

Tan Kim Guan and another v Tan Tee Theng and another
[2012] SGHC 53

Case Number : Suit No 1070 of 2009
Decision Date : 14 March 2012
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Tan Bar Tien (B T Tan & Company) for the plaintiffs; Defendants in-person.
Parties : Tan Kim Guan and another — Tan Tee Theng and another

Land

14 March 2012

Judgment reserved.

Choo Han Teck J:

1 The plaintiffs contracted to purchase the defendants' flat at Block 108 Jurong East Street 13 for \$336,000. The option to purchase was exercised by the plaintiffs on 26 May 2009. By cl 11 of the option contract the defendants were obliged to apply to the Housing and Development Board ("HDB") jointly with the plaintiffs for the approval of the sale and purchase. When the defendants failed to comply with cl 11 and subsequently to complete the sale and purchase, the plaintiffs sued in this action for specific performance.

2 The defendants were initially represented by Mr Peter Ezekiel ("Mr Ezekiel") and the plaintiffs were represented by Mr Tan Bar Tien ("Mr Tan"). At trial the defendants alleged that the contract was subject to an oral term agreed between the plaintiffs and defendants, made in the presence of the mutual housing agent for both parties Mr Vincent Chua Yew Loon ("Mr Chua"), providing that the contract could be rescinded if "the defendants were unable to secure the requisite financing to purchase a replacement flat" within two weeks from 26 May 2009. The defence averred that "on or before 9 June 2009" the first defendant (who is the husband of the second defendant) orally informed the first plaintiff (who is the husband of the second plaintiff) that the defendants could not secure the requisite financing and wished to rescind the option. This was denied by the plaintiffs. I will revert to the defence as filed shortly.

3 The defendants subsequently discharged their solicitor Mr Ezekiel and the trial commenced on 11 April 2011. The defendants then informed the court that they will not be calling Mr Chua, and his affidavit of evidence-in-chief was accordingly struck out. The defendants then stated that they were at fault and no longer wished to defend the suit. They, however, asked that the court award damages instead of specific performance. Mr Tan submitted that an order for specific performance be made. However, I directed that proceedings be adjourned so that the parties could proceed with the terms under cl 11 and that pending approval or otherwise from the HDB, all other prayers be adjourned.

4 Thereafter, the defendants did not proceed expeditiously to submit the joint application for the HDB's approval. Consequently, the plaintiffs were compelled to apply to enforce the order above. Eventually, the application was lodged and on 16 January 2012 the HDB granted approval for the sale. The plaintiffs thus restored the current proceedings for the final orders. Before me, the defendants

again requested that they pay damages instead. The second defendant, who admitted being a property agent since 2005, stated that they entered into this contract on the misrepresentation of the agent Mr Chua that the sale could be rescinded if the defendants were unable to obtain financing to purchase their replacement flat. This position was different from that pleaded in the Defence. Furthermore, the defendants had declined to call Mr Chua as witness. Although the second defendant submitted that she was only familiar with the rental and not the sale of HDB properties, I do not think that either version of the defence was true. The plaintiffs were both technicians with the StarHub group of companies. They were entitled to the flat they purchased. Damages in this case may not be adequate because the defendants were financially unstable and the plaintiffs would end up bearing a much greater loss if they fail to pay. The first defendant is currently unemployed. He was formerly a cellphone salesman although the plaintiffs claim that he was also a property agent. The prices of HDB flats have increased substantially since 2009.

5 A contract for the sale of real property attracts the remedy of specific performance as real property has intrinsic value by reason of which damages may not be considered adequate. Both the vendor and the purchaser are generally entitled to specific performance. There is also clear authority this holds true even if the property is not a piece of land but an HDB flat (See *Govindaraju and another v Ganasen and another* [1994] SGCA 125 and *Wee Chee Siong and another v Tan Boon Hwa and another* [2010] SGHC 22) In this case, denying specific performance would leave the purchasers without any relief. Furthermore, the protracted proceedings were caused entirely by the defendants. There is no basis to grant their request to order damages rather than specific performance. I therefore grant –

- (a) an order that the defendant do complete the sale within four weeks or such other time as the court may allow;
- (b) the Registrar of the Supreme Court be empowered to execute all or any relevant documents as may be required to complete the sale in the event that the defendants fail or refuse to execute those documents;
- (c) costs to follow the event and to be taxed; and
- (d) that there be liberty to apply.

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