

Chokkanathan Palanimuthu and another v V Jayaram and another
[2011] SGHC 152

Case Number : Suit No 519 of 2010 (Summons No 5572 of 2010)
Decision Date : 15 June 2011
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : A Thamilselvan (Subra TT Law LLC) for the plaintiffs; Bernard Sahagar s/o Tanggavelu (Lee Bon Leong & Co) for the defendants.
Parties : Chokkanathan Palanimuthu and another — V Jayaram and another

Land – Sale of land – Remedies under uncompleted contract

15 June 2011

Lai Siu Chiu J:

1 Chokkanathan Palanimuthu and Chokkanathan Sudha (“the first and second plaintiffs” respectively) sued V Jayaram and his wife Mohanarani d/o Muthu (“the first and second defendants” respectively) *inter alia* for specific performance of a contract of sale of a 4-room Housing and Development Board (“HDB”) flat situated at Block 193, Riverdale Drive #04-787, Singapore 540193 (“the flat”) and for leave to issue a writ of possession in the event the defendants failed to vacate the flat upon completion of the sale and purchase.

2 After hearing arguments from counsel for both parties on the plaintiffs’ application for summary judgment, I granted the plaintiffs’ application and made consequential orders. The defendants are dissatisfied with my decision and have filed a notice of appeal (in Civil Appeal No 47 of 2011) against the same. I now give the reasons therefor.

The background

3 The proceedings herein started life as Originating Summons No 228 of 2010 (“the OS”). After the attorney of the plaintiffs, one Chinnadurai Sudhakar (“Sudhakar”), had filed an affidavit on their behalf in support of the OS followed by an affidavit from the second defendant and one from the first plaintiff, the OS was converted to a suit (Suit No 519 of 2010) because the issues were highly contentious.

4 Thereafter pleadings were filed by the parties. It was only after the plaintiffs had filed a reply to the defendants’ defence that the former applied for summary judgment against the defendants. As the pleadings mirror the affidavits filed by the parties, I shall only refer to the latter documents in my grounds. Five affidavits were filed altogether, three by Sudhakar, one by the first plaintiff and one by the second defendant on the defendants’ behalf.

The facts

5 In his affidavit, the first plaintiff deposed that together with his attorney Sudhakar (who is also his relative), he went to view the flat on 31 May 2009. There, they met the second defendant and the defendants’ agent Arnagirenathan (“Arna”) an associate with ERA Real Estate, who was also

known to the defendants as Steve Nathan, as well as the plaintiffs' agent P Kalaiman ("Kalai"). The first plaintiff and Sudhakar were told by the second defendant that the first defendant was at work.

6 After viewing, the first plaintiff offered \$290,000 for the flat which price included \$5,000 being what is commonly described as a cash-over-valuation ("COV") premium. The second defendant went into a room to call the first defendant and returned later to inform the foursome that the defendants accepted the plaintiff's offer. Arna then filled up an option to purchase ("the Option") which had been pre-signed by the defendants and handed it to the first plaintiff. In exchange, the first plaintiff gave \$1,000 cash to Kalai who then issued a cheque for \$1,000 in favour of the first defendant. The cheque was cleared on 2 June 2009. Arna had obtained a valuation report of the flat dated 14 May 2009 which stated that the flat was valued at \$285,000 as of 8 May 2009 for purposes of obtaining a mortgage loan and for withdrawal of Central Provident Fund monies to purchase the flat.

7 Under cl 5 of the Option, the plaintiffs had to pay \$4,000 to exercise the Option which expiry date was 14 June 2009. The plaintiffs applied to borrow \$256,500 ("the loan") from DBS Bank to pay for their purchase which loan was subsequently approved by a letter dated 5 June 2009 from DBS Bank.

8 On 13 June 2009, the plaintiffs exercised the Option by paying \$4,000 cash through Kalai to Arna. In turn, Arna paid the defendants the sum less \$80 registration fee to HDB. He deposited \$3,920 into the POSB Bank savings account of the first defendant, which particulars had previously been given to him by a text message from the defendants' son. Evidence of the payment was exhibited in the first plaintiff's affidavit.

9 As was the usual practice for the sale of HDB flats, the HDB notified the parties by a letter dated 30 July 2009 of a first appointment at HDB on 16 November 2009 ("the first appointment"). The defendants and Sudhakar attended the first appointment where a resale officer one Quah Kheng Wah ("Quah") attended to them and explained the resale procedures and what was required of the respective parties in order to complete the sale and purchase. At the request of the defendants, the first appointment was postponed by a week to 23 November 2009. The defendants also requested an extension of 90 days to look for an alternative flat. After consulting the first plaintiff on the telephone, Sudhakar acceded to the defendants' request. The defendants then signed, in Quah's presence, a letter of indemnity where it was stated that the defendants would have 90 days' extension from the date of resale completion (incorrectly stated as 16 January 2009) to reside at the flat without rental payment.

10 On 23 November 2009, the defendants again attended before Quah and signed the HDB form confirming that Quah had indeed explained the resale procedures and requirements to them. The defendants also signed a letter of Undertaking and Acknowledgment that they had received \$5,000 deposit on the declared resale price of \$290,000. Quah fixed completion of the sale and purchase on 18 January 2010.

11 By a letter dated 3 December 2009, the HDB notified the plaintiffs and the defendants that the sale and purchase transaction was approved in principle and confirmed that completion was tentatively fixed for 18 January 2010.

12 The sale and purchase was not completed on 18 January 2010 or at all. The defendants apparently wrote to the HDB on 21 December 2009 stating they wished to cancel the resale transaction due to "the agent's influencing, misguided and misrepresented we are now not able to get a 3-room flat in Ang Mo Kio or elsewhere".

13 The plaintiffs then received a letter dated 5 January 2010 (not produced in court) from the HDB stating that the defendants did not wish to proceed with the transaction. In response, the plaintiffs' solicitors wrote to the defendants on 14 January 2010 reminding them that completion was fixed on 18 January 2010 and that the plaintiffs reserved their rights if the defendants did not complete the matter.

14 On 1 December 2009, the plaintiffs was addressed a letter at the flat from ERA Real Estate ("ERA") headed Second Reminder stating that their invoice dated 15 September 2009 in the sum of \$3,103 was still outstanding. The first plaintiff denied ERA was the plaintiffs' agent and lodged a police report when he came to know of their letter. The defendants subsequently relied on ERA's letter in their defence to contend that the same agent acted for them as well as for the plaintiffs and there was therefore a conflict of interest.

15 It appeared from the documents before the court that the second defendant had met ERA sometime in December 2009 to lodge a complaint against Arna. After ERA had conducted its investigations, the company wrote to the second defendant on 6 January 2010 giving Arna's response on her complaints. I shall return to ERA's letter when I deal with the second defendant's affidavit (see [\[19\]](#) below).

16 Notwithstanding the plaintiffs' solicitors' letter in [\[13\]](#), the defendants did not complete their sale. The OS was issued by the plaintiffs on 1 March 2010, after the plaintiffs' solicitors had written to the second defendant (as well as to the HDB) on 19 January 2010 giving the requisite 21 days' notice under cl 29 of the Law Society's Conditions of Sale 1999, stating that the plaintiffs were ready, able and willing to complete. The 21 days' notice expired with no response from either defendant.

17 The second defendant filed an affidavit to resist the OS which contained the exact same reliefs prayed for in the Order 14 application. In her affidavit (which will be dealt with in greater detail below at [\[19\]](#), the second defendant raised various allegations against Arna and the plaintiffs' agent Kalai. This prompted the plaintiffs' solicitors to write on 2 June 2010 to ERA Real Estate. The plaintiffs' solicitors in particular sought Arna's: (a) response to the second defendant's allegations that he (Arna) did not represent the defendants in the sale and (b) confirmation that the plaintiffs were represented at all times by Kalai who was/is from the Dennis Wee Group. Unfortunately, the reply of ERA (if any) was not exhibited by the plaintiffs in any of the affidavits filed on their behalf. Neither was there mention in their affidavits of any response from the Dennis Wee Group.

18 Notwithstanding the aforesaid missing letter(s), I was still of the view that the defendants had raised no triable issues as to warrant having this claim tried.

The decision

19 Earlier (in [\[15\]](#)), I had alluded to the second defendant's affidavit. She made the following allegations therein:

(a) Neither defendant had met or dealt with Sudhakar.

(b) Near to midnight on 31 May 2009, their agent Arna came to the flat and demanded that she and her husband sign the Option as the plaintiffs were very interested to purchase and were willing to pay \$20,000 over and above the valuation of \$285,000. However, as the valuation

was only \$285,000, Arna suggested that he would put the purchase price as \$290,000 and the plaintiffs would pay \$15,000 "under the table" within 14 days;

- (c) Arna promised he would find a 3-room flat for them on a "contra basis" immediately after they had sold the flat;
- (d) The defendants reluctantly agreed. Arna took down the first defendant's POSB account number to deposit the \$1,000 deposit paid by the plaintiffs.
- (e) After 31 May 2009, Arna could not be contacted and refused to take the defendants' calls when they requested for the \$15,000. The defendants then checked with other agents and discovered that what Arna had promised them was illegal. The defendants refused to proceed further with the transaction. In any case the plaintiffs had failed to exercise the Option in accordance with cl 5 therein as they did not deliver the signed Option and Option fee of \$4,000 to the defendants before 4pm of 14 June 2009. The defendants had not authorised any third party to receive the exercised Option or the Option fee of \$4,000 nor did they authorise Arna to submit the Option to the HDB. They only knew of the submission from HDB's letter dated 30 July 2009 giving notice of the first appointment.
- (f) The defendants refused to attend the first appointment but Arna threatened that the plaintiffs would sue and lodge a caveat against the flat which meant the defendants would be unable to sell the flat for many years. Arna caused a commotion at the flat and only left when the defendants agreed to attend the first appointment.
- (g) At the first appointment on 16 November 2009, they informed Quah that they did not trust their agent and did not wish to proceed with the transaction and as a result, the appointment was postponed to 23 November 2009.
- (h) On 23 November 2009, the defendants still refused to go through with the transaction and they explained to Quah what happened but were pressured by Arna and his supporters that if the defendants failed to sign the documents, they would be ruined.
- (i) Arna had attempted to deceive them into believing that the defendants were represented by another firm of housing agents. Later, the second defendant discovered that the same agent represented them as well as the plaintiffs; this was a clear conflict of interest.
- (j) Subsequently, the defendants attended at the plaintiffs' solicitors' office to inform the latter that the transaction was cancelled; they offered to return the deposit paid to them but the offer was rejected.

- (a) Arna, their agent, had pressurised them into agreeing to the sale, he was not authorised on their behalf to submit the transaction to HDB for approval nor to accept the exercise of the Option.
- (b) The transaction was illegal because it involved "under the table money" that was never received by them.
- (c) Arna failed to keep his promise to find them a 3-room flat.

I should point that the allegation regarding "under the table money" was denied by the first plaintiff.

21 The allegations in (a) and (b) above were not borne out by the defendants' conduct. If indeed, they had been pressurised into the sale, Quah of the HDB would have/should have been told on 16 November 2009. They would not have been asked to sign the Letter of Undertaking and Acknowledgment if they had not received \$5,000 in total from the plaintiffs and the option was not duly exercised. Indeed, the defendants should have refused to sign those documents if the two allegations were true. More importantly, if indeed the defendants (as the second defendant claimed) were reluctant to sell because of Arna's pressure, why did they request a postponement of the first appointment? Further, why did they sign the letter of indemnity, referred to earlier at [\[9\]](#), in Quah's presence, undertaking to pay all outgoings of the flat in return for the plaintiffs' agreement to give them an extension of time to vacate the flat? Such conduct was wholly inconsistent with their allegations.

22 I should add that the defendants' son had sent the first defendant's POSB account particulars by short message service ("SMS") to Arna's handphone on 1 June 2009. Again, such conduct is inconsistent with that of reluctant sellers.

23 As for allegation (c) in [\[20\]](#), the conduct of the defendants' agent had nothing to do with the plaintiffs' and was not relevant to the transaction. The defendants' recourse was/is against their agent Arna. Even so, this allegation was rebutted by the letter from ERA, referred to earlier at [\[15\]](#), to which I now turn my attention.

24 ERA's letter of 6 January 2010 revealed that the viewing on 31 May 2009 was the second by the first plaintiff and that his initial offers of \$285,000 and \$288,000 were rejected before the final price of \$290,000 was accepted by the defendants. ERA confirmed the facts in [\[6\]](#) above. It appeared from their letter that Arna had even obtained interim approval from DBS Bank for the defendants' loan to purchase a 3-room flat. Further, Arna had arranged viewings for the defendants of about 8 units of 3-room flats in Ang Mo Kio and Yishun within the defendants' budget, all of which did not meet with their approval. Eventually, the defendants told Arna they would source for the 3-room flat themselves to which Arna agreed.

25 In the light of the fact that the bare allegations in the second defendant's affidavit were not borne out by the documents before the court or were inconsistent therewith, I saw no reason not to award final judgment to the plaintiffs on their claim.

26 In her affidavit, the second defendant had also made a cavalier statement that the plaintiffs, not being resident in Singapore, had no urgency to purchase a flat. In his affidavit, the first plaintiff explained that whilst he was then based in Algeria (as an engineer working for a Singapore public

company that posted him there), he would need a roof over his/his family' head when he returned to Singapore after the project in Algeria was completed. In any case, the foreign posting of the first plaintiff did not afford a valid defence to the defendants on the claim for summary judgment for specific performance. Accordingly, I granted an order in terms of the plaintiffs' application.

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