Singh Chiranjeev and Another v Joseph Mathew and Others
[2008] SGHC 222

Case Number : Suit 521/2007

Decision Date : 28 November 2008

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Boo Moh Cheh (Kurup & Boo) for the plaintiffs; Leslie Netto (Netto & Magin LLC) for the first and second defendants; Foo Say Tun and Brian Campos (Wee Tay & Lim) for the third and fourth defendants

Parties : Singh Chiranjeev; Gulati Jasmine Kaur — Joseph Mathew; Mercy Joseph; Helene Ong Geok Tin; Dennis Wee Properties Pte Ltd

Contract – Formalities – Whether writing requirement under s 6(d) Civil Law Act (Cap 43, 1999 Rev Ed) fulfilled – Whether contract part-performed

Contract – Formation – Whether binding contract in existence – Whether agent authorised to deposit cheque into seller's bank account – Whether seller bound upon accepting deposit to grant option to purchase

28 November 2008 Judgment reserved.

Andrew Ang J:

Introduction

1 The plaintiffs (Singh Chiranjeev and Gulati Jasmine Kaur) are the intending buyers of a property known as 26 Upper Serangoon View, #04-32, Rio Vista, Singapore 534206 ("the Property"). The first and second defendants (Joseph Mathew and Mercy Joseph) are the joint owners of the Property. The third defendant (Helene Ong Geok Tin) was the property agent involved in the sale and purchase of the Property and was working as an associate of the fourth defendant (Dennis Wee Properties Pte Ltd). The plaintiffs originally brought this action against only the first and second defendants for specific performance and damages in respect of an agreement for the sale and purchase of the Property made on 14 May 2007. However, the first and second defendants alleged in their defence that the property agent had no authority to conclude any agreement to sell the Property; the plaintiffs therefore joined the third and fourth defendants in this suit. The plaintiffs' claim against the third and fourth defendants, for damages due to negligent misrepresentation, is in the alternative to their claim against the first and second defendants, and no submissions were made on this alternative claim after evidence was led.

Facts

2 The plaintiffs first viewed the Property with the third defendant on 6 May 2007 and again on 11 May 2007. On both occasions, the first plaintiff informed the third defendant, orally, that the plaintiffs had been renting another unit at the Rio Vista as their residence and intended to buy and reside in the Property. On 6 May 2007, the first plaintiff handed a cheque for $5,000 to the third defendant, and the third defendant told him that she would ask the first defendant if he was prepared to accept the plaintiffs' offer to purchase the Property for $500,000. The first and second defendants rejected this offer and the cheque was returned to the plaintiffs. At the second viewing on 11 May 2007, the first plaintiff orally offered, through the third defendant, to buy the Property for $506,000

and issued a second cheque for $5,060 in respect of a sale price of $506,000 ("the 1% cheque"), which the third defendant had told him was acceptable.

3 On 14 May 2007, the third defendant told the first plaintiff that the first defendant had agreed to his offer of $506,000 and faxed him a draft of the Option to Purchase ("the Option").

4 The third defendant deposited the 1% cheque into the first defendant's bank account on 16 May 2007 and the first plaintiff's account was correspondingly debited on 17 May 2007. On 18 May 2007, the third defendant sent the first defendant an e-mail (1AB.82), informing him as follows:

> I am informing you as per your instruction regarding the 1% cheque to be deposited to your account (given by you). I have done it already.

The first plaintiff testified that on 18 May 2007 he called the third defendant to ask for the documents because he needed them to obtain a bank loan, and she told him that they would be signed and sent back immediately. At that time, the first plaintiff was not aware that the 1% cheque had already been deposited.

5 On 20 May 2007, the third defendant called the first plaintiff and informed him that there were "some unfortunate unexpected developments", and that he would receive confirmation two or three days later. The first plaintiff, not knowing that the 1% cheque had already been deposited, was under the impression that this confirmation would be conclusive "and then they would deposit the cheque post that". On 22 May 2007, the first defendant sent an e-mail (1AB.98) to the first plaintiff and the third defendant:

> Dear Mr. Singh/Ms. Helene,
>
> As conveyed through Ms. Helene, it is extremely difficult situation for me to make a decision now due to organizational changes in our company (expecting in two weeks time, my Director's visit also rescheduled, refer separate mail to Helene) and I may need to come back to Singapore within 6 months time (that is still not confirmed). Further property price in Singapore is going up which makes me also difficult to buy another property for the same price.
>
> It is also unfair to ask you to wait another two more weeks. As such, I am canceling [*sic*] my plan to sell the apartment.
>
> Understand that Ms. Helene has already deposited the advance cheque to my account. Therefore, the same cheque amount (S$5060) will be handed over to Helene during my visit to Singapore on 26th May 07.
>
> Thanks for your understanding and sorry for the inconvenience caused if any.

6 On 23 May 2007, the third defendant sent the first plaintiff an e-mail informing him that the first defendant would return the "deposit (1%) in cheque" when he arrived in Singapore on 26 May 2007. The first plaintiff testified that when he checked his bank statement on 24 May 2007 he saw that his account had indeed been debited on 17 May 2007.

7 On 26 May 2007, the first plaintiff met the first defendant at the Rio Vista condominium by the swimming pool; the third defendant was also present. The first defendant said that he had to cancel his plan to sell the Property because he might have to come back to Singapore in the near future. The first plaintiff responded that if the first defendant was sure of coming back to Singapore, he was

prepared to let the deal go, but if that was not the case then he should proceed to complete the sale of the Property. The plaintiffs refused to accept a cheque for $5,060 from the first defendant (via the third defendant). On 19 June 2007, the first defendant sent another e-mail (1AB.147) to the third defendant:

> Dear Helene,
>
> Further to my previous emails, pls ensure to inform the buyer that I am not selling the property.
>
> As you are clear, I have neither given the exclusive agency for you nor signed the option/Agreement for sale. By mistake, you have deposited the cheque to my account before signing the agreement, I do understand that.
>
> I will give time to the buyer to withdraw the amount until 25 June 07 failing which I will proceed with legal action follow up based on several grounds.

The present suit

8 The plaintiffs commenced this suit on 17 August 2007 and lodged a caveat against the property in February 2008. The first and second defendants are currently residing in India, the first defendant's contract having been renewed for two years from June 2007.

9 The plaintiffs relied on four material e-mails, all with the subject "Rio Vista", to show that there was a binding agreement to sell the Property, and specifically that the third defendant was instructed by the first defendant to deposit the 1% cheque into his bank account: first, on 12 May 2007, the third defendant wrote to the first defendant ("the first e-mail") (1AB.58–59):

> Dear Mr Joseph
>
> Buyer Mr & Mrs Chiranjeev Singh viewed the apt late this evening again. Similarly buyers also must have confidence that they did buy the right property and at a fair right price. I did my best to convince them about your asking price with the fact that they have been increasing their offer since last 5 days. I told them about your asking price and they finally offered 506K which you did mention that you will accept. I went back to collect the 1% deposit from them i.e. for the sale price of $506K.
>
> Option To Purchase (OTP) will be prepared upon their agreement and also yours. It will be as follow and pls confirm.
>
> * 1% deposit of $5060.00 received (Option money).
>
> * 3 wks to exercise Option i.e. from 14/5 to 4/6/07. Next 9% will be paid to your Lawyer by 4/6/07.
>
> * Completion date is 10 weeks after i.e. 13 August 2007.
>
> Do you have a Solicitor (lawyer) you are using or I can recommend. I need to fill up in the Option. Pls provide me.
>
> Buyers want to have vacant possession i.e. Tenant has to leave upon completion. Base on the dates as mentioned above, it will be just in time of 12 weeks notice for tenant to leave. Total is 13 weeks upon completion of sale.

So, pls write a note to Tenant immediately to give them the 12 weeks notice wef 14 May 2007 or latest by 21 May 2007 (date of notice). Pls do not delay cos that is your agreement with the Tenant. Completion date is sensitive.

Please address notice to Tenant Mr IKENNA IGWE. I can also plan this notice/letter for you but still need your signature.

I will courier the OPTION to you but need the address immediately. Will do it by Monday, no delay. Or you want to fly in Mon or Tues to settle all the signing. I can help you arrange a lawyer also. Pls advise.

As agreed and with the fact that I have put in my utmost effort to convince the Buyers to increase their offers, I am charging a 1% service fee of the sale price with GST. Thank you.

You can call me to clarify and confirm all text as written herewith.

Regards

Helene …

10 Second, the third defendant wrote another e-mail ("the second e-mail") (1AB.184) to the first defendant on 12 May 2007 referring to a telephone conversation they had after the first e-mail was sent:

Hi Mr Joseph

Follow up to my telephone call, I hope you are clear of my 1st email. So pls let me know all the info required, date as stated agreeable to coincide the 3 + 10 wks, lawyer's address, contact No. and the lawyer's name to fill into the OPTION.

The 1% deposit of S$5060.00 (cheque) is in your name. I will send it to you together with the OPTION via courier.

I can help you write the notice to Mr Igwe (Hart) re the notice of tenancy. But will courier together with all papers and you need to sign and return this fast. So the notice is 12 weeks as agreed in your tenancy with him.

Pls email address for my courier. This will take up 3 to 4 days if no delay on your side thus EXERCISE OPTION date will be affected if delay. I will do it early on Monday as I have to book the courier service. They will then pick it up by Noon.

Regards

Helene

11 The first defendant replied the same day as follows ("the third e-mail") (1AB.183–184):

Dear Helene,

Understand that at this growing market, the property price is going up including rental market. However I am taking a decision to proceed to sell the property at this price of S$506K which is

reasonably OK as my minimum expectation was S$510K which we couldn't achieve.

After deducting agent fee and lawyer fee at least I should get minimum of S$500K. I had taken loan of S$250K and also paying heavy interest for the last one year (not much gain), also very less rental of S$1500 which is also not attractive. As discussed through phone I can only agree for an agent fee of S$4000 + tax which is reasonable. Also I can give more business for you through various contacts. Pleas [*sic*] raise the invoice accordingly.

– You can also deposit the cheque to my account POSB-026-XXXXX-X

– Pls send me the draft letter for Mr. Igwe so that I can sign the letter with effect from 14 May 07.

– My address as follows

Joseph Mathew
Keppel FELS Offshore,
Unit No. 3, 8th floor, Prism Tower A,
Mindspace, Malad West,
Mumbai – 400062
India.

– Also appreciate your follow up to find a suitable flat which can demand higher rental value (ex. Summerdale etc) or Any new EC coming up /any good deal.

Thanks for your understanding and support.

Best Regards

Joseph Mathew

12 Finally, the third defendant replied also on 13 May 2007 ("the fourth e-mail") (1AB.65):

Hi Mr Joseph

Yes I agree with the growing market but different sector with different growing percentage. I do not need to refresh my explanation again. I think it is a genuine offer especially your unit with original condition – no renovation and other factors which I did mention).

Aiya – it's always the poor hardworking agent who has to bear and share the story and compensate by lossing [*sic*] their service fee. What can I say.

Okay $4000 + GST. But other fee of courier, etc, I have to bill you accordingly, thank you.

Okay will deposit your 1% Buyer's deposit into your POSB account.

Will courier OPTION and any other papers to you on Monday. Would appreciate you sign immediately and courier back to me to my home address. My address :-

…

> What about the lawyer. If you have your own lawyer just email back, I will fill it up. Otherwise I will have a lawyer to help you out and they will contact you once they have the OPTION.
>
> I will be sending a separate email for Mr Igwe's notice re ending Tenancy. Please print it out and sign then fax to my office first. I will give him the copy first. Original copy can be courier back with the Signed copy of OPTION. Then I can give him the original once I receive it.

13 The plaintiffs' claim was originally against the first and second defendants only. In a letter dated 29 June 2007 to the plaintiffs' former solicitors, the first defendant denied that he had agreed to sell the Property to the plaintiffs. However, in their defence filed on 21 September 2007, the first and second defendants averred that the third defendant did not have actual, implied or apparent authority to bind them in respect of the sale of the Property. On 12 October 2007, the first and second defendants' solicitors wrote a letter to the plaintiffs' solicitors informing them that the third defendant had no authority to conclude the agreement and that the agreement was subject to the first and second defendants signing the Option (1AB.187). The plaintiffs thus amended the writ of summons to include the claim against the third and fourth defendants. At the end of the trial and after evidence had been led, however, the plaintiffs submitted that the evidence supported their claim against the first and second defendants and decided not to make submissions on their alternative claim against the third and fourth defendants.

14 At trial, the first and second defendants argued that the third defendant had no authority to bind them to sell the Property to the plaintiffs; that there was no sufficient memorandum evidencing the sale under s 6(d) of the Civil Law Act (Cap 43, 1999 Rev Ed); and that they had no intention to be bound until the Option had been signed by them.

15 On the first day of trial, counsel for the first and second defendants made clear that they were not raising the defence of waiver or estoppel by the first plaintiff's agreement (noted in the third defendant's e-mail (1AB.88) of 20 May 2007) to give the first defendant more time to consider if he was moving back to Singapore. Rather, the defence was that there was no enforceable agreement without a signed Option. The first and second defendants did not dispute that the third defendant had authority to tell the first plaintiff that they had agreed to the price, but argued that the third defendant did not have authority to bind them by depositing the 1% cheque into the first defendant's account.

Whether the first defendant authorised the third defendant to deposit the 1% cheque

16 The first and second defendants placed great emphasis on the fact that neither of them had seen a copy of the Option prior to the one couriered to the first defendant on 14 May 2007. They asserted that the burden of proof was on the plaintiffs to show that the first and second defendants "had knowledge of the contents of the option at the material time". This is not correct. The plaintiffs bore the burden of showing that a binding contract had been formed which they could enforce, but this was not premised on showing the first and second defendants' "knowledge of the contents of the option" since the agreement was not subject to contract. The first and second defendants testified that they changed their minds about selling the Property not because of their dissatisfaction with any term in the Option but because they thought they would have to move back to Singapore soon. In fact, as of the trial they still had not read the Option. The proper issue was thus whether the third defendant was authorised to bind the first and second defendants by depositing the 1% cheque into the first defendant's account.

17 The plaintiffs submitted that the first defendant authorised the third defendant to sell the Property to the plaintiffs by instructing her specifically in the third e-mail to bank the 1% cheque into

the first defendant's POSB bank account. The first defendant exhibited the third e-mail to his affidavit but did not mention it therein. The plaintiffs thus argued that an adverse inference should be drawn accordingly that the first defendant could not deny that this e-mail bound him to the sale.

18 The first defendant asserted during cross-examination that he had not authorised the third defendant to bank the 1% cheque into his POSB bank account on 16 May 2007, but only after he and the second defendant had signed the Option. Having conceded that the third e-mail was silent on what "appropriate time" the cheque was to be deposited, the first defendant could only insist that this was his subjective intention that he expected the third defendant to understand from the third e-mail because "[w]hat is appropriate she knows better than me" (Transcript dated 23 June 2008 at p 93). As the plaintiffs point out in their written submissions at para 75, this evidence surfaced for the first time when the first defendant was cross-examined; in his affidavit he had neither referred to the third e-mail nor averred that the third defendant was not authorised to deposit the 1% cheque into his POSB bank account on 16 May 2007.

19 More importantly, the first defendant's oral evidence was contradictory to the four e-mails. In the second e-mail, the third defendant wrote that she would courier the 1% cheque (representing the 1% deposit) together with the Option to the first defendant. In the third e-mail, the first defendant replied to instruct the third defendant to deposit the 1% cheque into his POSB bank account instead, with no qualification as to when she should do so. Then, in the fourth e-mail, the third defendant confirmed that she would deposit the 1% cheque into the first defendant's POSB bank account. The first defendant did not indicate in any way that she should not do so. Upon cross-examination, the first defendant had to admit that he had authorised the third defendant to proceed because he expected, like everyone else, to promptly sign and return the Option so it could be granted to the plaintiffs.

20 The first and second defendants also sought to rely on the third defendant's testimony, in particular the following passage (Transcript dated 24 June 2008 at pp 123–124):

> Q During a telephone conversation on 14th May, did you make an oral statement to the 1st Plaintiff that the 1st and 2nd defendant had agreed to sign the option to purchase for the sale of the property?
>
> A No, I did not.
>
> Court: You did not tell the ---
>
> Witness: May I ---
>
> Court: You did not tell Mr Singh ---
>
> Witness: No, may I further add that I told him Mr --- er, 1st defendant is willing to accept the sale of 506,000.
>
> Court: Ah.
>
> Witness: And the option has been forwarded, so we are waiting for his option to be returned. That --- that was an agreed acceptance of offer by the 1st defendant.

21 The first and second defendants submitted (at para 33 of their written submissions) that the third defendant's statement "that she did not tell [the first plaintiff] that [the first defendant] agreed to sign the option [amounted] to evidence that [the third defendant] did not have actual authority to bind and in fact did not bind [the first and second defendants]".

22 The first and second defendants then stated quite baldly (at para 57 of their written submissions) that they would "rely on the following authorities; *Yeo Gek Lang v Wee Alice* [1978-1979] SLR 127 [("*Yeo Gek Lang*")] [and] *Kwong Kum Sun (S) Pte Ltd v Lian Soon Siew & Ors* [1984-1985] SLR 98 [("*Kwong Kum Sun*")]". It is difficult to see how these cases assist their position. *Yeo Gek Lang* concerned an agreement to sell property "subject to contract" and there was no evidence in that case that the appellant's solicitors had been authorised to negotiate and conclude a contract for her, or that she ratified any unauthorised bargain struck by her solicitors. This is plainly different from the present case, where the agreement to sell was not subject to contract and, more importantly, where the first defendant had specifically agreed to the sale price and instructed the third defendant to deposit the 1% cheque into his identified bank account.

23 In *Kwong Kum Sun*, the Court of Appeal held that the general rule relating to the creation of a binding agreement was that the parties must have finished reaching an agreement so that it was possible to infer an intention on the part of both of them to be bound immediately. In that case, the respondents' notification of acceptance on a letter of offer from the appellants sufficed to create a binding agreement. In the present case, the first defendant bound himself not by signing the Option but by instructing and then allowing the third defendant to deposit the 1% cheque. Having been requested to sign the Option promptly so that it could be granted to the plaintiffs, he raised no objection either when the third defendant confirmed that she was going to deposit the 1% cheque, or after she informed him that she had already done so on 16 May 2007. This conduct, coupled with his agreement to the sale price and negotiation of the third defendant's agent fee in the third e-mail, amply manifests his intention to be bound immediately upon, at the latest, the 1% cheque being deposited into his account.

24 Nor was there any merit to the first and second defendants' contention, in their opening statement filed on 16 June 2008, that the third defendant had never communicated directly with the second defendant at all. The plaintiffs argued that since the first and second defendants owned the Property jointly, the second defendant would be bound by the first defendant's decisions regarding the Property and there was no need for the third defendant to communicate with the second defendant separately. This is not correct. In fact, the authority cited by the plaintiffs in support of this proposition states quite clearly otherwise: "Joint tenants have to act jointly to effectively bind the estate which they hold jointly." (Tan Sook Yee, *Principles of Singapore Land Law* (Butterworths Asia, 2nd Ed, 2001) at p 122.) Thus, the first defendant could not have bound the second defendant to the sale without her consent. Rather, I find that the second defendant had agreed to sell the Property for the price of $506,000 and was content to leave the mechanics of the transaction to the first defendant. Having not even read the Option as of the trial, she could not and did not argue that the terms of the Option influenced her decision not to sell the Property. Like the first defendant, her main concern was the price, and once that was agreed she was content to let the first defendant complete the transaction. The first defendant was thus properly acting on her behalf in instructing the third defendant to deposit the 1% cheque into his account.

25 In short, the first defendant, acting also on the second defendant's behalf, authorised the third defendant by the third e-mail to deposit the 1% cheque into his bank account, without qualifying that she should wait for him to sign the Option and, when she did so, he did not protest. The first defendant could not explain away this third e-mail satisfactorily. The only other question is whether the payment of the 1% cheque into the first defendant's designated account bound the first and

second defendants.

Whether the first and second defendants were bound when the 1% cheque was deposited

26 The first and second defendants contended that their language and disposition constituted "evidence that all along they had treated the agreement as only to come into force upon [the first and second defendants] signing the option". They recounted that when the first defendant did not send the signed Option promptly, the third defendant sent an e-mail (1AB.81) dated 18 May 2007 to him, copied to the first plaintiff, in which she wrote: "As mentioned, you will be confirming your acceptance as soon as you can." The first and second defendants, pointing to the first plaintiff's lack of protest against the language of "confirming" and "acceptance", took this to mean that there had been no binding agreement yet. This contention was unconvincing and untenable in the face of the overall evidence. In particular, the first plaintiff was then unaware that his cheque had been deposited in the first defendant's account.

27 In testifying that he had given the third defendant discretion to deposit the 1% cheque at the appropriate time, while asserting at the same time that she should only have deposited the 1% cheque after he had signed and returned the Option, the first defendant was clinging to the unsustainable position of trying to have his cake and eat it. The first defendant agreed that he had taken the decision to proceed to sell the Property at $506,000 to the plaintiffs. The plaintiffs pointed out that the first defendant only raised the defence that he and the second defendant would only be bound upon their signing the Option for the first time on 29 June 2007 in para 4 of his letter (1AB.159) dated 29 June 2007 addressed to JHT Law Corporation, the plaintiffs' former solicitors. In any case, the first defendant's testimony that he intended only for the third defendant to deposit the 1% cheque after he had read the Option and made up his mind was far from convincing. Upon cross-examination, when asked why he told the third defendant to deposit the 1% cheque, he demurred that he meant that she should only deposit the 1% cheque at the appropriate time, though he had to admit that this was not what his e-mail stated.

28 As the third and fourth defendants argued, the first defendant had time to stop the third defendant from depositing the 1% cheque into his bank account. The third defendant deposited the 1% cheque into his bank account only on 16 May 2007, a few days after she sent the first defendant the fourth e-mail on 13 May 2007 to confirm, "Okay will deposit your 1% Buyer's deposit into your POSB account" (see [12] above). Nor did the first defendant object after the 1% cheque had been deposited. As he eventually acknowledged on the stand, it would have been unfair to complain about the third defendant depositing the 1% cheque after he had unqualifiedly instructed her to do so.

29 The first and second defendants were therefore bound upon having the 1% cheque deposited into the first defendant's bank account. The 1% deposit was in consideration of the Option being granted. The first plaintiff's evidence that prior to learning that the 1% cheque had been deposited he was willing to give the defendants a few days to reconsider because he understood that no *binding* agreement had been formed yet, is consistent with his change in attitude once he learnt that his account had in fact been debited in that amount on 17 May 2007. The first plaintiff also explained that had he known the 1% cheque had been honoured on 17 May 2007, he would not have agreed to let the defendants take a few days to confirm their plans. From that point, the first and second defendants were obliged to grant the Option and the plaintiffs had the right to insist on proceeding with the transaction.

Whether there was a written memorandum in accordance with s 6(d) of the Civil Law Act

30 The first and second defendants argued that the plaintiffs' claim contravened s 6(d) of the Civil

Law Act ([15] *supra*) which provides that no action shall be brought against any person upon any contract for the sale or other disposition of immovable property unless the promise or agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person lawfully authorised by him. The plaintiffs submitted that the four e-mails, read together and read with the 1% cheque, satisfied the requirement under s 6 (d) of the Civil Law Act of a written memorandum of the Option.

31 It is trite law that the plaintiffs may rely on more than one document to constitute the necessary memorandum to comply with s 6 of the Civil Law Act: see *SM Integrated Transware Pte Ltd v Schenker Singapore (Pte) Ltd* [2005] 2 SLR 651 at [73] ("*SM Integrated Transware*"), citing *Halsbury's Laws of Singapore*, vol 7 (Butterworths Asia, 2000) at [80.133]). In *SM Integrated Transware* at [74]–[93], Judith Prakash J ("Prakash J") also reasoned comprehensively that s 6(d) does not require a signature to have been made by hand; an e-mail suffices to indicate the person who has written and signed it by transmitting it to the recipient, even if the writer has not signed off as such. The first and second defendants rightly conceded this but argued that the four e-mails read together "cannot be considered as satisfying the requirement of s 6" because only "one of the [four] emails emanated from [the first defendant] and that [did] not contain the terms" (the defendants' written submissions at paras 66–67).

32 This argument is untenable. There is no requirement that the documents relied on must *all* originate from the first defendant; in *SM Integrated Transware*, Prakash J held at [73] that e-mail correspondence involving two persons was, read together, sufficient to constitute the necessary memorandum:

> [H]aving looked through all the correspondence, I consider that Ms Yong's e-mail of 27 January 2003 together with its attachment, the draft LSA, and Mr Tan's reply to Ms Yong dated 4 February 2003 accepting the terms of the draft LSA, would together constitute the necessary memorandum. This is because all the agreed terms are reflected in those documents when read together and these include the essential terms for a lease, and also, one of the e-mails is a specific acceptance by Mr Tan on behalf of Schenker of the proposed terms.

33 Here, the first defendant never denied receiving or reading the first two e-mails sent to him by the third defendant; indeed the third e-mail was his reply to these e-mails confirming his agreement to the sale price and instructing the third defendant to deposit the 1% cheque into his named bank account. The four e-mails clearly form a chain of correspondence and must thus be read together. Taken together, they must then specify the four "P"s of parties, property, price and any other provisions that the Court of Appeal held were required in a memorandum (*Lee Christina v Lee Eunice & Anor (executors of the estate of Lee Teck Soon)* [1993] 3 SLR 8 at 16 ("*Lee Christina*"), quoting *Farrand on Contract and Conveyance* (4th Ed, 1983) at p 38):

> As a rule the writing relied on to satisfy s 40(1) of the Law of Property Act 1925 must contain all the terms of the parties' agreement (See *B*eckett v Nurse *[1948] 1 KB 535.) If the* agreement itself is in writing, eg where a formal contract is drawn up and the parts exchanged by solicitors, then this rule will almost inevitably be observed (see *H*utton v Watling *[1948] Ch 398(. Where, however, the writing is merely a memorandum of the parties' prior oral agreement, it will normally be insufficient unless it simply records neither more nor less than the terms of that agreement* (see ibid; also Smith v MacGowan [1938] 3 All ER 447). *In other words, the memorandum must specify the four 'P's — the parties, the property, the price plus any other provisions'* [emphasis added]

34 It is clear that the e-mails specified the price, parties and other provisions. The only difficulty

with the e-mails is that they did not specifically identify the full address of the Property apart from the subject heading "RIO VISTA" in each e-mail. However, the Property was fully identified in the third defendant's writing on the back of the 1% cheque, which the plaintiffs further relied on as a memorandum pursuant to s 6 of the Civil Law Act. On the back of the 1% cheque, the third defendant had written the first defendant's account number and name, her own mobile phone number (since the first defendant was stationed overseas) and the following note:

> 1% Deposit Sale of 26 Upper Serangoon View #04-32 RIO VISTA (S) 534206

35 Even though this note was neither written nor signed by the first defendant, its authenticity has not been disputed and no party has denied that this was the Property referred to in the four e-mails. I find that the writing on the 1% cheque can be read together with the four e-mails because it only elaborates the precise address of the Property and does not contradict any part of any of the e-mails. It is also undisputed that this was in fact the Property in question and, reading the writing on the 1% cheque together with the e-mails, would in no way enable or allow the mischief sought to be avoided by s 6(d) of the Civil Law Act. The Property having already been partially identified as the Rio Vista in the four e-mails, it could easily be discerned which unit of that development was the precise property in question. The 1% cheque provides in writing, not denied by the first and second defendants, this precise address.

36 In *Lee Christina*, the Court of Appeal found (at 16) that the note in question contained:

> [T]he requisite 'P's that is the parties, property and price. Other normal conditions pertaining to sale and purchase of immovable property would then be implied one of which would be completion within reasonable time. Notwithstanding that it was a note addressed to her solicitors, it is a sufficient memorandum evidencing the sale.

37 Thus, there is no requirement that the memorandum evidencing the sale be in any particular form. The precise date of completion also need not be expressly stated; it need only be within a reasonable time. Here, the difference between the dates of 13 August 2007 and 31 August 2007 in the two draft Options sent to the first and second defendants was explained by the third defendant as her change to allow for the tenant to have time to vacate the Property; in any case it was not a material discrepancy.

38 I therefore find that the e-mails, read with the 1% cheque, are sufficient to constitute written memoranda of the binding agreement to sell the Property. They clearly set out the parties' identities, the Property, the sale price and the other material terms of the contract. The 1% cheque reinforces the e-mails and proves that the deposit was actually received and accepted by the first defendant. Section 6(d) of the Civil Law Act was complied with and the plaintiffs' claim stands.

39 Assuming *arguendo* that the cheque should not be read together with the e-mails and that s 6(d) of the Civil Law Act was not complied with, I nevertheless find that there was part performance of the contract by virtue of the first defendant accepting payment of the 1% cheque into his bank account. The Option stated that it was to be granted in consideration of the sum of $5,060 paid by the purchaser as the Option money. In *SM Integrated Transware*, Prakash J found that the doctrine of part performance was not available to the plaintiff because it had not specifically pleaded it in its reply or pleaded the particulars of the acts of part performance on which it relied. In *Tan Kia Poh v Hong Leong Finance Ltd* [1994] 1 SLR 270, the Court of Appeal explained that allowing submissions to be made on matters not previously specifically pleaded might result in material prejudice to the other party because it would have had no opportunity to produce evidence that might effectively counter these submissions.

40 There is no such danger of material prejudice to the first and second defendants here. The plaintiffs pleaded in their amended statement of claim at para 11 that the 1% cheque had been presented for payment and honoured, so that the first plaintiff's bank account was debited and the first defendant's account was credited with the sum of $5,060. The plaintiffs further averred at para 12 "that by the [first defendant or his agent] presenting the [1% cheque] to the POSB Bank for payment, there is already an enforceable agreement whereby [the first and second defendants] had contracted with the Plaintiffs to sell the Property to the Plaintiffs for the sum of $506,000.00". In the amended reply, the plaintiffs further pleaded (at para 6) that they "had partially performed their part of the bargain" when they paid the 1% deposit. The correct analysis is that the first and second defendants themselves partially performed by accepting the plaintiffs' 1% cheque into the first defendant's bank account, and in consideration of that 1% deposit they must grant the Option. I therefore find that the payment of the 1% cheque, on the back of which the Property was fully identified, into the first defendant's account was an act referable to the contract to sell the Property and there was thus part performance (see also *Midlink Development Pte Ltd v The Stansfield Group Pte Ltd* [2004] 4 SLR 258 at [66]–[67]).

Conclusion

41 It is beyond dispute that the first defendant instructed the third defendant to proceed with the transaction, simultaneously preparing and couriering the Option for his signature as well as depositing the 1% cheque into his bank account, which he specified in the third e-mail. He admitted that the third defendant could not have been expected to guess from his e-mail that she was supposed to wait until the Option had been signed before depositing the cheque, and conceded that it would have been "very unfair" to subsequently object to her having deposited the 1% cheque pursuant to his instructions. The first and second defendants raised wholly unmeritorious arguments regarding the third defendant's authority, or lack thereof, to enter into the agreement on their behalf, compelling the plaintiffs to join the third and fourth defendants. The plaintiffs' claim must therefore succeed, with the first and second defendants to pay the costs of the plaintiffs (who, to their credit, did not submit on their alternative claim against the third and fourth defendants) as well as the costs of the third and fourth defendants. While the plaintiffs could have subpoenaed the third defendant as a witness or left it to the first and second defendants to join the third and fourth defendants, I am of the view that their decision not to drop the third and fourth defendants in the course of trial was prudent rather than excessively litigious.

42 It was the first defendant's evidence that he wanted to sell the Property because he had an indication that he would be staying in India for "a long time" and thought there was no point keeping the apartment yielding low rental income while servicing a loan. As things have turned out, the first and second defendants will continue to reside in India for the next two years or so, and would not need to keep the Property as their family home or to purchase a substitute property should specific performance be ordered here. Thus, their professed "main reason" for reconsidering or cancelling the sale has evaporated. I therefore order the first and second defendants to grant the Option to the plaintiffs to purchase the Property for $506,000; if they refuse to do so the Registrar shall have power to sign and grant the Option to the plaintiffs on their behalf.

43 Assuming the plaintiffs exercise the Option, they will also be entitled to damages after the completion date of 31 August 2007. The plaintiffs have claimed for damages for the rent they had to and would have to continue to pay from 1 September 2007 to 30 November 2008, less the following monthly expenses for the same period had completion taken place on 31 August 2007, *viz*, interest on a bank loan of $400,000, maintenance charges for the Property and property tax. The plaintiffs calculated and submitted that the net amount of damages amounted to $15,510.05. In his affidavit, the first plaintiff had given evidence of the plaintiffs' loss due to increased rent from November 2007

as well as of the bank loan of $400,000 that the plaintiffs would have to take to finance their purchase of the Property, but neither plaintiff was cross-examined on the quantum of damages at trial. I therefore further order that upon the plaintiffs exercising the Option, the first and second defendants pay damages of $15,510.05 to the plaintiffs.

44 The defendants shall pay the costs of the plaintiffs and the third and fourth defendants, such costs to be taxed unless agreed.