Norsiah binte Samat v Neo Poh Guan and Another
[2003] SGHC 260

Case Number : OS 143/2003/Q

Decision Date : 23 October 2003

Tribunal/Court : High Court

Coram : Lai Kew Chai J

Counsel Name(s) : Philip Jeyaretnam SC and Ling Tien Wah (Rodyk and Davidson) for plaintiff; Mrs Margaret George (Koh Ong and Partners) for defendant

Parties : Norsiah binte Samat — Neo Poh Guan; Chuan Tan

Land – Conveyance – Legal requisitions – Road reserve affected 20.2% of the total area of the property – Whether reply to requisition was satisfactory – Test to be applied in determining whether a reply to requisition was satisfactory – Whether purchaser entitled to rescind the agreement for sale and purchase – Claim for return of 10% deposit.

Land – Sale of land – Contract – Legal requisitions – One of two lots designated as property to be sold was shaded as land required as a road reserve – Whether sale related to one lot or two lots of land.

Words and Phrases – 'Unsatisfactory reply to requisition'

1 By this Originating Summons the plaintiff is seeking a declaration against the defendants that the plaintiff is entitled to rescind the Agreement for sale and purchase dated 7 November 2002 relating to the sale of the property described as 31 Toh Crescent, Singapore comprising Lot 1011T and 1009A of Mukim 31, Singapore ("the property") for the sum of $3.1 million. At the conclusion of the hearing, I made the declaration as prayed for. I also ordered the defendants to repay the plaintiff the sum of $310,000 being the deposit of 10% of the purchase price of the property which was paid by the plaintiff to both defendants. I further ordered the defendants to pay interest on the said deposit sum at 4% p.a. with effect from 17 December 2002. The defendants have appealed against my decisions. I now set out the material facts and the reasons for my decisions.

2 The defendants are the registered owners of the property. By an Option to Purchase dated 23 October 2002, the defendants offered to sell to the plaintiff the property for $3.1 million. The plaintiff exercised the Option on 7 November 2002.

3 I shall set out the brief history of the property. It was at one time part of a larger plot of land containing an area of 26,233 square feet and was comprised in Lot 487A of the same Mukim.

4 By a Notice of Grant of Written Permission dated 27 January 1972 issued to the 1st defendant, the Chief Planner gave notice that permission was granted under section 9(3) of the Planning Act, to subdivide Lot 487A into 3 lots.

5 On 20 April 1972 the defendants purchased Lot 487A and on 28 June 1972 the defendants subdivided Lot 487A into 3 lots. Plot 1 became Lot 1009A on which was erected 31 Toh Crescent, Singapore. The second plot was Lot 1010P on which was erected 35 Toh Crescent. The third plot was named Lot 1011T which was the main driveway leading to both 31 and 35 Toh Crescent, Singapore.

6 On 24 July 1972 the defendants sold 35 Toh Crescent, Singapore erected on Lot 1010P to one Jeganathan Jesudason Isaac.

Undisputed Facts

7 In early 2002 the defendants put the property up for sale. In July, 2002 the plaintiff and her husband visited the property with one Mr Adam Lim and Mr Ishak, who were housing agents from Thomas Lee Realty. The 1st defendant was present during this visit and answered queries from the plaintiff and her husband through the interpretation of Mr Adam Lim.

8 On 27 September 2002, the defendants through their housing agents ERA advertised in the Straits Times for the sale of the property. The advertisement was in these terms: "TOH CRESC, S/STOREY bunglw. Land approx 16000 sq. ft. Potential for rebuilt. Vacant now. View by appt only. 9028 2268 ERA".

9 The property is L-shaped and consists of three parts: (1) the main rectangular area of land with the bungalow; (ii) a narrow strip of concrete driveway and (iii) the main driveway connecting the house to the major road known as Toh Crescent, Singapore.

10 On the same day the plaintiff's husband contacted Ms Christine Chan after seeing the advertisement and thereafter negotiated for the purchase of the property. Just short of a month later, the plaintiff and her husband applied to the DBS Bank for a housing loan of $1 million to purchase the property. The land area of the property was stated as 16,000 sq. ft.

11 On 23 October 2003 the defendants granted to the plaintiff an option to purchase what was described as "31 Toh Crescent, Singapore 507940 'the property'" at the price of $3.1 million. The plaintiff paid the 'Option Money' of $35,699.70.

12 A title search conducted through the Singapore Titles Automated Registration System on "31 Toh Crescent" revealed that the lot on which the building is erected contained the land area of approximately 12,762 sq. ft. instead of the 16,000 sq. ft. advertised and represented by the defendants.

13 On 24 October 2002 the plaintiff's solicitor, Ms Chui Yin Yen, contacted one Ms Josephine Low from the defendants' office to inquire on the discrepancy in the land area. On the same day, the plaintiff's husband enquired of Ms Christine Chan of ERA. Ms Christine Chan likewise assured the plaintiff's husband that the subject land and premises under the Option included the main driveway and not only the plot of land on which the bungalow was erected. Ms Christine Chan faxed a plan of the property to the plaintiff's husband.

14 By the letter of 25 October, 2002 Koh Ong & Partners, the defendants' solicitors, referred to the said conversation and they wrote "to confirm that:- 1. The sale price of the above property comprises Lots 1009A and 1011T, Mukim 31"

15 On 7 November 2002 the plaintiff exercised the Option to purchase by making payment to the defendants of the sum of $274,300.30. The 10% deposit was therefore paid. The sale was scheduled for completion on 15 January 2003.

16 In the usual way, the solicitors for the plaintiff sent out the usual requisitions to various authorities pertaining to the property. In November 2002 the Road Line Plan obtained from the Land Transport Authority ("LTA") revealed that the whole of Lot 1011T had been shaded as land required as a Category 5 road reserve. On 19 November, 2002 the solicitors of the plaintiff gave notice in writing of this reply to their requisition from LTA and stated that the reply was unsatisfactory under the agreement for sale and purchase. Her rights were reserved.

17 It was also elicited from the Urban Redevelopment Authority ("URA") that the planning

decision to develop Lot 1011T for a road was made on 27 January 1972.

18 On 25 November 2002 the defendants claimed for the first time that the plaintiff "had made an offer for the sale price at $3.1 million to the defendants based on Lot 1009A." This allegation is wholly unreliable in view of the confirmation from the defendants' solicitors as contained in their letter of 25 October 2002.

19 On 5 December 2002 the plaintiff gave notice of rescission of the agreement for sale and purchase of the property pursuant to clause 14, as contained in what was then the Option to Purchase. The plaintiff relied on the ground that the reply from the Road Line Plan was unsatisfactory. She also demanded the return of the deposit of $310,000.00.

20 It was asserted on behalf of the defendants that it had been made clear to the plaintiff when the sale price was being discussed that the sale was only in relation to Lot 1009A. It was also argued that the plaintiff's husband "when the price was being discussed" was fully aware that the sale was only of Lot 1009A "as he had himself considered Lot 1011T redundant and of no use to him as it could not be built on." Counsel for the defendants also stressed that a physical inspection of the site, which the plaintiff and her husband did carry out before the Option was granted, would have impressed upon the plaintiff and her husband that Lot 1011T was a main driveway on which nothing could be built.

21 The allegations stated above sounded more like submissions and speculation of what had gone on in the mind of the plaintiff's husband. The fact was that they confirmed in writing that the sale related to the two lots before the Option was exercised. In effect, the plaintiff was assured that she was purchasing 16,000 square feet of land. That was, in my view, the bargain.

22 Clause 14 of the agreement provides as follows:-

> "The Property is sold subject to satisfactory replies to the usual Purchaser's Solicitors' requisitions (including Road and Drainage Interpretation Plans) to the various Government and relevant competent authorities. If any of the aforesaid replies are unsatisfactory then this Agreement may be rescinded at the Purchaser's option and upon rescission, the Vendor shall refund to the Purchaser the Deposit and all other monies (if any) paid by the Purchaser hereunder to the Vendor or the Vendor'' solicitors but without any interest compensation or deductions whatsoever, and thereafter neither party hereto shall have any claim or demand against the other party for damages, costs, compensation or otherwise whatsoever in the manner PROVIDED ALWAYS that:-
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> …
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> c. any approved road, backlane or drainage lines reserves or proposals shall be considered unsatisfactory if such lines reserves or proposals affect the building line of the Property regardless of whether the same is adopted or safeguarded or is to be implemented before or after the completion dated PROVIDED that if such lines reserves or proposals will be implemented only if there is re-development of the Property, then the reply shall not be considered unsatisfactory; …"

23 It was clear to me that the Road Line Plan issued by LTA was a reply to a requisition within the meaning of clause 14. Both *Peh Kwee Yong v Sinar Co (Pte) Ltd* [1987] 2 MLJ 533 and *Ang Kok Kuan v Ang Boh Seng* [1993] 3 SLR 669 ruled that the road interpretation plan issued by the PWD (the predecessor department of LTA) in response to a purchaser's application constituted an answer to a

requisition.

24 In both these cases, it was also held that the test to be applied in determining whether a reply to a requisition is satisfactory or not is an objective one, viewed from the perspective of a "reasonably determined purchaser". Chan Sek Keong J.C. (as he then was) in *Chu Yik Man v S Rajagopal & Co & Anor* [1987] 2 MLJ 557, at 559 referred to *Peh Kwee Yong's* case (which was a decision at first instance) and recalled the articulation of this court as follows: "Lai Kew Chai J. held that notwithstanding the subjective form of the clause an objective test of what is satisfactory must be applied. He applied the test of a reasonably determined purchaser and that whether a particular answer was satisfactory to such a purchaser was a question of fact."

25 In *Chu Yik Man v S Rajagopal* (supra) the potential loss of 1,000 square feet of land out of 10,000 square feet was considered an unsatisfactory reply from the authorities and the agreement was annulled. This finding of fact was arrived at in spite of the following facts. The affected land did not affect any part of the building, which was sited far from the road and nearer to the rear boundary. The court even commented that it would appear that the purchaser would not lose any amenity or enjoyment of the property.

26 In the present case, the road reserve affected the whole of Lot 1011T, which was approximately 3,230 square feet in area. That constituted 20.2% of the total area of the property. In monetary terms, the difference would be roughly $600,000, although I must at once state that this difference was one of the factors which drove me to the conclusion that the answer to the requisition was unsatisfactory, which entitled the plaintiff to rescind the agreement under clause 14.

27 I will now address another defence. The defendants alleged that clause 14 did not allow the plaintiff to rescind the agreement as the property was not sold subject to re-development. It was further alleged that the plaintiff would only loose the ownership and use of the main driveway comprised in Lot 1011T, Mk 23 only if she chose to redevelop the property. In advancing this line of defence, the defendants appear to rely on proviso (c) of clause 14. I formed the view that the proviso would be of no help to the defendants. They did not produce any evidence to show that the road reserve in question had affected the building line of the property. It was also clear from the plan of the property that the road reserve did not in any way affect the bungalow on the property.

28 In the premises I made the declaration and orders I did.

Declaration and orders made with costs