Teo Teo Lee and Another v Top Chance Properties Pte Ltd
[2004] SGHC 272

Case Number : OS 1349/2004

Decision Date : 22 December 2004

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Joan Lim Pheck Hoon (Chan Kam Foo and Associates) for plaintiffs; Sham Sabnani and Chan Wei Meng (Drew and Napier LLC) for defendant

Parties : Teo Teo Lee; Ang Siew Joo — Top Chance Properties Pte Ltd

Land – Sale of land – Completion – Purchaser refused to complete – Vendor's summons filed by vendors – Statutory notice to complete subsequently served on purchaser – Whether leave should be granted to vendors to withdraw summons – Section 4 Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed)

Land – Sale of land – Contract – Property sold subject to tenancy – Tenant evinced intention to terminate tenancy prematurely – Whether vendors in breach of warranties in option to purchase property

22 December 2004

Choo Han Teck J:

1 The plaintiffs are the joint owners of a Housing and Development Board ("HDB") shophouse known as Block 449 Ang Mo Kio Avenue 10 #01-1733. They granted an option to purchase dated 5 July 2004 to one Chua Hian Hee and/or his nominee. Unknown to the plaintiffs at that time, Chua was, in fact, the agent of the defendant. Nothing turned on this fact. The purchase price was agreed at $1,680,000. The option fee of $16,800 was paid directly to the plaintiffs. A further sum of $151,200 was being held by the plaintiffs' solicitors as stakeholders.

2 The property was sold subject to tenancy. At the material time (5 July 2004), the property was tenanted to GK Departmental Store. A copy of the tenancy agreement between the plaintiffs and the tenant was annexed to the option to purchase. The relevant term of the option was cl 5, which reads as follows:

> The Property is sold subject to tenancy and a copy of the Tenancy Agreement between the Vendor and GK Departmental Store ("Tenant") dated 16 April 2004, ("Tenancy Agreement") is attached hereto. The Vendor warrants that the Vendor and the Tenant are not in breach of any of the terms and conditions of the Tenancy Agreement, that no variation of the Tenancy Agreement has been entered into and that no rental rebate has been granted to the Tenant. On completion, the Vendor shall, at its own cost, assign in favour of the Purchaser, all the Vendor's rights, title, benefits and interests under and in respect of the Tenancy Agreement and any renewal thereof, including all security deposits paid thereunder and shall furnish and deliver to the Purchaser the original duplicate stamped copies of the Tenancy Agreement and any renewal thereof duly executed by the Vendor and the Tenant.

3 The defendant exercised the option on 16 July 2004. The tenant defaulted in payment of rent for the month of September. The plaintiffs' solicitors served a letter of demand dated 15 September 2004 on the tenant, who replied that it was unable to pay and asked if it could

terminate the tenancy agreement. The plaintiffs notified the tenant of the sale to the defendant and suggested that it should seek the defendant's consent for the intended premature termination. In my view, however, since the tenancy agreement expressly provided for the event of a premature termination, neither the consent of the plaintiff-vendor nor the defendant-purchaser was, in fact, required, but in the light of *Chen Con-Ling Tony v Quay Properties Pte Ltd* [2004] 2 SLR 181, it was probably a prudent thing to do although the facts here are different. In Chen's case, there were conditions attached to the right to terminate. Hence, the landlord there was in a position to dispute the termination and on that basis, his views might differ from the views of the purchaser. Returning to the present case, the tenant contacted the defendant. The plaintiffs' solicitors also notified the defendant's solicitors by way of a letter dated 27 September 2004 informing them of the tenant's intention to terminate the tenancy.

4 The defendant replied by a letter of 28 September 2004, alleging that the plaintiffs had breached cl 5 of the option to purchase and asked for a refund of the $168,000 deposit consisting of the option fee and stakeholding sum. The plaintiffs denied that they were in breach, and on 15 October 2004, their solicitors rendered the completion accounts to the defendant's solicitors. Not having received any response in spite of a reminder dated 22 October 2004, the plaintiffs gave notice to complete to the defendant on 26 October 2004. In the meantime, the plaintiffs took out this vendor's summons under s 4 of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) for the following orders:

(a) that the defendant be required to specifically perform the option to purchase granted on 5 July 2004 and accepted by the defendant on 16 July 2004;

(b) that the defendant accept the termination of the tenancy by the tenant;

(c) that completion of the sale and purchase be rescheduled to 22 October 2004;

(d) that in the alternative, the plaintiffs be at liberty to treat the contract of sale in respect of the property as repudiated by the defendant with loss and damages due to the plaintiffs to be assessed by the Registrar;

(e) that the sum of $151,200.00 held by M/s Jing Quee & Chin Joo as stakeholders be forfeited to the plaintiffs;

(f) such other orders as the court should think fit; and

(g) costs.

5 The summons came up for hearing before me on 1 December 2004. Miss Joan Lim, counsel for the plaintiffs, applied to withdraw the summons on the ground that events had overtaken prayers (a) to (d). She submitted that the plaintiffs had served a statutory notice to complete and the defendant, having failed to comply, had its deposit forfeited.

6 Mr Sabnani, counsel for the defendant, opposed the application to withdraw the summons on the ground that the defendant was entitled to rescind the sale and purchase agreement by virtue of the plaintiffs' breach of cl 5.

7 The substantive issue before me on the merits, therefore, was whether the plaintiffs were entitled to rescind the agreement on the basis that the defendant was in breach of cl 5. It was not disputed that the defendant entered into the agreement with full knowledge, not only of the tenancy,

but also of its terms. It may be true that the defendant was swayed by the fact that the valuation of the property on a tenanted basis was $1,700,000 whereas it was valued at $1,600,000 if untenanted. Under the tenancy agreement, the tenant was entitled to terminate the three-year tenancy prematurely, although if it did so the deposit paid to the landlord would be forfeited. The defendant would thus have to take the tenancy agreement as it was. If the tenant had chosen to terminate the tenancy prematurely, but after completion of the sale, the defendant would have no recourse against the plaintiffs in that event. There should be no difference, therefore, if the tenant terminated before completion but after the option was signed. Although the plaintiffs had made certain warranties in the option in respect of the tenancy, those warranties were not breached. The first warranty was that the tenancy agreement was not varied. It was not varied when the option was signed and accepted. The second warranty was that there was no rebate on the rental. There were no rebates.

8 In any event, given the stand the defendant took (that the plaintiffs were in breach of cl 5), the alternatives opened to it were as follows. First, it could refuse to complete and sue for the refund of the deposit. Alternatively, it could complete under protest and sue for whatever damages as it thought it was entitled. In either case, the plaintiffs ought not to be hamstrung and held in the impossible position of not being able to either find a new buyer or complete the sale to the defendant. In the circumstances of this case, having elected to rescind, the defendant cannot thereafter be permitted to insist on completion in the event that the court takes the view that there was no ground for rescission. On reflection, the plaintiffs' application to withdraw the summons ought to be granted. I am of the view that cl 5 of the option was not breached and the defendant had no basis not to complete. It was, therefore, itself in breach and the plaintiffs are entitled to forfeit the deposit. This application by way of a vendor's summons was a strange one to make since the plaintiffs could have, and should have, waited till the time for completion had passed and then serve the statutory notice to complete, which they did in the event. This application, being redundant, had to be withdrawn. In view of the fact that the substantive prayers had been rendered unnecessary, the proper formal order to make here would be to grant leave to the plaintiffs to withdraw the summons.

9 After hearing parties on costs I awarded costs to the defendant fixed at $2,500.