

MEP Systems Pte Ltd v Azuma Engineering (S) Pte Ltd
[2010] SGHC 282

Case Number : Originating Summons No 306 of 2010
Decision Date : 22 September 2010
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Thomas Tan Boon Yong and Shabnam Arashan (Haridass Ho & Partners) for the plaintiff; Tan Cheng Kiong and Ravi Arumugam (C K Tan & Co) for the defendant.
Parties : MEP Systems Pte Ltd — Azuma Engineering (S) Pte Ltd

Contract

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 170 of 2010 was allowed by the Court of Appeal on 7 April 2011. See [\[2011\] SGCA 10.](#)]

22 September 2010

Choo Han Teck J:

1 The defendant granted an option to purchase dated 30 October 2008 to the plaintiff. The property in question was at all material times owned by the Jurong Town Corporation ("JTC") and over which the plaintiff held a lease for 30 years (commencing from 18 January 1982). The operative clauses of the option to purchase read as follows:

IN CONSIDERATION of the 2% option money of Singapore Dollars Forty Six Thousand only (S\$46,400.00) (sic) received by us from you. [W]e, M/s Azuma Engineering (S) Pte Ltd of No. 186 Gul Circle Singapore 629631 (hereinafter called 'the Vendor') hereby make the following offer which remains open for acceptance in the manner hereinafter stated **until 4.00 pm on the 17th November 2008** .

We hereby offer to sell to you the Property upon the terms set out below.

This offer may be accepted by you by signing the page marked 'ACCEPTANCE COPY' and delivering the same duly signed together with 10% of the purchase price (less the 2% option monies paid), amounting to Singapore Dollars One Hundred Eighty Five Thousand and Six Hundred only (S\$185,600) (hereinafter called "the deposit")(which 10% shall form part of the purchase price on completion) to **M/s CK Tan & Co.** of No. 50 Armenian Street #03-04 Wilmer Place Singapore 179938, telephone : XXXXXXXX, who are authorised to acknowledge receipt of the deposit on our behalf on or **before 4.00 pm on the 17th December 2008** which deposit is to be held by our solicitors as stakeholders pending completion.

[emphasis in original]

2 There was no dispute that the option was duly and properly executed. However, the "confirmation letter from the JTC" was not obtained within the time specified under the option. The option of purchase provided, by cl 23, that:

In the event of JTC not granting or not issuing any confirmation letter as mentioned in clause 5.4 herein by 14th November 2008, the parties hereto shall mutually agree to an extension of time of one (1) month to enable the Vendor to obtain the said letter. If the said JTC's letter as mentioned under clause 5.4 is still not obtained or not granted, the sale and purchase herein shall become null and void. In such an event, the Vendor shall refund to the Purchaser the 10% of the purchase price paid within 7 days without demand, without any interest compensation or deduction whatsoever and each party shall bear their its (sic) own costs and neither party shall have any claim or demand against the other party for damages, costs or otherwise whatsoever in the matter.

3 The confirmation letter was not obtained by 14 November 2008 and so by cl 23, the defendant was granted an extension of one month to procure the letter. The defendant was unable to get the letter by 13 December 2008. The plaintiff's director Ng Tock Ping, their lawyer Tan Kah Hin, their accounts manager, Margaret Foo and the defendant's property agent Mike Yeo, met and Mike Yeo was told that the 14 December 2008 deadline had passed and the requisite confirmation letter from JTC had not been produced. On 19 December 2008 the plaintiff wrote to the defendant's agent to rescind the option to purchase. The plaintiff thus prayed for a declaration that the option was rescinded and for the refund of \$232,000 and \$16,240 being the 10% deposit and GST paid upon exercise of the option to purchase on 17 November 2008.

4 Mr Tan Cheng Kiong, counsel for the defendant, submitted that the JTC had no objections to the assignment and an extension of the lease. Whether JTC had indeed agreed with the defendant to the extension and assignment was important, but what was fundamental was that the defendant was to provide proof of that to the plaintiff as agreed. Otherwise the plaintiff was entitled to rescind the contract. A letter dated 11 December 2008 from the JTC to the defendant stated that:

This letter is to confirm that the lease extension of 23 years (with effect from 18 January 2012) has been approved and granted for the above premises

This letter (approved for extension but silent on assignment) was not shown to the plaintiff until after 18 December 2008. More importantly, this letter was signed by JTC and sent to the defendant after 15 December 2008. The letter of approval of the extension and assignment was therefore a crucial document and cll 5.3, 5.4 and 23 of the option to purchase were therefore fundamental to the agreement between the plaintiff and the defendant. The non-compliance by the defendant entitled the plaintiff to rescind. The affidavit evidence showed that the defendant was still insisting on performance of the agreement even after 14 December 2008. Although the plaintiff engaged it in reply, the contract had already been rescinded. Accordingly in my view, the plaintiff was entitled to the declaration and orders prayed for.

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