

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 51

Suit No 829 of 2016

Between

(1) Yeo Chock Min
(2) Tiang Weileen

...Plaintiffs

And

(1) Goh Ann Chuan
(2) Angeline Lim Cheng Cheng

...Defendants

JUDGMENT

[Contract] — [Misrepresentation Act]

[Contract] — [Contractual terms] — [Express terms]

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**Yeo Chock Min and another
v
Goh Ann Chuan and another**

[2017] SGHC 51

High Court — Suit 829 of 2016
Choo Han Teck J
22 February, 14 March 2017

14 March 2017

Choo Han Teck J:

1 Yeo Chock Min (“Mr Yeo”) and Tiang Weileen (“Ms Tiang”) (“the purchasers”) are a couple who run a business in the tourism industry. They had been looking for a new home since 2013. In early 2015, Agnes Ng, their estate agent, told them that she had seen an advertisement offering a corner terrace house for sale. The land area of the house was described as “2,775 sqft / 258 sqm” and the vendors, Goh Ann Chuan (“Mr Goh”) and his wife, Angeline Lim Cheng Cheng (“Ms Angeline Lim”) (“the vendors”), priced it at \$2,800,000.

2 Mr Yeo and Ms Tiang visited that house, known as 34 Waringin Park (“the property”), on 19 March 2015, and again in April and May 2015 and were shown the house from the entrance to the back of the house, *ie*, to the back boundary wall. On 2 July 2015 they instructed their solicitors to exercise the option to purchase. Completion took place on 10 September 2015. Shortly

after this, Mr Yeo and Ms Tiang visited the house again and were told by Ms Angeline Lim on that occasion that they could also build over the drain as one of the neighbours had done. Mr Yeo and his wife “did not think much about [Ms Angeline Lim’s] comment” at that time. The vendors moved out of the house on about 10 November 2015, having stayed there rent-free with Mr Yeo and Ms Tiang’s consent after completion of the sale.

3 Mr Yeo then engaged JDB Design & Build Pte Ltd to renovate the house. The contractors engaged a surveyor who drew a topographical survey plan from which Mr Yeo and Ms Tiang discovered for the first time that the total land size of the property they purchased, which was 2,775 sqft, included a drain outside the back boundary wall. The area of this drain was approximately 272 sqft. They then instructed their solicitors to sue the vendors. In their Statement of Claim, they sought \$265,021 in damages, comprising the price difference (calculated based on what the purchasers had paid on a per square foot basis for the original purchase, *ie*, \$1,009 per square foot) between 2,775 sqft and 2,503 sqft of land (amounting to \$274,448) and the difference in stamp duty payable (\$8,233), with a “goodwill discount” of \$17,660. In their closing submissions, they invite the court to adopt a “pragmatic approach” of awarding damages based on the price difference if had they bought 2,503 sqft worth of property at the rate of \$1,009 per square foot, as opposed to 2,775 sqft.

4 Mr Yeo and Ms Tiang rely on two main causes of action. The first is misrepresentation under the Misrepresentation Act (Cap 390, 1994 Rev Ed) and at common law and the second is breach of contract. Mr Yeo and Ms

Tiang testified in court that they bought the house because they wanted a house that was between 2,700 and 3,000 sqft and believed that the house they viewed was 2,775 sqft as advertised. Their solicitors pleaded in the Statement of Claim that “In reliance of the [d]efendants’ [Mr Goh and Ms Lim’s] and/or their agent’s representation on the land area, and not otherwise, the sale and purchase of the [p]roperty (at S\$2,800,000.00) was completed by the Plaintiffs on or about 10 September 2015.” The solicitors further pleaded that it was only after Mr Yeo and Ms Tiang had purchased the property that they “discovered that the property does not have a square land area of 2,775 sqft but only has land area of 2,503 sqft; 272 sqft of which being occupied by a drain outside the back boundary wall, of the property, on or over which the Plaintiffs cannot build because the National Environment Agency of Singapore require access to the same.”

5 Counsel for the vendors submitted that there is no evidence that the drain area is even part of the property size of 2,775 sqft. The purchasers tendered a survey plan of Mukim No. 28, Ulu Bedok, prepared by the Chief Surveyor in 2002, to the court. This plan was obtained from the Singapore Land Authority after the transaction had been completed. This survey plan shows that the area of the property is 257.8 square metres (*ie*, 2,775 sqft) and that this area includes a drain behind a back wall. This is the plan that is referred to in certificate of title of 34 Waringin Park. The vendors submit that the plan cannot be admissible as it was not proven by the purchasers to be accurate under s 85(2) of the Evidence Act (Cap 97, 1999 Rev Ed) (“Evidence Act”). This argument ignores s 38 of the Evidence Act, which provides that statement of facts made in plans made under the authority of Government as to

matters usually represented in such plans are themselves relevant facts, and s 85(1) of the Evidence Act, which presumes the accuracy of such plans. From the survey plan, it is clear that the drain is part of the property, but that is far from establishing a case for the purchasers.

6 The purchasers have not proven that the vendors or their agent Ms Katherine Lim had expressly represented that the property within the back boundary wall was 2,775 sqft or that the drain was not part of the stated size of 2,775 sqft of land. In his affidavit of evidence-in-chief Mr Yeo stated that he was informed that the size of the property was “as advertised”, and “on each visit to the property, [Ms Katherine Lim] and [Ms Angeline Lim] showed us around the [p]roperty but only until the back kitchen boundary wall. Nothing was ever mentioned, either by [Ms Katherine Lim] or [Ms Angeline Lim], about the existence of a drain at the rear side of the [p]roperty. In addition, neither [Ms Katherine Lim] nor [Ms Angeline Lim] showed us the drain at the rear side of the [p]roperty or informed us that the land area of the [p]roperty included the said drain”. Ms Angeline Lim testified that she could not recall being asked by Mr Yeo or Ms Tiang about the land size, but that she would have told purchasers that “the land size would be based on the title searches”.

7 For the purchasers’ claim to succeed on misrepresentation, they must prove that the vendors or their agents represented to them that the property of 2,775 sqft being sold by them did not include the drain area. The purchasers submit that this was done both by words (the advertisement) and conduct (showing them around the house without pointing out the drain). It is not disputed that the size of the property, as evident from the land title searches, is

indeed 2,775 sqft. Thus it is insufficient merely to say that the advertisement stated that the property was 2,775 sqft, because this is not a representation as to what the area does or does not include.

8 It is also insufficient to state that just because the drain had not been specifically pointed out to the purchasers during their viewings, the vendors (or their agent) had thereby represented by their conduct that the drain did not constitute part of the property. The solicitors for the purchasers spent the majority of their cross-examination attempting to establish that the vendors were aware that the drain was part of their property. Even assuming that the vendors were aware of that, there is no evidence that they knew that the purchasers were labouring under the mistaken size of the property. The purchasers have not proven a wilful suppression of material facts beyond mere silence. Thus, without any false representation of fact by the vendors, the misrepresentation claim must fail.

9 I come now to what exactly the terms in the option to purchase provide. First, there is nothing in the option to purchase that expressly indicates that the property does not include the drain area. The option to purchase had additional terms of sale hand-scrawled on it, permitting the vendors to stay past completion, but nothing was added to state or qualify the size of the property at 2,775 sqft. The purchasers then argue that a term as to “land area” should be implied. They do not make clear what such a term as to “land area” would be and what this would achieve. Even if I find that there is an implied term that the property has a land area of 2,775 sqft, this again does not account for whether or not the drain area is part of this 2,775 sqft. The

purchasers have not proven that an implied term that the property area of 2,775 sqft only extended up to the back boundary wall and excluded the drain area would satisfy the high threshold for the implication of terms.

10 Furthermore, cl 11 of the option to purchase expressly stipulated that “the property is sold subject to satisfactory replies to the usual [p]urchaser’s solicitors requisitions”. There is also a term that any “drainage lines reserves or proposals shall be considered unsatisfactory if such lines reserves or proposals affect the building line of the property”. The solicitors who completed the conveyance of the property were not called to testify, and we can assume that all the requisitions had been properly made, and the results properly brought to the clients’ attention and explained to them. The purchasers have not claimed that the replies were unsatisfactory within the meaning of this clause.

11 The official land registry record would have shown that the land size of the property is described to be 2,775 sqft. It would also have shown that there is a drain at the back of the land but within the 2,775 sqft boundary. The vendors only advertised a 2,775 sqft property for sale, and when the sale was completed, they conveyed the full 2,775 sqft property to the purchasers.

12 Further, a reply to a requisition from the Public Utilities Board (“PUB”) by his conveyancing solicitors was produced by Mr Yeo in his affidavit of evidence-in-chief. This reply is dated 28 July 2015 (after the exercise of the option but before completion), and states that although “there is no Drainage Reserve within the site”, “surface runoff from the site and all

neighbouring lots shall continue to be allowed to discharge through the common drain within the site. The boundary fence setback for maintenance of the common drain shall not be altered unless specific written permission is obtained from PUB Catchment and Waterways Department”. This reply makes it clear that, although there are no drainage reserves, there is a common drain within the property. During cross-examination, Mr Yeo admitted that the reply alerted him to the existence of a common drain within the property. In closing submissions, counsel for the vendors pointed out that there is also a common drain outside the front boundary wall of the property, the implication perhaps being that Mr Yeo thought that the reply was referring to that front drain. Simply assuming that the “common drain within the site” meant that particular drain is not sufficient. Mr Yeo ought to have clarified this with the vendors. Despite this, he and his wife did not raise this issue with the vendors, and went ahead to complete the purchase on 10 September 2015.

13 Even if the conveyancing solicitor had brought this to the attention of Mr Yeo before completion, and Mr Yeo had sought to rescind the contract then, the purchasers may still not succeed because it was not a term of the contract that the land size of 2,775 sqft excludes the area with the drain. This was Mr Yeo’s own assumption. The vendor of a property is not obliged to point this out to the purchaser. Furthermore, cl 12 of the option to purchase clearly states that “the Purchaser is treated as having notice of the actual state and condition of the Property as regards... drainage and all other respects and is deemed to have inspected the Property”. Clause 15 further states that the property is “sold subject to any restrictive covenants, easements... and all other rights whatsoever affecting the same”. The purchaser has to inspect the

property before he decides whether to exercise the option to purchase, or at least he must ensure that any uncertainty is resolved in the terms of the option before exercising it.

14 For completeness, the vendors also challenge the admissibility of two documents sought to be adduced by the purchasers, the first being the topographical survey plan prepared by a land surveyor from 1 Survey Associates, Too Oon Hock, for the purpose of renovations, and the second being a site plan enclosed in the valuation report prepared by Premas Valuers & Property Consultants Pte Ltd as part of the mortgage application process. They submit that these two documents are hearsay evidence and their makers were not called to testify in court. The topographical survey apparently indicates the existence of the drain within the property. I have already found this to be the case. The valuation report indicates the size of the property as 2,775 sqft. While Mr Yeo relied on this report in his affidavit of evidence-in-chief to state that the site plan prepared within did not show that the land area included the drain at the back of the property, this does not help him. The valuer was not called to testify so we do not know what instructions Mr Yeo gave him, although one can expect a valuer to check the official land area of the property under valuation and inspect the property. Although the valuer appears to be oblivious to the status of the drain, he had expressly stated in his report that no requisition on road or drainage proposals has been made and that they will only make such requisitions on specific request. These two documents hence do not assist the vendors.

15 On these facts, I am of the view that the purchasers, Mr Yeo and Ms Tiang, have no cause of action against the vendors Mr Goh and Ms Angeline Lim. However much we may be sympathetic to Mr Yeo and his wife over such a costly mistake, that mistake was his in the first place. He and his wife compounded the mistake by not being alert enough to spot it when the requisitions made by his solicitors came back to indicate that although the PUB has no intention of establishing a drainage reserve over his land, the setback must remain and cannot be altered without express permission.

16 This action is therefore dismissed with costs.

- Sgd -
Choo Han Teck
Judge

Ng Khai Lee Ivan and Grismond Tien De Ming (Infinitus Law Corporation) for the plaintiffs;
Tan Tzu Kwang Paul and Toh Hui Lin Desiree (Cornerstone Law LLP) for the defendants.
