Ong Kok Ming (alias Ong Henardi) *v* Happy Valley Holdings Pte Ltd and another [2011] SGHC 199

Case Number : Suit No 1051 of 2009

Decision Date : 31 August 2011

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Wong Siew Hong and Colin Phan (Infinitus Law Corporation) for the plaintiff; Basil Ong Kah Liang (PK Wong & Associates LLC) for the first defendant.

Parties : Ong Kok Ming (alias Ong Henardi) — Happy Valley Holdings Pte Ltd and another

Contract

31 August 2011 Judgment reserved.

Judith Prakash J:

Introduction

1 The issue in this case is whether the plaintiff and the defendants had entered into an enforceable contract for an option for the sale of property.

2 The plaintiff, Ong Kok Ming @ Henardi Ong, is a businessman. Through a company known as Tirta Sari Pte Ltd ("TSPL"), he owns and operates a chain of restaurants. At all material times, TSPL was the tenant of three units in Lucky Plaza, *viz*, #01-45, #01-46 and #01-47. These units, together with the adjacent units known as #01-42, #01-43 and #01-44, were at the material times jointly owned by the first defendant, Happy Valley Holdings Pte Ltd, and the second defendant, Mr Peter Lok Chan. These six units (hereinafter collectively called "the Property") were the subject matter of the alleged agreement between the plaintiff and the defendants.

3 In the negotiations between the plaintiff and the defendants, the first defendant was represented by its director, Susanna Kwan Ping Sum ("Ms Kwan"), and her husband, Aloysius Chu Fee Loong ("Mr Chu"). Ms Kwan also held a power of attorney with respect to the Property granted by the second defendant on 6 June 1996. The second defendant is resident in Hong Kong and is Mr Chu's brother-in-law. The plaintiff's position is that Ms Kwan represented the second defendant in the negotiations. The second defendant, although served with the writ in this action, did not enter an appearance and did not dispute this contention. The action was defended by the first defendant alone.

4 Another person who played a part in the negotiations regarding the sale of the Property was one Choo Kok Yin aka Frederick Choo ("FC"). At the material time, he was a property agent and had been instrumental in introducing TSPL to the first defendant and obtaining a tenancy of three units of the Property for TSPL.

The facts

5 In 2001, the Property was mortgaged to the Bank of East Asia Limited ("BEA") as security for banking facilities extended by BEA to a company called Farquson Private Limited ("FPL"). Ms Kwan and

Mr Chu were the directors and shareholders of FPL. At the beginning of 2009, the outstanding amount under the facilities secured by the mortgage to BEA was in excess of $23m and due to the 2008 financial crisis, the financial outlook was uncertain. BEA therefore requested the first defendant to sell the Property in order to reduce the amount of FPL's indebtedness.

6 Thereafter, Mr Chu took steps to obtain a valuation of the Property and also appointed a property agent to market it. In March 2009, he was provided with a valuation report showing a total value of about $20m for the units comprising the Property and a forced sale value of $16m. All six units of the Property were rented out. These tenants had been introduced to the first defendant by FC and therefore, sometime in April 2009, Mr Chu contacted FC to see whether he had any clients who might be interested in purchasing the Property. Subsequently, FC informed him that the owner of TSPL was interested in acquiring the Property. As a result a series of meetings took place between the plaintiff and the defendants' representatives.

7 The first meeting took place sometime in April/May 2009 and ended without any conclusion. In May/June 2009, BEA kept pressing the first defendant to sell the Property and indicated it would prefer an owner's sale rather than a forced sale. At about that time, BEA informed Mr Chu that it had received offers to purchase the Property at a price of about $12m. Mr Chu, sensing that BEA might want to sell the Property at that price, asked FC to check with the plaintiff to see if he was still interested in acquiring the Property.

8 A lunch meeting to discuss the sale of the Property took place around the end of June 2009. It was attended by FC, the plaintiff and his daughter, Jessica Ong, Mr Chu and Ms Kwan. No agreement was reached but Mr Chu informed the plaintiff that an acceptable price would have to be close to the forced sale value of $16m stated in the valuation report. A second lunch meeting between the same persons also ended without an agreement.

9 Sometime after this second meeting, BEA informed Mr Chu that it had a client who was willing to buy the Property at $13.5m. Mr Chu wanted a better price and therefore asked FC to arrange for a third meeting with the plaintiff. This meeting took place at the Pines Club on 31 August 2009 over lunch. It was attended by the same persons as had gone to the first two meetings.

10 According to Mr Chu, at this third lunch meeting, he told the plaintiff that there was a firm offer received from a prospective purchaser but if the plaintiff was prepared to offer at least $14.5m, he would seriously consider that offer. The plaintiff mentioned that he had sold certain assets and was expecting to receive his money. He showed Mr Chu some documents to prove that he had the money except that it would take some time for it to come in. Mr Chu did not look at these documents closely and did not pay them very much attention. In response, he told the plaintiff that time was not very important since it would take about three months for the sale to be completed anyway. He stressed that he could help the plaintiff arrange for financing if that was necessary. In an effort to persuade the plaintiff, he even told him and FC that although FC was the plaintiff's agent, the first defendant would pay the latter's commission as well. However, the plaintiff was again non-committal and said that he would talk to his wife about the matter. No mention was made about any option agreement to be issued and what the terms of any purchase would be.

11 The plaintiff's version of what happened at this third lunch meeting is very different. He firmly believes that the parties had reached an agreement for the Property to be sold to him at the price of $14.5m. The plaintiff said that during the meeting, he told Mr Chu and Ms Kwan that funds would be coming his way at the end of October 2009 and that only then would he be in a position to pay the balance of the purchase price. He said he would have insufficient funds to pay for the Property in September 2009. He showed Mr Chu and Ms Kwan his bank documents to prove this but when he

presented these documents to Mr Chu, the latter replied with no hesitation at all, "money no problem". Then the parties got down to the issue of the price and discussed various figures. Finally, near the conclusion of the lunch, the price of $14.5m was agreed upon and a deal was reached. At the end of the meeting, the plaintiff told Mr Chu and Ms Kwan that he would pay the option money of one percent of the purchase price ($145,000) immediately. He had brought along with him a single cheque leaf in order to make payment. Mr Chu, however, informed the plaintiff that he needed two cheques, one for $139,000 and the other for $6,000, and therefore the plaintiff was unable to pay the option money at the end of the meeting. Mr Chu told him to give the first defendant the cheques the next day. It should be noted that both Jessica Ong and FC testified that an agreement for the sale of the Property was reached at the third lunch meeting.

12 On 1 September 2009, FC collected two cheques in favour of the first defendant from the plaintiff. These were drawn on the account of one of the plaintiff's companies, Megantara Indo Trading Private Limited ("Megantara"), and were for the sums of $139,000 and $6,000 respectively. FC took the cheques to the first defendant's office and handed them to Ms Kwan in the presence of Mr Chu. FC told them that the cheques were not to be presented for payment until he or the plaintiff called and said that this could be done. Ms Kwan then made a photocopy of the two cheques and acknowledged their receipt on the photocopy. At this time, Mr Chu gave FC a document containing the format of the proposed option agreement to be issued by the defendants. This document was referred to in evidence as the "draft option".

13 The plaintiff received the draft option on 2 September 2009. He noted that one of the terms was wrong in that it stated the option had to be exercised in two weeks' time, *ie*, by 11 September 2009. The plaintiff thought that this was inconsistent with the negotiations and he told FC to remind the defendants that Mr Chu had agreed that there was no issue regarding the plaintiff's funds being received only in October as long as completion of the purchase took place by the end of the year. The other terms of the draft option correctly stated the addresses of the Property, the names of the vendors, the price, and the name of the law firm authorised to represent the vendors.

14 Subsequently, the plaintiff decided that it was better for him to acquire the Property in his own name. He drew two cheques in favour of the first defendant on his personal bank account and gave them to FC to pass to the first defendant. On 8 September 2009, FC went to the first defendant's office and wanted to hand over the plaintiff's personal cheques to Ms Kwan in exchange for the earlier Megantara cheques. Ms Kwan telephoned her husband and, after he himself spoke to FC, Mr Chu instructed her to accept the two new cheques and return the Megantara cheques. Ms Kwan made a photocopy of the new cheques and acknowledged receipt of them on the back of the photocopy.

15 The next disputed area of evidence relates to a meeting that took place the next evening, 9 September 2009, in the first defendant's office, between Mr Chu and FC. According to Mr Chu, he told FC that even by that date, no specific terms had been agreed upon as FC had not signified that the terms of the draft option were acceptable to the purchaser. FC then said that the plaintiff had difficulty with the 14 days' exercise period and required the date for exercise of the option to be towards the end of October 2009. Mr Chu alleged that he responded that "this suggestion was too far from the normal period of 14 days". In any event, he said he would have to seek the approval of BEA and the second defendant regarding any proposed sale and its terms especially in relation to the exercise date. He proposed that he would fly to Hong Kong at the earliest opportunity to get such approval.

16 According to Mr Chu, he then asked FC whether the plaintiff would agree to his cheques being presented for payment without obligation, pending Mr Chu's visit to Hong Kong that weekend. In the event that Mr Chu was unable to obtain the approval of the second defendant and BEA to the terms,

then the sums paid into the first defendant's account would be refunded to the plaintiff. FC replied that he would talk to the plaintiff and left the premises. Shortly thereafter, FC called Mr Chu on Ms Kwan's mobile phone and said that it was all right to bank in the cheques on the proposed basis. On the next day, the first defendant presented the cheques for payment.

17 FC's evidence was that sometime after 2 September 2009, he had called Mr Chu to convey to him what the plaintiff had said about the erroneous option exercise date in the draft option. Mr Chu's response was to ask when the plaintiff would be able to exercise the option. FC said that the plaintiff needed time until October. Mr Chu said "okay" but in the same breath he mentioned that he needed to discuss the date with the second defendant. Mr Chu did not, however, get back to FC on this matter.

18 FC also said that he went to the first defendant's office on 10 September 2009 at the request of Ms Kwan. When he arrived there, Mr Chu told him to secure a firm date from the plaintiff on when the latter could exercise the option. He telephoned the plaintiff immediately and was told that the middle of October was the firm date. This was conveyed to Mr Chu and FC said that if 15 October was acceptable, the plaintiff's cheques for a total of $145,000 could be banked in. The first defendant deposited the plaintiff's cheques on 10 September 2009 and they were duly cleared.

19 According to Mr Chu, the next development was that on 11 September 2009, he was informed by BEA that it had a purchaser who would be prepared to pay $15.5m for the Property. Accordingly, when he went to Hong Kong on 12 September 2009, it was for the purpose of confirming whether BEA would agree to a sale at this price notwithstanding that it was insufficient to cover Farquson's indebtedness to BEA. In Hong Kong, Mr Chu met an officer of BEA and tried to persuade him to delay the sale of the Property, an effort that was not successful. Mr Chu also called his sister to mention that the Property would be sold for $15.5m. She said that she would inform the second defendant of the same.

20 On 15 September 2009, Ms Kwan and Mr Chu asked FC to go to their office. There, they told him that they had received an offer of $15.5m for the Property and showed him an option to purchase to be granted in favour of a purchaser named Geetex Pte Ltd ("Geetex"). They told FC to find out from the plaintiff if he was prepared to match the price of $15.5m and that if he could not, then the plaintiff's option money would be returned to him. They also told FC that if the plaintiff was prepared to match this price, then the plaintiff would have to pay FC's commission. Mr Chu himself said he spoke to the plaintiff on the telephone and told him he would have to exercise the option within the normal 14 day period and to complete the purchase by 15 December 2009. The plaintiff then spoke to Mr Chu briefly and told him that the defendants would be hearing from the plaintiff's lawyers.

21 The plaintiff did not meet the price of $15.5m and the defendants thereafter issued an option to Geetex for sale of the Property at this price. The first defendant attempted to refund the sum of $145,000 to the plaintiff but the latter refused to accept it. The sale of the Property to Geetex was completed on 30 October 2009.

The action and the issues

22 The plaintiff commenced this action on 11 December 2009. He claims against the defendants for breach of contract in respect of the defendants' failure to issue an option to the plaintiff to purchase the Property. The plaintiff says that on 31 August 2009, he entered into an agreement with the defendants by which he agreed to purchase the Property and the defendants agreed to issue him an option for such purchase at a price of $14.5m. The defendants neglected, failed or refused to issue the option to the plaintiff and instead sold the Property to Geetex. The plaintiff seeks damages.

23 The first defendant's case is that there was no concluded agreement for the sale of the Property to the plaintiff. Further, even if there had been an oral agreement for the grant of an option to the plaintiff, the requirements of s 6(d) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("the Act") were not met and therefore the agreement is not valid and enforceable.

24 The following main issues arise out of the pleadings and the submissions:

(a) whether the defendants had entered into an agreement with the plaintiff to issue an option to the plaintiff in respect of the purchase of the Property;

(b) if so, whether the requirements of s 6(d) of the Act have been fulfilled;

(c) in the alternative, if s 6(d) of the Act is not fulfilled, whether the agreement is nevertheless enforceable by virtue of the doctrine of part performance; and

(d) if there was an agreement, what remedy the plaintiff can claim for its breach.

Issues

Was there an agreement for an option to be issued to the plaintiff?

25 The plaintiff's case is that the parties reached an agreement at the conclusion of the meeting on 31 August 2009. The first defendant says that there was no agreement at all on that date because:

(a) the price was not agreed upon;

(b) the plaintiff had told Mr Chu that he wanted to check with his wife about the matter;

(c) the terms of the option had not been agreed on, and in particular, the exercise and completion dates had not been agreed on;

(d) the identity of the purchaser had not been disclosed; and

(e) the second defendant's agreement to the sale had not been obtained.

26 I must now examine the evidence. The evidence of the plaintiff, his daughter and FC was that an agreement was indeed reached at the meeting on 31 August 2009 at the Pines. They agreed that this agreement related to the purchase of the Property at a price of $14.5m. Both Ms Kwan and Mr Chu denied vehemently that any agreement had been reached. Who was telling the truth?

27 The first defendant was represented at the meeting by Mr Chu and Ms Kwan. There was no dispute that these persons had the authority to represent the defendants even though Mr Chu was not a director of the first defendant or the donee of the power of attorney executed by the second defendant. Ms Kwan who occupied both those positions testified that Mr Chu had handled all the discussions relating to the sale of the Property during the meetings with the plaintiff and that she herself, though present, had not participated in the same. She did not suggest at any time that Mr Chu was not authorised to speak for either of the defendants. The very fact that she took a back seat and let Mr Chu do all the talking indicated the extent of his authority. Mr Chu himself agreed in court that he was the driving force behind the sale of the Property. I think it is a fair inference from the evidence that the first defendant was very keen to accomplish its own sale of the Property

instead of submitting to a mortgagee sale.

28 Ms Kwan was not an impressive witness as she was evasive and changed her position from time to time during the course of her testimony. A prime example of this related to the position of FC. The witness agreed that in March 2009 when FPL received a letter of demand from BEA, she was worried about how she was going to repay BEA. She further agreed that she then contacted FC to put the Property on the market for sale and to approach the sitting tenants, including the plaintiff, to see if they were interested in buying the Property. She was then asked whether she agreed that FC was the first defendant's agent for selling the Property. She prevaricated for sometime before answering the question as this extract from the evidence shows:

> Q And at all times, Frederick Choo was your agent for selling the property, correct?
>
> A Sorry, sorry, er, may I beg your pardon?
>
> Q At all times, Frederick Choo was your agent for selling the property, correct?
>
> A (Interpreted evidence resumed) Well, we only told him that we have a property for sale.
>
> Court Was he your agent or not?
>
> (Witness speaks in English)
>
> Witness If --- if, er, he got the tenant --- er, if --- if --- if, er, he got a interested buyer.
>
> Court Then?
>
> Witness Then, er, if, er, he got a ten---genuine buyer, so we have the property for sales. So I can say that he is the agent.

It appears to me from this evidence that even though commission was not discussed at this stage, FC was acting as the seller's agent in this transaction between the defendants and the plaintiff. There is not only Ms Kwan's reluctant admission that he would be their agent if he found a buyer but also Mr Chu's statement in his affidavit (repeated at [6] above) that he too had contacted FC to find out if the latter had any buyers for the Property.

29 When it came to what happened on 31 August 2009, Ms Kwan's affidavit was extremely brief. There, all she said about the 31 August meeting was that the plaintiff had mentioned that he was expecting to receive his money from the sale of his properties but he did not say when and that Mr Chu had told the plaintiff that the sale price of the Property would have to be at least $14.5m. Under cross-examination she stated that she was not sure whether the plaintiff had accepted the price of $14.5m. When it was put to her that the first defendant had accepted the plaintiff's offer to purchase the Property at this price, she at first said "I agree". Subsequently, she was asked again whether the plaintiff had offered this amount and the first defendant had accepted it and this time she replied "at first I thought he accepted but before we go off ... he mentioned he would talk to the wife tonight".

30 Ms Kwan was evasive in relation to the significance of the document which the plaintiff had shown Mr Chu at the 31 August 2009 meeting. She was asked whether she remembered that the plaintiff had brought along a document to show that he had funds coming in to Singapore. Her response was that she knew he had brought "a piece of paper" but she was not sure what that paper was. It was then put to her that the plaintiff had told her and Mr Chu that the funds for the purchase of the Property, $14.5m, would be coming in to Singapore at the end of October 2009. Her response was:

> I am not sure what is the arrangement because, er, I just, er, attend the meeting but I'm not, er, er, really listen what they --- the arrangement.

I found that reply difficult to credit and asked her whether she had listened to what was going on. She then answered:

> Er, maybe I just sit beside the --- I mean, attend the meeting but, er, what is the arrangement made between them, I'm not very sure.

It is difficult to accept as true this sort of evidence from a witness who was a director of the first defendant and had a personal interest (as a guarantor of FPL's indebtedness) in selling the Property and reducing the indebtedness to BEA as much as possible. It should also be noted that subsequently when the witness was asked several questions about the document produced by the plaintiff, her initial response was to repeat that she did not know what that piece of paper was for but eventually she replied:

> I only know this piece of paper, er, is about the fund but I'm not --- I'm not sure what is arrangement.

Ms Kwan therefore admitted that she knew that the document related to the remittance of the plaintiff's funds but she still attempted to maintain her alleged ignorance as to what had been agreed between Mr Chu and the plaintiff.

31 At first blush Mr Chu appeared to be a more credible witness. Examination of his testimony, however, revealed cracks. Some of these are detailed later in this judgment.

32 In court, Mr Chu attempted to qualify his evidence about what had happened at the meeting. He was asked whether the plaintiff had made an offer of $14.5m. He responded that the figure was raised by him and that he had told the plaintiff $14.5m was the lowest figure that the defendants would accept. Mr Chu then said that "He [*ie*, the plaintiff] did not at that time argue on the figure". The exchange following this answer is set out below:

> Q Mr Chu, I'm instructed --- that Mr Ong at that meeting, which was the fourth meeting, offered 14.5. What do you say to that?
>
> A The --- the offer came from me. But, er, if you say that --- I mean we --- we --- we agreed to the 14.5.
>
> Q Yes.
>
> A There's no argument on that.
>
> Q Okay. And there was agreement on the price at 14.5?
>
> A I thought there was an agreement ---
>
> Q Yes.
>
> A --- during the meeting ---
>
> Q Yes

A --- until the end of the meeting when he told me that, "Oh, okay. Let me go back and talk to my wife this evening".

33 I do not accept Mr Chu's and Ms Kwan's evidence that there was no agreement because the plaintiff needed to go back to consult his wife. There are various reasons for this. First, as stated, I have doubts as to the credibility of these witnesses. Secondly, the events that took place both before and after the 31 August 2009 meeting make the first defendant's version much less probable than the plaintiff's denial that any such thing occurred. The parties had met three times before over a period of a couple of months. The meeting on 31 August 2009 was planned and, by that time, the plaintiff had done his sums. He had also made arrangements to bring a bank document to the meeting to show to the first defendant as proof of his ability to pay for the Property. It was not as if there was going to be an impulse purchase on the part of the plaintiff. Since the plaintiff was willing to buy the Property at $14.5m, why would he first confirm that and then say that he needed to go back to consult his wife? The plaintiff had the funds, raised from the sale of other assets. His wife had not previously played any part at all in the negotiations, and no need for the plaintiff to consult his wife was demonstrated.

34 The plaintiff submitted that the only "sticking point" at the meeting was whether the option period would be extended. He also pointed out that Mr Chu had confirmed in court that he was eager to sell at the time of the meeting and that he was looking at all means possible to accommodate the plaintiff in order to facilitate the sale. Mr Chu had gone so far as to promise the plaintiff to help him get bank facilities if these were required to complete the purchase. The plaintiff therefore submitted that the extended option period was not a problem for the first defendant.

35 I think it likely that the exercise date in respect of the option was not specifically mentioned at the meeting and that the parties were talking in more general terms. This, however, does not mean that the parties did not agree in a general way on an extended period for exercise of the option. It was the plaintiff's evidence that when he explained that his funds would be coming in in October, Mr Chu had said "money no problem". Mr Chu denied this but the plaintiff's evidence was supported by FC who added that Mr Chu had emphasised that he wanted the completion date to be by the end of October 2009. At that stage, the best offer that the first defendant had was for $13.5m and it was Mr Chu who had initiated the meeting with the plaintiff in the hope of getting a figure that was closer to his desired amount of $16m. It was also Mr Chu who brought the first defendant's asking price down to $14.5m and thereby made the deal possible. Mr Chu had seen the plaintiff's bank document by then and must have been satisfied that the plaintiff was a genuine buyer. I hold that in these circumstances, the first defendant was willing not to insist on the exercise period for the option being the normal two weeks.

36 The events that took place after 31 August 2009 support the plaintiff's case that agreement on the sale and the price was reached on that date. On 1 September 2009, Mr Chu accepted the two Megantara cheques and in return handed the draft option to FC for transmission to the plaintiff. Mr Chu testified that this draft option had been prepared several days earlier by his solicitor (after he had been told by BEA about the $13.5m offer) and that he had printed it out on 1 September 2009 after adding some details. The draft option contained all the material particulars including the price of $14.5m and the completion date of 30 November 2009 which was three months after 31 August 2009. Mr Chu confirmed in court that this document had been prepared *after* the meeting on 31 August 2009:

... if you say it --- "prepare" means that the putting in of --- the certain amount, the – the figures and so on, er yes, I don't --- er, I don't disagree.

As the plaintiff submitted, it is also telling that Mr Chu contradicted himself at this juncture. He had earlier testified that he thought that there was no agreement because the plaintiff had said he needed to check with his wife. Yet, when talking about the completion date of 30 November 2009, he said:

> --- that I might have put in myself or I asked PK to put it in because that --- when I gave to, er, er, the --- the agent, er, Mr Choo, we have already --- I thought we have already got an agreement. So --- so that is why that date was in.

Mr Chu prepared the draft option by inserting the material particulars in the draft which his lawyer had given him after the meeting. Therefore, it would appear that on his own evidence, after the meeting Mr Chu believed that there was an agreement. Otherwise, he would not have prepared the draft option and would not have had it available to hand to FC when the latter arrived with the two cheques for $139,000 and $6,000 on 1 September 2009.

37 The fact that the plaintiff issued two cheques for a total of $145,000 is also evidence that an agreement existed. The figure of $145,000 was obviously derived as the standard one percent option fee based on the agreed sale price of $14.5m. The first defendant must have told the plaintiff to issue two cheques and what the face amounts of each cheque should be. Otherwise, the plaintiff would simply have issued one cheque as he testified he had been prepared to do at the conclusion of the 31 August 2009 meeting.

38 I agree with the plaintiff that, on the evidence, the parties had gone to their meeting on 31 August 2009 with the expectation that an agreement was possible. I hold that at the conclusion of the meeting, the parties reached an agreement for the defendants to sell the Property to the plaintiff for $14.5m and for the defendants to issue to the plaintiff the written option to purchase the Property required by such agreement upon payment of the option fee.

39 With reference to the points made by the first defendant as set out in [25] above, I find no merit in the same. First, the price was agreed and I have held that the plaintiff had not told Mr Chu that he needed to check with his wife. Second, the main terms of the option, *ie*, price, parties and property had been agreed. There had been no discussion of any of the other terms apart from payment and as far as payment was concerned, the plaintiff had said that his money would be in by October 2009 and Mr Chu had indicated that as long as completion took place before the end of the year that was acceptable to him. There was no dispute about timelines and indeed, when the draft option was issued, the plaintiff had no quarrel with it apart from the specified option exercise date. I have found that although the exercise date had not been agreed specifically, this was not a concern to Mr Chu who was willing that the option to be exercised in October 2009 when the plaintiff's money came in. As for the identity of the purchaser, it was clear to all parties that the purchaser would be the plaintiff either directly or through a vehicle nominated by him. The final point about the second defendant's consent to the sale not having been obtained is of little moment. The second defendant had given Ms Kwan a power of attorney which enabled her to sell the Property on his behalf and Ms Kwan had agreed to the sale. Mr Chu's own evidence was that when he went to Hong Kong, he did not see or speak to the second defendant at all, let alone ask for his consent to the sale, whether to the plaintiff or to Geetex. Mr Chu stated that he *told* his sister about the impending sale of the Property and told her to inform her husband. He did not ask her to obtain the second defendant's consent. This evidence underlines the untruth of the first defendant's assertion that Mr Chu needed to get the second defendant's consent to the sale before a contract could be concluded.

Is there a sufficient memorandum in writing?

40 Section 6(d) of the Act provides as follows:

> **Contracts which must be evidenced in writing**
>
> 6. No action shall be brought against –
>
> ...
>
> (d) any person upon any contract for the sale or other disposition of immovable property, or any interest in such property ...
>
> unless the promise or agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person lawfully authorised by him.

It can be seen that the section has three requirements. The first is that there is some written evidence of the contract. The second is that the material terms of the contract are included in the writing. The third is that the writing is signed by the party to be charged.

41 It is common ground that s 6(d) is applicable in the present case as an option for the purchase of property creates in favour of the option holder an equitable interest in the land be sold: see *Joseph Mathew v Singh Chiranjeev* [2010] 1 SLR(R) 338 ("*Joseph Mathew*").

42 The plaintiff pleads at para 18 of the amended statement of claim that s 6(d) is satisfied by a combination of the following memoranda:

(a) Ms Kwan's acknowledgement of receipt on 1 September 2009 on the photocopy of the Megantara cheques;

(b) the draft option; and

(c) Ms Kwan's acknowledgment of receipt on 9 September 2009 on the photocopy of the plaintiff's personal cheques.

43 The first defendant argues that s 6(d) is not satisfied because:

(a) the documents that the plaintiff relies on were all referable to acts or events which took place after the alleged agreement was reached on 31 August 2009 and were not created at the time of that agreement;

(b) the requisite three "Ps" of price, parties and property are not satisfied because the documents do not identify the purchaser;

(c) the acknowledgements of receipt of cheques do not fulfil the requirement that the memorandum has to be signed by the party to be charged;

(d) the first set of cheques acknowledged was not to be presented for payment until receipt of confirmation from the plaintiff and this means that there was no payment by the plaintiff for the option; and

(e) it was the plaintiff's evidence that he was not expecting an option in return for his

payment of $145,000 and he expected to only receive the contract after he paid a further nine percent of the sale price.

44 Considering the first defendant's objections, I see no merit in the first point which is that the memorandum required by s 6(d) had to be created prior to or at the time of the oral agreement on the option. The section does not specify any time within which the necessary writing has to be created. The important point is that such writing must exist before the action is started and is in reference to the oral agreement and not that it was made contemporaneously with the oral agreement.

45 The next two points raised by the first defendant require a consideration of the documents relied on. First, it is undeniable that the draft option was not signed. If the requirement of signature of the party to be charged is to be met, it can only be met by reliance on Ms Kwan's signature on the photocopies of the cheques presented by the plaintiff. The question is whether the draft option may be read jointly with the acknowledgment of receipt followed by her signature. The issue of whether, and if so when, disparate documents may be joined was raised in *Joseph Mathew*. There, the Court of Appeal recognised at [27] that s 6(d) can be satisfied by a joinder of several documents and went on to approve the observations made in GH Treitel, *The Law of Contract* (Sweet & Maxwell, 7th Ed, 1987) ("*Treitel*") at p 142:

> Where no single document fully records the transaction it may be possible to produce a sufficient memorandum by joining together two or more documents.
>
> Joinder is, in the first place, possible where one document expressly or impliedly *refers* to another transaction. If that transaction is also recorded in a document, and that document was in existence when the first was signed the two documents can be joined. [emphasis added]
>
> Even where the first document contains no reference to the second, the two can be joined if, on placing them side by side, it becomes obvious without the aid of oral evidence that they are connected. ...

46 The issue of signature has been approached by the courts in a very flexible manner. This was recognised in *Joseph Mathew* at [29] of the judgment:

> Yet another requirement in s 6(d) is that the note or memorandum must be "*signed*". In this regard, the observations by Prof Furmston, once again, are apposite (see *Cheshire, Fifoot and Furmston* ([26] *supra*) at p 273):
>
> > The word 'signature' has been *very loosely interpreted*. In the first place, it need not be a subscription; that is to say, it need not be at the foot of the memorandum, but may appear in any part of it, from the beginning to the end. *In the second place, it need not, in the popular sense of the word, be a 'signature' at all. A printed slip may suffice, if it contains the name of the defendant*. The relaxation of the statutory language was well established a hundred years ago and offers a striking instance of the way in which legislation may be overlaid by judicial precedent. [emphasis added]

47 The draft option identifies the Property and also the nature of the consideration both for the option and for the purchase and sale. The photocopy of the second set of cheques identifies the parties and contains the signature of Ms Kwan who was an authorised director of the first defendant and the donee of the second defendant's power of attorney. Therefore her signature was that of the parties to be charged in this case. The first defendant's contention was that the photocopy of the second set of cheques should not serve as a memorandum of the agreement because when Ms Kwan

signed it she was merely acknowledging receipt of the cheques. That contention is not sustainable. It is true that when she signed the photocopy on 8 September 2009, the immediate purpose of her action was to acknowledge receipt of the cheques. However, she only received the cheques because she was aware of the agreement between the plaintiff and the defendants and knew that the cheques were handed to her in the course of such agreement. She would not have accepted the cheques if the agreement had not been made.

48 Turning to the question of whether the draft option may be joined to the second set of cheques, joinder can be effected, as stated by *Treitel*, where if two documents are placed side by side, it is obvious they are connected, without recourse to oral evidence. This is satisfied on the facts of the present case. The draft option states as its first paragraph:

> IN CONSIDERATION of the sum of Singapore Dollars One Hundred and Forty-Five Thousand Only ... received by HAPPY VALLEY HOLDINGS PTE LTD ... from the Purchaser this day by way of option money, the Vendor hereby grants the Purchaser this Option to purchase the above described property ...

When this is juxtaposed with the photocopy of the two cheques made out to "HAPPY VALLEY HOLDINGS PTE LTD" for the sums of $139,000 and $6,000 which in total made $145,000, it is clear that the two documents are connected and can be joined as sufficient memoranda of the oral agreement between parties.

49 Between the two documents, the three "Ps" are satisfied as the property, price and purchaser are all clearly identified. The main terms are, with one exception, also contained in the draft option including the consideration and the date of completion. The exception is of course the date for exercise of the option. The draft option states that it shall expire at 3pm on 11 September 2009. This term was not agreed. If the date for exercise of the option was a material term of the agreement between the parties, then there is a question as to whether the failure to agree on that date is fatal to the enforcement of the contract.

50 I have said at [35] above that it is likely that the parties were not bothered about an extended date for exercise of the option. Looking at their evidence again in this context, it is clear that the plaintiff and Mr Chu were during their negotiations more concerned about the date of the completion of the sale and purchase than about the date by which the option should be exercised. In the circumstances, I find that the date for the exercise of the option was not a material term and the fact that there was an error in the date mentioned in the draft option is not fatal to the enforcement of the contract. At the time of the 31 August 2009 meeting, Mr Chu was very keen to sell at a higher price than he could get from the purchaser put forward by BEA. As long as the plaintiff was willing to pay $14.5m and do so in the usual completion period, he wanted to tie the plaintiff down and was not concerned that the plaintiff would not have all his funds in until mid-October. I note in particular that Mr Chu in his evidence in court testified in almost so many words that the date for exercising the option was never mentioned or discussed. He also agreed that as far as he was concerned, time was not important, in a loose sense, as long as the sale was completed at the end of three months.

51 I therefore hold that the draft option and the acknowledgement of the plaintiff's cheques together constitute a sufficient memorandum of the option agreement to satisfy s 6(d). The first defendant's further argument that it was not necessary for the defendants to issue the option because the plaintiff did not permit them to present the cheques cannot be accepted. The initial set of cheques could not be presented without confirmation from the plaintiff but he later agreed to the presentation of the second set of cheques and these were duly presented and cleared. The plaintiff thereby provided consideration for the grant of the option and the written document should have

been issued forthwith.

52 The first defendant did argue that the plaintiff had agreed to the cheques being banked in without obligation on the part of the defendants. Mr Chu's evidence was that he had told FC that he was going to travel to Hong Kong to ask BEA and the second defendant for their permission to sell the Property and asked that the plaintiff allow the cheques to be banked in pending such consent. He asserted that the plaintiff accepted this condition. The plaintiff denied it. I do not accept Mr Chu's version of events. There was no reason for the plaintiff to have allowed the first defendant to bank in cheques for a substantial sum of money on a "no obligation" basis. The plaintiff thought that the contract had been concluded and knew that he had to pay the option fee. That was why he agreed to the cheques being paid in. If he had known that the contract was subject to the consent of third parties, he might have refused to bank in the cheques because it would be much easier to pay when agreement was reached rather than to pay first and then have to look to the first defendant for a refund if the consent of the third parties was refused.

53 Mr Chu's evidence is also incredible because he had not brought up the necessity of getting consent from BEA and the second defendant at any time during the negotiations before the price of $14.5m was accepted. It was Mr Chu's evidence that he proposed this price. He did not testify that at that time he told the plaintiff that the price was subject to approval. Mr Chu was the one who called for the meeting to be held and at all times he had acted as if the decision on the price at which the Property should be sold was entirely within his hands. His evidence that he told FC that he had to get consent must have been an afterthought. Even if he had said it, it would not have been true since on 10 September 2009 he knew the bank had brought in the lower offer of $13.5m which it was willing to accept and the second defendant had already given Ms Kwan the power to sell the Property.

54 Finally, while it may have been the plaintiff's evidence that he was not expecting an option in return for his payment of the $145,000 that does not change the fact that an agreement was entered into and that it is enforceable because the requirements of s 6(d) have been met. The plaintiff as a layman may not have known at that time exactly what to expect but he did know that he was paying for a contract that would allow him to purchase the Property.

55 As I have found that the provisions of s 6(d) have been satisfied, I do not have to go on to consider if there was part performance.

The plaintiff's remedy

56 My finding is that there was a contract between the parties which obliged the defendants to issue a formal option document to the plaintiff containing the clause empowering the plaintiff to purchase the Property for $14.5m by exercising the option in the specified manner. The defendants were not entitled to ask him to increase his offer to $15.5m to match that made by Geetex. By doing so and by going on to grant for the sale of the Property to Geetex at the higher price, the defendants were in breach of their contractual obligations to the plaintiff. The next issue that arises is as to the remedy available to the plaintiff.

57 In his original statement of claim, the plaintiff claimed an order for specific performance requiring the defendants to issue an option to him for the purchase of the Property at $14.5m. In the alternative, he claimed damages which he particularised as including the loss of rental from the Property. The plaintiff amended his statement of claim in January 2011 to remove the claim for specific performance and to limit the relief sought to general and special damages. No particulars of special damages were pleaded, however, and therefore the plaintiff's claim must be only for general

damages.

58 In his closing submissions, the plaintiff dropped his contention that the general damages payable to him included loss of potential rental from the Property. This was a wise decision since that was too speculative a claim and not, as far as I am aware, a head of damages that is generally allowed in cases such as the present. Instead, the plaintiff claimed that the damages payable to him should be in the sum of $1m being the amount by which the defendants had profited by breaching their contract with him.

59 As stated in *Tan Sook Yee's Principles of Singapore Land Law* (3rd Ed LexisNexis 2009) at 16.122, the general measure of damages for the breach of a contract for the sale of land is the difference between the market value of the property at the date of completion and the contract price. The question is whether this measure should be applied here when the contract that was breached by the defendants was the option contract rather than the contract for sale. The first defendant submitted that in reality, the plaintiff's claim was for the loss of a chance of owning the Property and that the plaintiff was not able to prove that the first defendant's breach of agreement had caused him to lose this chance because:

(a) the plaintiff did not take any step to exercise the option which he said should have been issued to him;

(b) the plaintiff did not take any step to protect his interest in the Property by lodging a caveat; and

(c) the plaintiff did not take any step by way of injunction or otherwise to prevent the sale to Geetex.

60 With due respect, I do not think that any of the above points affect the plaintiff's right to claim damages. The plaintiff was not obliged to attempt to exercise the option he had when he knew that the defendants had declared unequivocally that they did not recognise it as a binding contract. The plaintiff was not obliged to lodge a caveat or to try and prevent the sale to Geetex. The plaintiff had the option of choosing to claim damages for breach of contract instead of trying to enforce the option. It is not for the defendants who are in breach of contract to tell the plaintiff what remedy he should seek.

61 The relevant question is whether, had the defendants issued the written option, the plaintiff would have wanted to and been able to exercise it and complete the purchase of the Property. The first defendant has not contended that the plaintiff did not have sufficient funds or was not in a position to obtain such funds to complete the purchase. The evidence was that the plaintiff was extremely interested in the Property because of its potential to earn rental income. All six units were tenanted and three of the units were occupied by the plaintiff's own company TSPL and therefore the plaintiff must have thought that the rental prospects for all the units were good. Secondly, the plaintiff expressed his interest over a period of three months or so and kept meeting the defendants' representatives to discuss the purchase. Thirdly, the plaintiff produced documents to the first defendant to prove that he had substantial moneys coming in and would be able to complete the purchase. Fourthly, it was Mr Chu's own evidence that he had offered to assist the plaintiff to obtain banking facilities if the plaintiff's own funds were insufficient to meet the full purchase price. Mr Chu did not seem to think it would be a problem to obtain a mortgage loan for 80% of the purchase price from BEA or for 70% of the purchase price from another bank. In the light of all the evidence, I hold that had the written option been issued by the defendants, the plaintiff would have exercised it and would, in due course, have completed the purchase of the Property.

62 In the circumstances, the damages suffered by the plaintiff would be the difference between what he would have paid for the Property on completion and its market value at the date of the defendants' breach. In this instance, the market value at the relevant time can be gleaned from the fact that Geetex paid $15.5m for the Property in October 2009 as against the plaintiff's price of $14.5m. Therefore, I agree that the damages payable to the plaintiff should be the difference of $1m.

63 The first defendant also floated an argument on damages on the basis that the plaintiff might succeed in his claim due to the application of the doctrine of part performance. If that happened, the first defendant argued, the plaintiff would not be entitled to common law damages, and could not claim damages in equity either, because specific performance was impossible and damages in equity could not be awarded in lieu of specific performance. I have found that the plaintiff is entitled to common law damages sounding in contract because s 6(d) of the Act has been satisfied. Therefore, I do not have to deal with this alternative argument on damages being unavailable as a remedy. I should say, however, that I do not find any merit in it in the circumstances of this case.

Conclusion

64 In the result, there will be judgment for the plaintiff against both defendants (in the case of second defendant, in default of appearance) in the sum of $1m and interest thereon from the date of the writ. The first defendant shall pay the plaintiff the costs of this action.