

Ong Beng Chong v Jayaram Victoria and Another Matter  
[2009] SGHC 66

**Case Number** : OS 831/2008, 832/2008  
**Decision Date** : 24 March 2009  
**Tribunal/Court** : High Court  
**Coram** : Lai Siu Chiu J  
**Counsel Name(s)** : Tan Bar Tien and Winston Quek (BT Tan & Company) for the plaintiff; Ian Lim Wei Loong and Tan Sin Cheng (TSMP Law Corporation) for the defendants  
**Parties** : Ong Beng Chong — Jayaram Victoria

*Land*

*Equity*

24 March 2009

**Lai Siu Chiu J:**

1 In these consolidated proceedings, Ong Beng Chong (“the plaintiff”) attempted to evict Yeo Ang Moo (“the first defendant”) and Victoria Jayaram (“the second defendant”) respectively from properties known as Nos. 21 and 23 Meng Suan Road, Singapore (“the first house” and “the second house” respectively and collectively “the two houses”). The plaintiff sued for vacant possession of the first house from the first defendant in Originating Summons No. 832 of 2008 and for vacant possession of the second house from the second defendant in Originating Summons No. 831 of 2008 (collectively “the two OS”).

2 At the conclusion of the hearing, I dismissed the two OS with costs to the defendants. The plaintiff has now appealed against my decision in Civil Appeal No. 165 of 2008.

**The facts**

3 The undisputed facts are fairly straightforward. They are extracted from the two affidavits filed by each of the defendants. The two houses were two of nine terrace houses situated on a plot of land known as Lot 550P of Mukim 13 and are numbered from 20 to 28.

4 According to the first defendant’s first affidavit, he had purchased the first house from Lian Yi Construction Company (“Lian Yi”) for a consideration of \$5,200 under a contract dated 29 September 1959 (“the contract”). The contract, in Chinese, translated into English, reads:

Lian Yi Construction Company, having been appointed by Mr Yeo Ang [Moo] to construct one unit of residential house at House No. 21, Row 1, Lot No. 21-4, Wan Lee Road, hereby explicitly states that the price for each unit is five thousand two hundred dollars only. One unit in the sum of five thousand two hundred dollars only is booked in advance. A deposit of \$0 is paid in advance and the balance of five thousand two hundred dollars only shall be paid on 29 September 1959. All deposit shall be forfeited if payment is not settled in full as scheduled. [It is] also hereby stated that the ground rent of seven dollars per month per unit shall be collected directly by the landowner from the house owner. The parties have no objections of the terms and this agreement is hereby made in two copies with each party holding a copy as proof.

5 At the material time, the plaintiff’s father (who has since passed away) Ong Tiau Seng (“Ong”)

and his partners owned Lian Yi. The first defendant claimed he was told by Ong that the consideration of \$5,200 he paid for the first house was a special price to the first defendant as the latter was buying the house with two friends who each bought one unit. The first defendant was unable to buy the land on which the first house stood for the reason that the same was not and is not to-date, subdivided. According to one of the plaintiff's affidavits, Lian Yi purchased building materials from Ong's company called Chip Hup Hin Timber Merchant to construct the terrace houses.

6 The first defendant claimed that he bought the first house on the understanding and expectation that he and his successors would be able to stay at the first house for the remaining duration of the lease (924 years as at 1959) that Ong and his successors held over the land on which all the nine houses stood.

7 In the case of the second defendant, it was her father Sundaram Jayaram ("Sundaram") who purchased the second house for \$5,900 on 3 October 1959 not from Lian Yi but from one Oh Guan Seng or one Oh Kim Seng (according to the plaintiff). Sundaram passed away on 4 August 1981 and he bequeathed the second house to the second defendant.

8 The second defendant deposed that in regard to house No. 22 Meng Suan Road ("the third house") one V G Menon ("Menon") bought it from Ong by a contract in the English language dated 1 January 1961 which reads as follows:

I, the undersigned ONG TIAU SENG (i/c SBBB No. 04929) the owner of the premises situated at No. 22 Meng Suan Road, Singapore, 26 hereby acknowledge that I have on this day, the 1<sup>st</sup> January, 1961 sold the aforesaid premises (excluding the ground where the said premises stand) to Mr. V. G. Menon (i/c Z000 no. 06273) for the total sum of \$6,300.00 (Six thousand and three hundred dollars only), the receipt of which has been duly acknowledged.

I further admit that neither I nor my beneficiaries shall have the right whatsoever to claim the said premises after the date of sale of the said premises.

9 The second defendant also deposed that the owner of No. 24 Meng Suan Road viz Huang Shui Jin, had purchased it for \$6,500 from Ong.

10 It was the defendants' contention that a sum of \$6,000 would have bought an equivalent terrace house in other parts of Singapore in 1959, and must have been at or very close to the price that would have bought the first and second houses outright. The second defendant explained that her father did not buy the second house outright probably because the land was not at the time (and even now) subdivided.

11 The purchasers (including the defendants) of all the houses paid a ground rent of \$7 per month or \$84 per year, first to Ong and later (after his demise) to the plaintiff. Over the years, the plaintiff's family increased the ground rent, initially to \$15 in 1976 and later to \$20 in 1981. Although the house owners did not agree to the increase, they paid up so as not to be difficult. However, the plaintiff's family refused to accept payment of ground rent from the defendants after the plaintiff's solicitors served notices to quit (see [\[20\]](#)) on the defendants. In the case of the first defendant, he paid ground rent for the period 2006 to 2008 by a cheque dated 18 July 2008 for \$720 posted to the plaintiff's solicitors. By a letter dated 16 July 2008, the second defendant also tendered to the plaintiff's solicitors ground rent from 2003 to 2008 in the sum of \$1,440. Both defendants' cheques were returned to their solicitors by the plaintiff's solicitors on 25 September 2008.

12 The first defendant deposed he had renovated the first house over the years. In the 1970s, it

was twice renovated at around \$7,200 (tiling of the floor, plastering of the walls and replacement of bucket sewage system by flush system), then in the 1980s for \$4,000 (roofing of the courtyard, roof gutters and rain covers), in the 1990s for around \$2,000 (replacement of electric wiring, switches and power meters) and \$3,000 (replacement of roof structures and installation of iron gates).

13 In the case of the second defendant, the second house was first renovated between 1976 and 1978 for about \$7,790, then again in 2001 (\$12,250), in 2002 (\$1,650) and finally in 2007 (\$6,100). She produced repair bills and a letter to the income tax authorities to support her statements.

14 Both houses have been rented out over the years. In the case of the first defendant (save for the period 1994 to 1995 when his son lived there), he rented out the first house previously at \$1,200 and currently, he obtains rent of \$800 per month on a month-to-month tenancy.

15 Similarly, the second defendant has been renting out the second house and currently, she receives rental of \$1,600 per month on a two year tenancy that will expire on 31 May 2009.

16 Both defendants revealed that the plaintiff had attempted to recover vacant possession of both houses in 2007. They received letters dated 19 September 2007 from the plaintiff's (previous) solicitors K & Co indicating the plaintiff was prepared to pay reasonable compensation for the two houses. The first defendant was not interested and did not bother to contact K & Co as the latter had requested. The second defendant met the plaintiff at K & Co's office but there was no concrete outcome from the meeting.

17 On 8 January 2008, there was an article in the Straits Times ("the newspaper") titled "Two landed sites to go on sale with tenancies" (exhibited as VJ-6 in the second defendant's first affidavit). The newspaper reported that the land with existing houses would be auctioned on 30 January 2008 by Colliers International Singapore ("Colliers") with an indicative price of \$5.3m together with another piece of land along Meng Suan Road for \$7.8m.

18 The first defendant's son informed Colliers that his father was the rightful owner of the first house and the auction was called off.

19 K & Co wrote to all the house owners (including the defendants) on 25 March 2008 offering compensation of \$30,000 for each house. All nine house owners jointly replied to K & Co on 19 April 2008 rejecting the offer. Separately, the first defendant's son wrote to K & Co on 31 March 2008 explaining in detail how the first house came to be acquired from Ong and he counter-proposed paying the plaintiff \$84,000 for all future ground rent payable to the latter. Subsequently, K & Co discharged themselves from acting for the plaintiff.

20 On 30 April 2008, the plaintiff's current solicitors served the defendants and the other seven house owners with Notices to Quit expiring on 31 May 2008, stating their ground tenancies had been terminated and offering to pay them reasonable compensation for recovery of vacant possession. Although the first defendant's son proposed on the house owners' behalf, a meeting with the plaintiff's solicitors to try to resolve the matter in the spirit of good faith, his attempt was rebuffed. Both OS were then issued on 20 June 2008.

21 After the issuance of the two OS, the defendants commissioned Knight Frank Pte Ltd ("Knight Frank") to do a valuation on 8 September 2008 of the second house (see exhibit VJ-8 of the second defendant's first affidavit). Knight Frank was tasked to advise on the following points:

- (a) The worth today, in real money terms (assuming investing in Singapore property) of the

purchase price of the terrace house of \$5,900 in 1959; and

(b) the current undepreciated and depreciated building values.

22 Knight Frank advised as follows:

(a) it would have been difficult for a purchaser to find an equivalent terrace house in the vicinity of Meng Suan Road for \$5,900 in 1959 (on the basis that the property market was unchanged from 1959 to 1961). Other terrace properties in the immediate location would have been priced in the region of \$7,000 to \$8,000 (\$3.45 to \$3.94 psf);

(b) No. 92 Sophia Road (a 2-storey terrace house) with a land area of 788 square feet was purchased in June 1959 for \$6,000. In March 2008, the property was sold for \$1,230,000. No 67, Haji Lane (a 2-storey shophouse) with a land area of 638 square feet was purchased for \$6,000 in December 1959 and would be easily worth more than \$1m today;

(c) based on an estimated replacement cost of \$215 psf and allowing for 8% professional fees, its undepreciated value was approximately \$363,000 (1,564 sq. ft [area of second house] x \$215 psf x 1.08); and

(d) the second house was 49 years old. Adopting a building life span of 65 years and with repair works having been carried out, its depreciated value was estimated at approximately \$91,000 (\$363,000 x [100% - 75%]).

23 Knight Frank then valued the second house at current market value as \$625,000 with vacant possession, assuming it was a subdivided lot and both the land and the second house were owned by the same party that was interested to sell.

24 The plaintiff on the other hand had commissioned CB Richard Ellis ("CBRE") to conduct a valuation of No 25 Meng Suan Road as of 5 May 2008 and it was said to be worth \$40,000 as estimated depreciated building value. Based on CBRE's valuation, the plaintiff offered \$40,000 compensation to each of the defendants in exchange for vacant possession of the two houses. The first defendant in his affidavit filed on 16 September 2008 pointed out that No 25 Meng Suan Road had been unoccupied for many years and was the single most dilapidated house on the land.

### ***The issue***

25 The only issue for the court's determination was whether the defendants had an equity in the two houses such that the plaintiff could not terminate their tenancies without some form of compensation. A secondary issue was the quantum of compensation that would be considered fair and equitable if the court ruled in the defendants' favour.

### ***The submissions***

#### ***(i) the plaintiff's submissions***

26 Counsel for the plaintiff argued that as neither defendant lived at the two houses but had let the same out for many years now, whatever equities the defendants may have had were lost. Further, the plaintiff had received pittance (\$7,107) as ground rent from the first defendant when compared to the first defendant's receipt of \$294,000 to \$352,000 as rent over 49 years (at \$500-\$600 per month). In the case of the second defendant, she had collected over \$470,000 as rent if

the second house was leased out at \$800 per month, as compared with ground rent of \$6,438 that she/Sundaram had paid Ong or the plaintiff over 49 years.

27 In his first affidavit filed for the second OS, the plaintiff complained that it was both unfair and inequitable of the defendants and the other seven house owners to expect him (as they had demanded) to pay them substantial compensation of \$1.25m for each house. In the event the plaintiff was able to erect four apartments on each site, the nine house-owners expected the plaintiff to return one apartment to each house-owner plus \$400,000. If the plaintiff managed to build eight apartments on each site, then each house-owner was to be entitled to two apartments. Despite the small sums involved, the defendants were in arrears of the ground rent having failed and/or neglected to pay since 2006 or earlier (in the case of the second defendant).

28 Counsel for the plaintiff added that the plaintiff was unable to accept the defendants' tender of the ground rent as it was subsequent to his service of the notices to quit. Moreover, the ground rent tendered covered the period up to 31 December 2008, exceeding the expiry date (31 May 2008) of the plaintiff's Notice to Quit.

29 He added that neither the first defendant nor Sundaram were deceived when they bought the first and second houses, as they both knew they were buying the houses and not the land. The two purchasers did not object to the purchase on that understanding.

*(ii) the defendants' submissions*

30 Counsel for the defendants on the other hand submitted that his clients' tenancies were coupled with an equity which they did not lose by not staying in the two houses or by their being in arrears of the ground rent. In fact, in the plaintiff's first and second affidavits, he had deposed:

... the plaintiff recognises that [Mr Yeo and Victoria Jayaram have] a tenancy coupled with an equity and the plaintiff is willing to pay reasonable compensation to satisfy the defendant's said equity.

This was repeated in the plaintiff's third affidavit filed on 6 October 2008 where he asked the court to grant him orders to recover possession from the two defendants upon satisfaction of their equity. Yet, counsel for the plaintiff contended that the defendants had lost their equity.

31 It was pointed out to the court that although the defendants were late in their payment of the ground rent previously, neither the plaintiff nor Ong complained of that fact. The defendants did not pay the ground rent on time because the plaintiff's family did not always collect the rent on time. According to the first defendant, at the beginning, he paid ground rent monthly or bimonthly. From the 1970s to 1997, ground rent was cumulatively paid for periods ranging from 1 to 2 years. Thereafter, ground rent was cumulatively paid for a 4 year period for 1998 to 2001 and then for 2002 to 2005. In the case of the second defendant, from 1976 to 1986, ground rent was cumulatively paid for varying periods. From 1976 to 1986, ground rent was cumulatively paid for periods ranging from 5 months to 2 years and 7 months. Thereafter, ground rent was cumulatively paid for a 6 year period for 1990 to 1995 and then for a 7 year period for 1996 to 2002. Initially, the ground rent was collected personally by the plaintiff's mother. After her demise, it was collected by the plaintiff's sister. Because the amounts were so nominal, ground rent was collected only after every few years. The plaintiff's family stopped collecting after 2005.

32 It was contended that the first defendant and Sundaram bought the two houses at what were considered substantial sums in 1959 in reliance upon the understanding and their expectation that

they and their successors would be entitled to remain upon the land indefinitely. This applied equally to the owners of the other seven houses and was reinforced by the contract that Menon entered into (see [\[8\]](#)) for his purchase of the third house from Ong in 1961.

33 The defendants further carried out substantial renovations over the years to improve the houses. The plaintiff and his family would have been aware of the renovation works as they lived next door at No. 20A Meng Suan Road.

34 Apart from a bare denial, the plaintiff had not been able to support his contention that the two houses as well as the others were not sold with the understanding that the owners would be entitled to remain on the land indefinitely. What the plaintiff could not dispute was the fact that substantial sums were paid for the two houses back in 1959, no period was stated in the ground tenancies whatsoever and there were no provisions for the termination. Above all, for 49 years, neither Ong nor his successors including the plaintiff took steps to determine the tenancies and raised no objections when the defendants renovated the houses up to and including 2007.

35 Counsel for the defendants alleged that the reason for the plaintiff's purported termination of the ground tenancies and his attempts to evict the defendants was very clear. He intended to auction off the land (and a neighbouring plot) for \$5.3m. Based on that indicative price (with subsisting tenancies), it worked out to \$590,000 for each house from No. 20 to 28 Meng Suan Road, excluding what the house owners would have to be paid.

36 However, the defendants were not unreasonable. Although they had the right to remain on the land indefinitely, they were willing to give up that right upon payment of reasonable compensation, given their substantial outlay on the houses over the years and the very significant prices that were paid for the two houses in 1959.

### ***The decision***

37 I dismissed both OS as I was of the view that the defendants had an equity in the land which the plaintiff must and had failed to satisfy before he was allowed to recover possession of their houses. I did not accept the plaintiff's argument that the defendants lost the equity when they rented out their houses. The cases that counsel relied on for this submission had no relevance to this case. Once an equity has been established, subsequent conduct by the party entitled to it does not destroy that equity (see [\[40\]](#) below).

38 I also rejected the plaintiff's request to be allowed to submit an updated valuation report to court. The plaintiff could and should have revised the valuation report of CBRE before coming to court. When he was questioned by the court, counsel for the plaintiff failed to give any satisfactory explanation for his client's omission to obtain a valuation of either the first or the second house or both houses nor why the unoccupied building at No 25 Meng Suan Road was valued instead.

39 Further, the defendants had successfully raised the defence of proprietary estoppel in relation to the plaintiff's claim. Both defendants had the right to remain indefinitely on the land upon which the first and second houses were built.

40 *Halsbury's Laws of England* 4<sup>th</sup> edition (reissue) volume 27(1) Butterworth Law Publishers on Landlord and Tenant had this to say at p 33 para 14:

**Equity of Possession.** Equity recognises and enforces rights (sometimes referred to as "equities of possession" or "equitable licences" so as to restrict the revocation of licences to occupy or

use premises which at common law would be regarded as revocable. This restriction occurs where a person who is occupying or using land has acted in reliance upon the representation or acquiescence of the person having a proprietary interest in respect of that land.....

It would seem that, where a party alleges an equity of this type, and it is alleged that his own behaviour has been inequitable, the court may consider that behaviour in order to decide whether he is entitled to equitable relief; and, in considering how an equity which has been established may be satisfied, the court is entitled to have regard to events subsequent to those which gave rise to the equity. *Once an equity has been established, however, subsequent misbehaviour by the party entitled to it does not destroy that equity* (emphasis added).

41 Counsel for the defendant had relied on *Snell's Equity* 31<sup>st</sup> edition Sweet & Maxwell for the principles governing proprietary estoppel. At page 274 para 10-16, the learned authors quoted from Oliver J's judgment in *Taylor Fashions Ltd v Liverpool Victoria Trustees Co Ltd* [1981] 1 All ER 897 (at p 909):

If A, under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and with the knowledge of B and without objection from him, acts to his detriment in connection with such land, a Court of Equity will compel B to give effect to such expectation.

42 The prerequisites of proprietary estoppel and which were present here are:

- (a) A must establish there was a promise from B or B's agent or predecessor in title;
- (b) A must have acted in the belief either that he already owned a sufficient interest in B's property to justify the expenditure or that he would obtain such an interest; and
- (c) A must have incurred expenditure or otherwise have prejudiced himself or acted to his detriment.

The above principles were reiterated by Sunderesh Menon JC in the recent case of *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR 292, which was cited by the defendants.

43 The learned authors of *Snell's Equity* went on to consider the extent of and satisfaction of the equity. At para 10-21 to 10-23 at pp 283-285, they said:

### **Satisfying expectations**

The maximum extent of the equity is to have made good, so far as may fairly be done between the parties, the expectation of A which [B] has encouraged. Where for example, A has been led to expect a conveyance of the freehold this is the extent of the equity which the court may award. If however, A's expectation is to remain in the property indefinitely or for the remainder of his or her life or for some other period or on certain terms, the maximum extent of the equity is the right or interest or package of rights or interests which will best give effect to that expectation.

### **Proportionality**

In its search for "the minimum equity to do justice" to A and shaping it to the facts of the case "equity is displayed at its most flexible". Although the court has considerable flexibility in deciding what remedy to award "the court must take a principled approach, and cannot exercise a completely unfettered discretion according to the individual judge's notion of what is fair in any particular case". In deciding whether to satisfy A's equity by giving effect to his or her expectations or whether to satisfy it by awarding relief on some other basis, the court will take into account all the circumstances of the case and, in particular, whether A's expectation is proportionate to the detriment suffered.....

.....

If the equity is established and the extent of it identified, effect is given to it in whatever is the most appropriate way taking into account all relevant circumstances including the conduct of the parties. The court adopts a cautious approach looking for the minimum equity to do justice. Often it suffices merely to dismiss an action brought by [B] to enforce his legal rights. Thus a claim for possession may be dismissed....

44 I decided that it sufficed to satisfy the defendants' equity if I dismissed the two OS as I did. As stated earlier at [30], the plaintiff through his counsel had changed his initial stance. Although he had repeatedly acknowledged in his affidavits that both defendants had an equity which he must first satisfy before he could recover vacant possession of the two houses, his counsel informed this court at the outset that he was relying on certain authorities and would submit (as he did) that the defendants had lost their equity and no compensation at all was payable to them. For that reason, I did not address the second issue of the amount of compensation that would be sufficient to satisfy the defendants' equity.

45 Counsel for the plaintiff had cited two Malaysian cases *viz Yeow Soh Hwa v Low Lim Chew Poh* [2004] 4 MLJ 147 and *C Paul D'Cruz v Chow Tai Yow & Sons Sdn Bhd* [1999] 1 MLJ 51 as well as three local cases *Khew Ah Bah v Hong Ah Mye* [1969-1971] SLR 494, *Lim Hock Kim v Sim Seng Quee* [1980-1981] SLR 316 and *Lee Suat Hong v Teo Lye* [1987] SLR 34. I was of the view that none of the cases cited by his counsel assisted the plaintiff as a review of the cases will show.

4 6 *C Paul D'Cruz v Chow Tai Yow & Sons Sdn Bhd* was a case that concerned rent-controlled premises in Johor Bahru and was clearly irrelevant. So too was the case of *Khew Ah Bah v Hong Ah Mye*, which turned on the interpretation of a "new building" under the Control of Rent Ordinance. However, Choor Singh J reiterated there that had the defendant/tenant been the lawful owner of the house in question, the tenant would have had certain rights in equity which the plaintiff/landlord must satisfy before the latter could recover possession.

47 In *Yeow Soh Hwa v Low Lim Chew Poh*, the court dismissed the claim of the defendant who paid ground tenant of RM70 per month and who then rented out the whole premises at RM450. The defendant had erected the shophouse on the owner's land and occupied the same until 1978 when he rented out some rooms before finally renting out the entire premises in 1980. The owner's daughter sold the shophouse to the plaintiff in 1996 whose solicitors terminated the defendant's tenancy and demanded vacant possession of the premises with effect from 1 December 2001 which demand the defendant did not accept. In dismissing the defendant's appeal against an order for vacant possession made by the court below, the Malacca High Court held that the defendant did not have a tenancy coupled with an equity. The defendant who was coming to equity must do equity. Instead, the defendant had abused and claimed the aid of equity for his own profit at the expense and to the detriment of the plaintiff, since the defendant and his family members had not occupied the premises since 1980 but had collected rent of RM450 per month which was six and a half times the monthly



ground rent of RM70 paid to the plaintiff's predecessor in title.

48 The plaintiff's counsel had tailored his arguments in [26] along the lines of the judgment in *Yeow Soh Hwa v Low Lim Chew Poh*, comparing his client's receipt of a pittance by way of ground rent with the rental income received by the defendants. There was however a vast difference between the facts in that case and the circumstances that led to the defendants' purchase of the two houses. It should be noted that the plaintiff's father Ong did not let vacant land on a licence to the first defendant and Sundaram. He had built nine houses on the land and sold two thereof to the first defendant and to the second defendant's father for valuable consideration which in 1959, could have bought the defendants houses outright in other parts of Singapore, according to Knight Frank's report in [22]. Ong did not sell the land on which the two houses stood because he could not, the land not being subdivided then and even now.

49 In *Lim Hock Kim v Sim Seng Quee*, Choor Singh J dismissed the defendant's appeal against an order for possession made by the district judge in the plaintiff's favour. There, the defendant had been let vacant land in 1957 as a ground tenant paying a monthly rent of \$91.50 per month. The defendant built five small wooden houses on the land and sold four of them granting the purchasers 30 year leases of the land on which the houses stood. In those leases, the defendant described himself as "owner" of the land. The court dismissed his defence (for lack of evidence) that he was induced to believe that he could build on the land and to occupy it for as long as he wished so long as the monthly ground rent was paid. The defendant had contended that the plaintiff was estopped from recovering possession of the land.

50 Again, it can be seen that the facts in the case were vastly different from the circumstances in which the first defendant and the second defendant's father came to purchase the first and second houses. In our case, the defendants' claim that their understanding that they and their families could stay on for as long as Ong and his successors held the lease of the land was supported by the contract in English at [8] that Ong signed with Menon for the sale of the third house at \$6,300. There was no reason for Ong to have sold the third house on terms different from those for the first and second houses.

51 The Court of Appeal in *Lee Suat Hong v Teo Lye* affirmed the principle of proprietary/equitable estoppel set out at para [42] above. On the facts of the case however, the Court found that the evidence did not bear out the respondent defendant's claim that in reliance on the representations made by the plaintiff's predecessors in title, she had given up possession of rent-controlled premises at Lot 234, Mukim 15 in exchange for No. 38A Lorong Puntong ("the premises") on the understanding that she and her family would be allowed to erect their own house on the premises and to remain in occupation there for as long as they deemed fit. Again the facts are far different from those in these proceedings.

52 It bears noting that the plaintiff made no mention in his affidavits of his intended but aborted auction of the land at \$5.3m through CBRE. His complaint was that the defendants and other seven house-owners made unreasonable demands on him (see [27]) for compensation. Even if the defendants' demands could be said to be unreasonable, it was for the plaintiff to make counterproposals and then come to court to prove that his counterproposals were reasonable, unlike those made by the defendants. However, apart from his initial compensation offer of \$30,000 to the defendants made by K & Co and which he increased in his affidavits to \$40,000 but subsequently withdrew through his counsel, the plaintiff never seriously attempted to satisfy the defendants' equity. Had the plaintiff succeeded in auctioning the land, he would have netted in the region of \$5m as the sale proceeds. Yet he was only prepared to compensate each of the defendants with what can only be considered a derisory sum (\$40,000) as compared with his expected windfall had his

auction materialised and the value of comparable terrace houses as at the date of the filing of the two OS (20 June 2008).

53 It is trite law that he who comes to equity must do equity. Equally, the person who comes into equity must come with clean hands. For many years, the plaintiff's family members (his mother and sister) failed to collect the ground rent timeously from the defendants. In fact, his family stopped collecting ground rent altogether after 2005. Yet the plaintiff used his own tardiness and omission first as the basis for his Notices to Quit to the defendants and later, to ground the two OS. The court should not condone the plaintiff's misconduct by awarding him vacant possession of the two houses. Finally, the valuation report of CBRE on No. 25 Meng Suan was at best irrelevant and at worse misleading. Had it not been pointed out by the first defendant, the court would not have known that the property was unoccupied for many years and was the most dilapidated building along the row of terrace houses. The plaintiff knew but failed to disclose that fact to the court. Instead, he used CBRE'S valuation report to justify his offer of \$40,000 compensation to the defendants. I should add that prior thereto, K & Co had notified the first defendant that the Commissioner of Stamp Duties had accepted a declared value of \$20,000 for the assignment of No. 20 Meng Suan Road and which value was the basis for the initial compensation of \$30,000 offered to the first defendant. No details however were given of the assignment.

54 I had raised the possibility of relief against forfeiture to the parties to which counsel for the plaintiff replied that it did not apply to assist the defendants. Relief against forfeiture for failure to pay rent is encompassed in s 18A of the Conveyancing and Law of Property Act Cap 61 Revised 1994 edition ("the CLPA") which relevant extracts state:

(1) This section has effect where a lessor is proceeding by action to enforce against a lessee a right of re-entry or forfeiture in respect of any immovable property for non-payment of rent.

(2) If, within the time prescribed by rules of court for acknowledging service of the writ by which the action was commenced, the lessee pays into court all the rent in arrear and the costs of the action, the action shall cease, and the lessee shall hold the land according to the lease without any new lease.

(3) If —

(a) the action does not cease under subsection (2); and

(b) the court at the trial is satisfied that the lessor is entitled to enforce the right of re-entry or forfeiture,

the court shall order possession of the land to be given to the lessor at the expiration of such period, but not being less than 4 weeks from the date of the order, as the court thinks fit, unless within that period the lessee pays into court all the rent in arrear and such sum as the court shall direct on account of the costs of the action.

(4) The court may extend the period specified under subsection (3) at any time before possession of the land is recovered in pursuance of the order under that subsection.

55 I disagreed with the plaintiff's submission. Had it been necessary to do so and had the defendants applied to this court, I would have granted them relief against forfeiture in the exercise of my discretion under s 18A(1) of the CLPA and ordered the defendants to pay up all arrears of ground rent to the plaintiff in lieu of forfeiture.

56 To conclude, the first and second defendants' ownership of the first and second houses was coupled with an equity in the land which the plaintiff failed and/or refused to satisfy. Accordingly, I dismissed the two OS.

Copyright © Government of Singapore.