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

[2021] SGHC 223

Suit No 1123 of 2019

Between

Solution Aircon & Engrg Pte Ltd

… *Plaintiff*

And

Ivy Ng Soh Peng

… *Defendant*

JUDGMENT

[Contract] — [Breach]

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Solution Aircon & Engrg Pte Ltd
v
Ng Soh Peng Ivy

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Lee Seiu Kin J
28, 30 April 2021, 16 August 2021

28 September 2021 Judgment reserved.

Lee Seiu Kin J:

Introduction

1 This is an action by the plaintiff, Solution Aircon & Engrg Pte Ltd, against the defendant, Ivy Ng Soh Peng, for breach of contract.

2 The plaintiff had agreed to purchase two commercial property units at Midview Building, 50 Bukit Batok Street 23 Singapore 659578, from the defendant (the "Units"). The present dispute concerns pre-existing racking systems located in each of the Units (the "Racking Systems").

3 The plaintiff argues that at the time of contracting, the defendant had agreed to purchase the Racking Systems for a sum of S$300,000 from the plaintiff after completion of the Units' sale and purchase. This arrangement was allegedly for the purpose of giving the plaintiff a discount on the Units' purchase

price. In response, the defendant claims: (a) that the agreement is invalid; and (b) in the alternative, that it was a sham agreement.

Facts

4 Ng Peng Khuan ("Ng") and Lim Soh Hoon ("Lim") are directors of the plaintiff.[1]

5 The plaintiff and the defendant's company each owned a unit on the same floor of Midview Building, units #01-12 and #01-03 respectively.[2] The defendant and her husband also owned unit #01-02 in the same building as tenants-in-common.[3] The Units are #01-02 and #01-03.[4]

6 Sometime in May 2019, Ng and the defendant began discussing the sale of the Units to the plaintiff.[5] Ng was interested to have the plaintiff purchase the Units so that they could be rented out.[6]

7 On 17 May 2019, the defendant issued two options to purchase (the "Options") to the plaintiff, in which the defendant agreed to sell unit #01-02 for S$900,000 and unit #01-03 for $802,500, *ie*, a total of S$1,702,500 (the "Purchase Price"). Ng then paid the 1% option fee for each of the Units on

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1 Plaintiff's AEIC dated 30 November 2020 ("PAEIC") at para 1; Transcript dated 28 April 2021 at p 67, lines 4 to 6.

2 PAEIC at para 4; Defendant's AEIC dated 10 December 2020 ("DAEIC") at para 7.

3 DAEIC at para 8.

4 DAEIC at para 9.

5 PAEIC at para 4; DAEIC at paras 15 and 16.

6 PAEIC at para 19.

behalf of the plaintiff.[7] The Options provided that the plaintiff was required to exercise them by 31 May 2019.[8]

8 Subsequently, Ng had difficulty in raising sufficient funds for the purchase. He had difficulty in obtaining bank loans with suitable terms as he could not afford the down payment, which was 20% of the Purchase Price.[9] The defendant agreed to help him to secure financing from a suitable bank.[10]

9 Ng claimed that on 31 May 2019, the date by which the Options were to be exercised, he was still unable to find a suitable bank loan. The defendant told Ng that she was willing to sell the Units at a lower price.[11] She also agreed to extend the expiry date of the Options to 14 June 2019 and told Ng that she was willing to refund the option fee if he could not find a suitable bank loan ultimately.[12]

10 Thereafter, the defendant continued to help Ng secure a suitable bank loan and recommended several bankers to Ng.[13] Ng found those offers unsuitable.[14]

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7 DAEIC at para 18.

8 Plaintiff's Bundle of Documents dated 30 November 2020 ("PB") at pp 26 and 31; DAEIC at para 21.

9 PAEIC at para 5.

10 PAEIC at para 5; DAEIC at paras 23 and 24.

11 PAEIC at para 6.

12 PAEIC at para 7; DAEIC at paras 25 and 26.

13 PAEIC at para 8.

14 PAEIC at para 8.

Purchase of the Racking System

11 According to Ng, on 3 June 2019, the defendant suggested that Ng should exercise the Options at the original Purchase Price, but she would subsequently return him S$300,000 after completion of the Units' sale and Purchase, effectively giving him a discount (the "Alleged Agreement").[15] Also, on that day, Ng requested that the defendant refund him the difference in the *option fee* pertaining to the original purchase price of S$1,702,500 and the discounted purchase price of S$1,402,500, which he claims amounts to S$3,525.[16] However, on the same day, the defendant told Ng that she would not return this difference in deposit if the plaintiff chose not to purchase the Units.[17] The defendant did so because she thought that Ng was able to obtain a bank loan but simply chose not to take it up.

12 According to the defendant, however, she claims that the negotiations at this time were about the return of the option fee *in full*.[18]

13 On 8 June 2019, Ng wanted the defendant to reduce the Alleged Agreement into writing. He claims that the defendant agreed over WhatsApp messaging to do so and stated that she would effect the return by buying back the Racking Systems for S$300,000 thereafter.[19] The defendant disputes this claim and asserts that Ng was the one who wanted "to create a bogus sale and purchase agreement whereby [she] would buy the racking system in [her]

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15 PAEIC at paras 9 and 12.

16 PAEIC at para 10.

17 PAEIC at para 11.

18 DAEIC at paras 26 and 27.

19 PAEIC at paras 13 and 14.

personal capacity for $300,000".[20] She further avers that "[Ng] did not want new [options to purchase] to be issued as that would have meant that the loan that he would receive from the bank would have been correspondingly less".[21]

14 The defendant then sent him an email at 5.26pm, which the plaintiff claims put the Alleged Agreement in writing:[22]

> Dear Mr Ng,
>
> Like I have mentioned to you in our whatsapp. Our agreement will be as follows:
>
> If you are unable to obtain loan for the purchase of the said property, I shall refund you the 1% option money that you have paid to me in full. Since OCBC had already approve your loan and that you have decide not to take up their offer to you, therefore, this clause will not be applicable and in the event that you do not exercise on 14th June 2019, no money will be refunded to you.
>
> We now agreed as follows:
>
> > 1. Upon you exercising the option to purchase of the said property, I will pay you a deposit of $52,500.00 in cash being confirmation of purchase of the racking system, fixture and fitting in the said property from you.
> >
> > 2. Immediately upon completion of the said property, I will pay you the balance payment of S$247,500.00 being the final payment of the money for the racking system, fixture and fitting including the extension of the said premises up to 30th Sept 2019. (tenatively [*sic*], completion is scheduled on 9th September 2019.)
>
> Total agreed price for the purchase of the racking system, the fixture and fitting in the said premises and an extension of stay up to 30th Sept 2019 will be a lum [*sic*] sum S$300,000.00 (nett and including GST if any).
>
> The deal abovementioned is subject to the purchase of the said property successfully being transferred to your name.

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20 DAEIC at para 28.

21 DAEIC at para 28.

22 Defendant's Bundle of Documents dated 23 April 2021 at pp 67 and 68; Plaintiff's Closing Submissions dated 30 June 2021 ("PCS") at para 24.

> From Ivy Ng Soh Peng

The email also reiterated that the defendant would not return the option fee to him if he did not exercise the Options. The defendant explained that this was because Ng had managed to obtain an in-principle approval for a bank loan from OCBC, but he was simply not willing to take up that offer.[23]

15 Consistent with the defendant's version of events that Ng was the one who suggested the Alleged Agreement, the defendant claims that while she had initially agreed to his request in the email at 5.26pm because Ng "sounded very desperate", she later "knew that was wrong" and did not want to be part of this scheme.[24] To that end, she sent Ng another email at 6.21pm on the same day to "simply let him know that if he did not exercise the Options, the sellers would refund him part of his deposit back and [they] could still remain as friends".[25] The email states:

> Dear Mr Ng,
>
> Since we are neighbor [*sic*] and I also do not want to have any dispute with you.
>
> I hope that even though if the deal do not go thru [*sic*], we remain as good neighbours.
>
> As a goodwill, in the event that you do not exercise the option on 14th June 19, I will refund you $3525.00.
>
> Ivy Ng Soh Peng.

16 Ng, however, claims that he would have never exercised the Options if the defendant did not promise to return the S$300,000 sum to him. He avers that, to fund the purchase of the Units, he had to borrow around S$300,000 from

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[23] DAEIC at para 27.

[24] DAEIC at para 29.

[25] DAEIC at para 29.

his friends.[26] Presumably, he was able to borrow this sum from his friends because he was expecting the return of the same amount from the defendant shortly after the sale and could repay them then. Ng also claims that, at one point, he thought that he would be short of S$70,000 at completion, and that, when he raised this with the defendant, she suggested on 10 June 2019 that she could deduct S$70,000 from the S$300,000 sum that she would return him after completion.[27]

Issuing of five cheques

17 Ng claims that the defendant promised to return him the S$300,000 sum after completion in five payments to be made in September 2019.[28] This was to be effected through five post-dated POSB cheques.[29] While the plaintiff initially pleaded in its Statement of Claim that the defendant had given him these cheques sometime in May 2019,[30] Ng later testified that they were given "after 8 June 2019 but before 6 Sep[tember] 2019".[31]

18 The defendant claims instead that Ng had asked her sometime in August 2019 to issue these five post-dated cheques.[32] She said that Ng told her that he had difficulty in obtaining a loan for the remainder of the purchase price that was not covered by the existing loan from Maybank. She claims that he therefore wanted her to issue post-dated cheques to him so that he could show

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26 DAEIC at para 15.

27 DAEIC at para 15.

28 PAEIC at para 16.

29 PAEIC at para 16.

30 Bundle of Pleadings ("BP") dated 26 March 2021 at p 3, para 5.

31 PAEIC at para 16.

32 DAEIC at para 33.

them to a prospective lender that he was able to repay his loan to this lender after completion. The defendant avers that Ng assured her that it was "for show only". The defendant agreed to do so. According to her, because these cheques were not meant to be deposited, she issued them without indicating the name of a payee.[33]

19 The details of these cheques are as follows:[34]

Bank	Cheque number	Date	Amount
POSB	853849	10 September 2019	$100,000
POSB	863850	11 September 2019	$50,000
POSB	863852	12 September 2019	$25,000
UOB	545363	17 September 2019	$50,000
POSB	863853	24 September 2019	$75,000

20 Subsequently, Ng indicated Lim's name as payee on all the cheques.[35] These cheques were dishonoured and the bank account from which the payment was to be made was closed before 13 September 2019.[36]

Subsequent events

21 On 14 June 2019, Ng exercised the Options on behalf of the plaintiff.[37]

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33 DAEIC at para 34.

34 PB at pp 84 and 85; PAEIC at para 16.

35 DAEIC at para 35.

36 PAEIC at para 16.

37 PAEIC at para 18.

22 On 30 August 2019, the defendant offered to sell Ng the Racking Systems at S$30,000.[38] Ng rejected this offer.

23 Completion for the sale and purchase of both Units was originally fixed for 6 September 2019. However, it was postponed to 9 September 2019 as the plaintiff encountered issues pertaining to the GST payable for unit #01-03.[39] The defendant rented unit #01-02 from the plaintiff from 9 September 2019 to early December 2019,[40] at the price of S$3,800 per month excluding GST.[41] Parties agreed that the plaintiff would only charge rental for October and November 2019.[42]

24 Because of the late completion, penalty charges were imposed on the defendant and her company in respect of the mortgages for both Units.[43] The defendant felt that these charges were the fault of Ng, and so she asked him to waive the rental payable for unit #01-02 for October 2019 and November 2019.[44] In this regard, the defendant claims that she had previously issued a cheque dated 31 October 2019 (OCBC cheque number 657227) to the plaintiff for the rental of unit #01-02 for October.[45] This cheque was for the amount of S$4,066.[46] She therefore requested Ng to hold back from depositing this cheque and told him that she wanted to amend the date of this cheque to 29 November

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38 PAEIC at para 20; PB at p 22.

39 PAEIC at para 18; DAEIC at para 37.

40 DAEIC at para 42.

41 PAEIC at para 18.

42 PAEIC at para 18.

43 DAEIC at para 38.

44 DAEIC at paras 38 and 39.

45 DAEIC at para 40 and p 33.

46 DAEIC at p 33.

2019, which would indicate that it was for payment of the rental due in December.[47]

25 On Ng's account, the defendant did want to make an amendment to a cheque's date, but not to that cheque above. He claims instead that she wanted to amend the date of the last of the five post-dated cheques that were issued to him, *ie*, POSB cheque number 863853 dated 24 September 2019 for the amount of S$75,000, to 29 November 2019.[48]

26 Ultimately, the defendant procured the removal of the Racking Systems. The one in unit #01-03 was removed on or around 9 September 2019 after the completion of the Units' sale and purchase and the one in unit #01-02 was removed on or around 8 December 2019 after the defendant's lease agreement with the plaintiff for that unit ended.[49]

The parties' cases

27 The plaintiff argues that the defendant had agreed to pay it S$300,000 as consideration for the Racking Systems after completion of the Units' sale and purchase, by instalments.[50] By failing to do so, the defendant is in breach of contract.[51] The plaintiff seeks specific performance and damages in the alternative.[52]

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47 DAEIC at para 40.

48 PAEIC at para 17.

49 BP at pp 18 to 19, paras 11.1 and 11.2.

50 BP at p 13.

51 BP at p 4, para 9.

52 BP at p 4, para 10.

28 I note that the plaintiff's claim under s 97 of the Bill of Exchange Act (2004 Rev Ed) has been struck out in Summons No 769 of 2020.[53]

29 As for the defendant, she claims, as a preliminary issue, that the Alleged Agreement was invalid as a *collateral* contract as it did not fulfil the legal requirements of one.[54]

30 Even if the Alleged Agreement is considered as a contract *per se*, the defendant submits three alternative arguments as to why the plaintiff's case fails:

(a) Firstly, the defendant argues that because the plaintiff could not have acquired legal title to the Racking Systems, the court "need not concern itself with the … Alleged Agreement".[55]

(b) Secondly, the defendant argues that the Alleged Agreement did not satisfy the requirements for a valid contract.[56]

(c) Thirdly, the defendant argues that the Alleged Agreement was a sham agreement.[57]

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53 HC/ORC 2675/2020.

54 Defendant's Closing Submissions dated 30 June 2021 ("DCS") at paras 4 to 7.

55 DCS at para 45.

56 DCS at para 46 to 80.

57 DCS at para 86.

My decision

31 In my judgment, I find that the Alleged Agreement is a valid contract, and that the defendant was in breach of that contract. I set out my reasoning below.

Collateral contract issue

32 I first address the preliminary issue raised by the defendant: was the Alleged Agreement invalid as it did not satisfy the purported requirements of a *collateral* contract?

33 The defendant argues that it is "an established legal principle" that "the parties to the collateral agreement and the principal agreement must be the same", citing *Galaxy Imperial Pte Ltd v NS Engineering Pte Ltd* [2016] SGDC 334 at [79] in support.[58]

34 In the first place, I do not understand the above proposition to be "an established legal principle". Indeed, the contrary position was expressly set out in *Hiap Huat Pottery (S) Pte Ltd v TV Media Pte Ltd* [1998] 3 SLR(R) 734 ("*Hiap Huat*"), where the Court of Appeal held at [21]–[22] as follows:

> 21 In the oft-cited case of *Heilbut, Symons & Co v Buckleton* [1913] AC 30, Lord Moulton, in his speech in the House of Lords, stated the general principle of law on collateral contracts (at 47):
>
> > It is evident, both on principle and on authority, that there may be a contract the consideration for which is the making of some other contract. 'If you will make such and such a contract I will give you one hundred pounds,' is in every sense of the word a complete legal contract. *It is collateral to the main contract*, but each has an independent existence, and they do not differ in

[58] DCS at para 6.

> respect of their possessing to the full the character and status of a contract. But such collateral contracts must from their very nature be rare … .
>
> 22 We fully agreed and respectfully adopted His Lordship's above-stated *dicta*. Clearly, a collateral contract existed only when a main transaction had been entered into. It was supplemental to the main contract. ***That main contract may be between the same parties as the collateral contract, or it may be between a third party and one of the parties to the collateral contract*** (see *Strongman Ltd v Sincock* [1955] 2 QB 525; [1955] 3 All ER 90). But there could be no dispute that both co-existed together, such that without a main contract, there could be no corresponding collateral agreement of any sort.
>
> [emphasis in italics in original; emphasis added in bold italics]

While the same court in *Ang Sin Hock v Khoo Eng Lim* [2010] 3 SLR 179 expressed, *obiter*, doubt on the position that a collateral contract could not exist without a pre-existing main contract, the court did not doubt the proposition that the collateral contract need not be concluded between the same parties as the main contract: at [75]. Indeed, given that the court alluded to the possible adoption of a broader approach towards collateral contracts, this proposition would *a fortiori* be good law.

35 In addition, in my view, it does not follow from the nature of a collateral contract that there is a requirement that parties to that contract must be the same as those to the main contract. In *Lemon Grass Pte Ltd v Peranakan Place Complex Pte Ltd* [2002] 2 SLR(R) 50, the High Court stated (at [116]–[119]):

> 116 A collateral contract is an agreement distinct from the main contract. A court must therefore find *all the usual legal requirements of a contract* having been fulfilled with respect to the collateral agreement before it can be enforced.
>
> 117 What this means is that the statement purporting to be the contractual promise in such a collateral contract must be promissory in nature or effect rather than representational: *De Lassalle v Guildford* [1901] 2 KB 215; [1900–1903] All ER Rep 495; *Wells (Merstham) Ltd v Buckland Sand and Silica Ltd* [1965] 2 QB 170; [1964] 1 All ER 41; *Esso Petroleum Co Ltd v Mardon*

> [1976] QB 801 at 826. The plaintiffs must establish the agreement of the parties to its terms. Thus, to succeed in a claim founded on a collateral contract, the plaintiffs have to prove certainty of the terms.
>
> 118 It is for the party seeking to rely upon the collateral contract who has to bear the burden of establishing that both parties intended to create a legally-binding contract: Ralph Gibson LJ in *Kleinwort Benson Ltd v Malaysia Mining Corp Bhd* [1989] 1 All ER 785 at 796.
>
> 119 They must also establish consideration, which in the case of a collateral contract is easy to prove. All that is required is the promisee (the plaintiffs) entering or promising to enter into a principal contract with the promisor (the defendants).

Hence, where a collateral contract is concerned, apart from the fact that consideration would be easier to prove in respect of such a contract (since it is premised on the promisee entering or promising to enter into the main contract), the *usual legal requirements of proving a contract* are still applicable. Accordingly, I do not see how a further requirement would arise, that a collateral contract must have the same parties as that of the main contract.

36 I therefore dismiss the defendant's submission on this point and proceed to analyse below whether the plaintiff has proven that the Alleged Agreement is a valid and enforceable contract.

The Alleged Agreement is a valid contract

37 The defendant objects to the existence of the Alleged Agreement on legal and factual bases. Legally, she argues that the agreement is invalid because the plaintiff could not have acquired title to the Racking Systems so that he could thereafter sell them. Factually, she argues that the purported agreement does not satisfy the usual legal requirements of a contract. I will address these two issues in turn.

Does the plaintiff have to first obtain title to the Racking Systems?

38 The defendant claims, as a starting point, that the plaintiff must show that it acquired title to the Racking Systems at the time of the exercise of the Options, *ie*, 14 June 2019.[59]

39 In this regard, the defendant argues that: (a) the Racking Systems are not fixtures since they are movable property that could easily be dismantled; and (b) the Options stated that the Units were to be sold with vacant possession. Therefore, the Racking Systems, being movable property, were not part of the sale of the Units.[60] Also, when the sales of the Units were completed, the defendant's company procured the removal of the Racking Systems.[61] Hence, the plaintiff could not have acquired title to the Racking Systems by exercising the Options.[62]

40 In support of their respective cases, counsel submitted on: (a) whether the definition of "vacant possession" implies that the Units must be delivered with the removal of *all* fixtures; and (b) whether the parties had orally varied the Options to do away with the requirement of delivering the Units with vacant possession.[63]

41 In my view, the above submissions are irrelevant as this issue arose from a misunderstanding of the law. This is for two reasons.

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59 DCS at paras 22 and 24.

60 DCS at paras 25 and 26.

61 DCS at paras 27 and 28.

62 DCS at paras 36 and 38.

63 Transcript dated 30 April 2021 at p 64, line 3 to p 67, line 14; PCS at paras 48 to 50; DCS at paras 30 to 32.

42 Firstly, it is trite law that contractual rights are rights *in personam*, *ie*, personal rights. The plaintiff is therefore free to contract to sell something that he does not already own, save that he should procure the delivery of that thing on the stipulated date in the contract. If he does not, he will be in breach of contract. However, the defendant here did not make any counterclaim for breach of contract against a failure (if any) on the plaintiff's part to deliver the Racking Systems to the defendant after the Options have been exercised. The submission regarding the passing of title in respect of the Racking System is thus irrelevant.

43 Secondly, the Alleged Agreement is a separate contract from the Options. This agreement is thus not by itself an oral variation of the Options, although I can consider the existence of this agreement as evidence indicating that the parties have varied the Options such that the defendant is not obligated to deliver the Units to the plaintiff without having first removed the Racking Systems. However, this consideration is only necessary if the plaintiff had pursued a claim for breach of contract premised on the defendant's breach of the obligation under the Options to deliver the Units with vacant possession. This is not the case here: the plaintiff's present claim in breach of contract is only for the defendant's failure to pay it S$300,000 as consideration for the Racking Systems, *ie*, on a separate contract from the Options. The issue of whether the defendant was in breach of the Options' obligations therefore does not arise and I need not consider counsel's submission on this point.

44 Hence, this issue is a red herring and has no bearing on whether the Alleged Agreement is a valid contract and whether the defendant was in breach of that contract.

The usual legal requirements of a contract are fulfilled

45 The plaintiff's case is that the Alleged Agreement was concluded orally sometime before 8 June 2019.[64]

46 The plaintiff adduces documentary evidence, including emails and WhatsApp correspondence between Ng and the defendant, in support of its case. Having examined them carefully, I find that they consistently support the finding that such an agreement exists.

47 I pause to note that the defendant submits that the plaintiff cannot refer to WhatsApp messages since they were not pleaded in its Statement of Claim.[65] This submission is incorrect as it is trite law that one pleads facts and not evidence.

(1) Events before 8 June 2019

48 The evidence prior to 8 June 2019 weighs in favour of finding that the Alleged Agreement had existed prior to that date. To recapitulate, during this time, the defendant was actively helping the plaintiff to secure a favourable bank loan, as the plaintiff was facing problems in raising sufficient funds for the purchase of the Units.[66] In my view, the evidence pertaining to this period shows two points in favour of the plaintiff.

49 Firstly, as the plaintiff contends, there were already discussions during this period between the parties regarding the Alleged Agreement. This explains why Ng asked the defendant to refund the *difference* between the option fees he

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64 BP at p 12.

65 DCS at para 81.

66 PAEIC at para 15.

paid for the original purchase and the option fees payable for the discounted price.[67] Indeed, I find that this is supported by the correspondence adduced. Such discussions were shown in the WhatsApp conversation between Ng and the defendant on the morning of 3 June 2019:[68]

[10:14:04 AM] [Ng]:	Morning.. you are not in office now… asking for the return of the difference amount for the sales price as deposited..
[10:14:27 AM] [Ivy]:	That one is after exercised la
[10:14:34 AM] [Ivy]:	This was what we agreed
…	
[11:00:51 AM] [Ng]:	you need return the different in deposit… step by step… don't want all in one…

50 Subsequently, on 8 June 2019 at 9.50am, Ng sent the defendant an email showing how he arrived at the amount of S$3,525, being the difference in option fees payable in respect of the original and discounted purchase price. That email states:[69]

> Ivy Ng.
>
> Before this coming Tuesday (11th June 2019) for the MB loan package for the purchase of the two units.
>
> We like to establish that initial proposal from you for offer transaction is depend on the follow for the refund of deposit.
>
> 1. The loan approval from the bank with the reasonable term/s [*sic*] and conditions.
>
> 2. The sale price for the properties total: S$1,350K
>
> 3. There is NO out lay of cash for the Sale.
>
> Note:

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67 Transcript dated 30 April 2021 at p 77, lines 19 to 24.

68 PB at pp 5 and 6.

69 PB at p 39.

> *1. Deposit currently paid for S$8,025 + S$9,000 = S$17,025*
>
> *There shall be excess of S$3,525 for return.*
>
> 2. We are looking for the 2nd extension to exercise the option for the above to settle if it is required.
>
> Remark:
>
> 1. Currently proposal from your friend of OCBC does not have the best offer so far.
>
> 2. We are looking for the two unit of the property in the proposal from you.
>
> Your reply for our correction and records, if the above are not true from you and looking forward for favorable reply from MB so far.
>
> NG Peng Kuan
>
> …
>
> [emphasis added]

51 Furthermore, at trial, the defendant accepted that the evidence above did support the plaintiff's contention after some questioning (the answers to which I have omitted as they were irrelevant):

> Q: PB5 at the bottom, it says there at 10:14:04, plaintiff says: [Reads] "Morning..you are not in"---the---"office now…asking for the return of the difference amount for the sales price as deposited.." I'm instructed, Ms Ng, that my client said that because as at 3rd of June, there were *already discussions about reducing the sale price by 300,000, and he wanted to see you with regards to the difference in deposit for the sales price*. According to my client, the difference in deposit is the difference between what was the original purchase price and what was the sum of 1% if reduced by 300,000. That means if you adjust the purchase price downwards by 300,000, what was the difference. He was asking for return of the deposit of that.
>
> …
>
> Q: Ms Ng, my question is simply this, whether you agree that from the sentence that I've read to you and based on what my client said, there was already discussions about reducing the sale price by 300,000, and which

> was why he was asking for repayment back of the difference of the 1%.
>
> …
>
> Q: We---yes, we---Ms Ng, we know all that already, and thank you for summing it up. I just want to confirm that based on what you have just said, and my point was right that *his emails on the 6th of---sorry, 8th of June at 9.50 was not the first time the subject of reduction in purchase funds was raised*, right?
>
> A: *Yes.*
>
> [emphasis added]

52 Hence, I find that the above evidence weighs in favour of finding that the Alleged Agreement was concluded sometime before 8 June 2019. I add that even if the plaintiff and the defendant subsequently agreed that the option fees were to repaid in full in the event the Options were not exercised (see [14] above), that is irrelevant to my finding here. The Options were ultimately exercised, and I am concerned here only with the parties' agreement in respect of the S$300,000 reduction in the purchase price of the Units. Secondly, the WhatsApp correspondence on 31 May 2019 also shows that by that date, the defendant had committed to buying a property herself:[70]

> [3:17:37 PM] [Ivy]: Now i also committed w another purchase
>
> [3:18:10 PM] [Ivy]: Exercise option is 15th june cos seller give me 3 weeks extension
>
> …
>
> [5:38:55 PM] [Ivy]: I also committed buying 1 house at 1.47m
>
> [5:39:27 PM] [Ivy]: Excersive also on 15th june
>
> [5:39:46 PM] [Ivy]: So i also give u 2 weeks which due 14th june

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[70] PB at p 3.

> [5:40:07 PM] [Ivy]: U exercise my unit then i go exercise that unit
>
> [5:40:10 PM] [Ivy]: Same same

The defendant confirmed this at trial but testified that she did not purchase that property ultimately, and her deposit was returned.[71] Nevertheless, what transpired with regard to her purchase of this property is irrelevant. Here, the crucial point is that, *at that point in time*, she was very eager to sell Units to the plaintiff as she feared losing her deposit for her own property purchase, should the plaintiff refuse to go ahead with purchasing the Units.[72] Indeed, she was so eager that she even offered for him to buy one unit first and to raise funds for the other later.[73] Hence, I find that she was inclined to give the plaintiff a substantial discount of S$300,000 on the purchase price of the Units, so that she could afford her own purchase of property. As a corollary, this finding weighs in favour of finding that the Alleged Agreement was concluded during the period before 8 June 2019.

(2) Events during 8 June 2019

53 The evidence on 8 June 2019 shows that the Alleged Agreement was concluded before this date and parties were simply attempting to reduce it to writing.

54 On that day, the defendant sent Ng the following WhatsApp text messages:[74]

> [10:05:21 AM] [Ng]: please reply on the email…

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71 Transcript dated 30 April 2021 at p 67, line 11 to p 68, line 6.

72 PB at p 5, timestamp 31/5/19 7:42:28 PM to 31/5/19 7:44:01 PM.

73 PB at p 3, timestamp 31/5/19 3:21:14 PM and p 4, timestamp 31/5/19 5:40:29 PM.

74 PB at p 9.

[10:06:12 AM] [Ivy]:	I can only give u *i owe u* upon you exercise if u wan a black and white
[10:06:19 AM] [Ivy]:	This is the best i can do for u
[10:06:48 AM] [Ivy]:	So i say we meet after maybank result
[10:07:31 AM] [Ivy]:	*I owe u* is the best
[10:07:44 AM] [Ivy]:	Black n white n legal
[10:33:40 AM] [Ng]:	Dear Ivy… please put your self in my shoes, until so far, what i do it over? Just to do it right now…
[10:43:33 AM] [Ivy]:	I prepare i owe u for u
[10:44:09 AM] [Ivy]:	Legal documents
[10:44:12 AM] [Ivy]:	I owe u
[10:45:24 AM] [Ivy]:	Monday give u
[10:48:04 AM] [Ivy]:	See u Monday 8pm
[5:26:49 PM] [Ivy]:	*I replied to you already*
[5:28:51 PM] [Ivy]:	What i can *put in writing* is that *i buy over the racking system*, fixture and fitting including stay up to 30th sept 19 for a sum of $300k in total and *this is only applicable if the property is being transferred to you successfully to yr name then u can sell me back those racking systems in the property*
[5:29:28 PM] [Ivy]:	This is the best i can do *if u wan me to put in writing that i can buy over and give u $300k cash.*

[emphasis added]

The messages state unequivocally that what was to be put in writing is that the defendant was to buy the Racking Systems from the plaintiff after the property is transferred to the plaintiff. Importantly, the wording of the messages suggest that the Alleged Agreement was concluded *previously*, and the plaintiff is now requesting for it to be reduced to writing.

55 The defendant sent Ng an email on the same day at 5.26pm (the "5.26pm email"), to which the above message by the defendant, "I replied to you already", refers (the email is reproduced at [14] above). The wording of the email indicates that it was an attempt at putting an *already concluded* oral agreement, *ie*, the Alleged Agreement, into writing.

56 The defendant submitted that: (a) the 5.26pm email constituted an offer to the plaintiff; (b) Ng's subsequent reply to this email constituted a counteroffer, which implies that he had rejected the defendant's offer in the 5.26pm; and (c) the defendant's subsequently reply to this counteroffer meant that no agreement was concluded ultimately. This submission is premised on the Alleged Agreement being concluded *on the 5.26pm email*. However, as I have stated above, the evidence consistently shows that the Alleged Agreement was concluded *prior to* 8 June 2019, so any offer and acceptance must have been done *prior to* the 5.26pm email. Accordingly, the 5.26pm email cannot itself be an offer by the defendant.[75] I therefore dismiss the defendant's submission on this point.

(3) Events after 8 June 2019

57 The evidence after 8 June 2019 shows three points that weigh in favour of the plaintiff's case. Firstly, on 10 June 2019, the defendant assured Ng that she would buy the Racking Systems from him. Secondly, the five post-dated cheques given by the defendant are in payment of the S$300,000 sum under the Alleged Agreement. Thirdly, the correspondence between the parties after Ng tried to unsuccessfully deposit the cheques show that the Alleged Agreement was still operative prior to the commencement of this action.

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[75] DCS at paras 63 to 69.

58 I begin with the parties' correspondence on 10 June 2019. The conversation shows that when Ng claimed that he was still short of S$70,000 on completion, and the defendant then suggested on 10 June 2019 that she could deduct S$70,000 from the S$300,000 sum that she would pay him after completion. I reproduce their conversation below:[76]

[3:13:40 PM] [Ivy]:	I buy the racking system from u ma
[3:14:07 PM] [Ivy]:	The 70k i will u to pay on completion
[3:14:29 PM] [Ivy]:	So after transfer i pay u 230k instead of 300k la
[3:14:48 PM] [Ivy]:	So u understand?
[3:15:01 PM] [Ivy]:	Cos my email say i buy from u 300k ma
[3:18:29 PM] [Ivy]:	Recap
[3:18:30 PM] [Ivy]:	1
[3:18:36 PM] [Ivy]:	I buy from u 300k
[3:19:38 PM] [Ivy]:	If u short of 70k to pay on completion i can lend u but u must pay me back n deduct from the 300k i suppose to buy from u

In my view, by suggesting the arrangement above, she maintained that she would uphold the arrangement to return S$300,000 to Ng after the exercise of the Options.

59 I turn to the issue regarding the five post-dated cheques. The plaintiff claims that, sometime after 8 June 2019 but before 6 September 2019, the defendant gave Ng five post-dated cheques in order to pay the S$300,000 sum in five payments after completion of the Units' sale and purchase (see above at

[76] PB at p 12.

[17]–[20]).[77] Lim's name was indicated on these cheques. I find that the evidence is in favour of the plaintiff, for two reasons.

60 Firstly, the plaintiff adduces images of the cheques and documents from DBS indicating his failed attempts at depositing them.[78] The documentary evidence therefore indicates, contrary to what the defendant claims, that the cheques were not "for show only" (see [18] above).

61 Secondly, the WhatsApp correspondence also corroborate the view that these post-dated cheques were intended to be deposited at a staggered timing in the future. On 6 September 2019, the defendant sent Ng the following messages:[79]

[7:04:00 PM] [Ivy]:	My money never come in yet… u also must delay bank in my check otherwise wait bounce
[7:04:42 PM] [Ivy]:	My money come in..
[7:04:50 PM] [Ivy]:	I bank in first
[7:05:05 PM] [Ivy]:	I clear already then i tell u bank in
[7:05:59 PM] [Ivy]:	So if monday complete, then u wednesday or thursday then u bank in ya

On 9 September 2019, the defendant sent Ng these messages as well:[80]

[5:41:04 PM] [Ivy]:	The last cheque i wan to change date to 29th nov
[5:41:39 PM] [Ivy]:	1st cheque u can bank in thursday

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77 PAEIC at para 16.

78 PB at pp 84 to 90.

79 PB at p 21.

80 PB at p 22.

The plaintiff and defendant disagree on what the "last cheque" and "1st cheque" refer to. The plaintiff claims that they refer to the first and last of the five post-dated cheques, while the defendant claims that they refer to the first and last of the cheques that she issued for the rental of unit #01-02 from September to December 2019 (see [23]–[25] above).[81] Having considered the correspondence and the defendant's testimony at trial, I find that the defendant was unable to explain how she could have referred to these two cheques as payments for rental where the parties have not even agreed on the rental period and amount for unit #01-02 on 9 September 2019.[82] Furthermore, her explanation for why she said that the first cheque could be deposited on Thursday was that it could be deposited on the *coming* Thursday, *ie*, 12 September 2019; yet, rental for that month would not be due till the end of that month.[83] Hence, I find that the WhatsApp correspondence between the parties refer to the five post-dated cheques.

62 Having considered the evidence and the defendant's testimony above, I see no reason to doubt that these cheques were issued for the payment of the S$300,000 in consideration for the purchase of the Racking Systems under the Alleged Agreement.

63 I do note, however, that the plaintiff pleaded in its Statement of Claim that the cheques were given sometime in May 2019,[84] which is a different date.[85] The defendant submitted that the plaintiff had failed to prove this element of its

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81 PCS at para 33.

82 PCS at paras 33 to 35; Transcript dated 30 April 2021 at p 103, lines 16 to 21.

83 PCS at para 39.

84 BP at p 3, para 5.

85 PB at p 3, para 5.

claim. I can dispose of this submission with the following points. Firstly, it is the defendant's case that the cheques were given sometime in August 2019, which is consistent with the plaintiff's position that they were given sometime after 8 June 2019 but before 6 September 2019 (see [59] above).[86] Had the plaintiff made an application to amend the pleading to reflect this, the defendant would not be able to object. Second and more importantly, the essential element of paragraph 5 of the Statement of Claim is the fact that the cheques were *given* by the defendant to the plaintiff. The assertion that this was done in May was not the important element of the pleading. Since these post-dated cheques were intended to be deposited at future dates for the defendants to make payment by instalments, what is important is that these cheques were *given* prior to the completion of the Units' sale and purchase.

64 I turn next to the events after Ng tried to deposit the five post-dated cheques.

65 After the first cheque bounced, Ng sent several WhatsApp messages to the defendant on 16 September 2019 to chase for payment.[87] The defendant did not reply until the next day, and even so, her replies were sporadic. In one of her replies, she said "[l]ast night my husband ask my husband ask me why am i so stupid to buy rack from u at 300 when u also won't buy at 30? We fight cos of this". This was clearly with reference to her previous offer to sell the Racking Systems to Ng at 30,000 (see [22] above). This message therefore shows that she was referring to her obligation under the Alleged Agreement to buy the Racking Systems at S$300,000. In the same exchange on 17 September 2019, the defendant further said:

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86 Transcript dated 28 April 2021 at p 62, lines 21 to 23.

87 PCS at paras 41 to 42.

[7:00:24 PM] [Ivy]:	Our term was cleared… i buy back my racl.
[7:00:28 PM] [Ivy]:	Rack.
[7:00:37 PM] [Ivy]:	So what if i don buy now?
[7:00:42 PM] [Ivy]:	U can go sue me

I find that the above message shows that the defendant was not only aware of the Alleged Agreement, but that she was in breach of it.

66 After carefully considering the evidence for entire period prior to the commencement of the present action, I find that the evidence consistently shows that Alleged Agreement was concluded prior to 8 June 2019 and was meant to be performed thereafter up to the commencement of this action.

67 I also find that the Alleged Agreement satisfies the usual legal requirements of a contract. Here, the requirements of offer and acceptance, certainty of terms, and consideration are clearly satisfied where the parties knew at all times that the Alleged Agreement was operative and that under the agreement, the defendant was to pay a sum of S$300,000 in consideration for the Racking Systems after the completion of the Units' sale and purchase. Given that this agreement as concluded in a commercial context and Ng even wanted to subsequently put the agreement in writing, it is clear that the parties had intended to create legal relations. I therefore find that the Alleged Agreement is a valid and enforceable contract.

The Alleged Agreement is not a sham agreement

68 The defendant submits that the Alleged Agreement is a sham agreement that is not meant to be performed.[88] In this regard, she submits that "the Alleged

[88] DCS at para 86.

Agreement – if it existed – was nothing more than façade to hide the [plaintiff's] true purpose of trying to extract a discount off the purchase price of the 2 Units from the [d]efendant".

69 The defendant submits in support that: (a) the parties did not act in accordance with the "apparent purpose and tenor" of the Alleged Agreement; and (b) the 5.26pm email sent by the defendant on 8 June 2019 (see [14] above) "did not intend to create a legal relationship between buyer ([d]efendant) and seller ([plaintiff]) but was created to give the impression to other parties and notably the mortgagor that the [plaintiff] had purchased the Units for the total price of $1.65 million on paper and obtained a mortgage of 80% of the purchase price of the Units ($1.32 million)".[89] In other words, "the Alleged Agreement was not for the purchase of the racking systems but merely a disguised way of getting a refund of $300,000".[90]

70 To begin with, the defendant did not plead in its defence that the Alleged Agreement is a sham agreement.[91] As the defendant herself argues, "the general rule is that parties are bound by their pleadings and the court is precluded from deciding on a matter that the parties themselves have decided not to put in issue": *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [38]. Hence, strictly speaking, it follows that I need not consider the defendant's submission on this point.

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89 DCS at para 86.

90 DCS at para 99.

91 BP at pp 16 to 20.

71 Even if I were to decide this issue, however, I would not be inclined to hold in favour of the defendant, for the following reasons.

72 Firstly, I disagree with the defendant's argument that the parties did not act in accordance with the "apparent purpose and tenor" of the Alleged Agreement.

73 As I have found above, the correspondence between the parties indicated that Alleged Agreement was operative throughout the period of time since it was concluded sometime before 8 June 2019 till the commencement of the present action. The defendant removed the Racking Systems on 9 September 2019 and on 8 December 2019 (see [26] above), which was on or after the completion of the Units' sale and purchase on 9 September 2019 (see [23] above). Hence, the defendants took delivery of the Racking Systems and were due to pay the plaintiff the sum of S$300,000, and the plaintiff's chased for the payment of this sum. The parties' conduct thus shows that Alleged Agreement was always meant to be performed and thus not a sham agreement.

74 I understand that the real complaint is that the defendant alleges that the Alleged Agreement was simply a transaction that provided the plaintiff with a S$300,000 discount on the Units' purchase price, and the parties therefore did not really intend for the plaintiff to sell the Racking Systems to the defendant. Even if this transaction effectively provided with plaintiff with a such a discount, the defendant has not shown how this would vitiate the contract. In any case, having considered the evidence before me, I find that the defendant was the one who suggested the Alleged Agreement.[92] Thus, even if I were

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92 PCS at paras 23 and 24.

inclined to find any impropriety in this agreement, such impropriety would be adverse to the defendant.

75 Secondly, as for whether the 5.26pm email sent by the defendant on 8 June 2019 showed that the parties lacked the intention to create legal relations, this issue is a non-starter. I have shown in my analysis above that: (a) the Alleged Agreement was concluded *before* 8 June 2019, so the reference to the 5.26pm email on 8 June 2019 is irrelevant (see [56] above); and (b) the parties did intend to create legal relations (see [66]–[67] above.

76 I therefore find that the Alleged Agreement was not a sham agreement.

Breach

77 The defendant removed the Racking Systems on 9 September 2019 and on 8 December 2019 (see [26] above), which was on or after the completion of the Units' sale and purchase on 9 September 2019 (see [23] above). Hence, the defendants took delivery of the Racking Systems and was due to pay the plaintiff the sum of S$300,000 as stipulated in the Alleged Agreement. Having failed to do so, the defendant was in breach of the Alleged Agreement.

Conclusion

78 For the above reasons, I allow the plaintiff's claim. However, I note that the plaintiff has sought specific performance of the Alleged Agreement and damages in the alternative. It is trite law that specific performance is an equitable remedy that will not be ordered where damages are adequate. Here, I do not see any reason why damages would be inadequate, and parties have not submitted otherwise. More importantly, it would be presently impossible for the defendant to buy the Racking Systems from the plaintiff since they have already

been removed. Hence, I order the defendant to pay the plaintiff the sum of S$300,000 in damages. I also order the defendant to pay interest on that sum at 5.33% per annum from 31 October 2019, the date on which the writ was filed.

79 I will hear parties on the issue of costs.

Lee Seiu Kin
Judge of the High Court

Goh Peck San (P S Goh & Co) for the plaintiff;
Vijai Dharamdas Parwani and Lim Shu Yi (Parwani Law LLC) for the defendant.