

Re 41B Lorong 17 Geylang, Singapore 388564
[2007] SGHC 112

Case Number : OS 785/2007

Decision Date : 11 July 2007

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Tan Siew Tiong (Lawhub LLC) for the plaintiffs; Prabhakaran Narayanan Nair (Ong Tan & Nair) for the defendant

Parties : —

Land – Conveyance – Legal requisitions – Property said to be affected by road reserve – Whether reply unsatisfactory – Relevant considerations

Land – Sale of land – Option to purchase – No intention to purchase property – Whether exercise of option effective

Land – Sale of land – Recovery of option moneys – Whether term to refund option moneys if legal requisitions unsatisfactory ought to be implied

11 July 2007

Judith Prakash J:

Background

1 The defendant (“the vendor”) is the owner of the land and premises known as 41B Lorong 17 Geylang, Singapore (“the property”). On 2 September 2006, in consideration of the payment of \$5,000, the vendor granted the plaintiffs (“the purchasers”), who are husband and wife, an option to purchase the property.

2 The option document was a rather clumsily drafted one. The first page contained the vendor’s offer to sell the property to the purchasers and stated that this offer could be accepted by the purchasers signing at the foot of the copy of the option that was marked “Acceptance Copy” and delivering the same duly signed together with five percent of the purchase price less the option money of \$5,000 to the vendor’s solicitors on or before 4pm on 17 September 2006.

3 The next two pages of the document bore the heading “Terms of Sale” and contained 16 clauses. In the context of the present application, the relevant clauses were cll 7, 8, 9 and 14. These provided as follows:

7. The property is sold subject to the Purchaser’s Solicitors receiving satisfactory replies to their requisitions sent or to be sent by them to the various Government Departments including the MRTC, the Road Interpretation Plan from the Development Control Division and the Drainage Interpretation Plan from the Drainage Department and in the event of any of the replies to such requisitions being found unsatisfactory the Purchasers may annul the sale in which event all the monies paid by the Purchasers to the Vendors shall forthwith be refunded to the Purchasers without any interest or deduction whatsoever and neither party shall have any claims against the other for costs damages or compensation whatsoever (*sic*) each party to pay his/their own legal costs in respect of the abortive sale and purchase Provided that the Purchasers shall not raise

any objection or be entitled to annul the sale if the property is affected by a Category 5 Road which may be shown on the Road Interpretation Plan and the Purchasers shall be bound to complete the purchase in accordance with and subject to the terms and conditions herein contained.

8. The option money Dollars Five Thousand Only (\$5,000.00) shall be treated as part payment towards the 5% deposit of the purchase price which shall be paid on the exercise of the option as aforesaid.

9. If this option is not exercised on or before the date hereby stipulated, this option herein contained shall lapse and the option money paid shall be forfeited.

...

14. This option when exercised shall constitute a binding contract.

4 It would be noted therefore that although there was only one document, it was capable of giving rise to two distinct contracts, a rather odd situation which, however, is commonly encountered in relation to real property transactions in Singapore. The first contract would be the unilateral contract (the option) constituted by the offer (for valuable consideration) by the vendor to sell the property to the purchasers if they signed the Acceptance Copy and paid the deposit by a certain date. The second would be the actual synallagmatic contract for the sale and purchase of the property (the sale contract) which would come into existence upon the proper exercise of the option by the purchasers. Which of the clauses of the Terms of Sale applied to which distinct contract would really be a matter of construction of each individual clause because the presentation of the document as a whole did not clearly differentiate between the two contracts. From my reading, it would appear that of the clauses under the Terms of Sale, only cl 9 related exclusively to the option. The other clauses, apart from cl 16 which dealt with payment of commission to the vendor's agent and cl 1 which specified that the sale price was \$285,000 (and therefore was applicable to both the option and the sale contract), related only to the sale contract. Clause 14 which read "this Option when exercised shall constitute a binding contract" must be interpreted as meaning that when the option was exercised, a binding sale and purchase contract in respect of the property would come into existence, rather than as meaning that there was no contract of any sort in existence before the exercise of the option.

5 After the option was granted, the purchasers' solicitors, M/s K K Yap & Partners ("KKY") sent out legal requisitions to the usual government bodies. On 15 September 2006, KKY received a reply from the Land Transport Authority ("LTA"), which reply took the form of the Road Interpretation Plan or Road Line Plan ("the RIP"). The RIP indicated that the property was affected by lines of road reserve as marked on that plan. These reserves were to allow the widening of Lorong 17 Geylang and the two back lanes that ran along the boundary lines of the property. The purchasers were concerned that the road reserves might adversely affect the property. Therefore KKY wrote to the vendor's solicitors, M/s Ong Tan & Nair ("OTN") asking for an extension of the deadline for the exercise of the option from 17 September 2006 to 25 September 2006 so that the purchasers could investigate the situation. On 18 September 2006, OTN replied to state that the vendor would not agree to any extension of the option and that the option had to be exercised by 18 September itself. It was made clear to KKY that there was no question of the vendor returning the option moneys paid if the purchasers did not exercise the option as the vendor did not accept that there had been an unsatisfactory reply to the LTA requisition.

6 The purchasers were in a dilemma. They wanted the option money back. They were afraid that

if they did not exercise the option, the option money would be forfeited. They considered that to get the money back, they had no choice but to exercise the option. They therefore signed the Acceptance Copy of the option and their solicitors returned it to OTN together with a cheque for \$9,250 being the balance of the five percent of the purchase price payable on exercise of the option. The contents of the cover letter sent by OTN are important and I will therefore quote it in full. The letter read:

We refer to the matter above and your letter to us dated 18 September 2006, indicating that today is the last day in which the Option is to be exercised.

We also refer to the teleconversation between your Mr Nair and our Miss Loke today and understand that your clients are not prepared to consider refunding to our clients the Option Money of \$5000 prior to our clients exercising the Option to Purchase, notwithstanding that we have notified you that the property is affected by lines of road reserve and land required as road reserve according to the Road Interpretation Plan conducted on 15 September 2006.

Pursuant to our clients' instructions, we will proceed and hereby exercise the Option to Purchase today, without prejudice to our clients' rights under the Option, especially with regards to Clause 7 of the Option.

We enclose herewith:-

- (a) Duly signed Option To Purchase dated 18 September 2006;
- (b) Our clients' cheque for the sum of **\$9,250.00** issued in favour of **ONG TAN & NAIR** being 4% of the purchase price to be held by you as stakeholders; and
- (c) a copy of the title search.

We also enclose for your clients' attention an original copy of the Road Interpretation Plan dated 15 September 2006, showing the extent of the property that is affected by the lines of road reserve and the extent of the area of the land required as road reserve. We are of the view that the Road Interpretation Plan is unsatisfactory.

Pursuant to our client's instructions, we write to inform you that in view of the unsatisfactory Road Interpretation Plan, our clients have decided to exercise their right to annul the sale and purchase of the property pursuant to Clause 7 of the Option to Purchase.

Consequently please arrange for all monies for the sum of \$14,250.00 paid by our clients to your clients to be returned to us forthwith.

7 It would be noted that although the purchasers had purported to exercise the option, they were asserting at the same time that they had the right to cancel the sale and purchase of the property because cl 7 of the Terms of Sale gave them that right when there was an unsatisfactory reply to their requisition, and they were also demanding that the sum of \$14,250 paid by them (being the original option money of \$5,000 plus the subsequent sum of \$9,250) be returned to them forthwith. This was even before the vendor's solicitors had had a chance to encash the cheque for \$9,250.

8 On 29 September 2006, KKY wrote again to OTN. This time they forwarded a copy of the LTA's letter of 18 September 2006 together with the explanatory notes to the RIP and the scaled

dimensions on the plan, showing the extent to which the road reserves affected the property. The letter stated that in view of the situation, KKY had the purchasers' instructions that they would not purchase the property. The letter ended by demanding full repayment of the deposit paid by the purchasers. OTN responded on 3 October 2006. They stated that they had looked at the documents sent over by KKY and had discussed the implications of the plans and the letter with the vendor. They did not agree with the purchasers' stand that the road plans were adverse to the extent that the sale and purchase had to be called off. They noted that para 2(c) of LTA's letter stated that the portion of the land that had been marked for setting aside only came into operation when development or redevelopment took place on the subject lot or when road construction or improvement was carried out by the LTA. Furthermore, under para 2(b) of the letter, it had been stated that the advice of a registered surveyor was needed as to whether the existing building was affected by the land required for road reserve. OTN noted that since no surveyor's advice had been provided, there was no conclusive evidence that the building would really be affected.

The proceedings

9 The originating summons herein was issued on 22 May 2007. By these proceedings, the purchasers applied for, *inter alia*, the following orders:

- (a) a declaration that the reply to the requisition of the Land Transport Authority contained in Road Interpretation Plan/Road Line Plan dated 15 September 2006 (PO:1898120397031D) is unsatisfactory;
- (b) a declaration that the plaintiffs shall be entitled to rescind the option dated 2 September 2006 granted by Sin Ah Lui to the plaintiffs in respect of the property known as 41B Lorong 17 Geylang, Singapore 388564; and
- (c) the defendants be ordered to pay to the plaintiffs the sum of S\$14,250.00 being the amount of deposit paid by the plaintiffs to the defendants together with interest at such rate and for such period as this Honourable Court shall think fit.

10 When the matter came on for hearing before me, the parties took the position that the only issue to be decided was whether the reply of the LTA to the legal requisition sent to it was unsatisfactory and, therefore, the purchasers were entitled to annul the sale and purchase of the property. In my view, however, as I made clear to the parties, the first issue that had to be decided was whether the purchasers had actually exercised the option so as to bring a contract for the sale and purchase of land into existence.

Was there an effective exercise of the option?

11 My difficulty was that the terms of KKY's letter of 18 September had made it plain that by that date, the purchasers did not wish to purchase the property any longer. They considered that the road reserves adversely affected the property and that if they went on with the purchase, they would not get what they had bargained for when they had obtained the option. They had exercised the option merely as a matter of form so that they could rely on cl 7 of the Terms of Sale in order to annul the sale and get back the option money. The construction which I gave to the letter of 18 September was supported by the evidence of the first plaintiff given on behalf of himself and the second plaintiff. In his affidavit filed in support of the application, the first plaintiff said:

- 7. In view of the unsatisfactory reply from the LTA, we were in a dilemma as to whether to exercise the Option. On the last day on which we were to exercise the Option (i.e. 18 September

2006) our solicitor (for the purchase of the Property) spoke with the Defendants' solicitors:-

- (i) to inform him of the unsatisfactory reply from the LTA; and
- (ii) to ask him whether his clients (the Defendants) were prepared to refund the option monies of S\$5,000.00 to us.

The Defendants refused to refund us the option monies. ...

If we did not exercise the Option, then it would be taken that we do not wish to go on with the purchase and that our option monies (of S\$5,000.00) would be forfeited. It was under those circumstances that we exercised the Option. We had no alternative but to exercise the Option ... Our exercise of the Option was done expressly without prejudice to our rights under clause 7 of the Option.

12 When I raised this point, counsel for the purchasers submitted that they had made a valid exercise of the option as they had signed the Acceptance Copy and forwarded a cheque for the balance of the deposit to OTN. Looking at the evidence, however, it was clear to me that there could not have been a valid exercise of the option since at the time they purportedly signed the Acceptance Copy, the purchasers had no intention of actually purchasing the property and continuing with the transaction to the point of completion. The exercise of the option was a means to try and give contractual effect to cl 7 of the Terms of Sale so that they could reclaim the option money. In my judgment, no valid exercise of the option could occur when, at the same time as they sent out the Acceptance Copy and cheque for \$9,250, the purchasers demanded the return of all money paid including the balance of the deposit which had not even been encashed by the vendor.

Was there any basis to reclaim the option moneys although the option was not exercised?

13 Bearing in mind that it was my judgment that the option had not been validly exercised on or before the stipulated date provided for its exercise, the next question that arose was whether the vendor was entitled to keep any part of the moneys that had been paid by the purchasers. As far as the sum of \$9,250 was concerned, it was clear that that had to be returned since it had been paid on the basis of a valid exercise of the option. The sum of \$5,000 that had been paid as option money had, however, to be considered separately. As the vendor pointed out, cl 9 of the Terms of Sale provided that if the option was not exercised on or before the stipulated date, the option would lapse and the option money would be forfeited. Thus, in the circumstances of this case, the vendor claimed to be entitled to forfeit the option money.

14 The issue that then arose was whether notwithstanding the express terms of cl 9, the purchasers could rely on cl 7 of the Terms of Sale to defeat the vendor's claim to forfeit the option money. Looking at cl 7, however, it was plain to me that this clause was a term of the sale contract and was not a term of the option. The clause started "The property is sold ..." and it contained references to the right of the purchasers to "annul the sale". It only made sense as part of the sale contract. It therefore was not available as an express term on which the purchasers could rely to reclaim the option money. In these circumstances, assuming that the reply to the requisition was really unsatisfactory, were the purchasers without recourse? The answer was that yes, they would be without recourse unless the court was willing and able to imply a term into the option to the effect that if the purchasers received unsatisfactory replies to their requisitions sent to the various parties named in cl 7 before they exercised the option the vendor would be obliged to refund the option moneys. The argument then turned to whether such a clause should be implied into the option.

15 Counsel for the purchasers submitted that the option should be subject to such an implied clause. I agreed. If the purchasers' solicitors had received their reply to the LTA requisition after the purchasers had exercised the option and the sale contract had been concluded then, on the assumption that the reply was accepted by the court as being unsatisfactory, there would have been no doubt of the purchasers' right to annul the sale and obtain the refund of all the moneys that they had paid including the option money of \$5,000. It was relevant in this connection that cl 8 of the Terms of Sale provided for the option money to be treated as part payment towards the five percent deposit of the purchase price when the sale contract was concluded. In this case, the option money was not treated as a separate consideration paid simply for the option. It seemed absurd that if the sale could be aborted and the option money had to be returned after the option was exercised because of the receipt of an unsatisfactory requisition, the vendor should be entitled to retain it before the exercise of the option despite the existence of the same unsatisfactory requisition. Thus, in my opinion, the term sought to be implied met the usual tests of business efficacy and the officious bystander which the court considers in relation to the implication of terms in a contract. In the circumstances of this case, it seemed to me to be clear that if such a bystander had been asked in advance whether the option money should be returned even before the option was exercised if the essential elements of cl 7 were satisfied, he would have agreed that that went without saying.

16 I therefore found that in this case, the option was subject to an implied term of the nature stated in [14] above. As a result, I then had to consider whether the reply to the requisition was satisfactory or not.

Was the reply to the LTA requisition satisfactory?

17 Parties then turned to the question of whether the reply to the requisition was satisfactory. In this regard, the purchasers relied not only on the RIP but also on the report given by the survey firm of Lee Boon Haw Registered Surveyor which was obtained some months after the purported exercise of the option. The report stated as follows:

I refer to the survey work carried out at the above site and the findings are as follows:

- a. According to the Road Line Plan purchased from LTA, the subject lot is affected by road widening at Lorong 17 Geylang and backlane at the side and rear. The land area of the road reserve is computed to be 44.7 sq m which is 31.5% of the total land area. This area is provisional and is subject to final survey in SVY 21 Datum.
- b. Part of the existing 3-storey building is affected by the land required for Road Reserve. The portion of building (hatched in blue as depicted on our survey plan Ref: 10489RW1 updated on 5.1.07) affected is about 26.8% of the existing building.
- c. The 2 existing columns at the five-foot way are inside the road reserve land.

18 Counsel for the purchasers stressed that 31.5% of the total land area of the property was affected by the road reserve and, even more importantly, 26.8% of the existing building was affected by this reserve. Counsel cited various cases in which the area affected by road reserves had been significantly less and yet the court had found the reply to the requisition to be unsatisfactory. In the case of *Wong Meng Yuen Eddie v Soh Chee Kong* [1990] SLR 664 ("the *Wong Meng Yuen* case"), for example, 23% of the land involved was affected by road reserve whilst in *Seet Peng Yam v Mohamed Mohidin Habibullah* [1988] SLR 334, 15.5% of the land had been affected. In both those cases, the requisition was held to be unsatisfactory. On the other hand, in *Peh Kwee Yong v Sinar Co (Pte) Ltd* [1984-1985] SLR 398 ("the *Peh Kwee Yong* case") where only two percent of the land was affected

by the road reserve, the reply was adjudged satisfactory and the purchaser held to the contract.

19 As regards the law, this was largely common ground. Counsel for the purchasers relied on the following propositions:

(a) the formula "subject to satisfactory reply to requisitions" was intended to give the purchaser substantially what he had bargained for, taking into account his purpose in purchasing the property and the other circumstances which had a direct or indirect effect on the fulfilment of that purpose: see *Chu Yik Man v S Rajagopal* [1986] SLR 534 per Chan Sek Keong JC (as he then was) at [13];

(b) the test to be applied was an objective one as to whether the property was adversely affected by a road proposal and the fact that there was no current programme would not make the proposal any less a proposal: see the *Wong Meng Yuen* case per Karthigesu JC; and

(c) only those answers to requisitions which were unsatisfactory to a reasonably determined purchaser would entitle such a purchaser to call off the agreement and whether a particular answer was unsatisfactory to a reasonably determined purchaser within the meaning of the clause was, in each case, a question of fact: see the *Peh Kwee Yong* case and *Lim Kim Lian v Swee Eng Heng* [1987] SLR 491.

20 In this case, the purchasers had the intention of residing in the premises and were very concerned that implementation of the road reserve would result in their not only losing 31.5% of their land but also in the demolition of the building itself particularly since two existing columns were inside the line of road reserve. Further, the value of the property had been affected. In this connection, there was evidence that bank valuations of the property had dropped after the bank concerned had learnt about the road reserve. Counsel submitted that, in these circumstances, it was clear that road widening would result in a diminution of the value of the property and that the purchasers would not get what they had bargained for.

21 Counsel for the vendor did not disagree with the propositions of law that had been put forward on behalf of the purchasers. He agreed that there was little factual dispute. Instead, counsel wanted to focus on the category of road to which Lorong 17 belonged. He noted that in cl 7, there had been an exception for category 5 roads whereby if the reply to the requisition to the LTA had shown a line of road reserve on a category 5 road affecting the property, the purchasers would not have been entitled to raise any objection or annul the sale on the basis of that reply. Counsel pointed out that in this case, Lorong 17 was not a category 5 road. Lorong 17 was, instead, marked with the letters "NCAT" and the LTA had explained that NCAT meant that the road was not classified under any road category. As NCAT was not a road category, counsel submitted that this classification could not render a requisition unsatisfactory unlike a requisition relating to one of the five categories of road (*i.e.*, category 1 to 5) that exist in Singapore. In any event, the purchasers were obliged to buy if there was a category 5 classification and, counsel argued that it was only if the requisition showed the road lines to be category 1, 2, 3 or 4, that the requisition could be considered unsatisfactory as far as the option was concerned. Since NCAT was not a classification at all, such a reply would not be regarded as unsatisfactory.

22 I had no difficulty in rejecting the above argument. Whilst Lorong 17 and the two relevant back lanes may not have been categorised under any of the existing categories of road employed by the LTA, that did not reduce or eliminate the lines of road reserve that the RIP showed. It was clear from the RIP that the property was affected not only by the line of road reserve running through Lorong 17 but also by that running through the back lanes adjacent to the property. It was plain too that if the

road proposal was ever effected, the property would be adversely affected because not only would a substantial portion of the land be taken away but the building itself would be eaten into such that it would need substantial reconstruction in order to serve as a residence. I noted that in *Ang Kok Kuan v Ang Boh Seng* [1993] 3 SLR 669, the Court of Appeal indicated that the question of percentage in itself is not decisive and that relevant considerations include whether the building itself would be affected by the road line and whether there is any particular feature or understanding relating to the property. In this case, both the extent of the reserve and its effect on the existing building were substantial. Taking an objective view of the situation, I could not come to any conclusion other than that the reply to the LTA requisition was unsatisfactory.

Conclusion

23 At the end of the hearing therefore, I made the declaration asked for in respect of the status of the reply to the LTA requisition. I also ordered that the vendor should repay the purchasers the sum of \$14,250. I did not declare that the purchasers were entitled to rescind the option as the option was a unilateral contract and not subject to such rescission by the purchasers. Also, as no sale contract had come into existence there was nothing to rescind in that regard.

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