27 I also accept that LC did not know that the Controller had, on 31 March 1999, approved the nomination of YDP as the purchaser and I accept that LC did not know that the Sale Contracts with YDP had been signed on the same day. LC's ignorance of the existence of the Sale Contracts is apparent from LC's letter to STL dated 29 April 1999 – almost a month later – where LC is still referring to STL's "proposal" to transfer the 23<sup>rd</sup> floor to YEC and STL's "intention" to write to the Controller for the necessary approvals.

28 In the letter of 29 April 1999, LC noted that the proposed sale was to be in a format different from the format agreed in the Supplemental JDA and would result in the sale proceeds not being deposited into STL's project account with OUB and informed STL that its agreement to the changes was conditional upon STL providing the following:

- (a) a further letter of indemnity from STL in the format enclosed; and
- (b) OUB's letter of consent to the sale of the 23<sup>rd</sup> floor on the amended terms.

OUB's consent was necessary because of the paramount mortgage OUB held over the entire development.

29 It was only on 4 May 1999, when acknowledging the receipt of LC's letter of 29 April 1999, that STL – for the first time – forwarded copies of the Sale Contracts with YDP to LC. It was only then that LC came to know that sale and purchase agreements in relation to the 23<sup>rd</sup> floor had been signed and that the purchaser was a company known as YDP. In that letter of 4 May 1999, STL informed LC that it would revert on the question of providing the indemnity and obtaining OUB's consent. On 28 June 1999, STL provided the indemnity asked for. The consent of OUB remained outstanding.

#### **Events after completion of sub-contract works.**

30 YEC continued the sub-contract works through 1999 and completed them in 2000. Apart from a sum of about \$4.9 million that TKC had paid to YEC in February 1999 at the time of the Settlement Agreement, YEC did not receive any further cash payments from STL/TKC for its sub-contract works. On 9 January 2001, STL confirmed to YDP that it had received the purchase price of \$13,964,600 in respect of the 23<sup>rd</sup> floor in full.

31 On 11 January 2001. May Oh & Wee, a firm of solicitors who – on the instructions of STL – were acting for STL and LC in the sale, informed the solicitors of YDP that they had forwarded the draft deed of release of the mortgage on the 23<sup>rd</sup> floor to OUB for execution. OUB, however, did not sign and return the deed of release and many reminders were sent to OUB – copied to LC – reminding OUB to do so. On 10 September 2001, Richard Lim made a personal appeal to OUB urging that OUB sign the deed of release. This appeal was not successful.

32 All communications from YDP/YEC regarding the 23<sup>rd</sup> floor had throughout been with STL: at no stage had YDP/YEC discussed their intended purchase of the 23<sup>rd</sup> floor with LC. Even the final demand from YEC – dated 31 May 2002 – that the 23<sup>rd</sup> floor be conveyed as agreed was made to the Ban Hin Leong Group and marked for the attention of Richard Lim. In this letter, signed by Seow, YEC stated:

We refer to the above and to the Settlement Agreement dated 13 February 1999 (“the Settlement Agreement”) between yourselves, Springleaves Tower Limited (“STL”) and Yongnam Engineering & Construction (Private) Ltd.

You will note that there was an outstanding amount of S\$13,964,600 due from you to us for work done by us in respect of the construction of Springleaf Tower.

In turn for our agreeing to the substitution of STL in your place as a party to the contracts and for our agreeing to complete the outstanding work in respect of Springleaf Tower, it was agreed that the ownership of the 23<sup>rd</sup> floor of Springleaf Tower (“the Property”) would be conveyed to us.

STL had represented and warranted in the Settlement Agreement to us that it was the beneficial owner of the Property, and that it was entitled to sell the Property to us.

To date, and in breach of the Settlement Agreement, the Property has not been conveyed to us.

Please ensure that the conveyance of the Property to us is carried out by 7 June 2002, failing which we will instruct solicitors to commence legal proceedings against you for the debt due to you to us and/or for the conveyance of the Property to us.

It is clear from this letter – just as it was clear from the Settlement Agreement – that YDP/YEC knew, at all material times, that the beneficial owner of the 23<sup>rd</sup> floor was STL and that the obligation was on STL to procure the transfer of that floor free from all encumbrances.

33 It is also clear from the above letter that YDP/YEC knew that the outstanding amounts in settlement of which STL had agreed to transfer the 23<sup>rd</sup> floor to YEC, was outstanding from STL/TKC (of the Ban Hin Leong Group) and had nothing to do with LC. In the circumstances, it is not surprising that YDP/YEC did not, prior to the commencement of this action, demand of LC that LC procure the release of the mortgage and/or make payments for YEC’s sub-contract works and/or convey the 23<sup>rd</sup> floor to YDP.

### **The claim.**

34 The present action against STL and LC was commenced on 26 June 2002. In it, YDP claimed as against STL and LC: specific performance of the Sale Contracts or, alternatively, refund of the

purchase price of \$13,964,600. Default judgment for specific performance was obtained against STL on 31 July 2003. As noted earlier, YDP was, because of the impecunious finances of STL, not able to obtain satisfaction against STL and are pressing on with this claim against LC.

### **Issues.**

35 The issues that arose for consideration in this case were as follows:

- (a) Whether LC is bound by the execution, purportedly under the PA, of the Sale Contracts.
- (b) If not, whether LC has ratified and acquiesced in – or is estopped from denying that it has ratified and acquiesced in – the use of the PA by STL to execute the Sale Contracts.

The issue of estoppel had not been specifically raised by YDP in its claim against LC. However, Mr S A Pillai ("Mr Pillai"), who appeared for YDP, had, in his opening submission, raised the question of estoppel and Mr Tan Chuan Thye ("Mr Tan"), who appeared for LC, informed the court that he would not, in view of that fact, object to that question being raised.

### **The Sale Contracts: are they binding on LC?**

#### ***The signatures.***

36 The Sale Contracts were both signed by Richard Lim on behalf of LC. The jurats thereon were as follows:

- (a) in the S&P Agreement Richard Lim signed  
"as director of [STL] acting as Attorney for [LC]";
- (b) in the SS&P Agreement Richard Lim stated he was  
"... acting as the attorney of [LC]".

The question that arose was whether Richard Lim was duly authorised under the PA to sign the two agreements on behalf of LC.

37 The PA in question was given by LC, a corporate entity, to STL, another corporate entity. The manner in which the powers under the PA were to be exercised by STL was spelt out in cl 9 thereof as follows:

*For the better doing, performing and executing of the matters and things aforesaid, to appoint in writing under the common seal of the Attorney pursuant to a resolution of the Board of Directors of the Attorney any director, secretary or manager of the Attorney to be an attorney of LC, to exercise in the name of LC or of the Attorney the powers of the Attorney hereunder and to revoke such appointment at any time in a like manner provided that any person dealing with a person purporting to be appointed by such resolution by the Board of the Attorney may accept as conclusive proof of such appointment a copy of the resolution of appointment certified as a true copy under the hand of a director or the secretary of the Attorney. [Emphasis added]*

YDP did not sight any resolution from the Board of STL appointing Richard Lim to sign on behalf of LC. YDP merely assumed that Richard Lim had the necessary authority to sign on behalf of LC.

38 Mr Tan submitted that the burden was on YDP, before entering into the Sale Contracts, to satisfy itself that Richard Lim had the necessary powers to sign the contracts on behalf of LC. In support of this submission, Mr Tan referred to *Bowstead and Reynolds on Agency* (17<sup>th</sup> Ed, 2001) where at para 8-054 the learned authors state:

In the case of a disposition of land by an agent purporting to act under a power of attorney, *there will doubtless be a duty to examine the power*. But even in other situations the power itself will often constitute the only holding out by the principal; therefore the third party who knows of it can only rely on it if he has examined it, unless there are other circumstances creating apparent authority, such as the position or profession of the agent, or other acts by the principal indicating authority, e.g. acceptance of similar acts by the agent in the past. However, where such an inspection would not reveal the want of authority, failure to make it is not relevant: and if the act appears to be authorised, the third party cannot be expected to inquire further into the agent's motives for doing it unless there are special reasons (e.g. some irregular practice) for doubt. [Emphasis added]

Mr Tan submitted that, under cl 9 of the PA, the only way STL could have delegated authority to Richard Lim to sign the Sale Contracts in respect of the 23<sup>rd</sup> floor on behalf of LC, was by resolution of the Board of Directors of STL. He submitted that as there was no such resolution, Richard Lim had no authority to sign on behalf of LC.

39 YDP's response to this submission was to invoke the "indoor management rule" derived from the 19<sup>th</sup> century case of *Royal British Bank v Turquand* [1856] 6 E&B 327. It was submitted on behalf of YDP that as YDP/YEC had dealt only with Richard Lim and as Richard Lim had represented that he spoke for both STL and LC, YDP/YEC need not be concerned to ensure that all internal procedures of STL and LC had been complied with when Richard Lim signed the Sale Contracts on behalf of LC.

40 In support of that submission, Mr Pillai cited the following passage from Walter Woon's book "*Company Law*" (2<sup>nd</sup> Edition) at pages 90 and 91:

The indoor management rule should be applied together with the rules on apparent authority. Although the doctrines developed separately, it is suggested that there is no reason why they should not be merged. The rule in *Turquand's* case should, in a modern context, be seen as a sub-set of the rules of apparent authority. In its narrow form, the rule in *Turquand's* case only applies to procedural irregularities. However, in principle, there is no reason why the presumption or regularity should be so narrowly construed. In real life, people who deal with companies invariably assume that agents who appear to be authorized are in fact authorized. In the absence of anything to put a third party on notice, he is entitled to rely on the presumption of regularity. Any other rule would have a severely restrictive effect on real-life commercial transactions. *A party dealing with a company does not know what the actual authority of its agent is. The actual authority of a company's agent is an internal matter. An outsider cannot easily find out what an agent's actual authority is. It is sufficient if the agent has apparent authority to do the acts in question.* Persons dealing with a company in good faith are entitled to assume that acts within the apparent authority of its agent have been properly performed and need not inquire as to whether the agent's powers have been exercised or conferred regularly in compliance with all the prescribed formalities. As long as the agent has apparent authority, the fact that there is some internal irregularity that vitiates his actual authority does not matter. [Emphasis added]

and on strength of that passage, Mr Pillai submitted that the Indoor Management Rule applied to all

dealings which a party had with an agent of a company who held himself out as having apparent authority to act on the company's behalf. Mr Pillai submitted that as Richard Lim had represented that he had authority to sign on behalf of LC, YDP/YEC could rely on that representation and need enquire no further: the position taken by LC, he submitted, was myopic.

41 I do not think that the passage from Walter Woon supports this rather far-reaching submission of Mr Pillai. To begin with, the Indoor Management Rule only applies where a director or other employee of a corporation, having apparent authority, enters into a contract or makes a representation on behalf of that corporation. It would, for instance, apply with respect to Richard Lim signing the Sale Contracts on behalf of STL as Richard Lim was the Managing Director of STL. There is, however, no mandate to extend that rule to situations where a corporation is exercising powers given to it under a PA. Where a corporation/individual is exercising powers under a PA, the mode of exercise of that power and the scope of the authority given under the power are governed solely by the terms contained in the PA. It would therefore be necessary for a party contracting with a person acting on behalf of another under a PA to satisfy himself, from an examination of the PA, that that person has the authority to enter into that contract.

42 The PA in this case required the donee of the power, STL, to appoint by Board resolution the director or other representative of STL who was to exercise the power on behalf of LC. Such a resolution was not a matter of internal management of STL but a matter of compliance by STL of the requirements in the PA given to it by LC. It was incumbent on YDP to satisfy itself that all necessary steps required under the PA had been taken to vest Richard Lim with the authority to sign the Sale Contracts on behalf of LC.

43 In the present case, the PA required that there be a Board resolution of STL appointing the director of STL who was to be the attorney of LC. YDP/YEC had, without sight of such a resolution, accepted Richard Lim as that attorney. Such acceptance would be in order if YDP can show that there had in fact been such a resolution. But YDP has not shown that. No evidence was led, nor was it even alleged, that the Board of Directors of STL had passed the requisite resolution. I therefore find that Richard Lim had no authority to enter into the Sale Contracts on behalf of LC.

44 Mr Pillai raised one further argument in support of his submission that the signature on behalf of LC by Richard Lim was sufficient to bind LC to the Sale Contracts. He pointed out that the firm of May Oh & Wee were the solicitors for STL and LC in the sale of the 23<sup>rd</sup> floor and that Ms May Oh – who was the partner dealing with this matter – had, under cross-examination, confirmed that she was satisfied that Richard Lim had the authority under the PA to sign for LC. Mr Pillai submitted that this confirmation, coming from the solicitor of LC, was evidence that the Sale Contracts had been duly signed by Richard Lim on behalf of LC.

45 Although Ms Oh was the solicitor of LC in the transfer of the 23<sup>rd</sup> floor, it does not follow that the view she took of the sufficiency or otherwise of the execution of the Sale Contracts by Richard Lim on behalf of LC is a relevant factor in deciding whether such execution was valid. Whatever Ms Oh's view may have been, the onus was on YDP to satisfy itself that the person purporting to sign for LC under a PA was the person authorised in that PA to do so. The position may be different if, at the time of the execution, Ms Oh had informed YDP that she was satisfied that Richard Lim was authorised under the PA to sign on behalf of LC and YDP in entering into the contract had relied on that representation. But that was not the case here. This further argument by Mr Pillai therefore also failed.

### **The scope of the PA.**

46 After the units in the Project had been allocated between STL and LC under the Supplemental JDA, STL had no interest in the units allocated to LC and vice versa. However, for any of the units to be sold, both STL and LC would have to be joint vendors as legal title in all the units still vested in them jointly. To avoid having to be involved in transactions in which a joint vendor had no particular interest, the Supplementary JDA provided for each party to give the other a PA. As stated in Recital D of the PA, the reason LC agreed to grant the PA was:

To enable STL to co-ordinate, carry out and complete the sale of the STL Units, LC has agreed to appoint STL as the attorney of LC, to do and execute all or any of the acts, things and deeds hereinafter set out.

By the use of the PA the party wishing to sell any of its units could do so without troubling the other

47 Clause 1 of the PA specifically spelt out that STL (referred to in the PA as the "Attorney") was authorised:

To sign on behalf of LC as the joint vendor of each STL Unit, the option to purchase and the sale and purchase agreement, in the forms set out in Annexures B and C respectively, at the sale price(s) determined by the Attorney and to receive and give valid receipts for all or any part of the sale price or any sums due from each purchaser of the STL Unit.

Under cl 1, STL could only enter into sale and purchase agreements on behalf of STL that were in the Prescribed Form. It was LC's case that as the SS&P Agreement in respect of the 23<sup>rd</sup> floor differed from the Prescribed Form, STL did not have the power under the PA to enter into the SS&P Agreement on its behalf.

48 Although cl 1 of the PA was specific, there were other clauses in the PA that were in more general language. Mr Pillai relied on these other clauses to argue that STL was empowered to enter into the contract with YDP. In particular, Mr Pillai referred the court to the following clauses:

4. To act on behalf of LC as joint vendor, in relation to all matters arising from or connected with any option(s), agreement(s) or contract(s) relating to the sale of any STL Unit, including, but without limitation, the enforcement of all or any rights and interest thereunder.

...

7. Generally to act in relation to the sale of the STL Units as fully and effectually in all respects as LC itself could do if personally present.

8. For all or any of the purposes of this Power of Attorney to endorse sign, seal, deliver, execute, register or otherwise perfect as LC's act and deed any receipt, agreement or other contract, deed, document or instrument of any kind whatsoever which may be necessary or proper for any of the foregoing purposes of this Power of Attorney.

and submitted that the scope of the general words in cl 4, 7 and 8 should not be cut down by the more restrictive language of cl 1.

49 In answer to this submission, Mr Tan pointed out that the PA in this case was by deed and quoted the following passage from *Bowstead and Reynolds* at para 3-010 on the principles applicable in the construction of such PAs:

## **Construction of Powers of Attorney.**

*Powers of attorney are strictly construed and are interpreted as giving only such authority as they confer expressly or by necessary implication.* The following are the most important rules of construction:

- (1) The operative part of a deed is controlled by the recitals where there is ambiguity.
- (2) Where authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the proper performance of the particular acts.
- (3) General words do not confer general powers, but are limited to the purpose for which the authority is given, and are construed as enlarging the special powers only when necessary for that purpose.
- (4) A deed must be construed so as to include all incidental powers necessary for its effective execution.

[Emphasis added]

Mr Tan submitted, on the basis of the above statement of the law, that the court should construe the PA given to STL by LC as authorising STL to enter into sale and purchase agreements on behalf of LC that were in the Prescribed Form. The PA, he submitted, did not authorise STL to enter into any other form of sale and purchase agreement on behalf of LC.

50 I accept the principles of construction set out in *Bowstead and Reynolds* quoted above and I agree with Mr Tan that the PA granted to STL by LC only authorised STL to enter into contracts on behalf of LC that were in the Prescribed Form. As the SS&P Agreement was not in the Prescribed Form STL had no power under the PA to sign the SS&P Agreement on behalf of LC.

## **Inaction and ratification.**

51 Inaction or silence on the part of the principal, Mr Pillai submitted, can amount to ratification by conduct of the agent's act. It was YDP's case – in the event that the court finds that the Sale Contracts with YDP had not been validly executed by STL on behalf of LC – that LC, by its failure to notify YDP that STL had exceeded its authority under the PA, had accepted and ratified STL's conduct in entering into those contracts on behalf of LC. It was Mr Pillai's contention that LC's inaction, in the circumstances of this case, gave rise to a proprietary estoppel that precluded LC from denying the validity of the Sale Contracts.

52 In support of the above proposition, Mr Pillai quoted the following passage from the judgment of Lord Denning in *Crabb v Arun District Council* [1975] 3 All ER 865 at 871:

*Short of an actual promise, if he, by his words or conduct, so behaves as to lead another to believe that he will not insist on his strict legal rights – knowing or intending that the other will act on that belief – and he does so act, that again will raise an equity in favour of the other, and it is for a court of equity to say in what way the equity may be satisfied.* The cases show that this equity does not depend on agreement but on words or conduct. In *Ramsden v Dyson* Lord Kingsdown spoke of a verbal agreement "or what amounts to the same thing, an expectation, created or encouraged". In *Birmingham Land Co v London and North Western Railway* Cotton LJ said that "... what passed did not make a new agreement but what took place ... raised an equity

against him". And it was the Privy Council who said that "the Court must look at the circumstances in each case to decide in what way the equity can be satisfied ...

Mr Pillai submitted that LC must have known that YDP was proceeding on the assumption that LC had no objection to the Sale Contracts that had been entered into and therefore LC had a duty to speak up and make its position known to YDP.

53 What constitutes ratification by a principal of the acts of his agent is set out in *Bowstead and Reynolds* in para 2-070 which, in so far as is material to the present proceedings, reads as follows:

(1) Ratification may be express or by conduct.

(2) An express ratification is a clear manifestation by one on whose behalf an unauthorised act has been done that he treats the act as authorised and becomes a party to the transaction in question.

(3) Ratification will be implied whenever the conduct of the person in whose name or on whose behalf the act or transaction is done or entered into is such as to amount to clear evidence that he adopts or recognises such act or transaction in whole or in part: and may be implied from the mere acquiescence or inactivity of the principal.

At para 2-073 *Bowstead and Reynolds* state that to imply ratification from words or conduct, such words or conduct must be unequivocal. In this case, LC did not expressly ratify the acts of STL. To the contrary, LC expressly informed STL that it would agree to the sale only if the two conditions set out in para 28 above were satisfied.

54 As LC had voiced its objections to STL, there could also be no implied ratification of the acts of STL. If there had been such implied ratification by (say) the silence of LC vis-à-vis STL and YDP was aware of and relied on this silence, then an estoppel may arise in favour of YDP. As noted by *Bowstead and Reynolds* at para 2-075 under the heading "Estoppel":

Ratification merges almost imperceptibly into estoppel. When the silence or inactivity *is known to and relied on* by the third party, an estoppel may in appropriate cases arise against the principal, who may be estopped from saying that he has not ratified. [Emphasis added]

It would appear from the above quote that an estoppel can arise in favour of a third party if the third party had known and relied on the silence or inactivity.

55 YDP/YEC had at no time – whether in the course of negotiating the Settlement Agreement; at the time of signing the Sale Contracts; or at any time thereafter – discussed the sale of the 23<sup>rd</sup> floor with LC. There was no evidence that YDP even knew if STL had kept LC informed of the terms of the Sale Contracts. In such a scenario, it is not possible for YDP to assert that it knew of and relied on the silence or inactivity of LC.

56 All YDP/YEC's dealings in relation to the Settlement Agreement and the sale of the 23<sup>rd</sup> floor were with STL. YDP was content – without even examining the terms of the PA – to accept that STL was authorised under the PA to enter into the Sale Contracts on behalf of LC. It was perhaps because of this ignorance of the terms of the PA that YDP made no effort to ascertain from LC whether the terms of the SS&P Agreement were acceptable to LC. To that extent YDP can be said to be the author of its own misfortune.



57 The question that arises in this case is whether the inactivity of LC in informing YDP of its position on the matter, after copies of the Sale Contracts were sent to LC, was sufficient to give rise to an estoppel in favour of YDP precluding LC from denying the authority of STL to enter into those contracts on its behalf. The authorities cited by Mr Pillai were not particularly helpful as the decision in each case depended very much on the facts of that case. I accept, however, that there may be situations where a failure by the donor to keep a third party informed that a donee has acted in excess of his authority can – depending on the circumstances – amount to unconscionable conduct.

58 The doctrine of estoppel is a creation of the courts of equity. The classic form of the doctrine was stated by Lord Denning in *Crabb v Arun* in the passage quoted above. A more modern approach, adopted by Oliver J in *Taylor's Fashions Ltd v Liverpool Victoria Trustees Co* [1982] 1 QB 133 at 147, describes estoppel as:

... a much wider equitable jurisdiction to interfere in cases where the assertion of strict legal rights is found by the court to be unconscionable.

To apply the doctrine, one has therefore to look at all the circumstances and decide, in each case, where the equities lie or, to put it another way, the court has to decide, from the circumstances of each case, whether it would be unconscionable not to interfere with the strict legal rights of a party.

59 The genesis of the Sale Contracts in relation to the 23<sup>rd</sup> floor was clearly the Settlement Agreement. The Sale Contracts were merely the means by which the parties were giving effect to the term in the Settlement Agreement that STL would transfer the 23<sup>rd</sup> floor to YEC in settlement of TKC/STL's debts to YEC. As noted earlier, STL was the beneficial owner of the 23<sup>rd</sup> floor and was entitled to deal with that floor as it chose: it was therefore the responsibility of STL to transfer the 23<sup>rd</sup> floor, free of encumbrances, to YEC. YEC knew that the only role that LC would play in the implementation of the Settlement Agreement was – as legal title to the 23<sup>rd</sup> floor vested jointly in STL and LC – to lend its name to the Sale Contracts as a co-vendor of the 23<sup>rd</sup> floor. LC's involvement in the transfer of the 23<sup>rd</sup> floor was therefore – to YDP's knowledge – a matter of mere form. The requirement by LC that STL give an indemnity and that OUB's consent be obtained were not matters that could be said – in so far as YDP was concerned – to be novel, unexpected, or unreasonable. YDP would have known that to transfer the 23<sup>rd</sup> floor free of encumbrances, STL would, in any event, have to obtain the consent of OUB as OUB held a mortgage over the property.

60 The consent of OUB would not have posed any problem if the sale was on the basis of the S&P Agreement. That was not the case here. The SS&P Agreement varied the S&P Agreement and because of these variations it was no longer necessary to pay the purchase price into the STL project account with OUB: such a variation materially affected OUB's security interest in the property. If YDP had given thought to the matter, YDP would have realised that OUB's consent to these variations would be a pre-requisite for STL to transfer the 23<sup>rd</sup> floor, free of encumbrances, to YDP. YDP would also have realised that LC, to protect its position as a co-vendor, would require STL to obtain that consent.

61 The fact that YDP/YEC, prior to the institution of these proceedings, made no demand on LC to complete the sale of the 23<sup>rd</sup> floor and the fact that it was to Richard Lim of the Ban Hin Leong Group that YEC, on 31 May 2002, wrote to demand that the said sale be completed is consistent with the fact that YDP/YEC accepted, at all times, that LC was only a nominal vendor and that the obligation to obtain OUB's consent in order to effect the transfer to YDP was on STL. The fact that

YDP/YEC did not at any stage consult with LC on the terms of the Settlement Agreement or on the terms of the Sale Contracts is consistent with YDP/YEC knowing that LC was only a nominal party to the transaction.

62 I am not able to say, in the circumstances outlined above, that it would be unconscionable to allow LC to assert its legal right to deny the authority of STL to enter into the Sale Contracts in respect of the 23<sup>rd</sup> floor on behalf of LC. To the contrary, as YDP knew that the obligation to effect the transfer of the 23<sup>rd</sup> floor – free of encumbrances – was, under the Settlement Agreement, on STL and STL alone, it would be unconscionable to require LC to make the necessary arrangements with OUB in order to effect that transfer. It will also be unconscionable to make LC liable to YDP for refunds of any moneys paid by YDP/YEC to STL in connection with the proposed transfer. The equities in this case do not, in my view, lie on the side of YDP. The pleas of acquiescence, ratification and estoppel raised by YDP therefore fail.

### **Lack of consideration.**

63 Mr Tan raised one further argument why YDP's claims in this case should be dismissed. YDP was suing LC in contract. Under the Sale Contracts, the purchase price for the 23<sup>rd</sup> floor payable to the Vendors was to be set off against moneys owed by STL to YEC. YEC and YDP were separate corporate entities, albeit within the Ban Hin Leong group. Unless YEC had assigned the receivables from STL that were to be set off against the purchase price to YDP, there would be no consideration of the transfer of the 23<sup>rd</sup> floor to YDP.

64 To effect the assignment of the STL debts to YDC, it was necessary for YEC – under s 4(8) of the Civil Law Act, Cap 43 – to give notice in writing to STL. Mr Tan pointed out that in this case not only had there been no notice of the assignment but Seow of YDP/YEC had admitted in court that the STL debts still remained in the books of YEC. The compensatory credit had also not been assigned. Mr Tan submitted that as YEC had not assigned the STL debt to YDP, YDP was not entitled to succeed in its claims against LC.

65 Mr Pillai did not dispute that there had been no statutory assignment of the STL debt to YDP by YEC under the Civil Law Act. He submitted, however, that there was, in the circumstances of this case, an assignment in equity to YDP and that notice of such assignment was given when YDP was nominated to be the purchaser of the 23<sup>rd</sup> floor. The terms of the sale as reflected in the SS&P Agreement, he submitted, also constituted notice to STL of the assignment.

66 Mr Tan's response to this submission was that as the STL debts were still in the books of YEC there was no effective assignment even in equity. He went on to submit that even if there was an assignment to YDP in equity, that assignment being the assignment of a legal chose, cannot be enforced by the assignee without joining the assignor as a party. In support of that submission, Mr Tan referred the court to *Snell's Equity* (13<sup>th</sup> Ed) where in dealing with the equitable assignments of legal choses the learned authors state, at page 93:

The court must have before it all parties interested in the chose so that there may be a final adjudication binding them all.

Mr Tan pointed out that YEC was not a party to the present action.

67 Mr Pillai submitted that the requirement that all parties interested in the chose be before the court was only a procedural requirement and consequently need not be fatal to YDP's claim. In

support of that submission, Mr Pillai drew the court's attention to the paragraph in *Snell's Equity* following the passage quoted above where the learned authors noted:

This requirement is only procedural however and proceedings will not be treated as a nullity where the assignor and assignee are not both joined. The court may at any stage remedy the defect by ordering that a person be added as a party. In special circumstances (eg where it is clear that the assignor has no further interest in the matter) the court may even dispense with the requirement that both assignor and assignee are joined.

Mr Pillai did not, however, apply for YEC to be made a party to the action nor did he proffer any explanation as to why YEC had not, from the beginning, been made a party. Mr Pillai submitted that the court had a discretion to dispense with the need for YEC to be a party and urged the court to exercise that discretion.

68 I accept that the court has a discretion to dispense with the requirement that both assignor and assignee be joined as parties. That discretion should, however, only be exercised where the court is satisfied that the circumstances of the case are such that it is proper to do so. In the present case, the fact that the books of YEC do not reflect the assignment gives room for concern that YEC was reserving its rights in the matter. In the circumstances, although YDP and YEC were sister companies in the Ban Hin Leong Group, to give judgment in favour of YDP without YEC being a party to the litigation would not, in my view, be desirable.

#### **Decision.**

69 For the above reasons, I dismiss with costs the claims brought by YDP against LC.

*Plaintiffs' claims dismissed with costs.*