

Cheok Doris v Commissioner of Stamp Duties
[2010] SGHC 17

Case Number : Originating Summons No 1263 of 2008
Decision Date : 15 January 2010
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Gan Hiang Chye and Harleen Kaur (KhattarWong) for the appellant; Foo Hui Min and Jimmy Oei (Inland Revenue Authority of Singapore) for the respondent.
Parties : Cheok Doris — Commissioner of Stamp Duties

Revenue Law

15 January 2010

Judgment reserved.

Choo Han Teck J:

1 This was a case stated pursuant to s 40 of the Stamp Duties Act (Cap 312, 2006 Rev Ed) ("The Act") to determine, on appeal, the correctness of the respondent's decision concerning an appeal to it by the purchasers in a rescinded contract of sale of a property known as 96 Sophia Road. The property consisted of a number of flats, but the contract was not an *en bloc* sale contract. The purchasers were the appellant and her husband Aw Cheok Huat. The purchasers paid a sum of \$60,000 as option fee for the contract. The option was granted on 26 May 2004 and served on the vendor on 27 May 2004 after execution by the purchasers. The purchase price was \$6,000,000. Disputes arose between the vendor and purchasers and on 27 August 2004 the parties settled by rescinding the contract and refunding the \$60,000 option fee to the purchasers. However, the respondent assessed the contract of sale to be chargeable with a sum of \$174,600 being the ad valorem stamp duty. The purchasers objected and argued that the respondent was obliged to refund the duty paid (the sum of \$174,600 had been paid pending the outcome of the appeal to this court) by virtue of s 22(6)(a) of the Act. The respondent took the view that the duty was not waived. Section 22(6)(a) provides as follows:

Subject to subsection (7), the ad valorem duty paid under this section upon any contract or agreement for the sale of property shall, on application, be refunded by the Commissioner where the contract or agreement is later rescinded or annulled on the ground that (a) the vendor is unable to prove his title to the property

2 Mr Gan, counsel for the appellant submitted a technical argument as to why the vendor was unable to prove a good title in this case. The argument was advanced on the claim that the parts of the flats, namely, the designated family areas had far higher ceilings than the rest of the flats. However, the vendor had calculated the space where the floors were omitted to make way for those high ceilings and counted it as part of the total strata area. The purchase price thus included "empty space". Counsel submitted that the vendor was unable to prove title in the void space. Indeed, that was the allegation against the vendor – that he had breached his obligation to deliver a good title. This might have been a fascinating issue had the dispute between the vendor and purchasers come to trial. The matter was settled without a determination of the issue in dispute.

3 Mr Gan cited passages from the Parliamentary Debates on the amendment of the Act and

submitted that the amendment to s 22 was to curb speculation and was not intended to change the position that a vendor must convey a good title. Counsel submitted that "good title" meant "marketable title". He submitted that the vendor here wanted to convey 1,045 sq m (of each flat) but 22% of that stipulated area was not physical floor area but space.

4 I agree with Miss Foo, for the respondent, that the burden of proof lay with the appellant and she had not discharged the burden. Whether the contract in this case was enforceable by either party (vendor and purchaser), and whether the vendor was able to transfer good title, were questions of fact that cannot and had not been answered on a case stated. The vendor was not a party before this court. If that question was not answered, then the respondent was entitled to rely on the agreement for sale and assess the ad valorem duty on the basis of the land area stipulated in it.

5 The appeal is therefore dismissed. I will hear parties on the question of costs at a later date.

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