

Lim Hoe Heng v Poh Choon Kia and another
[2012] SGCA 58

Case Number : Civil Appeal No 18 of 2012
Decision Date : 18 October 2012
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; Sundaresh Menon JA
Counsel Name(s) : Jimmy Yap (Jimmy Yap & Co) for the appellant; A Thamilselvan (Subra TT Law LLC) for the respondents.
Parties : Lim Hoe Heng — Poh Choon Kia and another

Contract – Sale of Land

Contract – Breach

Land – Conveyance

[LawNet Editorial Note: The decision from which this appeal arose is reported at [\[2012\] 3 SLR 268.](#)]

18 October 2012

Sundaresh Menon JA:

1 This appeal arises out of an agreement for the sale and purchase of a Housing and Development Board (“HDB”) flat by the appellant, Lim Hoe Heng (“the appellant”) to the respondents, Poh Choon Kia and Goh Siu Mui (“the respondents”).

Parties

2 The appellant was the registered sole owner of a HDB flat at Block 121 Potong Pasir Avenue 1 #11-273, Singapore 350121 (“the Flat”). The appellant’s wife, one Kang Weina (“Kang”), was the second defendant in the proceedings below, but she is not party to this appeal.

3 The respondents were, at the material time, in search of a matrimonial home in anticipation of their wedding on 13 November 2011.

Background

4 The appellant had been an undischarged bankrupt since 12 June 2008, when his construction business failed. As his mortgage payments on the Flat had fallen into arrears, he was given the option of either selling the Flat on the open market, or surrendering the Flat to the HDB. [\[note: 1\]](#) The appellant opted for the former course and as it transpired, he granted the respondents an Option To Purchase the Flat for \$654,000 on 15 January 2011 (“the Option”). [\[note: 2\]](#) The respondents exercised the Option on 21 January 2011.

5 The parties were invited by the HDB to, and did attend at, the HDB’s branch office on 25 February 2011 (“the First Appointment”). [\[note: 3\]](#) On the same day, the HDB sent a letter to the

parties ("the February Letter"), [\[note: 4\]](#) setting out in tabular form the two stages of the sale process and the "estimated dates" on which each stage would be completed. The letter stated that:

(a) The first stage was the "Resale Approval Stage", and the parties would receive a letter from the HDB advising if it approved the resale. It was estimated that the resale would be approved around 11 March 2011.

(b) The second stage was the "Completion of Resale Stage", and "[o]ne week before the scheduled date for the completion, both sellers and buyers [would] receive a 2nd letter from [the HDB] Resale Office to inform them of the appointment date to complete the transaction". It was estimated that the resale would be completed around 8 April 2011.

6 Unfortunately, matters did not proceed as hoped or expected. Shortly after their receipt of the February Letter, the respondents were informed of two impediments to completion of the sale. The first was Kang's refusal to sign a form known as the Spouse Consent to Resale Form, the appellant's production of which was one of HDB's requirements for resale ("the Spouse Consent Requirement"). [\[note: 5\]](#) Kang's refusal was conveyed by the HDB to the respondents by a phone call on 29 February 2011, [\[note: 6\]](#) a letter dated 23 March 2011, and an email on 19 April 2011. The letter stated: [\[note: 7\]](#)

We wish to inform that we are unable to proceed with the processing of your purchase as the seller, Mr Lim is unable to obtain his spouse consent for the sale and we are unable to waive this requirement. Please let us have your written confirmation on whether you are willing to defer the resale transaction till the matter is resolved. Please let us have your letter latest by **4 April 11** . Otherwise, we will proceed to cancel the resale.

[emphasis in original]

7 The respondents did not reply to this letter. On 19 April 2011, the HDB sent a further email to the respondents' conveyancing executive enquiring to the same effect, as follows: [\[note: 8\]](#)

So are the buyers willing to wait and defer the resale? If we do not receive any confirmation that they are willing to defer the resale, we will have to cancel the case at our end.

8 On the same day, the respondents' conveyancing executive replied in an email that "[f]rom what I understand from the buyers yesterday they are very willing to wait until this issue is resolve [sic]". [\[note: 9\]](#)

9 As it transpired, this impediment to the sale was only removed on 31 May 2011, when the respondents successfully petitioned their Member of Parliament through whose good offices the HDB's waiver of the Spouse Consent Requirement was secured in this instance. [\[note: 10\]](#)

10 The second impediment was made known to the respondents through their solicitors in early April. Kang had lodged a caveat [\[note: 11\]](#) on the Flat on 8 March 2011 ("the Caveat"). Kang claimed that she had an equitable and proprietary claim to the Flat which would crystallise upon the division of the matrimonial assets pursuant to divorce proceedings. However, no divorce proceedings had been instituted even at the time of the hearing below.

11 The appellant asserts that he made strenuous efforts to overcome both impediments but to no

avail. According to him, Kang was only interested in obtaining for herself as much of the net proceeds of sale as she could, even though she knew that the appellant required the funds for his planned purchase of a replacement HDB flat in Hougang for his family ("the Hougang flat"). According to the appellant, he even offered to allow her to lodge a caveat against the Hougang flat if she withdrew the Caveat but she was unwilling to do so. [\[note: 12\]](#) He also attempted to get the Caveat cancelled under s 127(2) of the Land Titles Act (Cap 157, Rev Ed 2004) but failed as the Registrar of Land Titles considered the matter contentious and hence that it should properly be resolved by the court. The appellant was then unable to secure a third party's agreement to foot the legal costs involved prior to seeking the Official Assignee's consent to commence legal proceedings to remove the Caveat. [\[note: 13\]](#)

12 In these circumstances, the respondents commenced proceedings against the appellant and Kang on 6 September 2011, seeking the following remedies: [\[note: 14\]](#)

- (a) Specific performance of the contract of sale of the Flat;
- (b) Payment of late completion interest pursuant to Condition 8.2 of the Law Society of Singapore's Conditions of Sale 1999 ("the LSCS");
- (c) Damages to be assessed by the court by reason of the appellant's breach of contract;
- (d) Kang's withdrawal of the Caveat; and
- (e) Costs of the application, including, if applicable, the costs of lodging the withdrawal of the Caveat.

The relevant clauses in the Option

13 The clauses in the Option which are relevant to the present dispute are the following:

8. General

8.1 In this Option —

...

"Completion Date" means the date on which completion of the sale and purchase of the Flat is to take place in accordance with Clause 12;

...

9. Agreement for sale and purchase

9.3 The Flat is sold subject to —

- (a) the Housing and Development Act (Cap. 129) and any rules and regulations made under the Act;
- (b) the terms and conditions of resale and purchase of an HDB resale flat as prescribed by the HDB from time to time;

- (c) the policies of the HDB in force from time to time;
 - (d) the terms and conditions of this Option;
 - (e) the conditions in the Law Society Conditions which —
 - (i) apply to a sale by private contract; and
 - (ii) are not varied by or inconsistent with the terms and conditions in this Option;
- ...

12. Completion Date

12 Unless extended by the HDB, the Completion Date will be within 8 weeks from the date of the HDB's first appointment with the Seller and Buyer for the sale and purchase of the Flat.

13. Seller's obligations

13.1 The Seller must, within 7 working days at the request of the HDB or the Buyer's solicitor —

- (a) produce such documents;
- (b) sign such documents;
- (c) make such declarations; or
- (d) provide such information,

to the HDB or the Buyer's solicitor, as may be required to obtain the HDB's approval for the sale of the Flat.

...

13.3 The Seller must carry out such acts and sign such documents as the HDB or the Buyer's solicitor may direct to discharge any existing mortgage, charge, third party caveat or other encumbrance with respect to the Flat on or before completion.

...

13.5 The Seller agrees to take such steps as the Buyer may reasonably request to help the Buyer obtain the HDB's approval for the purchase of the Flat.

...

15. Non-approval of sale and purchase

15.1 If the HDB's approval for the sale and purchase of the Flat is not obtained, is refused or is revoked before the Completion Date, and it is not due to the Seller's or Buyer's default in complying with the HDB's terms of resale or requirements —

- (a) the sale and purchase will be cancelled;

- (b) this Option will be rescinded and become null and void and of no further effect;
- (c) the Seller will immediately, without demand, refund to the Buyer the Option Fee, Option Exercise Fee and any other monies paid by the Buyer to the Seller, without any interest or deduction;
- (d) each party will bear his own costs in the matter; and
- (e) neither party will have any other claim against the other.

15.2 If the HDB's approval for the sale and purchase of the Flat is withheld, refused, revoked or not obtained before the Completion Date and it is due to the Seller's or Buyer's default in complying with the HDB's terms of resale or requirements, the other party will be entitled to enforce the terms of this Option for specific performance, damages and/or any other remedy.

14 The relevant conditions from the LSCS, referred to in Clause 9.3(e) of the Option, are as follows:

8.2 Interest Payable by Vendor

8.2.1 If —

- (a) the sale is not completed on or before the date fixed for completion; and
- (b) the delay in completion is due solely to the default of the Vendor,

he must pay interest (as liquidated damages) commencing on the day following the date fixed for completion up to and including the day of actual completion. Interest will be calculated on the purchase price at 10% per annum.

...

8.3 No Interest Payable

No interest (as liquidated damages) will be payable if the delay in completion is due to some cause other than the default of the Vendor or the Purchaser or to the default of both the Vendor and the Purchaser.

29. Notice to Complete

29.1 This Condition applies in every case except where the Special Conditions provide that time is to be of the essence of the contract concerning the date fixed for completion.

29.2 A notice to complete means a notice in writing requiring completion of the contract in accordance with this Condition.

29.3 If the sale is not completed on the date fixed for completion, either party may give to the other party a notice to complete.

29.4 The notice to complete may be given on the date fixed for completion or at any time after that date, unless the contract has already been rescinded or become void.

...

29.6 Upon service of an effective notice, parties must complete the transaction within 21 days after the day of service of the notice (excluding the day of service) and time will be of the essence of the contract.

...

29.10 If the Vendor does not comply with the terms of an effective notice served by the Purchaser under this Condition, then the Purchaser may elect either —

(a) to enforce against the Vendor such rights and remedies as may be available to the Purchaser at law or in equity without any other notice under the contract; or

(b) to give a written notice to the Vendor to repay immediately to the Purchaser any deposit and any money paid on account of the purchase price. This is without prejudice to the Purchaser's rights to damages.

The appellant's arguments

15 The appellant argued that 8 April 2011 was only an "estimated" completion date, and that there was no fixed date of completion either in the Option or subsequently stipulated by the HDB. As such, there was no obligation to complete the sale in the absence of a notice to complete pursuant to Condition 29.2 of the LSCS. [\[note: 15\]](#) It was further argued that in the absence of a fixed date of completion, Condition 8.2 of the LSCS, which was predicated on the existence of a "date fixed for completion", did not apply. [\[note: 16\]](#) The appellant also argued that even if there had been a date initially fixed for completion, that date had been extended by the respondents' opting to defer the sale instead of cancelling it. [\[note: 17\]](#) Finally, the appellant argued that even if there was a date fixed for completion, Condition 8.2 of the LSCS was not triggered because the appellant's failure to obtain Kang's consent to the sale did not constitute a "default" either for the purpose of Clause 15.2 of the Option or Condition 8.2 of the LSCS. The appellant relied on the English case of *In re Bayley-Worthington and Cohen's Contract* [1909] 1 Ch 648 ("*Bayley-Worthington*") for the proposition that "default" entailed something more than a breach of contract, and involved "either not doing what you ought or doing what you ought not". The appellant argued that he had done all that he could to obtain Kang's endorsement of the Spouse Consent to Resale Form, and that having failed, the HDB's waiver of the Spouse Consent Requirement. Moreover, in his view, the delay was not caused "solely" by him in that the HDB had contributed to the delay by not waiving the Spouse Consent Requirement earlier when it could have done so. [\[note: 18\]](#)

The respondents' arguments

16 The respondents contended that the appellant's obligation to complete did not depend on the issuance of a 21-day notice but rather arose from the very nature of the contract which was for the sale and purchase of the property. [\[note: 19\]](#) Further, it was argued that the completion date was fixed as 8 April 2011, being the date for completion that had been estimated at the time of the First Appointment and which was within eight weeks from the First Appointment on 25 February 2011 as contemplated under Clause 12 of the Option. [\[note: 20\]](#) The respondents also argued that the Spouse Consent Requirement was expressly incorporated into the Option by Clause 9.3 of the Option, making the appellant's failure to furnish a signed copy of the Spouse Consent to Resale Form before 8 April

2011 both a breach of the express terms of the contract as well as a “default” which had caused the HDB to withhold its consent to the resale. [\[note: 21\]](#) This in turn entitled the respondents to claim damages under Clause 15.2 of the Option, which included liquidated damages in the form of late completion interest at a rate of 10% per annum as provided under Condition 8.2 of the LSCS.

The proceedings below

17 The parties’ arguments were presented over the course of two hearings before the judge in the court below (“the Judge”). At the first hearing on 24 November 2011, the Judge granted the orders sought by the respondents and directed the sale to be completed within three months from the date of the order, with late completion interest to be paid to the respondents with effect from 8 April 2011. [\[note: 22\]](#)

18 On 6 February 2012, at the appellant’s request, the Judge heard further arguments pertaining to the payment of late completion interest under Condition 8.2 of the LSCS. During the hearing, the Judge was informed that the respondents had not replied to the HDB’s enquiry in its letter of 23 March 2011 as to whether they were willing to defer the resale transaction. [\[note: 23\]](#) At this point, the email correspondence of 19 April 2011 between the HDB and the respondents’ conveyancing executive had not yet come to light. At the end of the hearing, the Judge declined to amend the orders he had made on 24 November 2011. On 9 February 2012, counsel for the respondents wrote to inform the Registrar of the Supreme Court that the respondents had in fact responded to the HDB’s email query of 19 April 2011 by an email of that same day stating that they were willing to wait rather than have the sale cancelled. A copy of the email correspondence was appended to the letter to the Registrar. [\[note: 24\]](#) In light of this new evidence, counsel for the appellant requested leave to make further arguments, [\[note: 25\]](#) but this was refused on 10 April 2012. [\[note: 26\]](#) The appellant then filed, on 2 March 2012, an appeal against that part of the Judge’s orders of 24 November 2011 relating to the payment of late completion interest and costs. [\[note: 27\]](#)

The Judge’s Grounds of Decision

19 On 26 April 2012, the Judge issued his grounds of decision in *Poh Choon Kia and another v Lim Hoe Heng and another* [2012] 3 SLR 268 (“the GD”). The Judge found that the date for completion of the sale was 8 April 2011, as stated in the February Letter. In his view, this date was framed as an “estimate” only for HDB’s internal administrative purposes. The Judge was of the opinion that had the appellant upheld his end of the bargain by duly furnishing the signed Spouse Consent to Resale Form, completion would certainly have taken place on 8 April 2011. [\[note: 28\]](#)

20 The Judge agreed with the respondents that the obligation to complete the sale was inherent in the sale and purchase contract, and that the absence of a 21-day notice under Condition 29 of the LSCS did not detract from this obligation. It had been incumbent on the appellant to clear the HDB’s Resale Approval Stage, and his failure to furnish the signed Spouse Consent to Resale Form before 8 April 2011 constituted a “default” for the purpose of Clause 15.2 of the Option notwithstanding that this stemmed from his matrimonial difficulties. The Judge thought that the appellant ought to have considered the potential impediments before choosing to embark on a sale instead of opting to surrender the Flat to the HDB. [\[note: 29\]](#) Accordingly, the appellant had breached his obligation to provide the necessary documents for the obtainment of the HDB’s approval and flowing from that, his obligation to complete the sale by 8 April 2011. This breach fell squarely within the ambit of Clause 15.2 of the Option, entitling the respondents to claim the reliefs provided under that clause. [\[note: 30\]](#)

21 The Judge considered that as Condition 8.2 of the LSCS had been incorporated into the Option by Clause 9.3 of the Option, late completion interest was a remedy open to the respondents under Clause 15.2, and should take effect from 8 April 2011 or alternatively, from the day after the eighth week following the First Appointment, as provided under Clause 12 of the Option. [\[note: 31\]](#) In the result, the Judge ordered specific performance of the contract of sale and payment of late completion interest to the respondents at a rate of 10% per annum with effect from 8 April 2011 until the date of actual completion of the sale. It was ordered that this should take place within three months of the first hearing on 24 November 2011. Costs of \$7,000 including disbursements were awarded to the respondents. The Judge declined however to award the respondents damages representing their claimed rental expenses for alternative accommodation pending the completion of sale, as the respondents had failed to submit sufficient evidence of this expense. [\[note: 32\]](#) The respondents did not appeal against this aspect of the Judge's decision.

Issues to be determined

22 The substantive issues before this court are :

- (a) Whether there was a date fixed for completion of the sale under the contract;
- (b) Whether there was a delay in completion of the sale for which the appellant was responsible and which constituted a breach of contract and/or a "default" under Clause 15.2 of the Option; and
- (c) The remedies available to the respondents if the appellant was contractually responsible for the delay in the completion of the sale.

Our decision

Issue 1: Whether there was a date fixed for completion of the sale under the contract

23 In determining whether a date was fixed for completion of the sale, it is essential to consider the construction of the Option and in particular, of Clause 12 of the Option, within the context of the HDB's resale process. This process consists of two distinct stages (see [5] above), the second stage (the Completion of Resale Stage) being contingent on the parties having obtained the HDB's approval at the earlier Resale Approval Stage. This was all set out in the February Letter.

24 Clause 8.1 of the Option purports to define "Completion Date" by reference to Clause 12 of the Option, but Clause 12 does not resolve the matter because it only prescribes a period of time starting from the date of the First Appointment, within which completion must take place. Specifically, Clause 12 contemplates that completion would take place within eight weeks from the date of the First Appointment, but it also provides that it is open to the HDB to extend this period. Consistent with this, the February Letter provided that the actual date of completion would subsequently be advised by the HDB and plainly, this could fall either within the eight week period or the extended period. There was thus a significant degree of flexibility incorporated into the process that would culminate in the fixing of the completion date.

25 It is clear from this that the Option did not in fact stipulate a fixed completion date. Rather, it set out a period of time within which the sale would be completed unless that period was extended by HDB and it was for HDB to inform the parties of the actual completion date.

26 It is evident that the HDB never did fix a completion date until the transaction was eventually completed on 29 February 2012. [\[note: 33\]](#) Although the parties were advised of various dates at the First Appointment and which were then set out in the February Letter, none of these was binding on the parties in a contractual sense. To begin with, these dates were all phrased and couched as "estimates". The Judge considered that the dates were only "estimates" for the HDB's own administrative purposes and that but for the difficulties caused by the appellant's failure to procure the signed Spouse Consent to Resale Form, completion would certainly have taken place on 8 April 2011. But this misses the point which is not whether completion would as a matter of fact have taken place on that date, but rather, whether each of the parties had come under an obligation as a matter of law to ensure that it did. There is nothing in the February Letter to suggest any such obligation. On the contrary, the February Letter expressly stated that "[o]ne week before the scheduled date for the completion, both sellers and buyers will receive a 2nd letter from [the HDB] Resale Office to inform them of the appointment date to complete the transaction". This reinforces the still tentative nature of the estimated completion date in relation to the purchaser and vendor, such date being subject to later confirmation by way of a second letter from the HDB which, in the circumstances, was never received.

27 We thus depart from the learned Judge's conclusion that the date of completion was fixed at 8 April 2011. We find that there was no completion date fixed under the Option and none was subsequently stipulated by the HDB at the material time.

Issue 2: Whether there was a delay in completion of the sale for which the appellant was responsible and which constituted a breach of contract and/or a "default" under Clause 15.2 of the Option

28 It is the appellant's case that there being no fixed completion date, he had no actionable obligation to carry the transaction forward to completion within any timeframe. Hence, he argued that neither a breach of contract nor a default under Clause 15.2 of the Option could be raised against him in the event of non-completion. This is erroneous. Where a contract for the sale and purchase of property is silent as to the time for completion, it does not follow that there is then no obligation to complete. All that is missing is a fixed time for completion, but the obligation to complete remains and in place of the absent timeframe, the law imposes on the parties an implied obligation to complete the sale within a reasonable time. As stated in Julian Farrand & Alison Clarke, *Emmett and Farrand on Title* (Longman Professional, Looseleaf Ed, 2012, June 2011 release) at para 2.064:

If there is no provision in either the special or the general conditions of sale fixing a date for completion, then the law implies that completion is to take place within a reasonable time. What is a reasonable time has to be measured by the legal business which has to be performed in connection with the investigation of title and the preparation of the necessary conveyancing documents (*Johnson v Humphrey* [1946] 1 All E.R. 460 at p 463; *Simpson v Hughes* (1897) 66 L.J. Ch. 334).

29 The obligation to complete within a reasonable time has been accepted as a term that is implied into contracts for the sale of immovable property such that a failure to specifically stipulate a completion date will not prevent the formation of such a contract (*Lee Christina v Lee Eunice and another (executors of the estate of Lee Teck Soon, deceased)* [1993] 2 SLR(R) 644 at [30]).

30 It was therefore incumbent on the appellant to complete the sale within a reasonable time. The sale was eventually completed on 29 February 2012. This is more than 10 months after the estimated completion date of 8 April 2011 and far in excess of the period of eight weeks after the First Appointment as stipulated by Clause 12 of the Option. These timeframes, while not themselves

forming the date fixed for completion, are a relevant factor in determining what a reasonable time for completion would be. In our view, the period of 10 months that was taken after the estimated date of completion undoubtedly constitutes an unreasonable delay. It is thus clear to us that notwithstanding the absence of a fixed completion date, the sale was delayed in the sense that its eventual completion fell outside the time within which the parties could reasonably have expected it to take place.

The appellant's contractual responsibility for the delay

31 It is no longer disputed that the delay in completion resulted from the appellant's failure to furnish the signed Spouse Consent to Resale Form. The appellant initially argued that the HDB's Spouse Consent Requirement was not an express term of the Option and hence that his failure to procure it did not amount to a breach of contract. This argument is clearly erroneous because Clause 9.3 of the Option expressly incorporated into the Option the relevant policies of the HDB as well as the terms and conditions of resale as prescribed by the HDB from time to time. Further, Clause 13.1 of the Option obliged the appellant as vendor to produce and sign such documents, make such declarations or provide such information to the HDB or the purchasers' solicitors as might be required to obtain the HDB's approval of the resale, within 7 working days of a request being made by the HDB or the purchasers' solicitors. Before us, counsel for the appellant eventually conceded that his client had in the circumstances breached his obligations under the Option.

32 Further, in our judgment, the appellant's breach of the terms of the Option did amount to a "default" under Clause 15.2, hence triggering the respondents' entitlement to damages provided for thereunder. The appellant attempted to distinguish his undisputed *failure* to comply with the HDB's resale requirements and his consequent breach of contract, from *default* in such compliance, by relying on the dictum in *Bayley-Worthington* which, according to the appellant, suggests that to find a "default" there has to be some element that goes beyond a simple breach of contract. In *Bayley-Worthington*, Parker J said (at 656):

Default must, I think, involve *either not doing what you ought or doing what you ought not*, having regard to your relations with the other parties concerned in the transaction; in other words, it involves the breach of some duty you owe to another or others. *It refers to personal conduct and is not the same thing as breach of contract.* ... So, in contracts for the sale of real estate providing for completion at a certain date, and containing provisions as to what is to happen if completion be delayed beyond that date by or without the default, or wilful default, of either party, the conduct of that party has to be considered; and if he has been guilty of no breach of duty he will not, I think, be in default within the meaning of the contract. Of course the duties of each party towards the other must be determined by all the circumstances, including the nature of the contract and its provisions; and in determining these duties the complexities of the English law of real property must be borne in mind. [emphasis added]

33 *Bayley-Worthington* has been applied by Singapore courts (see *See Bee Hoon v Quah Poe Hoe and another* [1989] 1 SLR(R) 623 at [22], *Toh Teck Sun v Mandarin Gardens Pte Ltd* [1988] 1 SLR(R) 294 at [18] ("*Toh Teck Sun*") and *Alivestone Investment Pte Ltd v Splendore Investments Pte Ltd* [1996] 1 SLR(R) 678 at [10]), but in our judgment, these cases do not assist the appellant and his suggested interpretation of "default" is untenable in the circumstances.

34 The appellant contended that in *Bayley-Worthington*, the court held that "default" requires an evaluation of the personal conduct of the defendant and a finding of something more than a breach of contract. The relevant clause in *Bayley-Worthington* specified the obligations attendant on the purchaser "if the delay in completion shall arise from any cause other than the *neglect or default* of

the purchaser” (at 654) [emphasis added]. Parker J held that in order to establish a default in the context of completing a real estate transaction it was necessary to show that the defendant had breached a duty to do or to refrain from doing something and that this breach was causally connected to the delay. Significantly, Parker J went on to hold that if the defendant was found to have breached its duty it would not matter whether it had acted either reasonably or under a reasonable, albeit mistaken, view of the law (at 660-661; see also *Toh Teck Sun* at [17]). This principle has nothing to do with the proposition advanced by the appellant which is that even if he breached his duty under the contract and even if this caused a delay, in the absence of some culpability or turpitude, he will not be held to have acted in default. In the present case, the appellant had a duty to meet the Spouse Consent Requirement. He breached this duty and this caused the subsequent unreasonable delays. Nothing in *Bayley-Worthington* would support the contention that this is not a default under Clause 15.2 of the Option.

35 In the circumstances, we find the appellant contractually responsible for the delay in completion of the sale by virtue of the breach of his obligations under the Option. We also find that his breach amounts to a “default” for the purpose of Clause 15.2 of the Option.

Issue 3: The remedies available to the respondents if the appellant was contractually responsible for the delay in completion of the sale

36 What then are the consequences of the appellant’s contractual responsibility for the delay in completion of the sale? Specifically, can the appellant be liable for late completion interest under Condition 8.2 of the LSCS?

37 The answer to both of these questions is found in Clauses 15.1 and 15.2 of the Option. The effect of Clauses 15.1 and 15.2 may be summarised thus:

- (a) If the HDB refuses to approve the resale for reasons independent of each party’s obligations, then the whole contract is treated as annulled and the parties are restored to their pre-contractual position; and
- (b) If the HDB’s approval is not obtained due to factors for which one party is responsible, then the innocent party is entitled to enforce the contract and seek specific performance, damages and/or any other remedy.

38 These remedies could include damages for delay, and in our view, even late completion interest under Condition 8.2 of the LSCS, provided that the requirements under Condition 8.2 of the LSCS are fulfilled as well. The appellant argued that Clause 15.2 of the Option could never encompass an obligation to pay late completion interest because it only envisions a situation where no sale is going to be completed at all due to the HDB’s withholding of approval. That is incorrect. Clause 15.2 of the Option contemplates that there is a delay in completion and once this is shown to be due to the default of one party, then he can be held liable for whatever remedies may be appropriate.

39 But this is a separate question from whether late completion interest under Condition 8.2 of the LSCS is a remedy open to the respondents in this case. Condition 8.2 of the LSCS provides that the defaulting party who causes completion to be delayed must pay to the innocent party late completion interest as *liquidated damages*. Liquidated damages are a contractual creation, the entitlement to which depends on the terms of the contract. As explained in Harvey McGregor, *McGregor on Damages* (Sweet & Maxwell, 18th Ed, 2009) at para 13-013:

Liquidated damages are damages which have been agreed between contracting parties in

advance of any breach of contract. They are not the equivalent of compensation; rather they form an acceptable and agreed alternative to compensation.

40 As a matter of construction, the liquidated damages under Condition 8.2 of the LSCS requires that there be a "date fixed for completion" and as explained at [23]-[27] above, no such date was fixed in the circumstances of this case and having regard to the terms of *this* contract. The last day of a stipulated period of time within which completion can take place cannot readily or necessarily be taken to be *the day fixed* for completion, because completion could conceivably take place on any day falling within that period or in this case even within an extended period beyond the stipulated period. This strict reading of the words "the day fixed for completion" was explained in *Chinnock v Hocaoglu and another* [2009] 1 WLR 765, where, albeit in a slightly different context, the respondent vendor argued that under a contract stipulating that completion was to take place "within ten working days" of the receipt of a notice to complete, the tenth day after receipt of such notice could constitute "the day fixed for completion" for the purpose of fulfilling another clause in the contract. In rejecting this argument, Lloyd LJ (with whom Sir Anthony Clarke MR and Waller LJ agreed) explained (at [22]):

It seems to me that one way to test [the vendor's] submission is to consider what the position would be if the purchaser had sought to complete on, say, the fifth working day after service of the notice to complete, by arranging payment to the vendor's licensed conveyancers' bank account of the sum which they calculated to be due. That day could not be described as "the day fixed for completion". It would not have been fixed, in any particular sense, nor would it be the only day, and therefore "*the day*", on which completion could take place. [emphasis in original]

41 We agree with these observations.

42 We note that there have been occasions where the innocent party to a sale and purchase agreement (which provides for completion to occur within a certain period of time) has successfully sued for damages upon the defaulting party's failure to complete by the last day of that period (see *Ken Glass Design Associate Pte Ltd v Wind-Power Construction Pte Ltd* [2003] 1 SLR(R) 34 ("*Ken Glass*"); *Chan Ah Beng v Liang & Sons Holdings (S) Pte Ltd and another application* [2012] SGCA 34 ("*Chan Ah Beng*").

43 It is sufficient for present purposes to confine ourselves to the terms of the contract at issue in this case. As noted at [23]-[27] above, it is clear that there was no "date fixed for completion" in this case principally because:

- (a) The contract contemplated a two-stage process for the transaction to be carried forward;
- (b) There was no certainty as to the date for completion, which would come at the end of the second stage only; and
- (c) The language in fact used in all the relevant documents was tentative in nature and not suggestive of a contractually binding nature.

44 But in any event, there is a further problem in the present dispute with the respondents' claim for late completion interest and that is the respondents' indication of their willingness to defer the sale until the appellant had removed the impediments to the sale. The HDB had asked the respondents to opt either to cancel or defer the sale. The HDB had also asked that they give their answer by 4 April 2011. The respondents' conveyancing executive only replied via email on 19 April 2011,

indicating the respondents' willingness to wait. The HDB agreed to this and at this stage, it is evident that the eight week period stipulated in Clause 12 had thereby been extended indefinitely.

45 Moreover, although this agreement to defer the sale occurred after the estimated completion date of 8 April 2011 had passed, as this estimated date had no contractual significance (see [23]-[27] above), and as the respondents' reply was given within the contractually stipulated window of completion of eight weeks from the date of the First Appointment, the respondents, at that point, on any view, had no entitlement to late completion interest. Had the respondents chosen to abort the sale at that point, there would clearly have been no issue of late completion interest arising at all. The most the respondents would have had was a remedy in damages for the additional amount they might have had to pay for an alternative property. Putting the respondents' case at its highest, the respondents might have preserved their *existing rights* but they cannot be said to have gained an *additional right* to claim late completion interest by way of liquidated damages simply by agreeing to defer the sale without saying anything at all about interest.

46 For all these reasons, we think that on the facts of this case, the respondents cannot avail themselves of the liquidated damages clause contained in Condition 8.2 of the LSCS.

47 For completeness, we also observe that the present case may be distinguished from *Ken Glass* and *Chan Ah Beng*. In those cases, the parties had proceeded on the common assumption that completion would occur on the last day of the contractually-stipulated period, hence making that day the date fixed for completion. More pertinently, unlike Clause 12 of the Option, the contractual completion periods in *Ken Glass* and *Chan Ah Beng* were not qualified as being subject to further notification or extension by a third party such as the HDB.

48 A further distinction is that *Ken Glass* did not concern a claim for liquidated damages and hence the specific question of whether there was a "date fixed for completion" did not arise. The question there was simply whether a breach sounding in unliquidated damages had occurred where completion took place beyond the stipulated completion date.

4 9 *Chan Ah Beng* on the other hand *did* concern a claim for liquidated damages under Condition 8.2 of the LSCS, but there appears to have been no dispute in that case as to what the scheduled date of completion was (see *Chan Ah Beng* at [9]). Further, the focus of that dispute was fundamentally different from the present case in that the question relating to completion dates concerned which of three possible contractually stipulated completion periods was applicable in light of a "best endeavours clause" within the option. The court went on to determine the applicable completion period in the light of the position in *Travista Development Pte Ltd v Tan Kim Swee Augustine and others* [2008] 2 SLR(R) 474 ("*Travista*"), namely that a best endeavours clause imposed a duty to do "everything reasonable in good faith with a view to obtaining the required result within the time allowed" (see *Chan Ah Beng* at [34] and [36], referring to [22] and [19] of *Travista* respectively). The question in *Chan Ah Beng* was thus framed as what the *period of time* was within which the parties had to apply their best endeavours to achieve a certain result, as distinct from a determination of a specified date for a specified event (*ie*, completion of sale).

50 We have found that late completion interest under Condition 8.2 of the LSCS is not a remedy open to the respondents in this case because the contractual requirement under Condition 8.2 that there be a "date fixed for completion" was not met. Furthermore, the respondents in agreeing to defer the sale could not have thereby gained a right which they did not possess at the time of their agreement to defer.

51 This is not to say that the respondents had no remedy at all. It was still open to them to claim

unliquidated damages under general law, subject to proof of loss and their duty to mitigate. An innocent party to a contract for sale of land who stands ready and willing to complete is entitled to claim damages under general law in the event of the other party's failure to complete the sale timeously. In *Raineri v Miles; Wiejski (Third Party)* [1981] 2 WLR 847, upon the vendors' failure to complete the sale of a house on the stipulated completion date, the purchasers were able to recover damages representing the cost of temporary accommodation pending the delayed completion of sale. Such damages would also include the additional cost of an alternative property if the sale did not go through at all: see *Lie Kie Siang v Han Ngum Juan Marcus* [1991] 2 SLR(R) 511.

52 The same principles of recovery apply where the contract is breached by a failure to complete within a reasonable time, there having been no contractual date fixed for completion to begin with. While it is uncommon for the completion date to be left open in a contract for sale and purchase of land, a helpful analogy can be drawn from cases involving construction contracts where, even when time is set "at large", a defaulting party's liability in damages is well established. In the context of construction contracts, the learned authors of *Chitty on Contracts*, vol 1 (H G Beale gen ed) (Sweet & Maxwell, 30th Ed, 2008) explain (at para 37-117) that:

Where the work is delayed by the employer and an appropriate extension of time is not granted, time is said to be "at large", ie. the contractual date is no longer binding. The contractual obligation is then replaced by an obligation to complete within a reasonable time. Time will be "at large" where the delay is caused by the employer and no machinery exists under the contract allowing the completion date to be re-fixed. The same applies where the contract administrator fails to extend time. In *McAlpine Humberoak v McDermott International*, the contract provided for an extension of time but contained no machinery whereby it was to be granted. The Court of Appeal held that this did not prevent time being re-fixed, if necessary by the court, so as to permit the recovery of general (not liquidated) damages by the employer.

53 Similarly in *Peak Construction (Liverpool) Ltd v McKinney Foundations Ltd* (1970) 1 BLR 111, the English Court of Appeal held that where delay in completion under a construction contract was occasioned by an event for which the contractual time extension clauses did not provide, namely the employer's inaction upon its discovery of certain building defects, a new completion date could not be fixed under the time extension clauses and hence time would be "at large". The obligation is then for the contractor to complete within a reasonable time. As Edmund Davies LJ noted (at 126):

The stipulated time for completion having ceased to be applicable by reason of the employer's own default and the extension clause having no application to that, it seems to follow that there is in such a case no date from which liquidated damages could run and the right to recover them has gone.

54 Rather, the employer was "left to his ordinary remedy; that is to say, to recover such damages as he can prove flow from the contractor's breach" (at 121 *per* Salmon LJ). The Singapore High Court in *Lian Soon Construction Pte Ltd v Guan Qian Realty Pte Ltd* [1999] 3 SLR(R) 518 reached a similar conclusion.

55 The cases involving construction contracts thus provide useful guidance as to the parties' liabilities where no new completion date is fixed after the original completion date is rendered inapplicable for one reason or other. In the present case, no completion date was fixed to begin with, and hence the position remains that there was no contractual date from which liquidated damages could run, but unliquidated damages would have been recoverable if the loss resulting from the failure to complete within a reasonable time had been proved. The reason the respondents in the present case did not succeed in their claim for unliquidated damages was because they failed to provide

evidence of the expenses incurred during the period of the delayed completion.

Conclusion

56 In view of the absence of a fixed date for completion of the sale, we find that Condition 8.2 of the LSCS is not applicable. We hence allow the appeal on the question of late completion interest.

57 We see no reason to disturb the costs order below because the substantive orders that had been sought and obtained were justified. In so far as the costs of the appeal are concerned, the appellant only succeeded on a narrow point. We accordingly fix the appellant's costs of the appeal at \$7000.

[\[note: 1\]](#) See Affidavit of Lim Hoe Heng at Appellant's Core Bundle ("ACB") Vol 2 p 49, paras 5-6

[\[note: 2\]](#) See ACB Vol 2 at p 1-10

[\[note: 3\]](#) See ACB Vol 2 at p 24

[\[note: 4\]](#) See ACB Vol 2 at p 27

[\[note: 5\]](#) See ACB Vol 2 at p 31, para 2

[\[note: 6\]](#) See Affidavit of Goh Siu Mui at para 10, ACB Vol 2 p 43

[\[note: 7\]](#) See ACB Vol 2 at p 28

[\[note: 8\]](#) See ACB Vol 2 at p 33

[\[note: 9\]](#) See ACB Vol 2 at p 34

[\[note: 10\]](#) See ACB Vol 2 at p 35

[\[note: 11\]](#) See Appellant's Record of Appeal "RA" Vol 3 at pp 74-77

[\[note: 12\]](#) See Affidavit of Lim Hoe Heng at para 25, ACB Vol 2 at p 54

[\[note: 13\]](#) See Affidavit of Lim Hoe Heng at para 29, ACB Vol 2 at p 55

[\[note: 14\]](#) See Statement of Claim, RA Vol 2 at pp 40-43

[\[note: 15\]](#) See First Defendant's Skeletal Arguments para 2, at RA Vol 4 p 214

[\[note: 16\]](#) See Defendant's Written Submissions dated 30 November 2011, at RA Vol 4 pp 221-223

[\[note: 17\]](#) See 1st Defendant's Proposed Further Arguments dated 30 November 2011 paras 17-22 at RA Vol 4 pp 223-224

[\[note: 18\]](#) See 1st Defendant's Proposed Further Arguments dated 30 November 2011 paras 23-35 at RA Vol 4 pp 224-227

[\[note: 19\]](#) See Plaintiff's Written Submissions dated 23 November 2011 paras 1-8, at RA Vol 4 at pp 205-207

[\[note: 20\]](#) See Plaintiff's Written Submissions dated 23 November 2011 paras 11-12, at RA Vol 4 at p 208, and Plaintiff's Response to 1st Defendant's Proposed Further Arguments dated 6 February 2012 paras 5-8 at RA Vol 4 at pp 274-275

[\[note: 21\]](#) See Plaintiff's Response to 1st Defendant's Proposed Further Arguments dated 6 February 2012 paras 14-20 at RA Vol 4 at pp 278-280

[\[note: 22\]](#) See Order of Court dated 24 November 2011 at ACB Vol 1 pp 29-33

[\[note: 23\]](#) See Minute Sheet dated 6 February 2012 at p 1, and Plaintiff's Response to 1st Defendant's Proposed Further Arguments dated 6 February 2012 para 11 at RA Vol 4 at p 276

[\[note: 24\]](#) See RA Vol 4 at pp 291-293

[\[note: 25\]](#) See RA Vol 4 at pp 294-296

[\[note: 26\]](#) See RA Vol 4 at p 306

[\[note: 27\]](#) See Notice of Appeal, RA Vol 2 at pp 34-36

[\[note: 28\]](#) See GD at [55]

[\[note: 29\]](#) See GD at [53]-[54]

[\[note: 30\]](#) See GD at [52]

[\[note: 31\]](#) See GD at [57]

[\[note: 32\]](#) See ACB Vol 1 p 26, GD at [59]

[\[note: 33\]](#) See RA Vol 4 at pp 285-286