Gn Muey Muey v Goh Poh Choo
[2000] SGCA 20

Case Number : CA 149/1999

Decision Date : 13 April 2000

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Gn Chiang Soon (Gn & Co) for the appellant; Koh Hai Keong, Lim Hin Chye and Jayanthi Jhogasundram (Koh & Partners) for the respondent

Parties : Gn Muey Muey — Goh Poh Choo

Contract – Formation – Oral agreement – Existence of oral agreement – Whether agreement evidence and facts establish oral

Contract – Discharge – Agreements relating to sale and purchase of land – Misdescription of property – Whether erroneous and substantial misdescription of subject property renders agreements void for uncertainty

(delivering the judgment of the court): ***Introduction***

The appellant, Mary Gn Muey Muey, is a conveyancing secretary working in the firm of solicitors known as M/s Gn & Co. Together with her husband, So Kin Nam, and her son`s father-in-law, Tan Jin Thong, the appellant has been and still is involved in several property investments. The respondent, Goh Poh Choo, is a civil servant. The respondent first became acquainted with the appellant through the appellant`s sister, one Mrs Helen Yeo. The present dispute between the two parties arose out of an investment in a sub-divided lot of a property then known as No 3 Brighton Crescent.

The facts

On 10 January 1995, the appellant, together with her husband, son and daughter purchased a property known as No 3 Brighton Crescent, which had an old single-storey detached house with a land area of 672.5 sq m. Sometime in September 1995, in the hope of reaping better returns from this property, the appellant and her husband decided to re-develop it by demolishing the detached house and building thereon a pair of two and a half storey semi-detached houses and selling them. The appellant and her husband then approached their relatives and friends to participate in this investment.

Arising from this, a group of four investors were interested in investing in this project and agreed to purchase and develop only one half of No 3 Brighton Crescent, ie to purchase a sub-divided lot of the property and build thereon one of the pair of semi-detached houses. For convenience and clarity, we shall refer to this sub-divided lot as `the Brighton property`. The four investors were: So Kin Nam (`So`) (who is the appellant`s husband), Tan Jin Thong (`Tan`), Tay Hock Lim (`Tay`) and Chia Chor Hoon (`Chia`). A written agreement, dated 1 October 1995, for the sale and purchase of the Brighton property was entered into between the appellant, her husband and their two children as vendors of the one part, and the four investors as purchasers of the other part. We shall refer to this agreement as the `October agreement`. Clauses 1, 2 and 3 of this agreement and the schedule referred to therein provided as follows:

> *(1) The vendors shall sell and the purchasers shall purchase free from encumbrances that part of the land containing the area as described in the*

Schedule hereto (hereinafter called `the property`) at the price of Dollars Two Million Three Hundred and Forty Thousand Only ($2,340,000).

(2) The purchasers shall each pay a sum of $260,000 together with interest at the rate of 1.5% per annum above prime to the vendors upon the sale of No 4 Worthing Road Singapore.

(3) The purchasers shall pay the balance purchase price amounting to $1,300,000 together with interest at the rate of 1.5% per annum above prime to the vendors upon the sale of No 3 Brighton Crescent Singapore.

Schedule Above Referred To

All that piece of land containing an area of approximately 3,600 square feet comprised in Lot 193-27 of Mukim 18 and known as No 3 Brighton Crescent Singapore more particularly delineated and hatched in red on the plan annexed hereto.

Shortly thereafter, Chia decided to withdraw from the investment, and another agreement dated 3 November 1995 was made between So, Tan and Tay (`the original three investors`) of the one part and Chia of the other part, under which Chia was allowed to withdraw from the investment. We shall refer to this agreement as the `Chia withdrawal agreement`. The agreement was stated to be supplemental to an agreement dated `2` October 1995. This was a typographical error, as there was no agreement dated 2 October 1995; the agreement intended to be referred to was the October agreement which was dated 1 October 1995.

On 8 November 1995, while the respondent and her husband were at the law firm of M/s Gn & Co to seek legal advice from the solicitor, Mr Gn Chiang Soon, on housing loans, as they had just purchased a condominium apartment [num]05-12 at Signature Park, they met the appellant who was working there as a conveyancing secretary. In the course of their conversation, the appellant told the respondent and her husband about investing in the Brighton property and asked them to consider participating in that investment. They were invited to attend a meeting to be held in the evening of the same day at the appellant`s house. They accepted the invitation and attended the meeting. There, the respondent was persuaded to participate in the investment. The respondent, together with another two new investors, joined the original three investors in an agreement to purchase the Brighton property and develop it by building a two and a half storey semi-detached house (`the development project`). The six investors involved in the development project were the following: So, Tan and Tay, who were the original three investors, and Low Meng Cher (`Low`), Ong Shai Chin (`Ong`) and the respondent, who were the three new investors. We shall refer to these six investors collectively as `the six investors`. The parties signed an agreement dated 8 November 1995 (`November agreement`), which was made between So, Tan and Tay (described there as the first purchasers) of the one part, and the six investors, ie So, Tan, Tay, Low, Ong and the respondent (described as the second purchasers) of the other part. Clause 1 of this agreement provided that the agreement was supplemental to the October agreement and the Chia withdrawal agreement, and the remaining clauses were in the following terms:

2 The first purchasers are agreeable to allow the said Mdm Goh Poh Choo holder of Singapore Identity Card No S2007152D of Apt Blk 37 Dover Road [num]08-293 Singapore 130037, the said Mdm Ong Shai Chin holder of Singapore Identity

Card No 0124443D of No 30 Bedok Ria Crescent Singapore 489846 and the said Low Meng Cher holder of Singapore Identity Card No S0064948A of 530 Balestier Road [num]06-01 Singapore 329857 to join in the purchase of the property known as No 3 Brighton Crescent Singapore (`the property`) at the purchase price of $2,340,000 and more particularly described in the Sale and Purchase Agreement and the Withdrawal Agreement and delineated in red on the plan annexed hereto.

3 Each of the second purchasers` share is $390,000 and the amount to be paid upfront by each of the second purchasers is $220,000 making a total of $1,320,000.

4 The balance purchase price amounting to $1,020,000 will be a loan from Gn Muey Muey Mary (hereinafter called `Mary`) at the interest rate of 1.5% per annum above the prevailing prime rate, which loan is to be repaid by all the second purchasers upon the sale of the property.

5 The second purchasers have also obtained an additional loan of $180,000 from Mary making a total of $1,200,000 at the interest rate of 1.5% per annum above the prevailing prime rate which is also to be repaid by each of the second purchasers upon the sale of the property.

6 Those who are obtaining a loan from Mary for the upfront of $220,000 will have to repay the same in full together with interest at the rate of 1.5% per annum above the prevailing prime rate upon the sale of the property at No 4 Worthing Road or on 30 June 1996 whichever is the earlier.

A site plan demarcating the property involved was annexed to this agreement. As some confusion emerged at the trial on the identification of the property, we should mention at this stage that the property demarcated in this plan is the sub-divided lot on the left facing Brighton Crescent and adjoining to No 5 Brighton Crescent.

Under this agreement, each of the six investors was obliged to make a capital contribution of $220,000 towards the purchase of the Brighton property. Presumably the original three investors had made their payments by then, and the three new investors on that evening made the required payment of $220,000 each. The respondent for her part issued a cheque for that amount made out payable to So.

An account called `the project account` was opened with the Oversea-Chinese Banking Corporation Ltd (`OCBC Bank`) and four of the investors were authorised to operate the account, and all cheques drawn on that account required the signatures of only two of the authorised signatories. At that time, the appellant had an overdraft account with the OCBC Bank, and she allowed funds from her overdraft account to be used for defraying the costs and expenses of the development project. One Phyllis Cheok Sock Lay (`Phyllis Cheok`) was appointed by the six investors as a part-time secretary to administer the project account and attend to other administrative matters.

After the initial meeting on 8 November 1995, there were several more meetings of the six investors held at the appellant`s house where they discussed the development project. The respondent attended these meetings. At one or two of these meetings, an investment project relating to another

property known as No 34 Bridport Avenue, was initiated and the respondent also participated in that project. That investment project formed the source of another dispute between the respondent and the appellant, which is currently the subject of a separate suit. That dispute, however, is not relevant to the present appeal.

At one of these meetings, another written agreement with respect to the Brighton property was executed by the six investors. This agreement was dated 5 April 1996 and was made between the appellant, her husband and their two children (described there as the vendors) of the one part and the six investors (described as the purchasers) of the other part. The agreement (`the April agreement`) contained three clauses and a schedule and had a site plan annexed to it. The terms of the agreement were these:

> *1 The vendors shall sell and the purchasers shall purchase free from encumbrances the part of No 3 Brighton Crescent as shaded in blue containing an area of 3,600 square feet as described in the Schedule hereto (hereinafter called `the property`) at the price of Dollars Two Million Three Hundred and Forty Thousand Only ($2,340,000) on an as is where is basis. The purchasers will construct a semi-detached house and the costs will be borne by them.*
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> *2 The purchasers shall pay to the vendors the sum of Singapore Dollars Two Hundred and Thirty-Four Thousand Only (S$234,000) by way of deposit on signing of this agreement.*
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> *3 The sale and purchase herein shall be completed at the vendor`s solicitors` office within eight (8) months from the date of issuance of the temporary occupation permit.*
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> *Schedule Above Referred To*
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> *All that house erected on that piece of land containing an area of approximately 3,600 square feet comprised in Lot 193-27 of Mukim 18 and known as No 3 Brighton Crescent Singapore more particularly delineated in blue on the plan annexed hereto.*

There was annexed to the agreement a site plan demarcating the property sold, namely, the sub-divided lot on the left facing Brighton Crescent and adjoining to No 5 Brighton Crescent.

Thereafter, there were further meetings of the six investors. On or around 31 May 1997, there was a meeting of the six investors, at which they were asked by the appellant to make a contribution of $34,167 each towards the costs of the development project. The respondent herself duly paid that amount to the appellant. Likewise, the other five investors each also made a payment of the same amount to the appellant at or about that time.

In the period that followed, the property market began to fall, and owing to the downturn in the economy there was a drastic fall in the property prices, and apparently as a result, the relations between the respondent and the appellant began to sour and deteriorate. Subsequently, the respondent refused to make any further payments as requested by the appellant. Two other investors, Low and Ong, also withheld further payments towards the development project. In September 1998, the appellant commenced the present suit against the respondent, Low and Ong

claiming the respective amounts owed by them which she had loaned for the purpose of the development project. The claim against Low and Ong was subsequently withdrawn, as they then agreed to settle the amounts owing to the appellant, and the action continued only against the respondent.

The appellant`s claim

The appellant claimed that in connection with the development project she entered into an oral agreement (`the oral agreement`) with the six investors, whereby she would let the six investors use funds from her overdraft account with the OCBC Bank for the purpose of financing the development project, and in return the six investors would be responsible for repaying the amounts drawn from the appellant`s overdraft account with interest at the same rate as that charged by the bank. For this purpose a working system was devised by the six investors. They appointed Phyllis Cheok as the part-time secretary to take care of the accounts and administrative matters relating to the development project, and an account called `the project account` was opened with the bank. Funds from the appellant`s overdraft account would be placed in this account and from this account payments of expenses for the development project would be made. To operate the project account, the six investors authorised four of them, namely, So, Tan, Tay and one Michael Loo (the husband of Ong), to be the signatories of cheques drawn on the project account. The six investors would instruct Phyllis Cheok to request for funds from the appellant as and when payments for the development project were due, which included the architect`s fees, engineer`s fees and various development charges. Pursuant to the requests made, the appellant would issue cheques for the requisite amounts and these would be credited to the project account. Thereafter, Phyllis Cheok would prepare cheques drawn on the project account for signatures by two of the four authorised signatories to make payment for the expenses incurred. From the beginning of the development project till 12 September 1998, the six investors requested for and received numerous amounts from the appellant`s overdraft account in the manner as described. In the case of the construction costs payable to the contractor, the appellant would make progressive payments direct to the contractor against the architect`s certificates by using her personal cheques or bank drafts drawn on her overdraft account.

Sometime in January 1998, the appellant was called upon by her bank to reduce the outstanding amounts owing on her overdraft account. Due to the bank`s demand, the appellant needed the investors to pay her back the amounts which they had taken from her overdraft account for the development project. Based on the updated statement of accounts prepared by Phyllis Cheok, the appellant requested for the amounts due from each of the six investors. The respondent refused to make any payment of the amount due.

The respondent`s defence

The respondent in her defence denied the existence of the oral agreement and claimed that she never withdrew, or consented to the appellant withdrawing on her behalf, any amount from the appellant`s overdraft account. The respondent also claimed that the appellant had exercised undue influence over her and thereby wrongfully induced her to sign the November agreement and the April agreement. The respondent claimed that she had absolutely no experience, nor had she any knowledge, about investing in properties and she was greatly influenced by what the appellant had represented to her.

Originally in the defence, in so far as concerning the validity of the two agreements, the respondent only alleged that the agreements were wrongfully procured as a result of the appellant exercising

undue influence over her. In the course of the trial, there arose a number of errors and ambiguities in the texts of the agreements and the plans annexed to the copies of the agreements produced. As a result, counsel for the respondent, at the close of the defence, applied to amend her defence and counterclaim by adding a plea that the April agreement was void for uncertainty in that `in respect of the subject matter of the alleged agreement, ie the exact portion of the Brighton property to be developed under the alleged agreement is unclear`. The respondent counterclaimed, inter alia, a declaration that the oral agreement and the April agreement were void and consequently, a refund of the sums ($220,000 and $34,167) she had paid to the appellant.

Decision below

The trial judge found that the appellant had failed to prove that there was an oral agreement made between her and the six investors as alleged. He did not accept the evidence of the appellant and found that her evidence on that issue was `palpably tentative, sketchy and to a certain extent flippant`. He accordingly dismissed her claim. Turning to the defence and counterclaim of the respondent, he rejected the defence that the respondent was induced to enter into the agreements by the undue influence exerted by the appellant. However, he found that the November agreement and the April agreement as well as the oral agreement as claimed by the appellant were uncertain and declared that they were void for uncertainty and allowed the counterclaim of the respondent. Consequently, he ordered the appellant to refund all the sums paid by the respondent to the appellant.

The appeal

There are before us only two issues: first, whether there was an oral agreement made between the appellant and the six investors relating to the use of her funds for the development project; and secondly, whether the November agreement and the April agreement were void for uncertainty. The first is one of fact and turns wholly on the evidence adduced, and the second is one of mixed fact and law and turns on the contents of the agreements.

Oral agreement

On the first issue, we turn first to the undisputed facts and the relevant documentary evidence. It is not disputed that on 8 November 1995 the respondent and her husband saw the appellant at the office of M/s Gn & Co and were invited by the appellant to attend a meeting at her house the same evening, and that she and her husband did attend the meeting. It was the respondent`s evidence that at that meeting she was persuaded to participate in investing in the development project, and in consequence she made out a cheque in the sum of $220,000 payable to So (the appellant`s husband who was one of the six investors). She also signed the November agreement. According to her she signed the agreement that same evening; however, according to the evidence adduced by the appellant, she signed it later. It is immaterial when she signed the agreement; what is material is that she did sign the agreement. At the meeting, in all probability the respondent and her husband were persuaded by the appellant and others present of the profitability of the development project. As the learned judge said, the appellant, and probably some of the others also, must have `sweet-talked` the respondent and her husband into investing their funds in the project by `painting a rosy picture of the investment prospects`. Whatever might have transpired at the meeting that evening, the true hard fact was that the respondent did agree to invest in the development project and became one of the six investors.

It is also not disputed that following that meeting on 8 November 1995 there were several more meetings held at the appellant`s house and the respondent attended those meetings. At one of the meetings held on or about 5 April 1996, she signed the April agreement, and in the subsequent year, at another meeting held on or about 31 May 1997, she made a contribution of $34,167 towards the costs of the development project and this payment was made by way of a cheque drawn by her in favour of the appellant.

We now revert to the November and April agreements to which the respondent was a party. By the November agreement, the respondents together with five other investors, So, Tan, Tay, Low and Ong, agreed to participate in the purchase of the Brighton property. The purchase price of the property was $2,340,000, and thus the share of each of the six investors was $390,000 of which $220,000 was to be paid by each of them at that time, making a total payment of $1,200,000. The balance amounting to $1,020,000 was to be financed by way of a loan from the appellant repayable with interest at the rate of 1.5% per annum above the prevailing prime rate and the loan was expressed to be paid `upon the sale of the property`. That agreement was expressed to be made supplemental to (i) the October agreement and (ii) the Chia withdrawal agreement. It was implicit in this agreement that the six investors would step into the shoes of the original three investors (So, Tan and Tay) and take over the purchase of the Brighton property under the October agreement. This implicit understanding was made explicit by the April agreement, under which the six investors agreed to purchase the Brighton property from the appellant, So and their children, and this agreement in effect replaced the October agreement. Under the April agreement the completion of the purchase of the property was to take place within `eight months from the date of issuance of the temporary occupation permit`. It was clearly contemplated by the parties to these two agreements that the six investors would develop a semi-detached house on the Brighton property and upon completion of the development to sell the property and with part of the proceeds of sale they would pay the appellant the balance sum of $1,020,000 and interest thereon.

We now turn to the question concerning the development of the semi-detached house as contemplated by the investors. Clause 1 of the April agreement provided that the purchasers, ie the six investors, would have to construct a semi-detached house and the costs would be borne by them. But neither the November agreement nor the April agreement made any provision as to how the investors intended to finance the costs of the construction. The evidence of the appellant was that there was an oral agreement between her and the six investors whereby she agreed to allow them to use her overdraft account with the OCBC Bank for paying the costs of the development project and in return they would repay the amounts withdrawn from that account with interest at the rate same as that charged by the bank. Before we examine her evidence on this point, it is helpful to consider what other evidence there was in support of what she said.

Evidence of Tan

First, there was the evidence of Tan, one of the six investors. His evidence, in so far as relevant, was this. The six investors (including himself) agreed to purchase the Brighton property from the appellant and her family for $2,340,000. Each of the investors paid a sum of $220,000 making a total of $1,320,000, and the appellant and her husband agreed to let them pay the balance of $1,020,000 after the development was completed and the property sold. It was also agreed that they would pay interest on the balance sum at 1.5% above prime per annum. As for financing the costs of the development project, the investors agreed with the appellant that they would make use of the funds from her overdraft account to pay for the expenses of the development project as and when required. The investors devised a system to draw funds from her account and to apply them in payment for the

project. First, they opened an account with the bank called the `project account` to receive funds from the appellant`s overdraft account and from that account to make payment of the expenses. To operate the project account the investors authorised four of them, namely, So, Michael Loo, Tay and Tan himself to sign cheques on that account and for that purpose the signatures of two of them would suffice. Secondly, the investors appointed Phyllis Cheok as a part-time secretary for the project. Her duties were to request for funds as and when required for the development project, upon receipt of the funds to place them in the project account, and to prepare cheques drawn on that account for payment. These cheques would then be signed by two of the four authorised signatories. From the beginning of the project in November 1995 to September 1998, the investors, had through Phyllis Cheok, requested and received numerous sums from the appellant and from these sums payments were made in the manner as agreed. Sometime in May 1997, the investors agreed that each of them would pay a sum of $34,167 towards the project costs. Each of the investors promptly made the payment on 31 May 1997 or 1 June 1997. In early 1998, when property prices fell drastically, the appellant informed the investors that the bank had made a call on her for a lump sum repayment on her overdraft account. All the investors, except the respondent, acknowledged their obligations to the appellant and agreed to repay the appellant what had been withdrawn to meet the bank`s demand.

We find that Tan`s evidence was in many ways substantiated. First, there were the November agreement and the April agreement and his evidence was wholly consistent with these two agreements. Secondly, there was a project account opened with the bank and four of the investors were authorised to operate the account and cheques drawn on this account were required to be signed by two of the four authorised signatories, and from time to time cheques were so drawn on this project account. Thirdly, there was a project for the construction of a semi-detached house on the Brighton property, and a contractor, architect, engineer, clerk of works and part-time secretary were engaged for the project, and various payments were made and the project was eventually completed. It is true that Tan was related to the appellant through the marriage of his daughter to the appellant`s son, and that Tan himself was one of the six investors. But these facts alone do not cast any doubt on his evidence which is otherwise credible. The learned judge said at [para] 49:

> *The evidence of Mr Tan also lent little weight to her claim. He was not only related to the plaintiff by his daughter`s marriage to the son of the plaintiff but also admittedly had a substantial stake in more than one joint venture project with the plaintiff and her husband. It seemed to me that his asservation that the so-called agreement was entered into in December 1995, surfaced only at the wake of the plaintiff`s halting answers that it was probably entered into in December 1995 or January 1996.*

With respect, we are unable to agree with the learned judge. Tan`s evidence lent considerable weight to the appellant`s claim. As we have shown, Tan`s evidence was substantiated in material respects by objective facts which had been established

Evidence of Phyllis Cheok

Next, there was the evidence of Phyllis Cheok. She testified that sometime in November 1995 she was engaged by the six investors as a part-time secretary for the development project. Her duties were to take care of the accounts and administrative matters of the project and to attend meetings of the investors so that she would understand what was happening with reference to the project and what she was required to do. She knew that there was an agreement made between the investors and the

owners of the property for the sale and purchase of one half of the property for $2,340,000. She also testified that the investors had an oral agreement with the appellant to use the latter`s funds from her bank overdraft account to pay for the costs of the development project as and when needed. She understood that one of her duties was to request for funds from the appellant, as and when payments were due for the project. Upon receipt of the funds from the appellant she was to place them in the project account which had been opened by the six investors. Thereafter, she was to issue a cheque drawn on this account and arrange for the signatures of two of the four signatories authorised by the investors. As for the progress payments for the construction costs payable to the contractor, she would check the amounts against the requisite architect`s certificates that were issued and would hand them to the appellant who would then arrange for the cheques or drafts to be drawn on her bank account for payment to the contractor. Pursuant to these procedures, she had made numerous requests for funds from the appellant and had received these funds which she then placed in the project account, and she had prepared numerous cheques drawn on the project account for signature and these were signed by two of the four authorised signatories. She produced copies of the bank statements of the project account and copies of the appellant`s cheques and bank drafts issued for purposes of the project. She prepared updated statements of account showing the various payments for the project that were made with funds from the appellant together with interest accrued and payable. She supported these statements with quotations, invoices, architect`s certificates, bank statements and other documents. We do not find that there was any challenge to Phyllis Cheok`s evidence in any material respects. Nor was there any dispute as to the statements of account she prepared or the supporting documents she produced. We can find no reason why her evidence should not be accepted.

Evidence of the appellant

We now turn to the evidence of the appellant. She testified that in early 1995, she and her family bought a property known as 3 Brighton Crescent which had an old single-storey detached bungalow with a land area of 672.5 sq m. Later, she and her husband thought that they might secure a better return by demolishing the detached bungalow and building in its place a pair of two and a half storey semi-detached houses. They approached relatives and friends with a view to inviting them to participate in developing one of the semi-detached houses. In November 1995, there were six investors who were so interested, and they were So (her husband), Tan, Tay, Low, Ong and the respondent. She and her family agreed to sell and the six investors agreed to buy `one half` of the property at $2,340,000 for the purpose of building a semi-detached house thereon and thereafter selling it at a profit. It was agreed that the six investors would each pay a sum of $220,000 making a total of $1,320,000, leaving a balance of $1,020,000 to be paid when the house is built and sold, and the investors agreed to pay interest on this balance at the rate of 1.5% above prime per annum. It was also agreed that the six investors could use her funds from her overdraft account with the OCBC Bank for the purpose of financing the development project, and in return the six investors would be responsible for repaying the amounts withdrawn from the appellant`s overdraft account with interest at the rate same as that charged by the OCBC Bank. At all material times, the bank charged her interest at 1.5% above prime per annum in normal situation and 4.5% above prime per annum in the event of any default in repayment.

As regards funding the project, she said that when a payment for the project was required, Phyllis Cheok would inform her of the amount needed and she would draw a cheque for the amount and give it to Phyllis, who would then place it in the project account and thereafter prepare a cheque for the amount to be signed by the signatories authorised by the investors. As for payment of the construction costs to the contractor, she would make payment with her own cheques or drafts drawn on her account. In May 1997, the investors each agreed to pay a sum of $34,167 towards the costs

of the development project and this amount was paid by each of them.

Sometime in January 1998, owing to the economic crisis the bank wanted her to reduce her overdraft with a lump sum payment. As a result of the demand by the bank, she required the investors to pay back what they had taken from her overdraft account for the project. The respondent, Low and Ong refused to pay, but later in December 1998, Low and Ong accepted their obligations and made the necessary arrangements to settle the amounts due. The respondent, however, refused to settle the amount due.

Our decision

On the evidence, it has been established that the six investors (one of whom being the respondent) had agreed to join in the purchase of the Brighton property from the appellant and her family at the price of $2,340,000. There were produced the November agreement and April agreement which were executed by the respective parties concerned (including the respondent). It seems clear to us that there was an oral agreement made between the six investors to carry out the development project, ie to build a two and a half storey semi-detached house thereon for sale. This development project was actually carried out, and the contractor, engineer, architect, clerk of work and part-time secretary were engaged for the purpose. All these were supported by the evidence of Tan and Phyllis Cheok and documentary evidence.

It has also been shown that funds from the appellant`s overdraft account with the OCBC Bank were utilised to pay for the expenses incurred in the development project. A system involving the withdrawal of funds from the overdraft account and payment of such funds into the project account and payment out for the expenses of the development project was devised and the system was described in consistent detail by Tan and Phyllis Cheok as to how it worked. More importantly, the accounts produced by Phyllis Cheok were supported by the corresponding documents comprising copies of the cheques issued, the bank statements of the project account, the quotations and invoices from third parties such as the engineer and the contractor as well as the architect`s certificates certifying the amounts due for the completed work done at each stage of the development project. The relevant documents produced showed that the funds paid out by the appellant from her overdraft account corresponded with the funds placed in the project account, which were thereafter paid out for the expenses incurred in the development project. All these facts supported the appellant`s claim that there was an oral agreement made between her and the six investors relating to the use of her funds from her overdraft account with the OCBC Bank to finance the costs and expenses of the development project and the repayment of such funds by the investors.

The respondent herself was one of the six investors and was a party to this oral agreement to use the funds from the appellant`s overdraft account. The respondent herself admitted in her testimony that she attended four to five meetings of the investors held at the appellant`s house to discuss the progress of the development project. She also admitted that she saw the contractor and the architect of the project when they were introduced by the appellant at one of the meetings. She knew who Phyllis Cheok was and must have met her at the meetings held, since the latter attended all the meetings. The respondent must have been aware of the use of the appellant`s funds for the development project. She sought to claim ignorance of what had happened, by virtue of her alleged lack of experience in this area and the failure of the appellant to explain to her the agreements which she signed. We find it incredible that the respondent could claim that she was ignorant of everything that had taken place with respect to the development project from the time she agreed to invest in it in November 1995 to late 1997 or thereabouts. We also cannot believe that merely because she had

little or no experience in property investments, she could not follow the matters that were discussed at the meetings. The respondent must have understood or at least could follow most of what was discussed at the meetings. At these meetings, there would invariably be some discussions of the expenses that had been incurred and/or would be incurred. It would be apparent to the respondent that, as a participant in the development project, she would have to bear her share of the costs and expenses incurred. Having regard to all these circumstances, the conclusion is irresistible that the respondent was a party to the oral agreement claimed by the appellant and is liable to repay the appellant her share of the amount, which the latter had loaned to finance the costs of the development project, together with interest thereon.

The trial judge found that there was no such oral agreement. With the utmost respect to him, on the evidence which we have considered in detail, this finding is plainly unsustainable. There was overwhelming evidence in support of the claim of the appellant. The learned judge did not accept the evidence of the appellant, and one of his criticisms of her evidence was that she could not remember the date on which the oral agreement was made between her and the six investors and that she declined to produce her bank statements to prove the amount withdrawn from her account. The learned judge said at [para] 12 and 13:

> *12 The plaintiff`s cross-examination by the first defendant`s counsel was eventful and parts of it need mention. Questioned by the first defendant`s counsel as to when the alleged oral agreement was entered into - which according to the plaintiff`s earlier averment, was in November 1995 - her reply was that she could not remember as to when it was made (p 11E of the NE). When questioned about the use of the overdraft and the terms of the oral agreement pertaining to it, she answered: ` **Whether it is one of the terms or not, I do not understand a thing. I only allowed them to use my overdraft as they were my friends** .` (Page 12D-E of the NE.)*
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> *13 She was asked by first defendant`s counsel to show the court the bank statements in relation to the overdraft facilities concerning the subject property. For some reason, she declined to produce them saying: ` **It is not my duty to show my personal account to anyone. But it is the secretary`s duty to show the partners how much is taken from the overdraft** ...` (pp 21 and 22 of the NE).*

The appellant`s inability to remember the date on which the oral agreement was made should not preclude the court from finding the existence of such agreement, because there was preponderance of evidence showing the existence of such an agreement. In her evidence she said that it was made in December 1995 or January 1996 and it seems to us that her evidence on this point was quite clear. In her cross-examination, she said:

Court (to PW1)	:	Do you know when was the agreement reached?
PW1	:	I can`t remember the date.
Q	:	At which month can you say?
A	:	Probably in December 1995 or January 1996.

Q	:	Who were these partners with whom you entered into this oral agreement?
A	:	The agreement was reached between myself and the three defendants Tan Jin Thong, So Kin Nam and Tay Kok Lim.
Q	:	Yesterday you said that there was no oral agreement directly with the first defendant. What do you mean by that?
A	:	Yes, what I meant was I had an oral agreement with all partners inclusive of the first defendant but not with her alone

The appellant thus had identified the approximate period in which the agreement was made and the parties to this agreement. Her evidence on this point was corroborated by the evidence given by Tan. Probably, at that time the parties had not agreed on a specific time for repayment, but since the investors were developing the semi-detached house for sale, it must have been contemplated by them that in the normal course of events the repayment would be made at the time of sale. Unfortunately, owing to the economic crisis, the property market declined drastically and the bank then required the appellant to repay her overdraft account by a substantial amount, and in consequence the appellant in turn required the investors to make the repayment to her.

As for the refusal by the appellant to produce her bank statements we find that the answer she gave was perfectly valid. She was not obliged to show her personal bank account to any of the investors. They had established a project account for, inter alia, receiving funds from her overdraft account and had appointed Phyllis Cheok to administer the project account, and the appellant was entitled to rely on Phyllis Cheok to show how much had been taken from her overdraft account.

Lastly, in conclusion the learned judge made the following finding at [para] 43:

> *The first issue in this case was whether on a balance of probabilities the plaintiff has established by her as well as the evidence proffered on her behalf, that there was an oral agreement between her and six others - including her husband and her son`s father-in-law Mr Tan and the first defendant, I must observe at the outset that her evidence as respects this aspect was palpably tentative, sketchy and to a certain extent flippant. In fact, her original claim as pleaded by her in the first instance was that the so-called oral agreement which was also referred to in the pleading as joint venture agreement, was made in November 1995. The statement of claim went on to state in para 4 that pursuant to that joint venture agreement, a sale and purchase agreement dated 5 April 1996 was entered into. It was further stated in para 5(a) of the claim that under the joint venture agreement, the plaintiff agreed to let the partners use and draw upon her overdraft facilities and consequently the sum claimed was now due and owing from the first, second and third defendants. The claim started with the figure of $112,585.30 which was amended as the case proceeded to $107,093.00 and later further amended to $99,991.16. It was strange that nowhere in the pleadings was there any reference to the terms of the said oral agreement nor could the plaintiff be able to state with any precision what the terms were.*

We accept that there were unsatisfactory features in the evidence of the appellant, and the way she framed her claim left much to be desired. However, with respect, we do not find these unsatisfactory features really that crucial in determining the real issue, namely, whether there was an oral agreement between the appellant and the six investors for the use of funds from her overdraft account to finance the cost and expenses of the development project and the repayment of such amounts withdrawn. On this issue, the evidence in support of the appellant`s claim was overwhelming, and looking at the pleadings, this oral agreement was pleaded, although the way in which it was pleaded was far from satisfactory.

The learned judge was very much troubled by the series of amendments sought by counsel for the appellant in the course of the trial and found that there was a lot of uncertainty in the interest rate charged, which increased from 1.5% to 4.5% and finally was amended to 4.75%, and that it was odd and contradictory for the increase in the interest rate to be met with a progressive reduction in the amount claimed, which changed from $112,585.30 to $107,093 and then to the final figure of $99,991.16. However, to a certain extent, this inconsistency had been explained by the appellant. The amendments to the interest rates were necessary as a result of the change in the rates charged by the appellant`s bank, which was made known to her only after the action had been commenced in September 1998. The reason for the reduction of the amount claimed was that certain expenses that were due had not as yet been paid to the third parties, such as engineer`s fees and property tax, and were eventually excluded from the claim, and thus the resulting deduction was more than the rise in the interests charged.

Uncertainty in the agreements

The learned judge found that the two written agreements dated 8 November 1995 and 5 April 1996 and the oral agreement claimed by the appellant were void for uncertainty. In coming to this conclusion he was greatly influenced by his finding that there was an erroneous and substantial misdescription of the subject property (ie the Brighton property) in both the agreements.

On this issue, it is important to ascertain the exact property which was intended to be the subject of the development project. The original plot of land was Lot 193-27 of Mukim 18 with a house thereon known as No 3 Brighton Crescent. It was sub-divided into two lots as part of the plan to construct a pair of two and a half storey semi-detached houses, one on each sub-divided lot. The houses built on these two sub-divided lots were subsequently re-numbered and we think that they were re-numbered as No 3 (sub-divided lot number 14067N) and No 3A (sub-divided lot number 14068X) of Brighton Crescent. For ease of reference we shall treat these two sub-divided lots as No 3 and No 3A respectively. According to the appellant and as shown in the November and April agreements, the property which the six investors had purchased was that sub-divided lot we call No 3A (Lot No 14068X), namely, as we have earlier described, the sub-divided lot on the left facing Brighton Crescent and adjoining to No 5 Brighton Crescent. Both the November agreement and the April agreement had site plans attached, which clearly demarcated this sub-divided lot (No 3A) as the property sold to the six investors.

The confusion that arose at the trial over the exact area and location of the subject property came about as a result of the erroneous plans being annexed to the copies of the agreements and the architect`s `as built drawings` which were tendered in court on behalf of the appellant. The plans annexed to the copies of the agreements as contained in the plaintiff`s bundle of documents (PB-5 and PB-28) showed the sub-divided lot known as No 3 (Lot No 14067N) as being shaded, with the

words and figures `3,600 sq ft` appearing thereon, indicating that that was the sub-divided lot sold to the six investors. That clearly was wrong. The trial judge was therefore quite surprised when the appellant testified that the plans were in fact erroneous and that the sub-divided lot sold to the purchasers was actually the other sub-divided lot which was unshaded, ie No 3A (Lot No 14068X). The appellant`s explanation was that the error was probably the result of a mistake made by one Frederica Aw, the person who had drafted the agreements. This confusion was made worse by the architect`s `as-built drawings` that were tendered on behalf of the appellant which also had the same errors in relation to the numbering of `3` and `3A` of the two sub-divided lots. Thus, both the plans annexed to the copies of the agreement and the architect`s drawings showed the sub-divided lot on the left facing Brighton Crescent as No 3 and the other sub-divided lot as No 3A. Both these plans and the drawings were obviously in error. As a result of these errors and the ensuing confusion as to whether the investors had agreed to purchase No 3 or No 3A of Brighton Crescent, the trial judge formed the conclusion that there was an inaccurate and ambiguous identification of the subject property to be sold, thereby rendering the agreements too uncertain to be valid.

In our judgment, the appellant`s counsel must bear the blame for this confusion. First, in compiling the plaintiff`s bundle of documents marked `PB`, which contained, inter alia, copies of the November and April agreements, counsel had in the plans (annexed to these copies) demarcated the wrong sub-divided lot as sold to the six investors. Secondly, counsel appeared to have failed to bring to the trial judge`s attention the original agreements, marked `P15` and `P14` respectively, to which were annexed the plans demarcating the correct sub-divided lot as sold to the six investors. On these plans, the sub-divided lot sold to the six investors was distinctly shaded and demarcated and was marked with the words and figures `3,600 sq ft` (which is No 3A), while the other sub-divided lot was not shaded and was marked with the words and figures `3,638.1 sq ft` (which is No 3). These plans are consistent with both the appellant`s and Tan`s testimony that the subject property sold was the sub-divided lot, No 3A. At this point, we should clarify that in the plans annexed to the original agreements, the two sub-divided lots were not, in fact, numbered as `No 3` and `No 3A` respectively. For the ease of reference we use these numbers in referring to the areas unshaded and shaded respectively. There was absolutely no confusion or ambiguity with regard to the identification of the property that was sold to the six investors once attention is drawn and reference is made to these plans. The appellant`s counsel appeared not to have done so and failed to assist the learned judge in clarifying the confusion. It is significant that the respondent did not challenge in any way the authenticity or accuracy of these plans. Indeed, the request for the original agreements to be tendered was made by the counsel for the respondent.

It is significant that a copy of each of the two agreements was also produced by the respondent in her affidavit of evidence in chief. However, only one plan was produced and this was annexed to the November agreement, and no plan was annexed to the April agreement. A careful examination of that plan shows undeniably that it was exactly the same as the plan annexed to the original November agreement. Thus, the respondent`s copy of the agreement also showed the sub-divided lot, No 3A, as being the shaded part which was sold to the six investors. In our judgment, at the times the respondent signed the agreements, there was no confusion as to which property she and the other investors were purchasing, as it was clearly demarcated on the plans annexed to the agreements.

As for the errors in the architect`s `as-built drawings`, these are inconsequential as they relate only to the mistaken numbering of the two sub-divided lots as Nos. `3` and `3A`. In any case, these errors are irrelevant as, first, they do not affect the validity of the two agreements, which are distinct instruments unrelated to those drawings; and secondly, as we have said, the subject property was not identified in the agreements as No `3` or No `3A`.

In the premises, the learned judge`s conclusion on the `uncertainty` relating to the identification of

the subject property under the two written agreements is, with respect, in error. There are, however, other points of inconsistencies and ambiguities in these two agreements identified by the learned judge which we must now address. These `uncertainties` may be summarised as follows:

(i) the November agreement does not stipulate a completion date;

(ii) the two agreements provide for different amounts to be paid by the purchasers as deposit of the purchase price; and

(iii) the usual conditions relating to title and tenure as well as the Law Society`s conditions of sale were missing.

The November and April agreements were clearly supplemental to each other, although not expressly stated to be so, and the terms of both the agreements should be read together. It is true that the November agreement did not provide for a completion date of the purchase. However, it should be borne in mind that that agreement was not a sale and purchase agreement between a vendor and a purchaser. It was an agreement whereby the six investors agreed to join in the purchase of the Brighton property from the appellant and her family, and the purchase was formalised in the April agreement, which among other things did provide a date for completion of the sale and purchase of the property. Thus, the `uncertainty` relating to the omission of a completion date in the earlier agreement is resolved, as such a term was provided for in the later agreement. Even if this was not the case, this omission does not create such uncertainty as would render the agreements void.

As for the apparent contradiction in the deposits paid, the appellant, Tan and Phyllis Cheok gave consistent testimony that the amount of $234,000 stated in cl 2 of the April agreement was a mistake and that the figure should read instead as $220,000. This was not challenged by the respondent. More importantly, it is an indisputable fact that the respondent paid only a sum of $220,000 initially as the deposit and not $234,000. There was therefore no real confusion as to the amount of deposit paid by each of the purchasers. In any event, we cannot see how a discrepancy in the amounts agreed to be paid initially should affect the validity and enforceability of the agreement so long as the final purchase price remained fixed and consistent.

We accept that it is unusual and certainly not advisable not to provide in an agreement for the sale of land the usual terms relating to title, tenure and the Law Society`s conditions of sale. But, in our opinion, the omission to have such terms and the Law Society`s conditions of sale is not fatal to the validity of the agreement and certainly will not render void the agreement on the ground of uncertainty or otherwise. It is not a legal requirement that these terms must be included in a contract for the sale of land before the contract can be found to be valid and enforceable.

Conclusion

For the reasons given, we allow the appeal and set aside the judgment below. There will be judgment for the appellant in the sum of $99,991.16 with interest at 6% per annum from the date of the issue of the writ to the date hereof. The counterclaim is dismissed. The respondent must repay to the appellant all moneys which the latter had paid pursuant to the judgment below.

On the question of costs, we find that the error on the part of the appellant and her counsel in preparing and compiling the plaintiff`s bundle of documents marked `PB`, and in particular PB 5 and 28, has given rise to considerable confusion below and contributed to the costs incurred here and below. In consequence, the appellant should not be awarded the full costs of the action and this

appeal. She should get only three quarter of the costs here and below, and we so order. The deposit in court as security for costs is to be refunded to the appellant or her solicitors.

Outcome:

Appeal allowed.