Soo Nam Thoong and another *v* Phang Song Hua
[2011] SGHC 159

Case Number : Originating Summons No. 359 of 2011/K

Decision Date : 01 July 2011

Tribunal/Court : High Court

Coram : Chan Seng Onn J

Counsel Name(s) : Tan Lam Siong (L S Tan & Co) for the plaintiffs; Aqbal Singh s/o Kuldip Singh (Pinnacle Law LLC) for the defendant.

Parties : Soo Nam Thoong and another — Phang Song Hua

Land – Conveyance – Legal requisitions

1 July 2011 Judgment reserved.

Chan Seng Onn J:

Introduction

1 Originating Summons No. 359 of 2011/K deals with an application under s 4 of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) ("CLPA") regarding the sale of a two-storey shophouse at 145 and 145A Sims Avenue, Singapore 387467 ("the Property"). The Plaintiffs are asking for:

(1) a declaration that the reply to the requisition of the Land Transport Authority ("LTA") contained in Road Line Plan dated 28 April 2011 (PO: E263232001004H) (" 28 April 2011 Road Line Plan") relating to the Property is unsatisfactory;

(2) a declaration that the Plaintiffs are entitled to rescind the Option to Purchase dated 1 April 2011 ("Option") granted by the Defendant in respect of the Property pursuant to clause 10 thereof;

(3) a declaration that the Plaintiffs' notice of rescission in their said solicitors' letter dated 28 April 2011 is valid;

(4) an order that the Defendant do pay to the Plaintiffs the sum of S$285,000.00 being all the monies paid by the Plaintiffs to the Defendant together with interest at such rate and from such period as the court should think fit and costs of this application.

Facts

Background to the Dispute

2 The Plaintiffs were granted the Option to purchase the Property, which was 217.5 sq m, for $2.85 million. In return for the Option, they paid an option fee of $28,500.00. On 15 April 2011, they exercised the Option and paid a further sum of $256,500 (10% of the purchase price minus the option fee). Following the exercise of the Option, the Plaintiffs' solicitors sent their legal requisitions to the various relevant authorities, including the LTA. The original completion date of the Option was 10 June 2011.

3 In LTA's reply contained in the 28 April 2011 Road Line Plan, the Plaintiffs' solicitors noted that a substantial portion of the Property was coloured in red and required as Road Reserve. According to paragraph 3.1 of the Explanatory Note accompanying the 28 April 2011 Road Line Plan, the portions of land required as Road Reserve are to be:

> set aside when development/redevelopment takes place on the subject lots **or** when road construction/ improvement is carried out by the Land Transport Authority, whichever is earlier.
>
> (emphasis added)

4 The LTA confirmed in a letter dated 5 May 2011 that the land is required to be set aside when development/redevelopment takes place *or* when road construction/improvement is carried out by LTA, whichever is earlier.

5 The Plaintiffs estimated that about 40% of the Property was required as Road Reserve and will have to be set aside when either development/redevelopment *or* road construction/improvement is carried out. The Plaintiffs therefore argued that LTA's reply was clearly unsatisfactory since the road reserve will require a substantial portion of the land to be surrendered to LTA and the existing building to be reconstructed when road construction or improvement is to be carried out by LTA. This will substantially diminish the Property's value. Their solicitors gave notice to the Defendant's solicitors on 28 April 2011 that the Plaintiffs were rescinding the agreement pursuant to clause 10 of the Option.

6 Clause 10 of the Option is set out as follows:

> The sale and purchase herein shall be *subject to the Purchaser's solicitors receiving satisfactory replies to their legal requisitions* and applications for Interpretation Plans to the various Government Departments and Land Transport Authority (LTA) insofar as such replies/Interpretation Plan relate to the Property and *if any of such replies and/or Interpretation Plan are found to be unsatisfactory then this Agreement may be rescinded at the Purchaser's Option* and in such event the Vendor shall forthwith refund to the Purchaser all monies paid by the Purchaser to the Vendor or the Vendor's solicitors but without any interest, compensation or deductions whatsoever and thereupon neither party shall have any claim or demand against the other for costs, damages, compensation or otherwise. **PROVIDED ALWAYS** that:
>
> (a) the answers from the Property Tax Department, Environmental Health, Public Works and Sewerage Departments and Building Control Division shall not be deemed unsatisfactory unless the same disclose that the property is affected by any notice or order which has not been complied with and which is incapable of being complied with by the Vendor before completion;
>
> (*b*) *any road or drainage line schemes or proposals (whether actual or proposed or to be implemented only if there is any redevelopment of the property) affecting any part of the property shall be construed as satisfactory;*
>
> (c) any reply to legal requisitions are not received by the date fixed for completion shall be

deemed satisfactory.

[emphasis added in italics, emphasis in bold in original]

7 The Defendant's solicitors replied on 29 April 2011 that the Plaintiffs had no right to rescind because of clause 10(*b*) of the Option.

8 The dispute thus centred on the legal interpretation of clause 10(*b*) of the Option.

The Legal Interpretation of Clause 10(*b*) of the Option

The Plaintiffs' Interpretation

9 The Plaintiffs' interpretation gave clause 10 (*b)* a narrow ambit. The Plaintiffs argued that proviso (*b*) specifically contains the words in parentheses "(whether actual or proposed or to be implemented *only* if there is any redevelopment of the property)" (emphasis added). Proviso (*b*) thus failed to deal with the situation, in the present case, where the road reserve will *also* be implemented when road construction/improvement is carried out.

10 The Plaintiffs have thus read the words in the parentheses "(whether actual or proposed or to be implemented *only* if there is any redevelopment of the property)" as ***limiting*** what will be *deemed* as a satisfactory reply by the LTA. The limiting phrase "only if there is any redevelopment of the property" will apply to "actual", "proposed" and "to be implemented". Under such a reading, clause 10 (*b*) will not deprive the Plaintiffs of their right to rescind under the general provision of clause 10 which makes the Option "subject to satisfactory replies".

The Defendant's Interpretation

11 The Defendant's interpretation gave clause 10(*b*) a very wide ambit. The Defendant argued that the key structure of clause 10(*b*) is: "*any* road or drainage line schemes or proposals… affecting any part of the property shall be construed as satisfactory" (emphasis added). The words in the parentheses thus do not limit what will be deemed as a satisfactory reply by the LTA, but they merely "amplified" the "plain meaning of the key structure of clause 10(b)" [note: 1]. Under such a reading, clause 10 (*b*) will deem satisfactory LTA's reply that the Road Reserve will set aside the land when development/redevelopment takes place *or* when road construction/improvement is carried out by LTA, whichever is earlier.

12 The Defendant further argued that the words in parentheses "merely set out 3 scenarios where the key structure of the clause will have an impact", as follows [note: 2]:

> (a) "Actual" road line schemes or proposals affecting any part of the property. In other words the authorities have implemented schemes and proposals which are taking place currently.
>
> (b) "Proposed" road line schemes or proposals affecting any part of the property. In other words the authorities contemplate the implementation of the schemes and proposals in the future. ...
>
> (c) Road line schemes or proposals affecting any part of the property which are "to be implemented only if there is any redevelopment of the property". In other words, these schemes or proposals will not be implemented by the authorities unless and until the redevelopment of the property is initiated and commenced. …

Under such an interpretation, the phrase "only if there is any redevelopment of the property" applies only to "to be implemented".

The Preferred Interpretation

13 The crux of the interpretation of clause 10(*b*) therefore lies in the effect given to the words in the parentheses. Are they to be interpreted as (i) ***limiting*** what will be deemed satisfactory or (ii) ***enumerating*** merely an example of one of the scenarios that will be deemed a satisfactory reply? In my view, the Plaintiff's interpretation is to be preferred and Clause 10 (*b*) has a narrow ambit.

(i) Clause 10 of the Option to be considered in its entirety

14 First, the nature of clause 10 of the Option should be considered in its entirety. Clause 10 of the Option consists of the general provision allowing the Purchaser to rescind the Option if the replies to the legal requisitions are found to be *unsatisfactory*, with the specific proviso of clause 10 (*b*) deeming certain *types* of replies as satisfactory. It is important to consider the commercial context of clauses such as Clause 10 of the Option, since the Court of Appeal case of *Sandar Aung v Parkway Hospitals Singapore Pte Ltd* [2007] 2 SLR(R) 891 ("*Sandar Aung*") on reviewing the principles governing the construction of documents has at [29] stated that:

> The key concept here is that of *context*. No contract exists in a vacuum and, consequently, its language must be construed in the context in which the contract concerned has been made. We would go so far as to state that even if the plain language of the contract appears otherwise clear, the construction consequently placed on such language should not be inconsistent with the context in which the contract was entered into if this context is clear or even obvious, since the context and circumstances in which the contract was made reflect the intention of the parties when they entered into the contract and utilised the language they did. It might well be the case that if a particular construction is placed on the language in a given contract is inconsistent with what is the obvious context in which the contract was made, then *that* construction might *not* be as clear as was initially thought and might, on the contract, be evidence of an ambiguity.
>
> [emphasis in original]

15 Quite pertinently for our case, the Court of Appeal in *Sandar Aung* at [30] also cited Lord Wilberforce's observation in the House of Lords decision of *Reardon Smith Line Ltd v Yngvar Hansen-Tangen* [1976] 1 WLR 989 at 996 as emphasising the "general task of the court in a practical and functional manner":

> It is often said that, in order to be admissible in aid of construction, these extrinsic facts must be within the knowledge of both parties to the contract, but this requirement should not be stated in too narrow a sense. *When one speaks of the intention of the parties to the contract, one is speaking objectively – the parties cannot themselves give direct evidence of what their intention was – and what must be ascertained is what is to be taken as the intention which reasonable people would have had if placed in the situation of the parties*. Similarly when one is speaking of aim, or object, or commercial purpose one is speaking objectively of what reasonable persons would have in mind in the situation of the parties.
>
> [emphasis added]

16 In *Teo Hong Choo v Chin Kiang Industries Pte Ltd* [1983] 2 MLJ 309, the court considered a

clause regarding replies to legal requisitions that did not include a specific proviso deeming certain types of replies as satisfactory. The court, at 313, commented that the clause regarding replies to legal requisitions was:

> in effect a procedural device, to enable intending purchasers to sign these 'instant contracts' and yet *retain in their hands the right to opt out of the contract should the answers to the legal requisition* to city authorities prove to be unsatisfactory in that the property was affected by any government road, backlane or other improvement scheme.
>
> [emphasis added]

17 Chan Sek Keong JC, as he then was, also commented on the purpose of the clause regarding replies to legal requisitions in *Chu Yik Man v S Rajagopal & Co & Anor* [1987] 2 MLJ 557 at 559:

> In my view, the common thread that runs through these three decisions [he was referring to **Tatlien**`s case, **Teo Hong Choo**`s case and **Peh Kwee Yong**`s case (at first instance)] was the intention of the parties as expressed in the formula `satisfactory reply to requisitions`. In my view, that formula is intended to give the purchaser substantially what he has bargained for, taking into account his purpose in purchasing the property and such other circumstances which have a direct or indirect effect on the fulfilment of that purpose. *What seems clear is that the general provision allowing the Purchaser to rescind if the replies to the legal requisitions are unsatisfactory is to give the Purchaser what he substantially bargained for*. The clause regarding legal requisitions allows parties to sign "instant contracts", ie the Option, before checking if there are road plans, etc, affecting the property.
>
> [emphasis added in italics, emphasis in bold in original]

The commercial context and understanding of clause 10 regarding the replies to the legal requisitions is thus clear – the general provision allowing the Purchaser to rescind if the replies to the legal requisitions are unsatisfactory is to give the Purchaser what he substantially bargained for because parties recognise that the Purchaser had not been given a chance to check if there are road proposals affecting the Property.

18 In this context, the specific proviso in clause 10(*b*) is thus an *exception* to the general right of the Purchaser to rescind the agreement if the replies to the legal requisitions are unsatisfactory. It may also be understood as providing certainty between parties of what replies are clearly deemed satisfactory in order to prevent dispute between parties in the future. Therefore, if the Defendant's interpretation is to be adopted; that "*any* road or drainage line schemes or proposals… affecting any part of the property shall be construed as satisfactory" – the necessary implication is that **no** reply from the LTA concerning any road or drainage line scheme or proposal no matter how drastically it may affect the property could ever be unsatisfactory. Such a reading actually renders hollow the general right of the Purchaser to rescind the agreement in regard of replies from the LTA.

19 Under the Defendant's reading, even if the road proposal affects 90% of the land area of the Property, the Purchaser cannot rescind the agreement by stating that the reply from LTA was unsatisfactory. If *indeed* that was what the Purchaser bargained for, there is no reason for the court not to uphold such a bargain, however unfair it must seem to the Purchaser. However, when the phrasing of the specific proviso of clause 10(*b*) is ambiguous enough to support two completely different interpretations (to be developed further at [21] below), there is much merit in letting the general provision in clause 10 prevail over the exception in the specific proviso of clause 10(*b*) or even applying the rule of *contra proferentum*.

20 In fact, in *Wong Meng Yuen Eddie & Anor v Soh Chee Kong & Ors* [1990] 3 MLJ 352 ("*Wong Meng Yuen Eddie*"), the court held that if the vendor wanted to rely on the specific proviso deeming certain types of replies to the requisition as satisfactory, the vendor bore the burden of proving that the specific proviso was fulfilled. Therefore, the burden of proof is on the Defendant to show that clause 10(*b*) is satisfied to render LTA's reply as satisfactory.

(ii) Ambiguity in the Drafting of Clause 10(b)

21 The usual grammatical use of the parentheses is that the material within could be omitted without affecting the meaning of the sentence. The usual grammatical use of the parentheses would thus support the Defendant's interpretation of clause 10(*b*) since the Defendant argued that the words in the parentheses only *amplifies* and is explanatory of the main sentence. However, such a reading does not rest naturally with the *actual* words that are contained within the parentheses - "(whether actual or proposed or to be implemented *only* if there is any redevelopment of the property)" (emphasis added). The use of the word "*only*" in the parentheses goes against the Defendant's argument that the words in the parentheses *amplifies* the main sentence – a more natural reading would be that it *limits* the substance of the main sentence. In my view, the words in the parentheses is explanatory of what *type* of replies clause 10(*b*) deems satisfactory – however the word "only" in the words in the parentheses suggests that the sphere of application of clause 10(*b*) is *restricted* by what is set out within the parentheses. Therefore, the words in the parentheses will *exhaustively define* the type of replies clause 10(*b*) will deem satisfactory.

22 The critical question would be how to interpret the words in the parentheses. The Defendant's interpretation of the words in the parentheses broke the words up into unnatural divisions – "(actual *or* proposed *or* to be implemented only if there is any redevelopment of the property)" (emphasis added). As stated in [12] above, under such an interpretation, the phrase "only if there is any redevelopment of the property" applies only to "to be implemented". As the Defendant argued that the words in the parentheses are explanatory of the main sentence of clause 10(*b*), such an interpretation would mean that **all** the possible scenarios under "any road or drainage line schemes or proposals… affecting any part of the property" shall be construed as satisfactory. However, such an interpretation would make the words in the parentheses completely unnecessary. If parties had indeed intended for clause 10(*b*) to have such a wide sphere of application – for any road or drainage line schemes or proposals whether *actual* or *proposed* or *implemented only if there is any redevelopment of the property* to be deemed a satisfactory reply, the simplest and clearest way would be to *delete the words in the parentheses altogether*, *ie*,:

> any road or drainage line schemes or proposals ~~(whether actual or proposed or to be implemented only if there is any redevelopment of the property)~~ affecting any part of the property shall be construed as satisfactory.

23 In my opinion, the commercial context of the Option supports the view that the words in the parentheses were carefully and specifically chosen. The significance of the words in the parentheses becomes even more apparent when we interpret it within the commercial context of replies to legal requisitions regarding road or drainage proposals that are *typically* deemed satisfactory in Option to Purchases. In *Wong Meng Yuen Eddie* and *Kua Beng Koon v Kwok Wai Tien & Anor* [1993] 3 SLR 101, the specific deeming proviso was as follows:

> any replies to legal requisitions or plan indicating that the said property will be affected by road or drainage proposal or government acquisition or scheme *arising from a redevelopment of the said property* shall not be deemed to be unsatisfactory;

In *Choo Boo Ching & Anor v Heng Guan Hong Geoffrey* [1997] SGHC 99, the specific deeming provision similarly emphasized that:

> [f]or the avoidance of doubt any road or drainage line or proposal which is to be *implemented only if there is any redevelopment of the property* shall be deemed to be satisfactory.

Although these specific deeming provisos are not strictly standard clauses, they reflect a common commercial understanding that it is a *narrow group* of road or drainage proposals that are generally found to be consistent with what the Purchaser has substantially bargained for and will typically be deemed satisfactory, *ie*, road or drainage proposals that affect the property only if there is any redevelopment of the property. In my view, the particular phrase "*only if there is any redevelopment of the property"* in the parentheses was intended by parties to apply to road or drainage line schemes or proposals whether "actual *or* proposed *or* to be implemented" and not only to "implemented". Any other reading would not give the phrase "only if there is any redevelopment of the property" the operative effect the parties intended for the specifically chosen phrase.

24 It is trite law that the court's main objective in interpreting a contract is to ascertain the objective intention of parties (see *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029). If the parties had intended to deviate from the commercial norm of restricting the deeming of satisfactory replies to road or drainage proposals that affect the property "*only if there is any redevelopment of the property*", such an intention would be best exemplified, as suggested in [22] above, by deleting any reference to the phrase in clause 10(*b*) altogether. The fact that the particular phrase was placed within the parentheses supports the proposition that the parties did not objectively intend to *deviate* from such a commercial norm. This was a case where the substance of the clause should take precedence over the "form" of the clause in the use of parentheses. The court should not read clause 10(*b*) such as to render otiose the Purchaser's general right to rescind the agreement if LTA's reply to the legal requisitions is unsatisfactory based solely on the use of parentheses. Furthermore, the Defendant's reading of clause 10 (*b*) renders the words within the parentheses unnecessary when the specific examples embodied in the parentheses lead to the more natural inference that it was parties' intention to limit only these *specific types* of replies as satisfactory. It is clear within the commercial context of the case that the words in the parentheses were carefully chosen to give the Purchaser what they substantially bargained for in the Option.

25 Therefore, it is my opinion that reading the sphere of application of clause 10(*b*) as being *limited* by the words in the parentheses to give operative effect to the phrase "only if there is any redevelopment of the property" will be the reading most faithful to the commercial understanding and objective intention of parties. If clause 10(*b*) was really meant to have the draconian effect as argued by the Defendant, *eg*, any road or drainage line scheme or proposal would be deemed as satisfactory regardless if it affected 99% of the land area of the Property, such a clause could have and should have been drafted clearly. Under clause 10(*b*)'s particular phrasing with the specific choice of words in the parentheses, clause 10(*b*) is restricted to deeming satisfactory any road or drainage line schemes or proposals (whether actual or proposed or to be implemented *only if there is any redevelopment of the property*).

The Singapore Law Society Conditions of Sale 1999

26 Under clause 1 of the Option, the Option is also subject to the Singapore Law Society Conditions of Sale 1999 ("LSCOS 1999"). However the conditions regarding legal requisitions in the LSCOS 1999 did not affect the interpretation of clause 10(*b*) in any way. For comprehensiveness, the relevant conditions will be set out as follows:

4 Requisitions

4.1 Any objection or requisition in respect of the title, contract, sale plan and these Conditions, which the Purchaser wishes to raise must be made by way of a written statement served on the Vendor within the following time limits:

(a) 14 days after the Vendor has notified the Purchaser that the documents of title may be inspected; or

(b) 14 days after the Vendor has delivered the documents of title (or certified copies) to the Purchaser; or

(c) within such extended time as the Vendor may allow in writing.

4.2 Every objection or requisition not so raised is considered as waived.

4.3 Time is of the essence of the contract for the purpose of this Condition.

5 Vendor's Power of Recission

5.1 Where the Vendor is:

(a) unable, or

(b) unwilling, because of difficulty, delay or expense or for other reasonable cause, to remove or to comply with any objection or requisition of the Purchaser as to title, contract, sale plan and these Conditions, the Vendor has the right to annul the sale, notwithstanding any previous negotiation or litigation.

5.2 The Vendor must give the Purchaser not less than 10 days' written notice to annul the sale.

5.3 The sale is to be treated as annulled after the Vendor's notice has expired, unless the objection or requisition is withdrawn before the expiry of that notice.

5.4 When the sale is annulled, the Purchaser is entitled to the return of the deposit but without interest, costs or compensation.

Application to the Facts

27 Therefore, as the specific proviso in clause 10(*b*) only deems any road proposal satisfactory whether actual or proposed or implemented *only if there is any redevelopment of property*, it cannot deem LTA's reply in this case satisfactory as the road proposal includes the possibility of setting aside the land *also* when road construction/improvement is carried out. Therefore, the Purchaser has the right to rescind the agreement based on an unsatisfactory reply from the LTA and the Defendant could not argue that a road proposal that affected 40% of the Property's land area would be satisfactory on any reasonable basis.

Conclusion

28 The Plaintiffs are entitled to receive the declarations (as stated in [1] above) that they asked

for. I order the Defendant to pay the Plaintiffs a sum of $285,000 without any "interest, compensation or deductions" based on the general provision in Clause 10 of the Option. Clause 10 also states that "neither party shall have any claim or demand against the other for *costs*, damages, compensation or otherwise" (emphasis added). I am of the provisional view that the parties in reference to "costs" in Clause 10 did not intend for it to cover litigation costs of a *contested* application regarding the satisfactoriness of the reply to the legal requisitions. Furthermore, s 4(2) of the CLPA enables the court to order how and by whom the cost of the application under s 4 of the CLPA should be paid. Unless the parties wish to be heard on costs or to have them fixed, I order the Defendant to pay the Plaintiffs' costs for this application to be taxed if not agreed.

[note: 1] Defendant's skeletal submissions, [5].

[note: 2] Defendant's skeletal submissions, [7].