

17, 1982

No. 15 of 1979

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

PHOENIX HEIGHTS ESTATE (PTE) LTD. Appellants  
(Defendants)

- and -

1. LEE KAY GUAN  
2. ONG KIM LIONG Respondents  
(Plaintiffs)

SUPPLEMENTARY RECORD

LE BRASSEUR & BURY,  
71 Lincoln's Inn Fields,  
London, WC2A 3JF

Solicitors for the  
Appellants

THOMAS COOPER & STIBBARD,  
27 Leadenhall Street,  
London, EC3A 1AB

Solicitors for the  
Respondents

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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1. LEE KAY GUAN  
2. ONG KIM LIONG                          Respondents  
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SUPPLEMENTARY RECORD

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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B E T W E E N :

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- and -

1. LEE KAY GUAN  
2. ONG KIM LIONG Respondents  
(Plaintiffs)

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SUPPLEMENTARY RECORD

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No. 1

LETTER, APPELLANTS  
TO RESPONDENTS

---

PHOENIX HEIGHTS ESTATE (PTE) LTD.  
23 HOLLAND RISE  
SINGAPORE 10.

Tel. Nos. 660806/662039

No.1

Letter,  
Appellants  
to Respon-  
dents

29th  
November  
1974

Date: 29 NOV 1974

REGISTERED

20

Dear Sir/Madam,

re: Pte. Lot No.74  
Phoenix Heights Estate

We have pleasure to inform you that the  
above house/flat/shop is ready for occupation.

Kindly contact our Mrs. Goh (Tel.660806/  
662039) on receipt of this letter and make  
arrangement to collect the keys from our  
Head Office at 23, Holland Rise, Singapore 10.

No. 1  
Letter,  
Appellants  
to Respon-  
dents  
29th November  
1974  
(continued)

At the same time, please bring along your  
N.R.I.C. for identification and record  
purposes.

Yours faithfully,

PHOENIX HEIGHTS ESTATE (PTE) LTD.

Sgd. Illegible  
Manager

Mr. Lee Kay Guan &  
Mdm. Ong Kim Liong,  
127, Upper Bukit Timah Rd., 8 m.s.,  
Singapore.

10

No.2  
Letter,  
Respondents'  
Solicitors  
Yap & Yap to  
Appellants'  
Solicitors  
Guok and  
Ganesan  
11th December  
1974

No. 2

LETTER, RESPONDENTS'  
SOLICITORS YAP & YAP TO  
APPELLANTS' SOLICITORS  
GUOCK AND GANESAN

YAP & YAP  
34-A PHILLIP STREET  
SINGAPORE, 1.  
ADVOCATES & SOLICITORS

20

YAP BOR CHOON - TEL:77983  
YAP BOH LIM - TEL:96235  
CHENG TIM PIN - TEL:984460

11th December, 1974

Dear Sirs,

re: Pte Lot 74 Phoenix Heights  
Estate

We refer you to the above matter.

Our clients have received a letter from  
your clients that the house on the above  
property can be handed over to them.

30

Please let us have your clients' Notice  
of Completion in accordance with clause 11  
of the contract and note that our clients  
are claiming liquidated damages under the  
said clause 11.

Yours faithfully,  
Sgd. Yap & Yap

Messrs. Guok & Ganesan,  
11, D'Almeida Street,  
Singapore.

No. 2  
Letter,  
Respondents'  
Solicitors  
Yap & Yap to  
Appellants'  
Solicitors  
Guok and  
Ganesan  
11th December  
1974  
(continued)

No. 3

LETTER, APPELLANTS TO  
RESPONDENTS

No.3  
Letter,  
Appellants to  
Respondents  
26th December  
1974

10 PHOENIX HEIGHTS ESTATE (PTE) LTD.  
23 HOLLAND RISE  
SINGAPORE 10.

Tel.Nos. 660806/662039

REGISTERED

Date: 26th December 1974

Mr. Lee Kay Guan &  
Mdm. Ong Kim Liong,  
127, Upper Bukit Timah Rd., 8 m.s.,  
Singapore.

Dear Sir/Madam,

20 Re: Phoenix Heights Estate  
Private Lot No.74

30 Further to our registered letter dated  
29th November 1974, we regret to note that  
you have not made arrangements to collect the  
keys for your house/shop/flat from our office.  
Since the licence for temporary occupation  
was issued on 28th November, 1974 (please see  
copy attached), you are hereby requested to  
take possession of the above house/flat/shop  
forthwith as the delay will not be in your  
own interest.

As provided under clause 16/18 of the  
Contract, any defect in the building due to  
defective workmanship within six (6) months  
after the issue of the Temporary Occupation

No.3  
Letter,  
Appellants to  
Respondents  
26th December  
1974  
(continued)

Licence shall be rectified by us.

Yours faithfully,  
PHOENIX HEIGHTS ESTATE (PTE) LTD.

encl. Sgd. Illegible  
Manager

No.4  
Letter,  
Appellants to  
Respondents  
5th March  
1975

No. 4  
LETTER, APPELLANTS TO  
RESPONDENTS

5th March, 1975

REGISTERED

10

Mr. Lee Kay Guan &  
Mdm. Ong Kim Liong,  
127, Upper Bukit Timah Rd.,  
Singapore 21.

Dear Sir/Madam,

re: Phoenix Heights Estate  
Private Lote No.74

As the above house has been ready for  
occupation since 28.11.74 and all the improve-  
ments as requested by you had been complied  
with, you still refuse to collect the keys  
and take possession of the house in spite of  
a number of reminders (verbally and written)  
for reasons best known to yourself.

20

Please take note that in view of your  
refusal to take over the house we wish to  
place on record that the question of liquidated  
damages would not in any event extend beyond  
the date after the house was ready for  
occupation i.e. on 28.11.74.

30

Yours faithfully,  
PHOENIX HEIGHTS ESTATE (PTE) LTD.

Sgd. Illegible  
Manager

c.c. Controller of Housing.



No. 5

LETTER, APPELLANTS TO  
RESPONDENTS

---

Messrs. Phoenix Heights Estate (Pte) Ltd.,  
23, Holland Rise,  
Singapore 10.

No.5

Letter,  
Appellants to  
Respondents

17th April  
1975

re: Private Lot No.74  
Phoenix Heights Estate

10 This is to confirm that I have taken  
possession of the above house/flat/shop with  
its full sets of keys.

Signed:

Name in full: LEE KAY GUAN

I.C. No. : 0391578F

Witness:

Date: 17/4/75

No. 6

Letter,  
Guok & Ganesan  
to Yap & Yap

6th December  
1975

No. 6

LETTER, GUOK & GANESAN  
TO YAP & YAP

---

GUOK & GANESAN  
ADVOCATES & SOLICITORS  
11, D'ALMEIDA STREET,  
SINGAPORE, 1.

Our ref: PG/JT/753/72  
Your ref: YBC/cky/1621/72

6th December, 1975

10

Dear Sirs,

Re: Private Lot 74  
Phoenix Heights

We are pleased to advise you that the above matter is now ready for completion and we enclose herein the following :-

- (a) The Duplicate Certificate of Title in Volume 161 Folio 118 on your usual undertaking
- (b) Copy of Architect's Certificate of Completion 20
- (c) Our clients' completion account
- (d) A set of Transfer and Restriction forms for your use.

Please make arrangements to complete this matter within 14 days as stipulated in the Agreement for Sale and Purchase.

In returning us your draft Transfer and Restriction for our approval please also let us have \$20/- being the cost of the said forms. 30

Kindly confirm that you are retaining the 5% retention money pending production of Certificate of Fitness for Occupation.

Yours faithfully,  
Sgd. Guok & Ganesan

Messrs. Yap & Yap  
Singapore.

Enc.  
cc. Clients

No. 7

COMPLETION ACCOUNT  
FROM GUOK & GANESAN

No. 7

Completion  
Account  
from Guok  
& Ganesan

COMPLETION ACCOUNT

re: Private Lot 74  
Phoenix Heights

Sale Price \$180,000.00

10	<u>Add</u> Government Resurvey and Plan fees <span style="float: right;">750.00</span>
	Cost of Duplicate Certificate of Title <span style="float: right;">20.00</span>
	Interest (if any)

180,770.00

Less

20	Progress payments paid to date - \$171,000.00
	Liquidated Damages from 1.1.74 to 28.11.74 (327 days) - 14,512.26
	5% Retention money pending production of Certificate of Fitness for Occupation - 9,000.00 <span style="float: right;"><u>194,512.26</u></span>
	Balance due to Purchaser <span style="float: right;"><u>\$13,742.26</u></span>

(E. & O.E.)

Sgd. Guok & Ganesan

No. 8

Letter,  
enclosing  
Certificate of  
Fitness for  
Occupation from  
Appellants  
Solicitors to  
Respondents  
Solicitors  
12th February  
1976

No. 8

LETTER ENCLOSING CERTIFICATE  
OF FITNESS FOR OCCUPATION  
FROM APPELLANTS SOLICITORS  
TO RESPONDENTS SOLICITORS

---

GUOK & GANESAN  
ADVOCATES & SOLICITORS  
11, D'ALMEIDA STREET,  
SINGAPORE, 1

Our ref: PG/JT/753/72  
Your ref: YBC/L/1621/72      12th February 1976

10

Dear Sirs,

re: Private Lot 74  
Phoenix Heights

We are instructed to enclose herein  
the Certificate of Fitness for Occupation  
of the above property and hereby on behalf  
of our clients request the payment of the  
5% retention money in pursuance to the  
Agreement for Sale & Purchase.

20

Yours faithfully,

Messrs. Yap & Yap  
34-A Phillip Street,  
Singapore, 1.

Encl:

c.c. Clients

No. 9

LETTER, APPELLANTS  
SOLICITORS TO RESPONDENTS  
SOLICITORS

No. 9

Letter,  
Appellants  
Solicitors  
to Respon-  
dents  
Solicitors

GUOK & GANESAN  
ADVOCATES & SOLICITORS  
11, D'ALMEIDA STREET,  
SINGAPORE, 1

19th  
February  
1976

Tel: 92372 & 92373

10 PETER S.S. GUOK  
HARIDAS GANESAN

Our ref: PG/YL/753/72  
Your ref: CTP/1621/72/G 19th February 1976

Dear Sirs,

re: P/Lot 74, Phoenix Heights

We refer to your letter of 18.2.76 and previous correspondence repeating on the same question of damages which our respective clients cannot agree.

20 Our clients maintain that the claim is premature in view of the Controller's recent direction and that payment of 9% by way of damages up to the date of completion is in law tantamount to a penalty as it involves payment for failing to make good a title without any fault on the part of our clients when normal measure of damages in such circumstances for delay in completion is nil.

30 However our clients have always been prepared to compensate your clients on the sale price and to pay 9% on the sale price up to the date when your clients could have taken possession of the premises i.e. when T.O.L. was granted.

40 In the circumstances, without prejudice to our clients' legal rights which are fully reserved, they forward herein a cheque for \$4,742.26 being balance as shown in our clients' completion account less the 5% retention money since Certificate of Fitness has been issued.

Yours faithfully,  
Sgd. Guok & Ganesan

Messrs. Yap & Yap,  
34-A Phillip Street,  
Singapore, 1.

Enc. c.c. Clients

No.10  
Letter,  
Respondents  
Solicitors to  
Appellants  
Solicitors

21st February  
1976

No. 10

LETTER, RESPONDENTS  
SOLICITORS TO APPELLANTS  
SOLICITORS

---

YAP & YAP  
34-A PHILLIP STREET,  
SINGAPORE, 1  
ADVOCATES & SOLICITORS

---

YAP BOR CHOON - TEL:77983  
YAP BOH LIM - TEL:96235  
CHENG TIM PIN - TEL:984460

10

Your ref: PG/YL/753/72  
Our ref: CTP/cky/1621/72 21st February 1976

Messrs. Guok & Ganesan,  
11, D'Almeida Street,  
Singapore.

Dear Sirs,

Re: Pte Lot 74 Phoenix Heights

We thank you for your letter of 19th  
February, 1976.

20

As stated in our letter dated 18th  
February, 1976 the sum due from your  
clients to our clients is \$21,633.56.

We return herewith your cheque for  
\$4,742.26. Your terms of payment or part  
payment are not acceptable to our clients.

Yours faithfully,

Sgd.

Enc.

No. 11

LETTER, RESPONDENTS  
SOLICITORS TO APPELLANTS  
SOLICITORS

---

No.11

Letter,  
Respondents  
Solicitors to  
Appellants  
Solicitors

15th September  
1976

PG/JT/753/72  
CTP/mc/1621/72

15th September 1976

M/s. Guok & Ganesan,  
11 D'Almeida Street,  
Singapore.

10 Dear Sirs,

Re: Suit No.4663 of 1975  
Pte. Lot 74 Phoenix Heights

We enclose herewith the Amended Completion  
Account dated 15.9.76 in respect of the above.

Kindly let us have your clients' cheque  
for \$21,653.56.

Kindly confirm the accounts is in order  
or let us know in what respect it is not in  
order.

20

Yours faithfully,

Encl.

No.12

Amended  
Completion  
Account from  
Respondents  
Solicitors to  
Appellants  
Solicitors

15th September  
1976

No. 12

AMENDED COMPLETION ACCOUNT  
FROM RESPONDENTS SOLICITORS  
TO APPELLANTS SOLICITORS

YAP & YAP  
ADVOCATES & SOLICITORS  
NO. 24-A PHILLIP STREET  
SINGAPORE

Our ref: CTP/mc/1621/72

AMENDED COMPLETION ACCOUNT

10

In Re: Pte.Lot 74 Phoenix Heights

Purchase Price	\$180,000.00
<u>ADD</u>	
Government resurvey fee	750.00
Cost of Certificate of Title	20.00
Costs of forms	<u>20.00</u>
	\$180,790.00

LESS

Payment to Account \$171,000.00

Liquidated damages  
calculated on  
\$180,000/- at 9%  
per annum for 708  
days (from 31.12.73  
to 8.12.75) 31,423.56

Costs of forms paid 20.00 \$202,443.56

Amount due to purchaser \$ 21,653.56

(Dollars Twenty-one Thousand Six Hundred  
Fifty-three and cents Fifty-six only)

Dated this 15th day of September 1976 30

E. & O.E.



No. 13  
ORDER OF COURT

In the High  
Court

No.13  
Order of  
Court

1st April  
1977

IN THE HIGH COURT OF THE REPUBLIC OF  
SINGAPORE

Suit No. 4663 of 1975

Between

1. LEE KAY GUAN  
2. ONG KIM LIONG (m.w.) Plaintiffs

And

10

PHOENIX HEIGHTS ESTATE  
(PTE) LTD. Defendants

ORDER OF COURT

BEFORE THE HONOURABLE CHIEF JUSTICE  
MR. JUSTICE WEE CHENG JIN

IN CHAMBERS

20

Upon the application of the abovenamed Plaintiffs made by way of Summons-In-Chambers Entered No.4004 of 1976 coming on for hearing on the 28th day of March, 1977 and further hearing this day and Upon reading the affidavit of Lee Kay Guan filed on the 4th day of October, 1976, the affidavit of Peter S.S.Guok filed on the 21st day of October, 1976, the affidavit of Lee Kay Guan filed on the 3rd day of November, 1976, the affidavit of Cheng Tim Pin filed on the 11th day of March, 1977 and the affidavit of Peter S.B.Guok filed on the 25th day of March, 1977 and the exhibits therein and Upon hearing the Solicitors for the Plaintiffs and for the Defendants IT IS ORDERED that the Plaintiffs are hereby at liberty to enter judgment against the Defendants for the sum of \$4,742.26 (being \$13,742.26 less \$9,000.00) AND IT IS FURTHER ORDERED that the Plaintiffs do proceed to trial with the balance of the Plaintiffs' claim herein under the Summons-for-Directors and IT IS LASTLY ORDERED that the costs of this application be reserved for trial judge.

30

40

Dated the 1st day of April, 1977

Sgd. Loh Wee Ping  
Asst. Registrar

In the Court  
of Appeal

No. 14

BRIEF ARGUMENTS IN WRITING

No.14  
Brief Arguments  
in writing which  
were submitted  
by the Appellants  
Solicitors to  
the Court of  
Appeal on  
19th April 1978

IN THE COURT OF APPEAL OF THE REPUBLIC  
OF SINGAPORE

CIVIL APPEAL NO. 57 OF 1977

Between

1. LEE KAY GUAN
2. ONG KIM LIONG (m.w.) Appellants

And

PHOENIX HEIGHTS ESTATE  
(PTE) LTD. Respondents

10

IN THE MATTER OF SUIT NO.4663 OF 1975

Between

1. LEE KAY GUAN
2. ONG KIM LIONG (m.w.) Plaintiffs

And

PHOENIX HEIGHTS ESTATE  
(PTE) LTD. Defendants

BRIEF ARGUMENTS IN WRITING

1. The Respondents submit that the Contract prescribed by the Controller is in effect partly a building contract involving, inter alia, progressive payments and building specifications and partly a sale of land involving transfer of title. The primary purpose is to ensure that developers do not delay over the construction of the house.

20

2. In a building contract if there is delay in completing the building the normal measure of damages would be the value of the use of the building during the period of delay, the value generally being taken as the rental value.

30

3. However if there is delay in the conveyance or transfer of the title, due not to any fraud or fault on the part of the Respondents but caused by a third party (Registrar of Titles) at common law no

damages are payable and if there is failure to complete the transfer only the purchasers' expenses are recoverable.

In the Court  
of Appeal

No.14

1. The English & Empire Digest (Vol.40) Pages 284, 285 & 287
2. Bain v. Fothergill (1874) Law Times (Vol.31) P.387
3. Flureau v. Thornhill (1776) 96 E.R.635
- 10 4. Rowe v. School Board for London (1887) 36 Ch.D.619
5. McGregor (13th Ed.) Para:661 & 683.

Brief Arguments  
in writing which  
were submitted  
by the Appellants  
Solicitors to  
the Court of  
Appeal on  
19th April 1978  
(continued)

But Clause 11 in allowing the damages at 9% of the purchase price to continue from the date the house was completed and ready for occupation until the title is issued and produced to the purchasers is repugnant to the common law.

20 4. In the present case the delay in the construction of the house was mainly due to acute shortage of building materials caused by a sudden world recession. The Respondents had to go through great length to get the necessary materials, apart from having to pay exorbitant prices for them. Despite this adverse situation the Respondents through sheer diligence managed to complete all in all 160 units of houses and flats in the Estate in a space of 3 years. Although  
30 Equity would have granted relief to them the Respondents were prepared to and did compensate the Appellants in full for the delay in completing the house. The sum paid was \$14,512.26.

40 5. But with regard to the titles the Respondents could not get the Certificate of Title (which were issued in bulks) for the bungalows, semi-detached and terrace houses until late 1975 and in the case of flats not until late March 1976 although steps had been taken with the Commissioner of Lands as early as 1970 and the Registrar of Titles in 1971 to surrender the original common law title. This became necessary after the introduction of the Land Titles Act. Prior to this the Respondents could transfer the title by making it part of the larger title.

6. It is significant to note that had the

In the Court  
of Appeal

Nol4

Brief Arguments  
in writing which  
were submitted  
by the Appellants  
Solicitors to  
the Court of  
Appeal on  
19th April 1978  
(continued)

Certificate of Title to the property been issued before or by the time the house was completed the Respondents would have been in the position to give the Appellants the "Notice to Complete" and the Appellants' claim could not possibly be extended beyond the time the building was completed.

7. The house was in fact completed some 3 months before the Respondents received the Temporary Occupation Licence (T.O.L.). To get the T.O.L. eight different Government Departments had to be totally satisfied namely (a) Building Control Division - on structural joints; 10
- (b) Electricity Department - on electricity supply;
  - (c) Sewerage Department - on internal water supply and internal fittings and pipings;
  - (d) Drainage Department - on outlet system; 20
  - (e) Septic Tank Department - on flows into septic tank and pump house;
  - (f) Roads Department - on surfacing of roads;
  - (g) Survey Department - on boundaries of each plot; and
  - (h) Ministry of the Environment - on bins and refuse system. 30

The T.O.L. granted was subject to automatic renewal and until such time when the maintenance period was over a Certificate of Fitness for Occupation would follow.

8. The irony of the Controller's intention was that the Respondents should not delay the construction of the house yet as it turned out the Appellants refused to take possession when the house was completed simply because the Respondents could not produce the title. In formulating the contract the Controller had no power over the issuing of the Certificates of Title nor had he any control when it will be issued. The refusal to take possession in such circumstances therefore necessarily involves a question of public policy and in McGregor para.197 it is said "Over and above the contemplation of the parties there is the overall public policy of the law: this will sometimes prevent recovery even for damages 40 50

that could be said to have been in the parties' contemplation." Should the property be laid to waste simply because there was a delay in the issuing of the Certificate of Title and notwithstanding that property tax was now imposed on a occupational level? Even without the Certificate of Title the property could be mortgaged and in fact it was mortgaged by the Appellants to the Chung Khiaw Finance Ltd. It could also be sold by the Assignment of rights, title and interest and as the Caveat had been lodged with the Registrar of Titles long before the title was issued the Appellants' interest was fully protected. There are in Singapore to-day still many housing estates where purchasers had taken possession years ago but are still without a title. The time between completion of the building until the titles are issued can be a difference of many years.

10

20

9. The Contract, as formulated by the Controller with provisions for amendments, deletion and alterations to be allowed by him had never been affirmed by Parliament and must therefore subject to judicial control as being unreasonable and repugnant to the common law.

30

Halsbury's (3rd Edition)  
Vol.36 Paragraph 742  
Vol.24 Paragraphs 948, 950 & 952

It is not strictly a Statutory Contract as we have in the case of a Statutory Mortgage:-

Statutes of Singapore Vol.8 -  
Page 109

It was never scheduled to the Housing Developers (Control & Licensing) Act but a contract made under statutory powers which did not license the Controller to alter the law of damages in any shape or form but to make contracts within the law.

40

10. The power exercised by the Controller under Section 21(5) of the Housing Developers (Control & Licensing) Act Cap.250 reads as follows "All such rules shall be published in the Gazette and shall be presented to Parliament as soon as may be after publication." Unlike other bye-laws, rules and regulations made under different parent Acts, examples of which are briefly shown as follows :-

50

In the Court  
of Appeal

No.14

Brief Arguments  
in writing which  
were submitted  
by the  
Appellants  
Solicitors to  
the Court of  
Appeal on  
19th April 1978  
(continued)

In the Court  
of Appeal

No.14

Brief Arguments  
in writing which  
were submitted by  
the Appellants  
Solicitors to the  
Court of Appeal  
on 19th April  
1978

(continued)

"S.125 Bankruptcy Act (Cap.18) Page  
356

.....such rules, on publication in  
the Gazette shall be judicially  
noticed and shall have effect as if  
enacted by this Act."

S.21(2) Bills of Sale Act (Cap.29)  
Page 529

"Any such rules shall be published  
in the Gazette, and shall have the  
same force and effect as if enacted  
in this Act."

10

S.23(2) Public Trustee Act (Cap.38)  
Page 600

"Any rules made.....shall be published  
in the Gazette and shall be presented  
to Parliament and shall not come  
into force until approved by a  
resolution of Parliament. In  
approving any rules Parliament may  
make such alterations therein as it  
thinks fit."

20

11. Nothing in the Housing Developers  
(Control & Licensing) Act provides that  
the Minister or Controller could alter  
the common law or any established principles  
of law in formulating the contract form.  
If a contrary intention is intended it  
must be clearly shown.

Leach v. R (1912) A.C.305, H.L.  
Halsbury's (3rd Edition) Vol.36  
Para.625

30

12. Halsbury's (3rd Edition) Vol.24 Page  
520 provides :-

"Where a bye-law is in part good and  
in part bad it is severable and may  
be upheld in part."

The Respondents contend that clause 11  
insofar as it provides for damages claim-  
able up to date of notice to complete was  
invalid as repugnant to the general law.  
Furthermore clause 10 of the contract  
contradicts clause 3(h) in that even  
should the title be not available due to  
the delay in sub-dividing the land the  
Respondents are entitled to collect the  
last progressive payment which amounts to  
completion so long as the Respondents

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are able to deliver possession to the Appellants.

In the Court  
of Appeal

No.14

Brief Arguments  
in writing which  
were submitted  
by the  
Appellants  
Solicitors to the  
Court of Appeal  
on 19th April  
1978

(continued)

12. It is significant to note that after T.O.L. irrespective of the question of damages where it is liquidated or otherwise the fact remains that there was no actual damage whatsoever suffered by the Appellants.

10 13. The Appellants at the previous hearing had submitted the following authorities :-

- a) Diestal v. Stevenson (1906)  
2 K.B. 345
- b) Phillips v. Lamdin (1949)  
2 K.B.33
- c) Jones v. Gardiner (1901) 1 Ch.D.191
- d) Cellulose Acetate Silk Co.Ltd. v.  
Widnes Foundary (1925) H.L. (1933)  
A.C. 20
- e) In re Earl of Wilton's Settled  
Estate (1907) 1 Ch. D50
- f) In re Ernest Debenham, Bart & W.H.  
Mercer Contract (1944) 1 A.U.  
E.R.364
- g) White & Carter (Councils) Ltd. v.  
Mcgregor (1962) A.C.413

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(a) In Diestal v. Stevenson a contract contained the clause "penalty for non-execution of this contract by either party 1 shilling per ton on the portion unexecuted." It was held that notwithstanding that the parties had called the 1 shilling per ton a penalty, the 1 shilling per ton was to be treated as liquidated damages. This decision serves to show that the terminology used in the contract, whether "penalty" or "liquidated damages", is not always conclusive.

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(b) In Phillips v. Lamdin, the Defendant contracted with the Plaintiff to complete the sale of a property with vacant possession at certain date but later informed the Plaintiff that he was unable to arrange for possession at the agreed date because of the difficulties which had arisen in respect of another house

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In the Court  
of Appeal

No. 14

Brief Arguments  
in writing which  
were submitted  
by the Appellants  
Solicitors to the  
Court of Appeal  
on 19th April  
1978

(continued)

into which the Defendant proposed to move. It was held that "except where delay was due to a defect in the title or a conveyancing difficulty damages were recoverable for delay in the performance of a contract for the sale of interest in land." This case is distinguishable in that the fulfilment of the contract was within the Defendant's power and did not entirely depend on a third party. The Defendant could have moved into a hotel or any other accommodation as an alternative.

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(c) In Jones v. Gardiner it is also distinguishable in that there was no defect or want of title of the vendor as the title was available at the time the contract was made. The vendor was held liable by reason of his not having used reasonable diligence to perform his contract by discharging a certain equitable charge on the property. Here again the fulfilment of the contract lay solely with the Defendant.

20

(d) In Cellulose Acetate Silk Co. Ltd. v. Widnes Foundry the damages was in respect of the delay in construction of a plant. It is distinguishable in that no title was involved at all and was purely a breach of building contract. In all the above cases the parties were able to fulfil the contract themselves and the delay or inability to do so was not due to a third party.

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(e) In Earl of Wilton's Settled Estate the case is even more distinguishable in that the sale agreement was conditional until it was sanctioned by Parliament. A private Act of Parliament was later obtained confirming the terms of the Agreement. It was therefore held that the statutory effect must be given to the terms therein.

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(f) In Ernest Debenham, Bart & W.H. Mercer Contract the vendor contracted to sell to the purchaser who paid a certain deposit with the balance to be paid on completion otherwise 5% interest would be charged subject to the Law Society General Conditions of Sale. It was held that the 5% interest was not inconsistent with the Society's conditions of sale. The case is not quite relevant.

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(g) In White & Carter (Councils) Ltd. v. McGregor an advertising company refused to cancel a contract of advertising for a period of 3 years which was entered by a garage owner through his manager and despite subsequent notice of cancellation by the owner proceed to perform the advertisement as though there were no such cancellation. It was held that the advertisement company was entitled to carry out the contract and entitled to the full contract price. This was has no bearing on the present issue.

In the Court of  
of Appeal

No.14

Brief Arguments  
in writing which  
were submitted by  
the Appellants  
Solicitors to the  
Court of Appeal  
on 19th April  
1978

(continued)

Sgd. Guok & Co.

No.15

LETTER FROM APPELLANTS SOLICITORS  
TO THE REGISTRAR OF THE SUPREME  
COURT

No.15

Letter from  
Appellants  
Solicitors to  
the Registrar  
Supreme Court

10th November  
1980

GUOK & CO.  
Advocate & Solicitors  
11 D'Almeida Street,  
Singapore, 1  
TEL: 92372 & 92373

PETER S.S. GUOK 10th November, 1980

Our ref: PG/JT/753/72

Dear Sir,

re: Suit No. 4663 of 1975 and  
Civil Appeal No.57 of 1977

On 7.9.77 Messrs. Yap & Yap (Solicitors for the Plaintiffs) filed in Suit No.4663 of 1975, inter alia, a Bundle of Documents marked "AB" consisting of the following:-

<u>Item</u>	<u>Nature of Documents</u>	<u>Page</u>
1	Agreement dated 6.1.73 made between Phoenix Heights Estate (Pte) Ltd. and Lee Kay Guan and Ong Kim Liong.	1-17
2	Letter dated 6.12.75 from M/s. Guok & Ganasan to M/s. Yap & Yap.	18
3	Completion Account from M/s Guok & Ganasan.	19
4	Letter dated 15.9.76 from M/s. Yap & Yap to M/s. Guok & Ganasan.	20
5	Amended Completion Account dated 15th September, 1976 from M/s. Yap & Yap to M/s. Guok & Ganasan.	21

On 22.9.77 we, Guok & Co. (Solicitors for the Defendants) in the same Suit No.4663 of 1975, inter alia, filed a Bundle of Documents marked "K" consisting of the following:-

No.15	<u>Item</u>	<u>Nature of Documents</u>	<u>Page</u>	
Letter from Appellants Solicitors to the Registrar Supreme Court 10th November 1980 (continued)	1	Xerox copy of Licence for Temporary Occupation No.12530 dated 28.11.74	1	
	2	Letter dated 29.11.74 from Defendants to Plaintiffs	2	
	3	Letter dated 11.12.74 from Plaintiffs' Solicitors M/s Yap & Yap to Defendants Solicitors M/s. Guok & Ganesan	3	10
	4	Letter dated 26.12.74 from Defendants to Plaintiffs	4	
	5	Letter dated 5.3.75 from Defendants to Plaintiffs	5	
	6	Letter dated 17.4.75 from Plaintiffs to Defendants	6	
	7	Letter dated 12.2.76 enclosing Certificate of Fitness for Occupation from Defendants' Solicitors M/s Guok & Ganesan to Plaintiffs' Solicitors M/s. Yap & Yap	7 - 8	20
	8	Letter dated 19.2.76 from Defendants' Solicitors M/s. Guok & Ganesan to Plaintiffs' Solicitors M/s. Yap & Yap	9	
	9	Letter datd 21.2.76 from Plaintiffs' solicitors M/s. Yap & Yap to Defendants' Solicitors M/s. Guok & Ganesan	10	30
	10	Order of Court dated 1.4.77	11 - 12	

On 19.4.78 in Civil Appeal No.57 of 1977 we, Guok & Co., (Solicitors for the Respondents) inter alia, filed our "Brief Arguments in Writing" consisting of 12 pages.

Our search this morning revealed that the abovementioned documents were filed as stated. We shall therefore be obliged if you will kindly give us your confirmation accordingly so that the Privy Council can be informed. 40

Yours faithfully,  
Sgd. Guok & Co.

The Registrar,  
Supreme Court,  
Singapore

No. 16

LETTER FROM THE REGISTRAR  
SUPREME COURT TO APPELLANTS  
SOLICITORS

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REGISTRY, SUPREME COURT,  
SINGAPORE 0617  
REPUBLIC OF SINGAPORE

Tel: 3360644

11 Nov. 80

10 Messrs. Guok & Co.  
Advocates & Solicitors  
Singapore  
(Ref: PG/JT/753/72)

Dear Sirs,

RE: SUIT 4663/75  
CIVIL APPEAL NO. 57/77

With reference to your letter of  
10 Nov 80, please be informed that the  
documents as mentioned are in the Court files.

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Yours faithfully,

Sgd.

ASST. REGISTRAR  
SUPREME COURT, SINGAPORE.

/ap

No.16

Letter from  
the Registrar  
Supreme Court  
to Appellants  
Solicitors

11th November  
1980

No. 15 of 1979

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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O N A P P E A L  
FROM THE COURT OF APPEAL IN SINGAPORE

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B E T W E E N :

PHOENIX HEIGHTS ESTATE (PTE) LTD.

Appellants  
(Defendants)

- and -

1. LEE KAY GUAN
2. ONG KIM LIONG

Respondents  
(Plaintiffs)

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SUPPLEMENTARY RECORD

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71 Lincoln's Inn Fields,  
London, WC2A 3JF

Solicitors for the  
Appellants

THOMAS COOPER & STIBBARD,  
27 Leadenhall Street,  
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Solicitors for the  
Respondents